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

FIRST SECTION

DECISION

Application no. 45343/18
Giuseppina OTTAVIANI against Italy
and 5 other applications
(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 applications lodged on the various dates indicated in the appended table,

Having regard to the declarations submitted by the respondent Government requesting the Court to strike the applications 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' 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

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

The Government informed the Court that they proposed to make unilateral declarations with a view to resolving the issues raised by these complaints.

They further requested the Court to strike out the applications 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 Ge. Milani, L. Valvason, G. Barison, Gi. Milani, E. Scoizzato, L. Zuccolo, G.E. Agostini, L. Boldrin, A. Faccin, L. Franceschini, G. Gallocchio, E. Businaro, F. Gastaldello, E. Daminato, G. Vettorato, F. Polato and A.L. Frison, the Government offered to pay them the amounts detailed in the appended table and invited the Court to strike their 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 cases.

With regard to the applicants, G. Ottaviani, F. Valeri, V. Caciola, M. Santinelli and M. Boscato, 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, which were later reversed on appeal following the application of Article 1 § 218 of Law no. 266/2005 of 23 December 2005.

The Court also notes that the Government further proposed to jointly award the applicants 2,000 euros (EUR) for costs and expenses.

The applicants were sent the terms of the Government's unilateral declarations several weeks before the date of this decision.

On 5 December 2022, the applicants M. Boscato, Ge. Milani, L. Valvason, G. Barison, Gi. Milani, E. Scoizzato, L. Zuccolo, G.E. Agostini, L. Boldrin, A. Faccin, L. Franceschini, G. Gallocchio, E. Businaro, F. Gastaldello, E. Daminato, G. Vettorato, F. Polato and A.L. Frison informed the Court that they rejected the terms of the declarations.

The Court has not received a response from the applicants G. Ottaviani, F. Valeri, V. Caciola, and M. Santinelli accepting 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 cases 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*, no. 29483/11 and 4 others, §§ 31-33, 30 January 2020; *De Rosa and Others v. Italy*, no. 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 declarations as well as the amount of compensation and the amount of costs and expenses 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 applications (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 applications (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declarations, the applications 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).

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

For these reasons, the Court, unanimously,

Decides to join the applications;

Takes note of the terms of the respondent Government's declarations and of the arrangements for ensuring compliance with the undertakings referred to therein;

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

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

Viktoriya Maradudina Acting Deputy Registrar	Alena Poláčková President

APPENDIX

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

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Date of receipt of Government's declaration	Date of receipt of applicant's comments, if any	Amount awarded for non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses (in euros)[2]
1.	45343/18 18/09/2018	**Giuseppina OTTAVIANI** 1945	Pistilli Massimo Viterbe	28/10/2022	-	-	2,000, jointly to all applicants
2.	45376/18 18/09/2018	**Francesca VALERI** 1947		28/10/2022	-	-	
3.	45440/18 18/09/2018	**Vanda CACIOLA** 1944		28/10/2022	-	-	
4.	45903/18 18/09/2018	**Maddalena SANTINELLI** 1944		28/10/2022	-	-	
5.	25790/19 07/05/2019	**Michela BOSCATO** 1962	Zampieri Nicola Schio	28/10/2022	05/12/2022	-	
6.	45683/19 13/08/2019 (18 applicants)	**Geltrude MILANI** 1960		28/10/2022	05/12/2022	1,282.13	
		Laura VALVASON 1940				2,368.87	
		Gastone BARISON 1960				6,287.09	

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Date of receipt of Government's declaration	Date of receipt of applicant's comments, if any	Amount awarded for non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses (in euros)[2]
		Giovannina MILANI 1950				3,837.07	
		Elisa SCOIZZATO 1947				2,239.62	
		Luciana ZUCCOLO 1953				3,204.66	
		Vera RUZZON 1963				3,707.99	
		Gledis Elena AGOSTINI 1958				7,680.82	
		Laura BOLDRIN 1954				3,487.80	
		Adriano FACCIN 1959				2,936.23	
		Luigia FRANCESCHINI 1943				4,283.26	
		Giovanni GALLOCCHIO 1949				2,943.06	
		Enrico BUSINARO 1957				15,552.03	

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Date of receipt of Government's declaration	Date of receipt of applicant's comments, if any	Amount awarded for non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses (in euros)[2]
		Fiorella GASTALDELLO 1958				6,798.74	
		Elsa DAMINATO 1948				887.82	
		Giulia VETTORATO 1949				5,463.64	
		Francesca POLATO 1966				1,286.18	
		Anna Lisa FRISON 1955				990.49	

[1] Plus any tax that may be chargeable to the applicants.
[2] Plus any tax that may be chargeable to the applicants.