



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

FIRST SECTION

**CASE OF AZZANO AND OTHERS v. ITALY**

*(Application no. 53453/22)*

JUDGMENT

STRASBOURG

25 April 2024

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



**In the case of Azzano and Others v. Italy,**

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

Péter Paczolay, *President*,

Gilberto Felici,

Raffaele Sabato, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 4 April 2024,

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

**PROCEDURE**

1. The case originated in an application against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 10 May 2016.

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

3. The Italian Government (“the Government”) were given notice of the application.

**THE FACTS**

4. The list of applicants and the relevant details of the application are set out in the appended table.

5. The applicants complained of the retrospective application of section 1(218) of Law no. 266/2005 of 23 December 2005 to pending proceedings.

**THE LAW**

**I. THE GOVERNMENT’S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION**

6. After unsuccessful friendly-settlement negotiations, the Government informed the Court by a letter of 9 January 2024 that they proposed to make unilateral declarations in respect of the applicants L. Azzano, A. Frattolin and L. Puppo with a view to resolving the issues raised by their complaints. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

7. The Government acknowledged the violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 and offered to pay forty percent of the sums awarded to those applicants by judgment no. 133/2005 of the Trieste Court of Appeal.

8. Accordingly, the Government invited the Court to strike the applications out of the list of cases in accordance with Article 37 § 1 (c) of the Convention.

9. The Court also notes that the Government proposed to pay 76 euros (EUR) per application for costs and expenses, plus any tax that may be chargeable to the applicants.

10. 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.

11. The payment will constitute the final resolution of the case.

12. The applicants were sent the terms of the Government's unilateral declarations several weeks before the date of this decision. The Court has not received a response from the applicants accepting the terms of the declarations.

13. 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”.

14. 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).

15. 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).

16. Noting the admissions and undertakings contained in the Government's declarations, the Court considers that it is no longer justified to continue the examination of the application in that part (Article 37 § 1 (c)).

17. 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 the part covered by the unilateral declarations (Article 37 § 1 in fine).

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

19. In view of the above, it is appropriate to strike this part of the application out of the list.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 FOR REMAINING APPLICANTS

20. The applicants M. Babuin, L. Clementi, C. Damo, S. Nassutti, L. Perissinotti and R. Salvoni complained under Article 6 § 1 of the Convention that the retrospective application of section 1(218) of Law no. 266/2005 of 23 December 2005 to pending proceedings infringed their right to a fair hearing. They also complained under Article 1 of Protocol No. 1 that the retrospective nature of section 1(218) of Law no. 266/2005 of 23 December 2005 deprived them of their property in so far as that provision settled the dispute between them and the administrative authorities with final effect.

21. In the context of civil disputes, the Court has repeatedly ruled that although, in principle, the legislature is not prevented from regulating, through new retrospective provisions, rights derived from the laws in force, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute, save on compelling grounds of the general interest. There are dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinnable. Respect for the rule of law and the notion of a fair trial therefore require that any reasons adduced to justify such measures be treated with the greatest possible degree of circumspection (see *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, §§ 92-93, 3 November 2022).

22. The relevant domestic law and practice with regard to the application of section 1(218) of Law no. 266/2005 of 23 December 2005 to pending

proceedings is set out in the Court's judgments *Agrati and Others*; *De Rosa and Others*; *Cicero and Others* (all cited above).

23. Having regard to the case-law cited above and the documents submitted by the applicants, the Court sees no reason to reach a different conclusion on the admissibility of these complaints.

24. As regards Article 6 § 1 of the Convention, the Court finds that in the circumstances of the present case section 1(218) of Law no. 266/2005 of 23 December 2005 resolved the merits of the dispute between the applicants and the State in the domestic courts with final retrospective effect, and that the legislature's intervention was not justified by any compelling grounds of the general interest. Therefore, there has been a violation of Article 6 § 1 of the Convention.

25. With regard to Article 1 of Protocol No. 1, the Court notes that the applicants argue that their property rights were infringed. Nevertheless, from the available documents, it appears that the applicants' seniority was not affected by the interference and, consequently, that they did not suffer any financial loss. Therefore, the Court considers that, in the instant case, despite its retrospective application, section 1(218) of Law no. 266/2005 of 23 December 2005 did not affect the applicants' right to the peaceful enjoyment of possessions and did not upset the fair balance between the demands of the public interest and the protection of individual fundamental rights.

26. The foregoing considerations are sufficient for the Court to conclude that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. Regard being had to its case-law (see, in particular, *Agrati and Others v. Italy* (just satisfaction), nos. 43549/08 and 2 others, 8 November 2012, *De Rosa and Others*, cited above, §§ 48-54, *Caligiuri and Others v. Italy*, nos. 657/10 and 3 others, §§ 41-55, 9 September 2014, and *Cicero and Others*, also cited above, §§ 48-61) and to the conclusions reached in respect of the complaints raised under Article 1 of Protocol No. 1, the Court considers that no pecuniary damage must be awarded to the applicants and that the finding of a violation is sufficient to compensate them for any non-pecuniary damage sustained as a result of the violation of their Article 6 rights.

28. With regard to costs and expenses, considering the repetitive nature of the applications, the Court finds it reasonable to award EUR 250 to each of the applicants, with exception of the three applicants L. Azzano, A. Frattolin and L. Puppo, under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Takes note* of the terms of the respondent Government's declaration in respect of the applicants L. Azzano, A. Frattolin and L. Puppo and of the arrangements for ensuring compliance with the undertakings referred to therein;
2. *Decides* to strike the application in the part covered by the unilateral declaration out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;
3. *Declares* the remaining part of the application admissible;
4. *Holds* that this application discloses a breach of Article 6 § 1 of the Convention concerning the retrospective application of section 1(218) of Law no. 266/2005 of 23 December 2005 to pending proceedings;
5. *Holds* that there has been no violation of Article 1 of Protocol No. 1;
6. *Holds*
  - (a) that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;
  - (b) that the respondent State is to pay each of the applicants, with exception of the three applicants, L. Azzano, A. Frattolin and L. Puppo, within three months, EUR 250 (two hundred and fifty euros) for costs and expenses;
  - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 25 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina  
Acting Deputy Registrar

Péter Paczolay  
President

## APPENDIX

Application raising complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1  
(retrospective application of section 1(218) of Law no. 266/2005 of 23 December 2005 to pending proceedings)

Application no. Date of introduction	Applicant's name Year of birth
53453/22 10/05/2016 (9 applicants)	<b>Liliana AZZANO</b> 1948
	<b>Maria BABUIN</b> 1960
	<b>Luciana CLEMENTI</b> 1956
	<b>Carla DAMO</b> 1943
	<b>Adriana FRATTOLIN</b> 1900
	<b>Sabina NASSUTTI</b> 1944
	<b>Lorena PERISSINOTTI</b> 1964
	<b>Lauretta PUPPO</b> 1949
	<b>Rita SALVONI</b> 1967