



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

## FIRST SECTION

### DECISION

Application no. 27897/16  
Elio ANTONIOLLI and Others  
against Italy  
(see appended table)

The European Court of Human Rights (First Section), sitting on 9 March 2023 as a Committee composed of:

Alena Poláčková, *President*,

Gilberto Felici,

Raffaele Sabato, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having regard to the above application lodged on 10 May 2016,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

### FACTS AND PROCEDURE

The list of applicants is set out in the appended table.

The applicants were represented by Mr G. Romano, a lawyer practising in Rome.

The applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the application of retrospective legislation (Article 1 § 218 of Law no. 266/2005 of 23 December 2005) to pending national proceedings were communicated to the Italian Government ("the Government").

### THE LAW

On 23 June 2022 the Registry sent a letter to the applicants requesting certain documents essential for processing the application. The reply only concerned some of the applicants.

By letter dated 2 August 2022, sent via the Court's Electronic Communication Service (eComms), the applicants were notified that the

period allowed for submission of the requested documents had expired on 7 July 2022. The applicants' attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike an application out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application. The applicants received that letter on 2 August 2022. They responded; however, no reply was received with regard to the applicant, G. Zammattio.

At the same time the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the applicants, excluding Mr G. Zammattio. They further requested the Court to strike out the application in accordance with Article 37 of the Convention. The Government acknowledged the violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

With regard to the applicants, P. Babuin, L.A. Borgonuovo, M. Bove, A. Cesa, L. Drigo, E. Franceschina, S. Gobbo, C. Lembo, G. Maestrello, A. Maserin, O. Mazzetti, P. Moro, L. Mozzon, L. Pagliaro, S. Santarossa, M.C. Sperti, the Government offered to pay them the amounts detailed in the appended table and invited the Court to strike the application out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The amounts would be payable within three months from the date of notification of the Court's decision. In the event of failure to pay these amounts within the above-mentioned three-month period, the Government undertook to pay simple interest on them, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

The payment will constitute the final resolution of the case.

With regard to the applicants, E. Antonioli, E. Asquini, M.P. Bravin, M. Codeglia, A. Da Pieve, P. Miotto, M. Sist, the Government offered not to proceed with the recovery of 40% of the sums paid to these applicants in execution of the first-instance judgments later reversed on appeal following the application of Article 1 § 218 of Law no. 266/2005 of 23 December 2005.

The Government finally proposed to award each applicant, save for Mr G. Zammattio, 76 euros (EUR) for costs and expenses.

On 7 November 2022 the applicants informed the Court that they rejected the terms of the declarations.

The Court observes that Article 37 § 1 (c) enables it to strike a case out of its list if:

“... for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

Thus, it may strike out applications under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued (see, in particular, the

*Tahsin Acar v. Turkey* judgment (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court has established clear and extensive case-law against Italy emphasising that the adoption of Law no. 266/2005 which definitively and retroactively settled the merits of the pending dispute between the applicants and the State and rendered futile any continuation of the proceedings was not justified by overriding reasons of general interest (see, for example, *Cicero and Others v. Italy*, nos. 29483/11 and 4 others, §§ 31-33, 30 January 2020; *De Rosa and Others v. Italy*, nos. 52888/08 and 13 others, §§ 48-54, 11 December 2012; and *Agrati and Others v. Italy*, nos. 43549/08, 6107/09 and 5087/09, §§ 59-66, 7 June 2011). When the Court found a violation of Article 6 § 1 of the Convention, it considered that the applicants had suffered a real loss of opportunity and that, consequently, the violations found were likely to have caused the applicants material damage. As to non-pecuniary damage, the Court considered that the finding of a violation constituted in itself just satisfaction for the non-pecuniary damage suffered by the applicants (see *De Rosa and Others*, cited above, §§ 60-62).

Noting the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application in respect of the applicants whose claims were addressed in the Government's unilateral declaration (Article 37 § 1 (c)).

In the light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application in that part (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application may be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

As regards the complaints lodged by Mr G. Zammattio, the Court reiterates the absence of the replies to its letters. In the light of the foregoing, and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention and the Protocols thereto, the Court, in accordance with Article 37 § 1 (a) of the Convention, considers that it is no longer justified to continue the examination of the application insofar as it concerns the complaints raised by Mr G. Zammattio.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

*Takes note* of the failure of the applicant, G. Zammattio, to reply to the Court's letter of 2 August 2022 and of the absence of any special

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circumstances regarding respect for the rights guaranteed by the Convention and the Protocols thereto;

*Takes note* of the terms of the respondent Government's declaration related to the remaining applicants and of the arrangements for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) and (c) of the Convention.

Done in English and notified in writing on 30 March 2023.

Viktoriya Maradudina  
Acting Deputy Registrar

Alena Poláčková  
President

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APPENDIX

Application raising complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1  
(legislative interference)

Application no. Date of introduction	Applicant's name Year of birth	Date of receipt of Government's declaration	Date of receipt of applicant's comments, if any	Amount awarded for non-pecuniary damage (in euros) <sup>1</sup>	Amount awarded for costs and expenses (in euros) <sup>2</sup>
27897/16 10/05/2016 (24 applicants)	<b>Elio ANTONIOLLI</b> 1946	15/09/2022	07/11/2022	-	76
	<b>Erta ASQUINI</b> 1948			-	76
	<b>Paola BABUIN</b> 1958			4,979.74	76
	<b>Loredana Alda BORGONUOVO</b> 1946			1,818.58	76
	<b>Margherita BOVE</b> 1953			16,773.19	76
	<b>Maria Pia BRAVIN</b> 1940			-	76
	<b>Anna CESA</b> 1962			2,061.60	76
	<b>Marco CODEGLIA</b> 1962			-	76
	<b>Attilio DA PIEVE</b> 1954			-	76

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Application no. Date of introduction	Applicant's name Year of birth	Date of receipt of Government's declaration	Date of receipt of applicant's comments, if any	Amount awarded for non-pecuniary damage (in euros) <sup>1</sup>	Amount awarded for costs and expenses (in euros) <sup>2</sup>
	<b>Learco DRIGO</b> 1952			312.08	76
	<b>Edda FRANCESCHINA</b> 1943			47.94	76
	<b>Stella GOBBO</b> 1941			1,265.45	76
	<b>Claudia LEMBO</b> 1966			13,398.95	76
	<b>Giorgio MAESTRELLO</b> 1951			1,074.64	76
	<b>Angela MASERIN</b> 1958			1,511.55	76
	<b>Onorio MAZZETTI</b> 1959			766.12	76
	<b>Pierluigi MIOTTO</b> 1966			-	76
	<b>Pierina MORO</b> 1955			1,161.50	76
	<b>Loredana MOZZON</b> 1959			5,583.46	76
	<b>Lucia PAGLIARO</b> 1948			23,616.56	76

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Application no. Date of introduction	Applicant's name Year of birth	Date of receipt of Government's declaration	Date of receipt of applicant's comments, if any	Amount awarded for non-pecuniary damage (in euros) <sup>1</sup>	Amount awarded for costs and expenses (in euros) <sup>2</sup>
	<b>Silverio SANTAROSSA</b> 1963			7,753	76
	<b>Marta SIST</b> 1959			-	76
	<b>Maria Cristina SPERTI</b> 1960			11,933.21	76
	<b>Gianni ZAMMATTIO</b> 1950	-	-	-	-

<sup>1</sup> Plus any tax that may be chargeable to the applicants.

<sup>2</sup> Plus any tax that may be chargeable to the applicants.