FIRST SECTION

DECISION

Application no. 20437/19
Massimiliano ANGELINI and Others
against Italy

(see appended table)

The European Court of Human Rights (First Section), sitting on 4 May 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 5 April 2019,

Having regard to the formal declarations accepting a friendly settlement of the case,

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

Having deliberated, decides as follows:

1. FACTS AND PROCEDURE

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

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

The applicants’ complaints under Articles 2 and 6 § 1 of the Convention concerning the failure to provide them with appropriate redress as relatives of a victim of medical negligence, the length of the proceedings in their medical negligence dispute and excessive formalism in the decision of the Court of Cassation declaring their appeal inadmissible were communicated to the Italian Government (“the Government”).

The Court received a friendly settlement declaration, signed by the Government and the applicants, Elisabetta Benesperi and Giancarlo Benesperi, under which the applicants agreed to waive any further claims against Italy in respect of the facts giving rise to this application, subject to an undertaking by the Government to pay them the amounts detailed in the appended table. These amounts will 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 undertake 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 this part of case.

After unsuccessful friendly-settlement negotiations, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the complaints of the applicants indicated in the appended table under numbers 1 and 4 to 6. They further requested the Court to strike out this part of the application in accordance with Article 37 of the Convention.

The Government acknowledged the violation of Articles 2 and 6 § 1 of the Convention. They offered to pay the applicants the amounts detailed in the appended table and invited the Court to strike this part of the application out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The amount would be payable within three months from the date of notification of the Court’s decision. In the event of failure to pay this amount within the above-mentioned three-month period, the Government undertook to pay simple interest on it, 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.

The applicants were sent the terms of the Government’s unilateral declaration several weeks before the date of this decision. The applicant Roberto Cacciavillani indicated that he was not satisfied with the terms of the unilateral declaration, whereas the applicants indicated in the appended table under numbers 1, 4 and 6 made no comments on this respect.

1. THE LAW

The Court takes note of the friendly settlement reached between the Government and the applicants Elisabetta Benesperi and Giancarlo Benesperi. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and the Protocols thereto and finds no reasons to justify a continued examination of the application in that part.

In view of the above, it is appropriate to strike this part of the case out of the list in accordance with Article 39 of the Convention as regards the complaints raised under Articles 2 and 6 § 1 of the Convention by the applicants, Elisabetta Benesperi and Giancarlo Benesperi.

The Court further 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 applicant wishes 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 concerning complaints relating to procedural obligations stemming from Article 2 in the context of health care (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, 19 December 2017; *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, 25 June 2019) and excessive formalism in the decisions of the domestic courts (see, for example, *Zub**ac v. Croatia* [GC], no. 40160/12, 5 April 2018).

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 concerning the applicants indicated in the appended table under numbers 1 and 4 – 6 (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 this part of the application (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, concerning the abovementioned applicants, 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 this part of the case out of the list concerning Articles 2 and 6 § 1 of the Convention in accordance with Article 37 § 1 (c) of the Convention.

The applicants also raised a complaint under Article 13 of the Convention.

The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Takes note* of the friendly settlement reached between the Government and the applicants Elisabetta Benesperi and Giancarlo Benesperi concerning the claims raised under Articles 2 and 6 § 1 of the Convention;

*Decides* to strike this part of the application out of its list of cases in accordance with Article 39 of the Convention;

*Takes note* of the terms of the respondent Government’s declaration concerning the complaints under Articles 2 and 6 § 1 of the Convention raised by the applicants indicated in the appended table under numbers 1 and 4 – 6, and of the arrangements for ensuring compliance with the undertakings referred to therein;

*Decides* to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

*Declares* the remainder of the application inadmissible.

Done in English and notified in writing on 25 May 2023.

 Viktoriya Maradudina Alena Poláčková
 Acting Deputy Registrar President

APPENDIX

Application raising complaints under Articles 2 and 6 § 1 of the Convention

(procedural obligation in the context of health care and excessive formalism)

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| --- | --- | --- | --- | --- | --- | --- |
| Application no.Date of introduction | Applicant’s nameYear of birth/registration | Representative’s name and location | Date of receipt of Government’s declaration | Date of receipt of Applicant’s declaration | Amount awarded for pecuniary and non-pecuniary damageper applicant(in euros)[[1]](#endnote-1)  | Amount awarded for costs and expenses per applicant(in euros)[[2]](#endnote-2)  |
| 20437/1905/04/2019(6 applicants) | **1. Massimiliano ANGELINI**1972**2. Elisabetta BENESPERI**1962**3. Giancarlo BENESPERI**1951**4. Andrea CACCIAVILLANI**1993**5. Roberto CACCIAVILLANI**1964**6. Moreno MAGRINI**1979 | Lana Anton GiulioRome | 14/12/202203/10/202203/10/202214/12/202214/12/202214/12/2022 | 02/03/202315/12/202215/12/202202/03/202302/03/202302/03/2023 | 5,00020,00020,0005,0005,0005,000 | 333333333333333333 |

1. Plus any tax that may be chargeable to the applicants. [↑](#endnote-ref-1)
2. Plus any tax that may be chargeable to the applicants. [↑](#endnote-ref-2)