

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

FIRST SECTION

DECISION

Application no. 32985/18
Fabio DE JORIO and Fabrizio DE JORIO
against Italy

The European Court of Human Rights (First Section), sitting on 11 September 2025 as a Committee composed of:

Frédéric Krenc*, President*,
Raffaele Sabato,
Alain Chablais*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 32985/18) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 July 2018 by two Italian nationals, Mr Fabio De Jorio and Mr Fabrizio De Jorio ("the applicants"), who were born in 1960 and 1961 respectively, live in Rome and were represented by Mr A. Saccucci, a lawyer practising in Rome;

the decision to give notice of the complaint concerning Article 2 of the Convention to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the death of the applicants' mother following a surgical operation and the State's responsibility under Article 2 of the Convention.

2. On 20 April 1994 the applicants' mother, L.V., underwent medical examinations ordered by doctors F.B. and T.W., prior to surgery. A blood test, conducted at the European Hospital of Rome (a private hospital), showed several abnormalities.

3. Subsequently, an amount of blood was taken from L.V. at the same hospital to collect the blood necessary for surgery.

4. On 30 June 1994 L.V. was admitted to a private nursing home where further blood tests were conducted. On 2 July she underwent a surgical procedure conducted by doctors F.B. and T.W., assisted by R.F. and D.Z. ("the medical staff"). She was discharged from the nursing home on 12 July 1994.

5. In January 1995, following a deterioration in her health, L.V. was again hospitalised. Medical examinations showed that she was suffering from HIV infection and a kind of cancer commonly associated with it. She died on 21 November 1995.

A. Criminal proceedings

6. On 30 June 1995 L.V. lodged a complaint against the medical staff. Following her death, those staff members were committed for trial on 16 February 1999 for having jointly caused death by negligence. L.V.'s mother joined the proceedings as a civil party.

7. On 18 December 2002 the defendants were acquitted by the Rome District Court. The acquittal was upheld on appeal.

8. Although the acquittal had become final, on 25 September 2009, following an appeal by L.V.'s mother, the Court of Cassation overturned the appeal court's judgment in part and referred the case to the Rome Court of Appeal to reconsider the issue of compensation.

9. On 13 September 2013 the Court of Appeal awarded the applicants, as heirs of the civil party, who had died during the proceedings, 444,941.16 euros (EUR) as non-pecuniary damage. The judgment was not appealed against and became final.

B. Civil proceedings

10. On 28 December 1999 the applicants brought civil proceedings against the medical staff, the European Hospital of Rome, the nursing home, R.G. (the president of the board of directors of the above-mentioned facilities) and their insurance companies ("the respondents"). The applicants argued that the taking of blood and the surgical procedure had accelerated the progress of their mother's infection from HIV to AIDS, and asked for compensation.

11. On 5 December 2002 the Rome District Court rejected the applicants' arguments as unsupported by scientific evidence. Nevertheless, it found that the abnormalities resulting from the tests of 20 April 1994 had been sufficiently serious to render surgery inadvisable and to have warranted further investigation, and that the medical staff had not even conducted the examinations that had been required by the law. The court considered that the

medical staff had been seriously imprudent and had acted in a way which was inconsistent with best practice. Accordingly, it ordered the respondents, excluding R.G., to jointly pay EUR 50,000 to the applicants as non-pecuniary damage for the reduction of the lifespan of their mother (*danno da perdita di sopravvivenza*) and EUR 15,000 as pecuniary damage (judgment no. 46351/02).

12. On 11 May 2010 the Rome Court of Appeal rejected the applicants' appeal against the first-instance judgment. It emphasised that the applicants had appealed only against the part of the judgment concerning the amount of compensation and not against the part establishing the relevant causal link. Therefore, the finding that the only relevant causal link in respect of the reduction of their mother's lifespan had been the failure to order further medical examinations, had acquired the status of *res judicata*. In respect of the alleged reduction of L.V.'s lifespan, the court found that the applicants had not provided adequate evidence to support their arguments. Accordingly, the decision by the first-instance judgment to award compensation was quashed (judgment no. 2036/2010).

13. On 18 June 2012 the Court of Cassation set aside the lower court's judgment. Without calling into question the causal link between the failure to order further medical examination and the applicants' mother's reduced lifespan, it found that the Court of Appeal had committed an error in its assessment. It therefore remitted the case to the Court of Appeal exclusively to reassess whether the medical negligence had impaired the detection of the infection and had resulted in a reduction *in concreto* of L.V.'s lifespan (judgment no. 9927/2012).

14. On 21 January 2016, following a reassessment of the evidence, the Court of Appeal found that the respondents' conduct, with the exception of R.F. and the European Hospital of Rome, had prevented a prompt diagnosis of L.V.'s HIV infection, delaying the start of treatment and, consequently, shortening her lifespan. On the basis of an individualised assessment, the court found it appropriate to award EUR 80,000 in respect of non-pecuniary damage jointly to the applicants as heirs and EUR 30,000 each as direct victims (judgment no. 423/2016).

15. On 29 January 2018, following an appeal by the applicants, the Court of Cassation set aside the judgment in question without remitting the case to the Court of Appeal. It extended liability to the European Hospital of Rome and dismissed the other grounds of appeal.

C. Complaint

16. The applicants complained under Article 2 of the Convention that the domestic authorities had failed to adopt an effective regulatory framework compelling hospitals, in this case a private hospital, to adopt appropriate measures for the protection of their mother's life. They also complained of an

error in the determination of the relevant causal link between the medical negligence and L.V.'s death in the civil proceedings, of the amount of compensation awarded and of the excessive length of those proceedings.

THE COURT'S ASSESSMENT

17. The Government raised an issue relating to non-exhaustion of domestic remedies. However, the Court does not find it necessary to examine that question, since the application is, in any event, inadmissible for the reasons set out below.

18. The relevant principles on the substantive and procedural obligations of States under Article 2 in the context of health care are summarised in *Lopes de Sousa Fernandes v. Portugal* ([GC], no. 56080/13, §§ 186-89 and 214-21, 19 December 2017).

A. Substantive obligations

19. The Court reiterates that "in the context of alleged medical negligence, the States' substantive positive obligations relating to medical treatment are limited to a duty to regulate, that is to say, a duty to put in place an effective regulatory framework compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives" (ibid., § 186).

20. In the present case, the medical negligence in question, as ascertained by the domestic courts, occurred between 20 April 1994, when the applicants' mother underwent medical examinations for the first time (see paragraph 3 above) and 2 July 1994, when she underwent surgery (see paragraph 4 above). The Court must thus assess the regulatory framework in force at that time.

21. First the Court observes that Law no. 24/2017, referred to by the Government in their observations, entered into force several years after the facts in the present case. Without prejudice to the relevance of the law in question to other cases of medical negligence, the Court notes that the Government has failed to clarify its applicability to the instant case.

22. Article 8 § 4 of Legislative Decree no. 502/1992 required the Regions to enact a policy and coordination act (*atto di indirizzo e coordinamento*) in conjunction with other national authorities. The act was to define minimum structural, technological and organisational requirements for healthcare providers and to ensure ongoing compliance with those standards. It was required to specify, among other things, the criteria for ensuring an adequate level of oversight and professional standards, and the deadline by when authorised healthcare providers were to comply with the new minimum requirements. That act ought to have been enacted by 31 December 1993 but, according to the information available in the case file, it appears that it was ultimately adopted by a Presidential Decree of 14 January 1997. On the basis that other potentially relevant provisions of Legislative Decree no. 502/1992,

such as Article 8-*ter* (authorisation to create healthcare services and facilities), Article 8-*quarter* (institutional recognition) and Article 8-*octies* (control) were only introduced by Legislative Decree no. 229/1999, the Court finds that Legislative Decree no. 502/1992 did not amount to an effective legislative framework at the relevant time.

23. Nevertheless, the Court observes that Article 8 § 4 of Legislative Decree no. 502/1992 was adopted without prejudice to Article 43 of Law no. 833/1978.

24. Law no. 833/1978 established that healthcare could be provided by both local health units, namely the network of public facilities, and private healthcare providers affiliated with the healthcare system on the basis of specific agreements (Articles 25 and 26). The agreements in question, made on standard forms, governed the relationship between local health units and private healthcare providers. In particular, local health units were responsible for the clinical and operational oversight (*vigilanza tecnico-sanitaria*) of private healthcare providers (Article 41). In that context, Article 43 of Law no. 833/1978 established that the grant of authorisations and the oversight of private healthcare providers was governed by regional law with a view to ensuring adequate services, such as those provided by the local health units.

25. In the light of the above, even though medical negligence had been established by the domestic courts, the Court notes that the applicants have failed to explain why the mechanisms set forth in Law no. 833/1978 failed to ensure proper protection of their mother's life and how its possible deficiencies operated to her detriment (compare, *Lopes de Sousa Fernandes*, cited above, §§ 187-88). Accordingly, this part of the complaint is manifestly ill-founded.

B. Procedural obligations

26. As to compliance with the State's procedural obligations under Article 2 of the Convention, the Court notes that the applicants complained: (i) of an error by the civil courts in the determination of the relevant causal link between the medical negligence and their mother's death; (ii) of the amount of compensation awarded; and (iii) of the excessive length of those proceedings.

27. At the time of the facts giving rise to the present application, where medical negligence was alleged, Italian law provided for the possibility of lodging a criminal complaint and bringing civil compensation proceedings for civil liability. Therefore, the Italian legal system offered litigants remedies which, in theory, met the requirements of the procedural obligations under Article 2 (compare *Lopes de Sousa Fernandes*, cited above, §§ 223-24).

28. The Court further observes that in a case where various legal remedies, civil as well as criminal, are available, the Court will consider whether the remedies taken together as provided for in law and applied in

practice, could be said to have constituted legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. The choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues for ensuring Convention rights, and even if the State has failed to apply one particular measure provided for by domestic law, it may still have fulfilled its positive duty by other means (ibid., § 216).

29. In the present case, the Court notes that a criminal investigation was conducted without delay into the alleged medical negligence upon a complaint by L.V. and it led to criminal proceedings against a number of defendants (see paragraph 6 above). Although the defendants were acquitted, the court awarded about EUR 445,000 in respect of non-pecuniary damage to the applicants' grandmother who had joined the proceedings as a civil party following the death of L.V. Following the grandmother's death during the criminal proceedings, this compensation was directly awarded to the applicants as her heirs (see paragraph 9 above).

30. In this respect, the Court observes that the fact that the applicants had at their disposal another avenue (civil proceedings) did not prevent them from joining the ongoing criminal proceedings if they would have wished to, especially considering that the possibility of making civil claims in that framework entails several advantages for victims given that it avoids pursuing different interests in multiple procedures, is often less expensive and benefits from State resources (*Fabbri and Others v. San Marino* [GC], nos. 6319/21 and 2 others, § 85, 24 September 2024).

31. Be that as it may, the circumstances of the case demonstrate that, irrespective of the acquittal of the defendants, the criminal proceedings led to the establishment of the extent of liability for the death of the applicant's mother and a substantial award as redress to their grandmother.

32. While this in itself suffices for the Court to conclude that the respondent State fulfilled its positive obligation under Article 2 of the Convention (compare *Kornicka-Ziobro v. Poland*, no. 23037/16, §§ 82-86, 20 October 2022), it will still examine the applicants' specific complains relating to the civil proceedings (see paragraph 26 above).

33. As regards the first point – an error by the civil courts in the determination of the relevant causal link between the medical negligence and their mother's death – the Court notes that the Court of Appeal, in its judgment of 11 May 2010, emphasised that the applicants had appealed only against the part of the District Court's judgment concerning the amount of compensation granted and not against the part which established the relevant causal link. Thus, the lower court's finding that the only relevant causal link established was between the failure to order further medical examinations and L.V.'s reduced lifespan had become final (see paragraph 12 above). The Court of Appeal's judgment in this respect was upheld by the Court of

Cassation on 18 June 2012 (see paragraph 13 above). It follows that, at the very latest, the final decision relating to the determination of the relevant causal link was the Court of Cassation's confirmation of the lower courts' findings in this respect. Since the application was introduced before the Court on 6 July 2018, more than six months after the final decision, this part of the complaint has been introduced out of time.

34. Turning to the applicants' second point – the amount of compensation awarded, which they considered too low – the Court observes that in the civil proceedings, for the reduction of their mother's lifespan due to the medical negligence, the applicants were awarded EUR 80,000 jointly as indirect victims and EUR 30,000 each as direct victims (see paragraph 14 above). The Court finds that the applicants did not provide any evidence demonstrating that these amounts were insufficient, manifestly unreasonable or disproportionately lower than that granted in similar cases (compare *Scripnic v. the Republic of Moldova*, no. 63789/13, §§ 44-46, 13 April 2021). Moreover, the Court cannot but note that the applicants, in addition, had already been granted a significant amount – almost EUR 445,000 – as heirs to the civil party in the criminal proceedings concerning their mother's death (see paragraph 9 above). In view of this, the Court finds this part of the applicants' complaint to be manifestly ill-founded.

35. As concerns the third point raised by the applicants – the excessive length of the civil proceedings – the Court notes that the proceedings lasted for just over 18 years (from 28 December 1999 to 29 January 2018) for five levels of jurisdiction. While the applicants could have made use of the "Pinto" remedy provided by Law No. 89 of 24 March 2001 to obtain compensation for the length of the proceedings at the domestic level, the Court observes that the present complaint is not made under Article 6 of the Convention but under the procedural obligations under Article 2 of the Convention.

36. In this respect, the Court first recalls that in cases concerning medical negligence where the death is caused unintentionally, the States' procedural obligations may come into play upon the institution of proceedings by the deceased's relatives (see *Lopes de Sousa Fernandes*, cited above, § 220). As the applicants instituted civil proceedings more than four years after their mother's death, they themselves caused an initial delay in establishing the facts surrounding her death. In any event, it is clear that the independence and impartiality of the civil courts are uncontested and that the proceedings before the first-instance court were effective – the District Court rendered its judgment in just under three years. In that judgment, the court dismissed the applicants' arguments but found that the medical staff had been negligent by not carrying out the necessary medical examinations and granted the applicants compensation. As the applicants failed to appeal against the part of the judgment establishing the causal link, in the subsequent stages of the proceedings the scope of the case was limited to the assessment *in concreto* of the extent of the reduction of L.V.'s lifespan due to the failure to carry out

the necessary medical examinations and, if appropriate, awarding compensation (see paragraph 13 above). It follows that the judgment on the merits – which established the facts and held those at fault accountable, two of the three key elements in assessing the effectiveness of the proceedings – was finally decided on 5 December 2002.

37. As to the third key element, namely the award of appropriate redress, the Court observes that certain criticism can be made concerning delays on the part of the Court of Appeal, where the case was pending for roughly seven and half years, while the other instances did not have any particular delays (see paragraphs 12-15 above). However, the Court also notes that the applicants contributed to the delays in the appeal proceedings in that their grounds of appeal before the appellate courts were confused and, as noted by the Court of Cassation in its final judgment, sought the reopening of issues that had already been conclusively adjudicated and were no longer open to challenge (see paragraph 15 above). Thus, having regard to the fact that, following the District Court's judgment in December 2002, the only issue before the civil courts were the question of compensation, the Court finds that in light of the overall circumstances of this particular case, and in the absence of any apparent lack of thoroughness in the authorities' examination of the case, the State can be said to have complied with its procedural obligations under Article 2 also within the civil proceedings.

38. In conclusion, the Court finds that the domestic system as a whole, when faced with an arguable case of medical negligence causing the death the applicants' mother, did not fail to provide an adequate response consonant with the State's obligation under Article 2. Accordingly, this part of the application must be also rejected as manifestly ill-founded.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 October 2025.

Liv Tigerstedt Deputy Registrar	Frédéric Krenc President