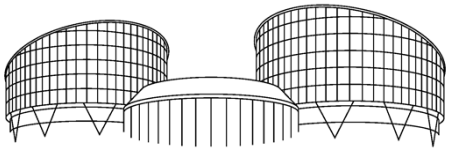

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF HÔPITAL LOCAL SAINT-PIERRE D'OLÉRON AND OTHERS v. FRANCE

(Application no. 18096/12 and 23 others – see appended list)

JUDGMENT

STRASBOURG

8 November 2018

FINAL

08/02/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Hôpital local Saint-Pierre d'Oléron and Others v. France,

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

Angelika Nußberger, *President,*
Yonko Grozev,
André Potocki,
Síofra O'Leary,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 8 November 2018,

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

PROCEDURE

1. The case originated in twenty-four applications (nos. 18096/12, 53601/12, 23542/13, 32194/13, 39165/13, 39173/13, 39180/13, 39184/13, 49923/13, 57424/13, 58995/13, 59003/13, 68908/13, 68916/13, 68918/13, 76512/13, 76519/13, 76527/13, 76530/13, 5485/14, 23544/14, 30287/14, 46819/14, 46862/14) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twenty-four legal persons in France ("the applicants"), on various dates between 20 March 2012 and 19 June 2014.

2. The applicants were represented by Mr S. Pappas, a lawyer practising in Brussels. The French Government ("the Government") were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry of Europe and Foreign Affairs.

3. The applicant alleged a violation of Article 6 § 1 of the Convention and of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 on the grounds of the enactment of a new law during their judicial proceedings. In applications nos. 18096/12 and 53601/12 the applicants also complained that no reasons had been given in the Court of Cassation's judgments.

4. On 11 September 2015 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Origin of the cases

5. The applicants are institutions which accommodate dependent elderly persons (EHPAD - *Etablissements d'Hébergement pour Personnes Agées Dépendantes*), hospitals incorporating EHPADs, and an association operating reception centre for persons with disabilities. The *Unions de recouvrement des cotisations de security social et d'allocations familiales* (URSSAF – "Social Security and Family Allowance Contribution Collection Offices") constitute a network of private bodies to which a public service has been delegated and which help maintain the social welfare system by collecting and distributing national insurance contributions, which serve to fund the general social security system. The URSSAF network operates under the dual umbrella of the Ministry responsible for Social Security and the Ministry of the Budget.

6. All the applicants applied to the URSSAF for reimbursement of the employers' share of the social contributions in respect of their employees, arguing that they had been providing residents in their institutions with home-help services as exempted under Article L. 241-10 III of the Social Security Code (CSS). Paragraph I of that provision exempts from employers' contributions the remuneration of specific types of home help provided to elderly or disabled persons, where the personnel in question are genuinely employed "for their personal service, at their home or at the home of members of their families" by six categories of persons. Article L. 241-10 III provided for the same exemption in respect of the remuneration of home-help providers employed by : (1) associations and enterprises authorised under Article L. 129-1 of the Labour Code (see paragraph 44 below) to exercise activities relating to childcare or assistance for elderly or disabled persons; (2) municipal or inter-municipal social welfare centres; (3) agencies which are officially authorised to provide social assistance or have concluded an agreement with a social security body, for the part paid in return for the performance of work *in the homes of* ("*chez*") the persons mentioned in section I (see paragraph 43 below).

7. The applicants' requests for reimbursement were rejected. They applied to the Social Security Court. Most of the first-instance and appellate courts applied to took the view that the exemption provided for in Article L. 241-10 III only applied to the remuneration of employees working in the elderly person's private home, and not to those working in an EHPAD, a collective accommodation centre which is not considered as the elderly person's home for the purposes of Article L. 241-10 CSS. The applicants argued that the word "*domicile*" ("private home") was not used in paragraph

III of Article L. 241-10 CSS but rather the preposition *chez* ("at the home of"), which, in their view, referred to the place where the elderly person resided, with the accommodation occupied by the residents of EHPADs constituting their "private homes".

8. While the first appeal on points of law was pending before the Court of Cassation (application no. 18096/12, see paragraphs 9 et seq. below), the legislature enacted a law, section 14 of which provided that "[i)n the first indent of paragraph III of Article L 241-10 of the Code of Social Security, the words "*chez les*" ["at the home of the"] shall be replaced with the words "*au domicile à usage privatif des*" ["at the private home of the"].

B. The applications

1. Application no. 18096/12

9. The applicant is a public healthcare institution comprising an accommodation centre for dependent elderly persons (EHPAD). This former old age home acquired EHPAD status by concluding an agreement with the Prefect and the President of the Department Council under Article L. 313-12 of the Social Action and Family Code. By letter of 20 May 2008, considering that the EHPAD was the private home of the elderly persons residing in it, the applicant, relying on Article L. 241-10 III CSS, requested exemption from employers' contributions to the Charente-Maritime URSSAF. It requested the reimbursement of 242,419.56 euros (EUR) in respect of social security contributions which it contended had been unduly paid out of the salaries of members of its staff who were employed to perform home-help work for elderly residents between May 2005 and April 2008.

10. On 2 June 2008 the URSSAF, and then on 18 December 2008 the Friendly Settlements Board, rejected the applicant's request on the grounds that "an old people's home is a collective accommodation centre which is not considered as the elderly person's private home for the purposes of Article L. 241-10 CSS".

11. The applicant appealed to the La Rochelle social-security appeal tribunal (TASS). It submitted that the accommodation occupied by EHPAD residents constituted their homes for the purposes of Article 102 of the Civil Code (CC), which provides that "the domicile [private home] of a French person, as to the exercise of his civil rights, is at the place where he has his main establishment....", given that it was their actual and real place of residence, that they were visited by their families there, that they furnished it as they pleased, that it was their residence for tax and electoral purposes and that they received their housing benefits there.

12. By judgment of 1 December 2009 TASS dismissed the applicant's appeal on the grounds that the private home (*domicile*) concept did not extend to collective accommodation structures:

> "[Article L. 241-10 III] provides for cases of exemption [from contributions] in conformity with the municipal policy of helping elderly persons to remain in their own homes, "home" meaning the ordinary residence before hospitalisation.
>
> The Tribunal notes from this very lengthy article that the exemption applies to home-helps employed under fixed-term contracts, and ordinary acts relating to everyday life. Moreover, exemptions are granted at the request of the (elderly) persons concerned, which was not the case in the present case, since it was the institution that requested exemption.
>
> Exemption is allowed only where the ordinary actions relating to everyday life are carried out in the home, which cannot be the healthcare institution.
>
> Furthermore, whenever legislation mentions a collective structure accommodating elderly persons, the Social Action and Family Code is only referring to institutions which provide accommodation for elderly persons, and not private homes.
>
> The legislature prioritises helping elderly persons to remain in their private homes because that is a better solution for elderly persons, and the exemption in question is, precisely, aimed at encouraging them to remain in their homes, which offsets the dearth of places in institutions.
>
> In short, [the applicant] is not eligible for exemption."

13. The applicant appealed against that judgment. It complained of the Tribunal's erroneous interpretation of Article L. 241-10 CSS, arguing that the "private home (*domicile*)" concept should be analysed in the light of Article 102 CC, relying on a judgment delivered by the Social Affairs Division of the Pau Court of Appeal on 18 December 2008 to this effect, which judgment had become final in the absence of an appeal on points of law from the URSSAF (see paragraph 46 below). It also referred to judgments delivered by several TASS's which had relied on Article 102 CC to treat EHPADs as being equivalent to the elderly persons' private homes, including the Bobigny TASS's judgment of 16 March 2010 (see paragraph 34 above). The applicant also mentioned the Law of 21 July 2009 reforming the hospital system and concerning patients, health and the regional and local authorities, which provided that "private home" (*domicile*) could mean the place of residence or an institution providing accommodation under the Social Action and Family Code. Finally, the applicant complained of the discrimination exercised by the URSSAF, which accepted that residential homes, which were collective accommodation structures like the EHPADs, were eligible for the exemption even though there was no difference between those two types of institution in terms of the healthcare provided. This, it submitted, created flagrant inequality among elderly persons living in collective accommodation structures.

14. By judgment of 8 June 2010, the Poitiers Court of Appeal upheld the judgment:

> "... contrary to the appellant's submissions, the provisions whose implementation he sought cannot apply to the actual staff of the retirement home, whose purpose is, precisely, to accommodate dependent elderly persons while providing them with all the services necessary for their survival, whereas the provisions clearly concern outside employees working in elderly persons' homes with a view to enabling them to remain autonomous in their own or their relatives' homes or in a residential home, which provides a limited set of collective services, by supplying them with personal services which do not exist in their homes for everyday actions which they cannot carry out on their own. It should be added that [the applicant] is not empowered to provide social assistance under the aforementioned provisions because, given that the fact that the residents are in receipt of welfare assistance in defraying their accommodation expenses in the retirement home does not confer on it the status of 'home-help employer'."

15. The applicant lodged an appeal on points of law. In a single four-pronged ground of appeal it alleged a violation of Article L. 241-10 III CSS and Article 102 CC, criticising the trial judges for having concluded that:

- it was a body empowered to accommodate persons benefiting from social assistance and not a body empowered to provide social assistance even though those two designations were synonymous;
- elderly persons could not have their "private home" (*domicile*) at the hospital;
- the exemption did not apply to the retirement home staff;
- only the elderly persons in question could apply for the exemption, and not the institutions as such.

16. On 21 December 2010, when the appeal on points of law was still pending, Law no. 2010-1594 of 20 December 2010 on social security funding for 2011 (hereafter "the 20 December 2010 Law") was published in the Official Gazette of the French Republic (Official Gazette no. 295 of 21 December 2010). Section 14 of that Law provided: "in Article L. 241-10 III (1) of the Code of Social Security, the words "at the home of" shall be replaced with "at the private home of".

17. In the meantime that Law had been referred to the Constitutional Council by Deputies who considered that by ruling out the impugned exemption of persons residing in institutions, section 14 of the 20 December 2010 Law was in breach of the equality principle. Conducting a preliminary review, by decision of 16 December 2010 as reasoned below, the Constitutional Council declared section 14 cited above in conformity with the Constitution:

> 1. "... Considering that the exemption from employers' contributions provided for in Article L. 241-10 of the Social Security Code is intended to enable dependent persons to continue to live in their own homes; that making entitlement to such exemption dependent upon the private nature of the home of the beneficiary of the said assistance is directly linked to the purpose of that Article; that, therefore, the provisions of Article 14, reiterating that purpose, do not infringe the principle of equality before the law".

18. In its defence pleadings lodged on 29 December 2010 before the Court of Cassation, the URSSAF emphasised that the aim of the exemption provision was to enable elderly persons to continue to live at home. It relied on the interpretative nature of section 14 of the 20 December 2010 Law, which was aimed solely at confirming that the exemption from contributions did not apply to persons employed by institutions providing collective accommodation for dependent persons and preventing the latter from misusing the provisions of Article L. 241-10 III CSS. The URSSAF pointed out that the 20 December 2010 Law was an interpretative law and that section 14 was directly applicable to the ongoing proceedings, including those before the Court of Cassation.

19. In his report entitled "In view of the non-admission of the appeal on points of law in the absence of any arguable grounds of appeal", the reporting judge argued, first of all, that the interpretation of the initial text by the trial judges had been consistent with the legislature's intentions, and, secondly, that by providing a definition of "private home" (*domicile*) for the purposes of the impugned text, the legislature had clearly wished to confer an interpretative nature on section 14 of the 20 December 2010 Law, rendering that decision applicable before the Court of Cassation. The reporting judge concluded his report as follows: "[c]onsequently, the decision taken by the Court of Appeal cannot be validly challenged by an argument which has become ineffective, such that the appeal on points of law cannot be allowed". The Advocate General's opinion concluded that the appeal on points of law should be dismissed:

> "The dispute is based on the interpretation of the provisions of Article L. 241-10 III of the Social Security Code concerning exemption from the employer's social security contributions relating to home help, in the version in force at the material time. Are those provisions applicable to persons in a retirement home, the aim of which is, precisely, to accommodate dependent elderly persons who have not remained in their personal, private homes, while providing them with all the services necessary for their survival?
>
> The question is based on the interpretation of the text: the parliamentary debates on the occasion of the discussion of the [20 December 2010] Law ... clearly establish the grounds on which the legislature intended to amend the text. It should be remembered that from the outset, the law had been designed to enable elderly dependent persons to continue living in their private homes and that some individuals, by applying for the assistance in question 'blatantly distort the spirit of the law ...'. Since the amendment effected by the words 'at the private home of the' replacing the words 'at the home of' are interpretative, it perfectly reflects the meaning of the version of the text in force at the material time in the present case. We are dealing, precisely, with a law which 'confines itself to recognising, without innovating, an existing law which had been rendered potentially controversial because of an imperfect definition' (Civ., 9 December 2008, no. 08-10.061)."

20. In its reply, the applicant submitted that that law was not interpretative but had effected an amendment, to the extent that it had changed the original wording of the impugned provision to confer a

different meaning on it. It pointed out that in the version prior to the enactment of the 2010 Law, Article L. 241-10 III had never prompted any controversy and that the Court of Cassation had never ruled on the EHPADs' eligibility for the exemption in question. Therefore, intervention by the legislature to influence ongoing disputes had been unjustified. Relying on Article 6 § 1 of the Convention, the applicant stated that section 14 of the 20 December 2010 Law had clearly and explicitly pointed to interference by the legislature with the course of justice in order to influence the judicial processing of a case by depriving of its legal basis the action which had been brought before that Law had entered into force, in breach of the principle of the separation of powers and the right to a fair trial. It took the view that there was no public-interest imperative to justify that interference in the administration of justice, given that the purpose of section 14 was to ensure that the State, through the intermediary of the URSSAF, could eliminate any risk of a finding against it. The applicant's reply did not comprise any arguments under Article 14 of the Convention and Article 1 of Protocol No. 1.

21. By judgment of 22 September 2011 the Court of Cassation dismissed the appeal on points of law in the following terms:

> "However, whereas the judgment notes that Article L. 241-10 III ... provides that the remuneration of home-helps who are employed under the conditions set out in that text are exempted from employers' contributions in respect of the part paid for work performed at the homes of the persons mentioned in paragraph I of the same Article;
>
> Whereas the Court of Appeal rightly deduced from that fact that the exemption could only apply to remuneration for employees working in the elderly person's private home and its decision was justified in law on those sole grounds ..."

2. Application no. 53601/12

22. The applicant, a public institution, runs the "Le Bon Accueil" retirement home. The latter acquired EHPAD status by concluding an agreement with the Prefect and the President of the Département Council. By decision of 31 October 2008 the applicant's claim for the reimbursement of the sum of EUR 120,655 in respect of the impugned employers' contributions was rejected by the URSSAF. The latter relied on two ministerial letters of 26 August 1987 and 22 June 1993 stating that no collective accommodation structures were eligible for the exemption in question apart from residential homes, on the grounds that the "private home (*domicile*)" criterion had not been met.

23. By judgment of 12 April 2010 the Ain Département TASS dismissed the applicant's appeal against that decision. By judgment of 23 December 2010 the Lyon Court of Appeal upheld that judgment:

> "... The parties disagree solely on the question whether a retirement home can be considered as a private home (*domicile*).

Article 102 of the Civil Code defines the home (*domicile*) as the principal place of residence.

Elderly persons permanently accommodated, on a non-temporary basis, in a retirement home do indeed have their home (*domicile*) in that institution within the meaning of the Civil Code.

However, the legislation on exemption from national insurance contributions clearly refers to an interpretation of 'home (*domicile*)' which is completely different from the legal concept as defined in the Civil Code.

Indeed, Article L. 241-10 III of the Social Security Code explicitly refers to Article L. 7231-1 of the Labour Code as regards the type of activity entitling legal or natural persons to exemption; however, that provision governs assistance for elderly persons who require personal help at home or mobility assistance in their local area to help them continue to live in their private homes.

The persons accommodated in the 'Le Bon Accueil' retirement home, a public institution, sign a residence contract which is subject to the provisions of the Social Action and Family Code; Article L. 231-4 of that code provides that 'any elderly person who cannot be properly assisted at home may be placed ... either in a healthcare institution or in a public medical institution or retirement home, or failing that, in a private institution.'

Therefore, where elderly persons are concerned, the 'remaining at home' concept is completely different from with the 'institutional placement' concept.

[The applicant] does not help elderly persons to remain in their private homes, it accommodates them; it is therefore ineligible for exemption from national insurance contributions ..."

24. The applicant lodged an appeal on points of law. In its single ground of appeal it submitted that only the version as it stood after the 19 December 2007 Law was applicable to the dispute (see paragraph 43 below), and not the 20 December 2010 Law (mistakenly designated in submissions as Law no. 2010-1657 of 29 December 2010 on the 2011 budget). It added that the new law could not have been interpretative in nature, justifying its retroactive application to ongoing proceedings, because it replaced the conditions for exemption set out in the previous law with more restrictive ones, which previous law had not required the existence of an exclusively private home (*domicile*) as a condition for granting exemption from contributions. The applicant thus emphasised that "even supposing that the Court of Appeal had implicitly intended to hide behind the interpretative nature of the 29 December 2010 Law [*sic*] in order to apply to the present case the provisions of Article L. 241-10 III CSS in the version as amended by that Law, the impugned decision would be in breach of Article 2 of the Civil Code read in conjunction with Article 6 (1) of the Convention and Article 1 of Protocol No. 1".

25. In his report, the reporting judge set out the following observations:

"As stated in the supplementary memorial, it is incumbent on the Court of Cassation to determine the question of principle concerning the scope of the provisions of Article L. 241-10 III of the Code of Social Security as it stood prior to the

amendments effected under the 20 December 2010 Law (also erroneously referred to as Law no. 2010-1657 of 29 December 2010 on the 2011 budget). The question was whether the exemption from employers' contributions *vis-à-vis* the remuneration of persons providing home-help services to dependent elderly persons was applicable to the wages of EHPAD employees.

The Second Civil-Law Division, being called upon to determine that question in a dispute between the Saint-Pierre d'Oléron local hospital, which comprises an EHPAD, and the Charente-Maritime URSSAF, gave its decision in a judgment of 22 September 2011 (no. 10-19.954), which is currently being published.

In that judgment dismissing the institution's appeal on points of law, the Court of Cassation approved the Court of Appeal's deduction from Article L. 241-10 III, in the version applicable to the present case, to the effect that the exemption only applied to the remuneration of employees working in elderly persons' private homes.

Having regard to that determination, the present appeal on points of law cannot be admitted, in the absence of any arguable grounds of appeal."

26. By judgment of 16 February 2012 the Court of Cassation declared the appeal on points of law inadmissible.

3. Applications nos. 23542/13, 32194/13, 39165/13, 39173/13, 39180/13, 39184/13, 49923/13, 57424/13, 76512/13, 76527/13, 76519/13, 76530/13, 46862/14 and 46819/14

27. All the applicants' requests for exemption from employers' contributions under Article L. 241-10 III CC were dismissed by judgments which were subsequently upheld by the appellate courts. They lodged no appeals on points of law in view of the decision of the Court of Cassation in application no. 53601/12 declaring the appeal inadmissible (see paragraph 26 above).

4. Applications nos. 58995/13 and 30287/14

28. In application no. 58995/13 the applicant's request for exemption from employers' contributions was dismissed. In its ground of appeal it had argued that the legislature's interference in the administration of justice was incompatible with Article 6 § 1 of the Convention and with Article 1 of Protocol No. 1. It did not rely on Article 14 of the Convention. By judgment of 14 March 2013 the Court of Cassation dismissed its appeal on points of law as follows:

"Whereas, however, Article L. 241-10 III of the version of the Code of Social Security applicable to the dispute ... only applies to the remuneration of employees working in such persons' private homes, to the exclusion of non-private or collective premises occupied in an institution ...;

And whereas the Court of Appeal noted, in reply to the ground of appeal without going into detail on the parties' arguments, and using a literal interpretation of the word '*chez*' (at the home of), and leaving aside partly ineffective but *obiter* grounds, on the one hand, that the institution managed by the hospital was a collective accommodation structure, implying that the service provided was not aimed at

> enabling persons to remain in their private homes, and that the official residence of the persons accommodated in the EHPAD corresponded to a collective 'domicile' rather than an individual home as in the case of a private dwelling which had been purchased or rented; that it had thus legally justified its decision under Article L. 241-10 III of the Social Security Code, devoid of any failure to respect Article 6 of the Convention ..., any infringement of the legitimate expectation protected by Article 1 of the additional protocol to the same Convention, or any retroactive application of section 14 of Law no. 2010-1594 of 20 December 2010 on the social security budget for 2011 in breach of Article 2 of the Civil Code ...;"

29. The applicant in application no. 30287/14 is an association managing a nursing home for adults with disabilities. By judgment of 20 May 2011 the Ille-et-Vilaine Département TASS rejected its claim for the reimbursement of the impugned contribution on the grounds that it was a collective structure which did not provide assistance to ensure that the persons in question could continue to live in their homes. The tribunal argued in that regard that the situation of a resident in the nursing home was very different from that of a person residing in a residential home, which type of accommodation pursued the aim of enabling persons to remain at home, which the exemption from the employers' contribution was, precisely, geared to encouraging. By judgment of 19 June 2012 the Rennes Court of Appeal upheld the judgment, emphasising the specific features of the different types of home help: "...the fact that this exemption applies to home-helps working in residential homes ... does not amount to discrimination inasmuch as the conditions of accommodation in residential homes differ from those in such an accommodation structure as a nursing home ... in that, although it is indeed a type of collective residence, it comprises both private premises and shared areas earmarked for community living, whereby the occupants hold tenancy agreements". The applicant lodged an appeal on points of law relying on grounds of appeal concerning the violation of Article 6 § 1 and Article 14 of the Convention and Article 1 of Protocol No. 1. By judgment of 10 October 2013, the Court of Cassation dismissed the appeal on points of law as follows:

> "Whereas, however, by considering, for the application of Article L. 242-10-III, that eligibility for the exemption in respect of the remuneration of a home-help, the latter term refers to work in a private home (*domicile*), on the one hand, that those provisions, which are aimed at exempting employers from contributions, must be seen solely in the framework of the legislature's desire to encourage persons with disabilities to remain in their homes by affording them the necessary assistance to retain their personal autonomy and prevent their accommodation in a collective structure, and on the other hand, that the word '*chez*' ('at the home of') and the requirement on stating the address implies home-help work in a private home, whereas, when the person must be provided for in a collective accommodation structure, even if he or she has an individual bedroom, the work performed by the employees of the accommodation structure amounts to services provided to the person and not at the home of the person, the Court of Appeal quite rightly decided that the association was not eligible for the exemption requested; ...".

5. Applications nos. 59003/13, 68916/13 and 5485/14

30. The applicants in applications nos. 59003/13 and 68916/13 lodged appeals on points of law without relying on a violation of their right to a fair trial within the meaning of Article 6 § 1 or of the rights under Article 1 of Protocol No. 1 and Article 14 of the Convention. By judgment of 14 March 2013 (no. 12-12.280) the Court of Cassation dismissed the appeal on points of law lodged by the applicant in case no. 59003/13. By judgment of 25 April 2013 (no. 12-19.614) the Court of Cassation declared the appeal lodged by the applicant in case no. 68916/13 inadmissible.

31. The applicant in application no. 5485/14 lodged an appeal on points of law, failing to submit any ground of appeal concerning a violation of the Convention, apart from complaining of a misinterpretation by the court of appeal of the CSS provision applicable at the material time. By judgment of 11 July 2013 (no. 12-20.583) the Court of Cassation dismissed his appeal on points of law.

6. Applications nos. 68908/13 and 68918/13

32. As regards application no. 68908/13, the applicant lodged an appeal on points of law against a judgment delivered by the Grenoble Court of Appeal. It relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. By judgment of 25 April 2013 the Court of Cassation declared the appeal on points of law inadmissible.

33. The applicant in application no. 68918/13 lodged an appeal on points of law alleging a violation of Article 6 § 1 of the Convention. By judgment of 25 April 2013 the Court of Cassation declared the appeal inadmissible.

7. Application no. 23544/14

34. By judgment of 16 March 2010 the Bobigny TASS allowed the applicant's request for exemption from employers' contributions as follows:

> "... the preposition '*chez*' ('at the home of') refers to the concept of the person's private home (*domicile*). Therefore, the 'private home' concept is 'a condition for the exemption provided for in Article L. 241-10 III of the Social Security Code. Consideration should accordingly be given to whether the 'private home' condition has been met in the present case.
>
> In the present case [the applicant] ... accommodates elderly residents requiring the help of third persons, offering them a healthcare programme aimed at preventing and treating impairments, and a 'life project' geared to limiting the social disadvantages of the loss of autonomy.
>
> Having regard to their age and level of dependency, the residents of [the applicant] can no longer remain in their original private homes.
>
> The residents have all signed an indefinite residence agreement with the retirement home, and take their meals in the institution, where they also sleep, are visited by their relatives and conduct most of their everyday activities.

> Furthermore, the elderly persons residing in the retirement home ... are resident for tax purposes in the rooms which they occupy there. Similarly, they receive and send their mail at/from their address at the retirement home ... and the address on their polling cards is that of the institution. The fact of their residing in the EHPAD entitles them to housing allowance payable for dwellings occupied as their habitual place of residence.
>
> That being the case, there can be no doubting the residents' intention to live there or the fact that the EHPAD is their permanent place of abode.
>
> Moreover, Article 2 of the Charter of the Rights and Freedoms of Dependent Persons provides that any elderly person who has a disability or is dependent must be able to choose a living environment – an individual or collective home – appropriate to his needs and expectations. The Charter also lays down that where an elderly dependent person lives in an institution, the latter becomes his new private home (*domicile*).
>
> Thus [the applicant] has produced evidence to show that the beneficiaries of the impugned services have established their private home (*domicile*) in its institution for the accommodation of elderly dependent persons in order to make it their principal place of abode.
>
> The URSSAF refuted the concept of a domicile as defined in Article 102 of the Civil Code on the basis of the ministerial letter of 26 March 1993 distributed via ACOSS [*Agence Centrale des Organismes de Sécurité Sociale*] circular of 22 June 1993, of a ministerial letter of 26 August 1987 and of a collective letter of 16 December 2008. Those circulars have no statutory force. Furthermore, the 1993 circular rules out the application of the provisions of Article L. 241-10 III of the Social Security Code to retirement homes, thus adding to the legal provisions.
>
> Article L. 241-10 III ..., which is clear and brooks no interpretation, provides for no exclusion from its scope in respect of services provided to elderly dependent persons in collective accommodation.
>
> Consequently, since [the applicant] constitutes its residents' private home (*domicile*), the exemptions from contributions laid down in Article L. 241-10 III of the Social Security Code are applicable to it. ..."

35. By judgment of 28 June 2012 the Paris Court of Appeal set aside the judgment. The applicant lodged an appeal on points of law alleging a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. By judgment of 19 September 2013 the Court of Cassation declared the appeal on points of law inadmissible.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Background to the mechanism for helping elderly and disabled persons to continue to live at home, as described by the Government

36. According to the Government, the system for helping elderly and disabled persons to remain at home by exempting employers from their insurance contributions in respect of the salaries of home-helps was

introduced under section 38 of Law no. 87-39 of 27 January 1987 concerning various emergency measures. Initially, the exemption only applied to home-helps recruited directly by the persons benefiting from their services.

37. Law no. 93-121 of 27 January 1993 partly extended the exemption mechanism to home-helps employed by associations approved under Article L. 129-1 of the Labour Code, associations exclusively responsible for providing services to private individuals at home and approved agencies providing social assistance or having concluded an agreement with a social security organisation. The exemption was limited to 30% of the employers' social security contributions.

38. Law no. 98-1194 of 23 December 1998 on the social security budget for 1999 revised Article L. 241-10 of the Social Security Code, which had been amended several times since 1987, in order to clarify it, and in particular to harmonise the exemption mechanism without discriminating between home-helps employed under private agreements by the beneficiaries of the service and those employed by agencies placing them at the elderly persons' disposal. That law was also designed to extend access to the exemption to municipal and inter-municipal social welfare centres.

39. The law was nevertheless revised with the initial aim of the mechanism in mind, that is to say to ensure that elderly persons could continue to live in their homes. The ministerial letters of 26 July 1987 and 26 March 1993 reiterated that in order to qualify for the exemption from social security contributions, the persons concerned had to remain in their homes, which ruled out collective accommodation in nursing homes.

40. Both before and after the 23 December 1998 Law, therefore, exemption from contributions exclusively concerned the remuneration of home-helps working in elderly persons' private homes.

41. After the modification of Article L. 241-10 III under the 26 July 2005 Law, which was essentially aimed at standardising home-help and personal assistance services, the meaning of the provision was once again further clarified.

42. Thus, Letter 2008-262 of 16 December 2008 from the "*Direction de la réglementation du recouvrement et du service*" (DIRRES – Department regulating recovery and service) pointed out that the legal provisions on exemption from contributions for the employment of home-helps did not apply to any collective structures apart from residential homes, and that the legislature's aim had been to enable the person to remain in his or her personal home in order to offset the shortage of available and affordable places in the collective accommodation sector.

B. Article L. 241-10 CSS

43. The version of Article L. 241-10 of the Social Security Code as amended by the 19 December 2007 Law, which the applicants consider applicable to the facts of the present cases, reads as follows:

Article L. 241-10

"I.- The remuneration of a home-help shall be exempted from employers' social insurance and family allowance contributions, where such person is actually employed in their personal service, at their private home or at the homes of members of their family, by:

(a) Persons having reached a specific age, observing, for each individual home and for all the remunerations paid, an upper limit on remuneration fixed by decree;

(b) Persons with a dependent child entitling them to the additional allowance for children with disabilities as set out in Article L. 541-1 or to the compensatory benefit under the conditions set out in Article L. 245-1 III 1 of the Social Action and Family Code.

(c) Beneficiaries:

- either of the compensatory benefit mentioned in Article L. 245-3 (1) of the Social Action and Family Code;

- or of an increased allowance for dependent persons payable under disability insurance, pursuant to legislation on occupational accidents, under a special social security scheme or under Article L. 18 of the Code of Military Invalidity and War Victims' Pensions;

(d) persons who find themselves, under the conditions defined by decree, forced to have recourse to the assistance of a third person in performing everyday actions, provided that they have reached the official age established by decree;

(e) persons satisfying the loss-of- autonomy condition set out in Article L. 232-2 of the Social Action and Family Code under the conditions defined by decree. ...

With the exception of the case mentioned in indent (a) above, exemption is granted at the person's request by the body responsible for the recovery of contributions under the conditions established by ministerial decree.

Entitlement under those provisions cannot be combined, in the case of the same home-help, with the free-choice-of-childcare complement to early childhood benefit paid in respect of home childcare allowance.

II.- Natural and legal persons who have concluded an agreement in conformity with Articles L. 442-1 and L. 444-3 of the Social Action and Family Code on homecare by individuals, for valuable consideration, of the persons mentioned in indents I (a), (c), (d) and (e) of the present article shall be exempted, under the conditions set out in the penultimate indent of paragraph I, from the employers' contributions to social security and family allowances payable from the remuneration which they pay to those kinship carers.

III.- Remuneration of home-helps employed on an indefinite or fixed-term contract to replace employees who are absent or whose contract of employment has been suspended under the conditions set out in Article L. 122-1-1 of the Labour Code by associations and enterprises which are authorised, pursuant to Article L. 129-1 of the

> Labour Code, to perform activities relating to childcare or assistance to elderly or disabled persons, municipal and inter-municipal social welfare centres and agencies which are officially authorised to provide social assistance or have concluded an agreement with a social security body, for the part paid in return for the performance of work in the homes of the persons mentioned in paragraph I or beneficiaries of domestic assistance services for elderly or disabled persons in respect of legal social assistance or in the framework of an agreement concluded between those associations or agencies and a social security body ...".

44. Article 129-1 of the Labour Code as mentioned in Article L. 241-10 III, replaced in July 2010 by a different Labour Code provision, concerns associations and enterprises whose activities include providing assistance to elderly persons, to persons with disabilities and to other persons "who require personal help at home or mobility assistance in their local area to help them to remain in their private homes".

C. Article 14 of the 20 December 2010 Law

45. Article 14 of the 20 December 2010 Law is the result of an amendment tabled in the National Assembly by Mr Bur, the Social Affairs Committee Rapporteur on receipts and overall financial balance. The purpose of the amendment was explained during the Parliamentary debates. Mr Bur stated:

> "Some institutions accommodating elderly or disabled persons are demanding entitlement to exemptions relating to personal services. They are being approached by retail pharmacies telling them that those institutions are places of residence providing the type of home-help services that are covered by exemptions from insurance contributions. For a long time those insinuations did not seem particularly noteworthy. But there are apparently a number of legal risks here. That is why I would propose that we clarify our legislation. ...
>
> I seem to recall that the system of exemptions from social security contributions is intended to promote home help rather than employment in the said institutions. Clarifying this matter would help ward off possible legal disputes. By specifying the scope of the exemptions relating to personal services, the amendment is in fact aimed at preventing collective structures involved in accommodating elderly or disabled persons from claiming, in particular through the courts, entitlement to the exemption mechanism in respect of home-help activities in the personal services sector. It is a case of ensuring that the mechanism is not subverted, diverted from its aim, which is to help elderly and disabled persons to remain at home.
>
> ... The aim is to exclude institutions accommodating dependent elderly persons (EHPADs) and those accommodating persons with disabilities from entitlement to exemption. ...
>
> The wording proposed is clear: we must exclude all institutions charging daily rates under an agreement with a social security body. ...
>
> Mr G.M.: what about retirement homes other than nursing homes, in which elderly persons are tenants?
>
> Mr Yves Bur, Rapporteur for receipts and overall financial balance: They are not covered.

Mr C.L.: I would agree that the vagueness of this amendment might make it detrimental to such structures as rural nursing homes for the elderly (MARPAs – *Maisons d'Accueil pour Personnes Âgées*), which look after elderly persons. If the amendment is not further clarified we will just be going from one extreme to the other in legal terms.

Ms B.P.: I consider that the addition of the expression '*l'usage privatif*' ('for private use') is pointless, since an EHPAD can easily be regarded as a private home (*domicile*), since the persons living there are in receipt of housing allocation.

Mr Yves Bur: I shall see to it that the wording of the amendment guarantees that only EHPADs are excluded. It goes without saying that those institutions should not be eligible for both a daily rate and exemption from contributions for home-help services."

That amendment was approved by the Government, the then Minister for the Budget speaking on their behalf:

"Mr Rapporteur, thank you for this highly relevant amendment. I feel it is important to remember that the legislature's intention in bringing in the mechanism for exempting home-help work in the personal services sector from employers' social security contributions was very much the concern to allow elderly dependent persons to remain in their private homes. We should remain as close as possible to the legislature's mindset when introducing mechanisms which will have budgetary consequences.

When some institutions request exemptions in respect of their employees, they are blatantly ignoring the spirit of the law, even though they are well known to already be in receipt of other types of public funding.

The exemption mechanism is fundamentally based on the concept of the home, which must be strictly understood in the sense of the elderly dependent person's private (*à usage privatif*) home (*domicile*). It goes without saying – but I shall say it all the same – that, inasmuch as residential homes constitute a private home for autonomous elderly persons, they were already included within the scope of the exemption mechanism and are still eligible for the mechanism notwithstanding the adoption of this amendment.

What worries me is that the reference to the article of the Social Action and Family Code relating to collective accommodation structures, which therefore only indirectly refers to residential homes, might not clarify matters in the way you wish. I am therefore in favour of this amendment, and one of the reasons I have presented such detailed arguments on the Government's position is that I wanted the Constitutional Council to fully grasp the legislature's intention and the manner and means of applying the provision in question."

D. Case-law cited by the parties

46. By judgments of 22 November 2010, 13 December 2010 and 14 June 2011, the Vosges, Saint-Étienne and Dordogne TASS's allowed the requests for the reimbursement of the impugned employers' contributions. By judgment of 18 December 2008 the Pau Court of Appeal held that "the text of Article L. 241-10 CSS is clear and brooks no interpretation: it does

not exclude persons living in retirement homes from eligibility for the exemption".

47. By judgments of 11 January, 19 May and 19 July 2010 the Côtes d'Armor, Amiens and Gers TASS's excluded from entitlement to the exemption in issue the persons employed by the institutions providing collective accommodation. Furthermore, by decision no. 2010-620 DC of 16 December 2010, the Constitutional Council ruled that section 14 of the law referred by the Deputies was not in breach of the principle of equality before the law (see paragraph 17 above).

THE LAW

I. THE JOINDER OF THE APPLICATIONS

48. The Court considers that in the interests of the proper administration of justice, the applications should be joined pursuant to Rule 42 § 1 of the Rules of Court, having regard to their similarity in terms of the facts and the legal issues which they raise.

II. ADMISSIBILITY OF APPLICATIONS NOS. 59003/13, 68916/13 and 5485/14 (see paragraphs 30 and 31 above)

49. As regards those applications, the Government submitted that the applicants had not raised before the Court of Cassation any of the complaints put forward in their application form (Article 6 § 1 of the Convention and Article 14 read in conjunction with Article 1 of Protocol No. 1), substance or otherwise. They requested their rejection for non-exhaustion of domestic remedies.

50. The applicants contested that assertion.

51. The Court notes, with the Government, that the submissions lodged by the applicants with the Court of Cassation do not contain any pleadings under the Convention corresponding to the complaints which they have raised before the Court. Therefore, it holds that the application are inadmissible for non-exhaustion of domestic remedies and that they must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE INTERVENTION BY THE LEGISLATURE

52. The applicants alleged that in introducing the new section 14 of the 20 December 2010 Law the legislature had intervened in order to alter the outcome of the proceedings to which the State had been a party, thus

upsetting the equality of arms. They relied on Article 6 § 1 of the Convention, which provides:

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

A. Admissibility

53. As regards applications nos. 23542/13, 32194/13, 39165/13, 39173/13, 39180/13, 39184/13, 49923/13 and 57424/13, 76512/13, 76527/13, 76519/13, 76530/13, 46862/14 and 46819/14 (see paragraph 27 above), the Government left it to the Court's discretion to decide whether the applicants, in failing to lodge appeals on points of law, had exhausted the domestic remedies.

54. The applicants invited the Court to declare the aforementioned applications admissible on the grounds that any appeal on points of law to the Court of Cassation would have been unsuccessful in the light of the judgments delivered by that court on 22 September 2011 (see paragraph 21 above) and 16 February 2012 (see paragraph 26 above).

55. Having regard to the authority held by the Court of Cassation in the French judicial system and to the nature of the above-mentioned judgments, the Court considers that in such a legal context the applicants might legitimately have deduced from the previous decisions that in their cases an appeal on points of law to that court would have been doomed to failure.

56. Consequently, noting that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible in respect of the applications mentioned in paragraph 53 above, as well as in respect of all the others, apart from those mentioned in paragraphs 30 and 31 above (see paragraphs 49 to 51 above).

B. Merits

1. The parties' submissions

(a) The applicants

57. The applicants submitted that the impugned law had been enacted at a crucial stage in the proceedings, just before the beginning of the first cassation proceedings. That situation had enabled the URSSAF to rely, in its defence pleadings, on the decision of the Constitutional Council, as well as on section 14 of the 20 December 2010 Law to shore up its position and allege the interpretative nature of that law, and had allowed the reporting judge to propose non-admissibility on that basis. The applicants emphasised, nevertheless, that the terms of the debate had not been fixed: although the first-instance judgment and the judgment of the court of appeal

had gone against them in the first proceedings, a number of judgments and one court of appeal judgment had stated that a room in an EHPAD could also be the private home (*domicile*) of an elderly dependent person (see paragraph 46 above). They complained that the Court of Cassation, which had had to determine the question of principle, had dismissed the first appeal on points of law using the wording of the 20 December 2010 Law, which had also led to the reversal of a judgment in favour of one of them (see paragraphs 34 and 35 above) after the judgment delivered on 22 September 2011.

58. The applicants stated that the Court condemns such a procedure: the enactment of a law designed to legalise existing practices (*loi de validation*) just when a set of proceedings is about to conclude infringes the right to a fair trial and an independent court and the equality of arms principle (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, Series A no. 301-B, and *Papageorgiou v. Greece*, 22 October 1997, *Reports of Judgments and Decisions* 1997-VI).

59. The applicants deduced from the foregoing considerations that the Law had purely and simply ratified the State's position in the framework of the proceedings against the URSSAF, which were still pending before the courts.

60. They also considered that the impugned law had not been intended to interpret the previous versions of Article L. 241-10 CSS or to confirm any initial intention on the part of the legislature, but had been enacted solely on the basis of financial considerations, which did not amount to compelling grounds of the general interest. The applicants took the view that the 2009 Law reforming the hospital system (see paragraph 13 above), the Charter of the Rights and Freedoms of Dependent Persons (see paragraph 34 above), the judgment of the Pau Court of Appeal of 18 December 2008 (see paragraph 46 above) and the parliamentary debates (see paragraph 45 above) recognised that the EHPAD was the private home (*domicile*) of the elderly and/or dependent persons in question. They argued that they had legitimately requested entitlement to the impugned exemption, and that the intervention by the legislature had therefore been intended solely to put an end to the ongoing court proceedings.

61. The applicants further submitted that the request for exemption from employers' contributions was vital for the proper functioning of their institutions. They pointed out that as public EHPADs authorised to provide social assistance, they were paid rates which were fixed by the public authorities and which were lower than those enjoyed by private structures. Article L. 241-10 III did not specify that the absence of public funding was a condition for eligibility for the exemption, and the structures covered by that provision were also in receipt of public subsidies.

(b) The Government

62. The Government first of all submitted that the stage of the proceedings at which the legislative change had been effected, that is to say following the court of appeal judgment dismissing the first applicant's request for reimbursement (see paragraph 14 above) did not raise any problem *vis-à-vis* the equality of arms principle. The present situation was different from that in the case of *Stran Greek Refineries and Stratis Andreadis*, cited above, in which the interference by the legislature had occurred at a time when the State and the applicants had been involved in a dispute for nine years and the latter had obtained a final enforceable decision against the former.

63. The Government took the view that the background to the tax exemption mechanism in question (see paragraphs 36 to 42 above) and the preparatory work on the impugned law (see paragraph 45 above) demonstrated that section 14 was interpretative in nature and was aimed at confirming the interpretation which had emerged from the previous versions of the provision, that is to say enabling elderly persons to remain in their personal homes. That mechanism was intended, precisely, to offset the lack of available and affordable places in collective accommodation structures.

64. The Government referred in particular to the Constitutional Council's decision. They emphasised that the latter had reiterated that the sole purpose of section 14 of the 20 December 2010 Law was to confirm the interpretation of the previous version laying down that the impugned exemption only applied to the remuneration of home-helps working in the private homes (*domiciles*) of elderly and disabled persons.

65. The Government added that the decisions cited by the applicants as supporting their position did not reflect the current state of case-law on the issue raised. They presented decisions given prior to the 20 December 2010 Law to the effect that the "private home (*domicile*)" concept mentioned in Article L. 241-10 III should be interpreted as the individual's personnel home (see paragraph 47 above).

66. The Government concluded that the legislature's intention had been to allow elderly dependent persons to remain in their private homes, thus pursuing a public-interest aim within the meaning of the Court's case-law.

2. The Court's assessment

67. The Court reiterated that although, in principle, the legislature is not precluded from regulating, in civil-law matters, by new retroactive provisions rights arising under laws already in force, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of the dispute (see judgments in *Stran Greek Refineries and Stratis Andreadis* cited above, § 49, and *Zielinski and*

Pradal & Gonzalez and Others, cited above, § 57). The Court further reiterated that the requirement of equality of arms entails an obligation to afford each party a reasonable opportunity to present his case under conditions that did not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among other authorities *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274, and *Stran Greek Refineries and Stratis Andreadis*, cited above, § 46).

68. The Court is invited to determine the question whether the intervention of the 20 December 2010 Law breached the fairness of the proceedings, and the equality of arms by changing the outcome of the latter while they were still ongoing.

69. The Court notes that the 20 December 2010 Law was published before the Court of Cassation had given a decision, but that at the time several sets of proceedings were still pending before the social-security appeal tribunals and the courts of appeal. Section 14 of that law replaced the words "*chez les*" ["at the home of the"] shall be replaced with the words "*au domicile à usage privatif des*" ["at the private home of the"], which was liable to reduce the chances of the applicants, as collective structures, obtaining satisfaction in their actions against the URSSAF. The State authorities pointed out that the introduction of section 14 of the 20 December 2010 Law had been intended to clarify Article L. 241-10 III CSS, in order to "prevent any dispute" (see paragraph 45 above).

70. That being the case, the Court notes that at the time when the impugned legislative provision was introduced, only one of the applicants (see paragraph 34 above), had obtained a judgment recognising their right to reimbursement of the impugned contribution. Moreover, only a few isolated first-instance decisions and one single court of appeal judgment (see paragraph 46 above) had acknowledged that a structure providing collective accommodation for elderly persons constituted its residents' private home (*domicile*) within the meaning of Article L. 241-10 III CSS, thus entitling them to exemption in respect of the remuneration of employees working in those structures. Finally, the Court observes that section 14 of the 20 December 2010 Law had pursued the officially acknowledged aim of specifying that the exemption mechanism was designed to promote home-help for elderly persons continuing to live in their own homes. The Court therefore holds that the question arises whether, prior to the new law, the applicants could have cogently claimed that the employees of structures providing collective accommodation for elderly or dependent persons fell within the scope of the exemption, and have obtained the reimbursement of the contributions in issue.

71. It emphasises, in that regard, that the background to the mechanism for helping elderly persons to remain at home and the parliamentary debates which preceded the enactment of the 20 December 2010 Law demonstrate that section 14 thereof was not aimed at coming down in favour of the

URSSAF or at correcting an interpretation of the Law which might have been favourable to the applicants. The reasons given by the public authorities during the parliamentary proceedings very clearly stressed the need to remedy a technical shortcoming in the law highlighted by the litigation, in order to reaffirm the legislature's initial intention concerning the mechanism of exemption from social security contributions in the personal services sector. It thus transpires from those debates that the applicants could not have expected to benefit from the said mechanism, which had from the outset been designed to ensure that elderly persons did not leave their private homes. One clear result is that unlike residential homes, the EHPADs were never intended to be eligible for the exemption provided for in Article L. 241-10 III CSS (see paragraph 45 above; see also paragraphs 22 and 42 above). Lastly, the Constitutional Council considered that the purpose of the impugned exemption was to enable dependent persons to remain in their private homes, and that section 14 of the 20 December 2010 Law, in pointing out that it was only applicable to the remuneration of work performed in the private homes of such persons, merely reiterated that purpose.

72. Having regard to the foregoing considerations, the Court considers that the aim of the intervention by the legislature was to clarify, by fleshing out the text, the meaning of Article L. 241-10 III CSS and to reinstate and reaffirm the legislature's initial wish to exempt from employers' contributions the remuneration of home-helps working in the dependent persons' private homes with a view to preserving their autonomy there. The Court therefore holds that the applicants cannot validly invoke the possibility, in the framework of a set of proceedings, of relying on a technically imperfect right without the legislature being able to intervene in order to specify the conditions and limits of that right, with a view to ensuring the fairness of the proceedings (see, *mutatis mutandis*, *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, § 69, 27 May 2004). In that connection the Court notes that the parliamentary proceedings underlined the fact that the applicants had attempted to circumvent the spirit of the law (see paragraph 45 above), deducing that they could not have ruled out the possibility of the legislature intervening to clarify the conditions for reimbursement of the impugned contributions (see, *mutatis mutandis*, *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 109, *Reports of Judgments and Decisions* 1997-VII).

73. In conclusion, the Court agrees with the Government that the intervention by the legislature had been foreseeable and had corresponded to compelling public-interest grounds. It therefore concludes that the applicants could not have complained of any infringement of their right to a fair trial.

74. There has accordingly been no violation of Article 6 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE REASONING OF THE JUDGMENTS OF THE COURT OF CASSATION (APPLICATIONS NOS. 18096/12 AND 53601/12)

75. The applicants complained of a violation of Article 6 § 1 of the Convention on the grounds of the lack of reasoning of the judgments given by the Court of Cassation on 22 September 2011 and 16 February 2012.

76. The Court put the following question to the parties:

> "Did the applicants in applications nos. 18096/12 and 53601/12 have a fair hearing before the Court of Cassation in the determination of their civil rights, in accordance with Article 6 § 1 of the Convention? In particular, was the right of those applicants to an effective assessment of their submissions and to a reasoned reply to their main arguments respected?"

A. Admissibility

77. Noting that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible.

B. Merits

1. The parties' submissions

(a) The applicants

78. The applicant in application no. 18096/12 complained of the deficient reasoning of the judgment of 22 September 2011. It stated that the said reasoning created confusion because the Court of Cassation relied on the version of Article L. 241-10 CSS prior to the entry into force of the 2010 Law, while using the wording of the new law without referencing it. It regretted the failure to reply to its argument concerning the incompatibility of the legislature's intervention with Article 6 of the Convention, whereas the Court of Cassation had been invited to determine the impugned issue for the first time, with hundreds of cases pending. The applicant pointed out that it had alleged a violation of the Convention before the Court of Cassation in its memorial in reply, since the impugned law had been introduced after it had lodged its supplementary pleadings and before the URSSAF and the reporting judge had submitted their memorial and report, respectively.

79. The applicant in application no. 53601/12 explained that it was not complaining about the conformity with Article 6 § 1 of the Convention of the procedure for non-admission of appeals on points of law. Its complaint concerned the lack of reasoning that had stemmed from the implementation of that procedure in his particular case: the Court of Cassation had hidden behind its landmark judgment of 22 September 2011, even though the latter did not set out any reasoning on the compatibility of the retroactive application of section 14 of the 20 December 2010 Law with the Convention.

(b) The Government

80. The Government did not reply to the question concerning application no. 18096/12.

81. As regards the inadmissibility decision given by the Court in application no. 53601/12, they reiterated the Court's case-law to the effect that the Court of Cassation was not failing in its obligation to provide reasoning where it applied a specific legal provision to dismiss an appeal as having no prospects of success (see *Burg and Others v. France* (dec.), no. 34763/02, ECHR 2003-II). The Government stated that the applicant must, in any event, have understood the grounds of non-admission of its appeal on points of law since the reporting judge's report referred to the reasoning of the landmark judgment delivered on 22 September 2011 in application no. 18096/12. Moreover, that report demonstrated that the applicant's pleadings had been effectively examined by the Court of Cassation.

2. The Court's assessment

(a) Applicable principles

82. The Court has already held on many occasions that the preliminary admissibility procedure for appeals on points of law is, *per se*, in conformity with the provisions of Article 6 of the Convention and that it does not breach, in particular, the duty to give reasons which derives from that article (see, for example, *Viard v. France*, no. 71658/10, § 31, 9 January 2014). The Court reiterates that pursuant to inadmissibility procedure before the Court of Cassation, the parties receive, before the hearing, a copy of the inadmissibility recommendation established by the reporting judge, which document states the grounds on which the pleadings in support of the appeal on points of law are not such as to lead to the quashing of the impugned judgment. That transmission of the inadmissibility recommendation helps meet the requirement of reasoning (see *Magnin v. France* (dec.), no. 26219/08, 10 May 2012).

83. The Court also reiterates that the right to a fair hearing can only be deemed effective if the parties' requests and observations are actually "heard", that is to say duly assessed by the "tribunal" in question. In other words, the effect of Article 6 is to place the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 59, Series A no. 288, and *Tourisme d'affaires v. France*, no. 17814/10, § 25, 16 February 2012).

84. In that regard, Article 6 § 1 requires courts or tribunals to give reasons for their decisions, but cannot be understood as requiring a detailed reply to each argument. The extent of that duty may vary according to the nature of the decision. Furthermore, it is necessary to take into account, inter alia, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. It is for that reason that the question whether a court or tribunal has failed in its obligation to give reasons flowing from Article 6 of the Convention can only be analysed in the light of the circumstances of the particular case (see *Tourisme d'affaires*, cited above, § 26).

85. Lastly, the Court reiterates that the courts must examine pleas concerning the "rights and freedoms" guaranteed by the Convention with particular rigour and care. That is a corollary of the subsidiarity principle (see *Fabris v. France* [GC], no. 16574/08, § 72, ECHR 2013 (extracts); *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 96, 28 June 2007; and *Magnin,* cited above).

(b) Application in the present case

86. As regards application no. 18096/12, the Court observes that the appeal on points of law against the judgment given by the court of appeal on 8 June 2010, as formulated in the arguments set forth in the applicant's supplementary memorial, concerned the interpretation of the version of the law prior to the 20 December 2010 Law, which had not yet been published. The Court of Cassation had therefore not been invited to consider that law, even though the URSSAF and the applicant discussed it in their subsequent written submissions. That led that court to refuse to follow its reporting judge, who had observed that section 14 of the 20 December 2010 Law settled the problem of interpretation raised by the applicant and consequently proposed dismissing his ground of appeal as "ineffective", in order to declare the appeal on points of law inadmissible. In doing so the Court of Cassation very clearly stated that it was not adjudicating on the basis of the new law. The Court does not consider that that analysis was altered by the fact that the judgment of 22 September 2011 used the word

"private" (*privatif*) as set out in section 14 of the 20 December 2010 Law, as that word is particularly apposite for expressing the fact, in accordance with that decision, that collective accommodation would not be taken into account. The Court therefore concludes that the judgment of 22 September 2011 ruled that the interpretation of Article L. 241-10 III, in the version applicable to the facts of the present case, did not make institutions accommodating elderly dependent persons eligible for the reimbursement of contributions which they had been seeking.

87. As regards application no. 53601/12, the Court notes that the appeal on points of law against the court of appeal's judgment of 23 December 2010 also contended that Article L. 241-10 III CSS should be interpreted in its version as it had stood prior to the 20 December 2010 Law. That is precisely what the Court of Cassation had done in its judgment of 20 September 2011 in the framework of the first appeal on points of law. And that is why, unlike in the first appeal on points of law, the Court of Cassation followed the line taken by its reporting judge, who, emphasising that the subject matter of the appeal on points of law had been dealt with in that judgment, had proposed declaring the second appeal on points of law inadmissible.

88. It transpires from the foregoing that the two applicants, which submitted that Article L. 241-10-III of the Social Security Code as interpreted in its version prior to the 20 December 2010 Law entitled them to reimbursement of specific contributions, received an unambiguous negative reply from the Court of Cassation.

89. Having regard to the foregoing considerations, since it is not contested that the members of the *Conseil d'Etat* and Court of Cassation Bar ("*avocats aux Conseils*") who represented the applicants before the Court of Cassation duly received the writs of non-admissibility of their appeals on points of law for lack of arguable claims, the Court concludes that that court did not fail in its obligation to give reasons under Article 6 § 1 of the Convention. There has accordingly been no violation of that provision.

V. ALLEGED VIOLATION OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

90. The applicants complained of a difference in treatment between institutions employing home-helps based on the "private home" (*domicile*) concept. In particular, they submitted that the difference in treatment as compared with residential homes, which were eligible for the exemption despite also being collective accommodation structures, had no objective or reasonable justification. They relied on Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1, which provide:

Article 14

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

1. Admissibility

(a) The Government

91. As regards the applications mentioned in paragraph 27 above, the Government left it to the Court to decide on the exhaustion of domestic remedies in respect of the complaint under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. Furthermore, for the other applications, apart from application no. 30287/14 (see paragraph 29 above) and the applications declared inadmissible in paragraph 51 above, the Government submitted that the applicants had not raised the complaint before the Court of Cassation. Consequently, they requested that it be rejected for non-exhaustion of domestic remedies.

92. The Government also submitted that Article 14 of the Convention was not applicable, given that the facts of the case did not fall within the ambit of Article 1 of Protocol No. 1 as the applicants did not have a "possession" within the meaning of that provision. They pointed out that the applicants had not been eligible for the impugned exemption, nor had they had any "legitimate expectation" of being so eligible. On the one hand, the provisions in force when the cases had come before the courts had been sufficiently clear as regards the beneficiaries of the exemption mechanism, and on the other, most of the applicants had had their requests dismissed by the trial courts.

(b) The applicants

93. The applicants submitted that it would have pointless to raise the complaint before the Court of Cassation given that the Constitutional

Council had already determined the principle of equality of treatment as regards the exemption from the contributions in question. The applicant in application no. 18096/12 emphasised that the law had been enacted during the proceedings before the Court of Cassation, that it had relied on Article 6 of the Convention, although it had been given no reasoning on that point, and that it had not had time to think of submitting a different legal argument.

94. The applicants considered that they had had a claim which was sufficiently established in domestic law to be considered as an "asset" for the purposes of Article 1 of Protocol No. 1. They referred to their previous line of reasoning (see paragraph 60 above) and to the judgment delivered by the Pau Court of Appeal on 18 December 2008 (see paragraph 46 above).

2. The merits

95. The applicants argued that they were in a situation relevantly similar to that of residential homes. The services provided in terms of home help were identical, whether they were aimed at persons accommodated in residential, nursing or old-age homes. By the same token, EHPADs comprised private areas where have their own bedrooms, as well as shared areas. Moreover, the occupants of residential homes signed residential contracts which, like those in the other structures, were "*sui generis*" contracts. Furthermore, as in residential homes, accommodation in an EHPAD entitled residents to receive personalised home help. As regards application no. 30287/14, the applicant argued that the association constituted the disabled persons' new home and that "the address on their polling cards was that of the EHPAD".

96. The applicants considered that the difference of treatment based on considerations relating to the concept of the elderly person's private home (*domicile*) had no objective or reasonable justification. In particular, they emphasised that the exemption had been intended to promote recourse to personal services and lighten the financial burden on elderly persons. The refusal to allow EHPADs to benefit from the exemption was discriminatory and increased the financial burden on those persons.

97. The Government highlighted the difference between EHPADs and residential homes, which were not in comparable situations, thus justifying differential treatment:

- residential homes were private dwellings with optional collective services, while EHPADs were collective accommodation structures;

- residential homes, as social structures, were subject to the Social Action and Family Code, whereas EHPADs were subject to the Social Security Code;

- residential homes received outside employees with a view to maintaining their residents' autonomy, whereas EHPADs accommodated

elderly persons and provided them with all the services necessary for their survival;

- home-help and/or home care services were provided in residential homes by outside workers remunerated either by the elderly persons themselves or through the intermediary of a home-help agency. In EHPADs, residents benefited from catering services and were also provided with equipment and furniture to cope with their situation of dependency. They were attended to by qualified staff;

- persons accommodated in EHPADs sign a residential contract, while persons in residential homes rent their accommodation.

98. As regards application no. 30287/14, the Government noted that the applicant advanced no arguments specifically relating to nursing homes for disabled persons and that it essentially reprised the pleas set out by the EHPADs. At any event, they pointed out that residential and nursing homes were in very different situations. The latter were collective accommodation structures taking in persons with serious disabilities who needed permanent accommodation in order to perform most of their essential everyday activities and to receive constant medical surveillance and treatment. They were social or medico-social institutions officially recognised under the Social Action and Family Code.

99. The Government considered that the distinction drawn between the beneficiaries of the exemption pursued the legitimate aim of helping elderly persons to remain in their homes and was justified by the fact that the social contributions for EHPAD and nursing home personnel were already financed from public funds. To grant them the exemption would involve providing two different types of public funding to defray expenditure on personnel.

B. The Court's assessment

100. The Court notes that the applicant's supplementary pleadings in application no. 53601/12 did not include any submissions based on Article 1 of Protocol No. 1 and Article 14 of the Convention. In those circumstances, the Court of Cassation not having assessed this complaint since it had not been submitted to it, the Court considers that the applicants mentioned in paragraph 27 above cannot rely on the inadmissibility judgment delivered by the Court of Cassation in this case to justify their failure to lodge an appeal on points of law with the court. The Court also observes, in line with the Government, that none of the applicants, apart from that in application no. 30287/14, raised explicitly or in substance before the Court of Cassation the violation of Article 14 read in conjunction with Article 1 of Protocol No. 1 which they are now invoking before the Court. This finding has already been made in respect of three of the applications (see paragraph 51 above). Consequently, for all the other applicants, apart from application no.

30287/14, this complaint is inadmissible and must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

101. As regards application no. 30287/14, the Court reiterates that under its established case-law, Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see, among many other authorities, *Fabris*, cited above, § 47).

102. In cases such as the present one concerning a complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a particular asset on a discriminatory ground covered by Article 14, the relevant test is whether, but for that discrimination, he or she would have had a right, enforceable under domestic law, to receive the asset in question (see, *mutatis mutandis*, *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 55, ECHR 2005-X, and *Fabris*, cited above, § 52).

103. The Court reiterates that a difference in treatment may raise an issue from the point of view of the prohibition of discrimination as provided for in Article 14 of the Convention only if the persons subjected to different treatment are in a relevantly similar situation, taking into account the elements that characterise their circumstances in the particular context (see *Fábián v. Hungary* [GC], no. 78117/13, § 121, 5 September 2017, and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV). The elements which characterise different situations, and determine their comparability, must be assessed in the light of the subject-matter and purpose of the measure which makes the distinction in question (see *Fabian*, cited above, § 121). A difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment; a wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy (see *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, §§ 51-52, ECHR 2006-VI).

104. Even supposing that the applicant can claim to have an "asset", thus rendering Article 14 of the Convention applicable to the instant case, and that the discriminatory ground on which it relies constitutes "other status" within the meaning of that provision, the Court considers, at any event, that

the complaint must be rejected as manifestly ill-founded for the following reason. The Court notes that the TASS and the court of appeal established the difference between a nursing home and a residential home by pointing out that the residence contract signed by persons accommodated in the former excludes home help in the strict sense (see paragraph 29 above). It observes that the Government has confirmed that nursing homes are not private accommodation structures on the same basis as residential homes. Under those circumstances, and having regard to the scant evidence produced by the applicant to show that it is in an analogous or relevantly similar situation to that of structures eligible for the exemption, the Court considers that that is not the case. Accordingly, the complaint is inadmissible and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* applications nos. 59003/13, 68916/13 and 5485/14 inadmissible, and the other twenty-one applications admissible as regards the complaint concerning interference by the legislature and inadmissible as regards the complaint under Article 1 of Protocol No. 1;

3. *Declares* applications nos. 18096/12 and 53601/12 admissible as regards the complaint concerning the reasoning of the Court of Cassation;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the interference by the legislature;

5. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the reasoning of the judgments of the Court of Cassation of 22 September 2011 and 16 February 2012;

Done in French, and notified in writing on 8 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President

APPENDIX

	Application no.	Lodged on	Applicant Place of residence
1.	18096/12	20/03/2012	**HÔPITAL LOCAL SAINT-PIERRE D'OLERON** 17310 Saint-Pierre-d'Oléron
2.	53601/12	14/08/2012	**MAISON DE RETRAITE LE BON ACCUEIL** 01150 Lagnieu
3.	23542/13	25/03/2013	**HÔPITAL LOCAL DES MEES** 04190 Les Mees
4.	32194/13	15/03/2013	**MAISON DE RETRAITE CHAMPDIEU** 42600 Champdieu
5.	39165/13	15/04/2013	**MAISON DE RETRAITE RENÉ ANDRIEU** 47150 Monflanquin
6.	39173/13	15/04/2013	**MAISON DE RETRAITE CORDELIERS** 03130 Le Donjon
7.	39180/13	15/04/2013	**MAISON DE RETRAITE RÉSIDENCE D'EAWY SAINT SAENS** 76680 Saint Saens
8.	39184/13	15/04/2013	**MAISON DE RETRAITE DE L'HORTHUS** 34270 Claret
9.	49923/13	31/07/2013	**MAISON DE RETRAITE LES OLIVIERS** 34360 Saint Chinian
10.	57424/13	31/07/2013	**MAISON DE RETRAITE DE STEENBECQUE** 59189 Steenbecque
11.	58995/13	12/09/2013	**HÔPITAL LOCAL DE SAINT-FELICIEN** 07410 Saint-Félicien
12.	59003/13	13/09/2013	**HÔPITAL LOCAL DE VIC-FEZENSAC** 32190 Vic-Fezensac
13.	68908/13	29/10/2013	**HÔPITAL LOCAL DIEULEFIT** 26220 Dieulefit
14.	68916/13	24/10/2013	**CENTRE COMMUNAL D'ACTION SOCIALE DE PLESSALA (CCAS)** 22330 Plessala

	Application no.	Lodged on	Applicant Place of residence
15.	68918/13	29/10/2013	**FONDATION LES VILLAGES DE SANTÉ ET D'HOSPITALISATION EN ALTITUDE (VSHA)** 74730 Passy
16.	76512/13	27/11/2013	**CENTRE COMMUNAL DE L'ACTION SOCIALE NEZIGNAN L'EVEQUE** 34120 Nézignan L'Evêque
17.	76519/13	27/11/2013	**HÔPITAL LOCAL DE MURAT** 15300 Murat
18.	76527/13	27/11/2013	**CENTRE COMMUNAL D'ACTION SOCIALE D'UGINE** 73400 Ugine
19.	76530/13	27/11/2013	**MAISON DE RETRAITE LIEVIN PETITPREZ** 59190 Morbecque
20.	5485/14	11/01/2014	**EHPAD DE LALOUVESC** 07520 Lalouvesc
21.	23544/14	19/03/2014	**MAISON DE RETRAITE LA MERIDIENNE** 92390 Villeneuve- la-Garenne
22.	30287/14	10/04/2014	**ADAPEI 35** 35044 Rennes
23.	46819/14	19/06/2014	**CENTRE HOSPITALIER LOUIS JAILLON DE SAINT CLAUDE** 39200 Saint-Claude
24.	46862/14	19/06/2014	**CENTRE HOSPITALIER INTERCOMMUNAL PIERRE FUTIN D'ORGELET** 39270 Orgelet