



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

SECOND SECTION

CASE OF DARAIBOU v. CROATIA

(Application no. 84523/17)

JUDGMENT

Art 2 (substantive) • Life • Positive obligations • Life-threatening fire in police station detention centre causing the applicant serious injuries and the deaths of three migrants • Failure to take sufficient and reasonable measures to protect applicant's life

Art 2 (procedural) • Ineffective investigation • Domestic authorities' failure to assess shortcomings leading to incident, remedy potential deficiencies and prevent similar life-endangering conduct in the future

STRASBOURG

17 January 2023

FINAL

17/04/2023

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Daraibou v. Croatia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenç,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 84523/17) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moroccan national, Mr Abdeljalil Daraibou (“the applicant”), on 19 December 2017;

the decision to give notice of the application to the Croatian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 12 October 2021 and 13 December 2022,

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

INTRODUCTION

1. The present case concerns a fire that broke out in a detention centre, in which three detained migrants died and the applicant suffered severe injuries. The applicant complained, under both the substantive and procedural limbs of Article 2 of the Convention, about the authorities’ failure to protect his life and their failure to properly investigate the incident.

THE FACTS

2. The applicant was born in 1992 and lives in Morocco. He was represented by Ms L. Horvat, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Fire at the Bajakovo police station

5. On 27 March 2015, at around 2.45 a.m., the border police found the applicant and three other persons, A.L., B.B. and H.B., in a truck with Croatian license plates. It was established that the four persons, who had given false names and nationalities, had entered Croatia clandestinely,

avoiding border control. They were taken to the nearest police station in Bajakovo.

6. Upon their arrival at the police station, the applicants and the remaining three persons were searched by three police officers between 3.30 a.m. and 4 a.m. The official note drawn up following the search listed the belongings that had been taken from them and stated that no objects capable of being used for an attack, escape or self-injury had been found.

7. At 4.50 a.m. the applicant and the other three persons were arrested.

8. Having interviewed each of the four arrestees, the police issued decisions ordering their expulsion. Their readmission was announced to the Serbian police for 10 a.m. the following day, since it had been established that they had entered Croatia from the territory of Serbia. Until their return, they were accommodated a facility used for the detention of illegal migrants at the Bajakovo police station.

9. The room in which they were staying was located in the basement of the building and measured about 9 sq.m. It had no toilet or running water.

10. At 7 p.m. Officer P.T. assigned two police officers, V.K. and J.L., to supervise the arrested migrants. The police officers were ordered to remain in front of the detention room in order to take care of their needs and to prevent any attempt at escape. Additionally, the room was under video surveillance.

11. According to the Government, at 8.26 p.m. the applicant and three other detainees had placed a bedsheet over the bars of their room so as to disable the video surveillance system. They then began tearing the mattresses, throwing the sponge, sheets and clothes on a pile. They ignited this material, thus causing an intense fire which, at around 8.31 p.m., spread uncontrollably across the room and part of the corridor, causing loss of electricity in the entire building.

12. The fire alarm sounded at 8.32 p.m. Eight police officers rushed into the basement area trying to rescue the detainees. At the same time, the fire brigade and an ambulance were called, which arrived at the scene at 9.05 p.m. and 9.07 p.m., respectively.

13. A.L. died at the scene of the incident, while the applicant, B.B. and H.B. were extracted from the detention room and transferred to the hospital.

B. On-site inspection

14. On 28 March 2015 at 4.00 a.m. the Vukovar County State Attorney, two crime scene police officers, a fire and explosives expert and a fire inspector began an on-site inspection. During the inspection, a burnt cigarette stub was found in the detention room. The inspection ended at 8 a.m.

15. On 29 March 2015 the applicant, B.B. and H.B. were transported to the Zagreb Clinic of Traumatology owing to the severity of their injuries. The applicant had first and second-degree burns. He also had soot in his airways

and was attached to a respirator. B.B. and H.B. were in induced comas owing to the severity of their injuries.

16. On 30 March 2015 an autopsy of A.L. concluded that the cause of death had been thermal shock.

17. On 31 March and 21 April 2015 respectively, B.B. and H.B. died as a result of their injuries.

18. The applicant recovered and was released from hospital in June 2015. His letter of release indicated that he had suffered visible burns on his forearms, hands, lower legs and feet, and that three surgical procedures had been performed on him.

C. Disciplinary proceedings against the police officers

19. After the incident, the Ministry of the Interior formed an independent expert team to determine all the circumstances and causes of the fire and its consequences.

20. On 30 March 2015 the expert team presented a report by the Office of the Chief of Police establishing that neither the shift supervisor nor his assistant had noticed on the video surveillance screen the detainees preparing or starting the fire. The police officers tasked with securing the detention room had not carried out direct surveillance during that period either; Officer J.L. had left in order to prepare an official report, while Officer V.K. had monitored the migrants until 8.22 p.m., three minutes before the migrants had begun the preparations for starting the fire. He then moved to the kitchenette located on the ground floor to prepare dinner for the detainees. The report concluded that it had been necessary to bring disciplinary proceedings against V.K. and J.L. for a serious breach of official duty, that visual surveillance had not been performed during the critical period of six minutes and that the search performed on the migrants had not been thorough since a lighter had been found among the detainee's belongings (which had been put on shelves leading to the detention room); moreover, several cigarette stubs had been found in the detention room where the migrants had been accommodated, indicating that they had been smoking there.

21. Meanwhile, on 28 March 2015 disciplinary proceedings were initiated against Officers J.L. and V.K. for a serious breach of their official duties by virtue of untimely, negligent or disorderly performance of their official duties. Both officers were suspended from service on the same day.

22. On 6 May 2015 the First-Instance Disciplinary Court of the Ministry of the Interior found Officer V.K. responsible for a serious breach of official duty in that between 8.22 and 8.32 p.m. he had not performed his task of supervising the detainees, which had allowed them to start a fire. That court noted that the tragic event had also been caused by a "number of circumstances, including the human factor, the inadequacy of the space, and some organisational shortcomings", that had not been related to Officer

V.K.'s failure to act. Taking into account the mitigating circumstances (partial acknowledgement of responsibility and the fact that he had risked his life to save the detainees), he was fined 10% of his monthly salary for a period of three months. On the same day, Officer J.L. was acquitted.

D. Criminal enquires by the State Attorney's Office

23. After the inspection, the police and the State Attorney's Office began making criminal enquiries with a view to establishing the causes of the fire and determining the responsibility for the death of the victims.

24. On 31 March 2015 the Vukovar County State Attorney ordered an expert witness evaluation in order to determine the cause of the fire.

25. Between 13 and 24 April 2015, it took statements from thirty police officers at the Bajakovo police station.

26. On 21 May 2015 the police interviewed the applicant about the circumstances of the fire. He stated that he did not see a lighter or other object capable of starting a fire with any of his friends. He added that at the moment that the fire had broken out, he had been asleep. He had been woken up by the intense heat and dense smoke that had prevented him from breathing.

27. On the same day, an independent expert witness report concluded that the fire had been caused by the deliberate igniting of blankets, sheets, sponges and mattresses using an open flame, most likely a lighter, by the detainees inside the room.

28. On 12 June 2015, the police conducted another interview with the applicant. On the same date, he applied for asylum in Croatia. His asylum request was refused on 2 September 2015.

29. On 29 September 2015 the police submitted to the Vukovar County State Attorney's Office a special report, stating that there was a reasonable suspicion that the applicant, together with the three deceased detainees, had committed a criminal offence against general safety given that he had used an open flame to cause a fire that had spread uncontrollably, endangering lives and property of substantial value.

30. On 10 January 2017 the Vukovar Municipal State Attorney questioned Officer H.J., who had conducted disciplinary proceedings against the police officers. He stated that the search of the migrants had been carried out thoroughly. During the disciplinary proceedings no grounds had been found for ascribing disciplinary liability to the police officers who had conducted the search or the shift supervisor. On 30 October 2017, when questioned again, Officer H.J. stated that he did not know how the detainees could have been in possession of an incendiary device. Two lighters had been seized from them when they had been searched. He considered that no one had expected that a fire of such intensity would break out. Prior to the incident, the detainees had been very noisy. He also emphasised that nobody at the police station had been exclusively in charge of monitoring the

detainees via video surveillance. He considered that the disciplinary punishment imposed was appropriate, bearing in mind the fact that Officer V.K. had risked his life during the rescue of the detainees.

31. On 14 June 2017 the applicant's lawyer requested information on the actions taken in the case. On 20 June 2017 the Vukovar Municipal State Attorney's Office informed her that criminal enquiries were underway, but that, pursuant to the relevant domestic legislation, they were confidential.

32. On 18 July 2017 the police conducted another interview with the applicant. He stated that on the day of the incident he and the three other detainees had been thoroughly searched by the police. Everything in their possession had been seized, including tiny pieces of notepaper. The applicant stated that they had been kept in the room for one entire day, perhaps even longer, and that they had repeatedly asked the police to explain to them their status, but that they had received no reply. Meanwhile, B.B. had been very agitated and had started shouting in English that he would burn the whole place down unless he was released, but the police had ignored him. The police officers had occasionally spent time in front of the detention room, but the room had been primarily monitored by means of the video surveillance system. According to the applicant, at some point B.B. had taken out a lighter and ignited a blanket causing the flame to uncontrollably spread across the room. They had then called for help, but in vain.

33. On 20 October 2017 the Vukovar Municipal State Attorney's Office held a department meeting, at which it was concluded that additional enquiries were required to establish whether the police officers should be held liable for an offence, following the irregularities identified in the report of the Office of the Chief of Police of 30 March 2015 (see paragraph 20 above). Another departmental meeting was held on 13 December 2017, during which the results of additional criminal enquiries were presented, namely the additional statement of Officer H.J. (see paragraph 30 above), and a report on the content of the video surveillance tapes from the day of the fire. It was established that the omissions stated in the report remained within the domain of disciplinary liability and that no criminal proceedings against the police officers were called for. At the same time, it was decided that criminal proceedings would be initiated against the applicant.

34. On 14 December 2017 the applicant's lawyer lodged a complaint, requesting that the work of the Vukovar Municipal State Attorney's Office be supervised, owing to its failure to make progress in the case. On 20 December 2017 the Vukovar County State Attorney's Office informed her that criminal enquiries were still underway and that a decision concerning the event and possible criminal responsibility would be taken in due course.

35. On 20 February 2018 the Vukovar Municipal State Attorney ordered that the applicant be questioned by the police as a suspect. The police contacted his lawyer but was unable to locate him. A general search

confirmed that he had moved away from the reception centre where he had been staying.

36. On 9 May 2018 the Vukovar Municipal State Attorney's Office opened an investigation in respect of the applicant on the reasonable suspicion that he, along with three other detainees, had caused a fire by throwing flammable material into a pile, carelessly disregarding the possibility of starting an uncontrollable fire. He thereby negligently endangered lives and property of substantial value, which had resulted in the death of three persons.

37. On 28 May 2018 the applicant appealed against the decision to open the investigation.

38. On 30 May 2018 the applicant was expelled from Croatia to Morocco. He was prohibited from re-entering the European Economic Area until 4 March 2021.

39. In July 2018 seven witnesses were heard. Officer I.Đ. stated that there had been no need to monitor the detainees via video surveillance as two police officers had been physically present in front of the detention room. When he had seen that the monitor had turned white and that the power had cut out, he had thought that there was a problem with the server. He stated that Officer P.T. had gone first to rescue the detainees and extinguish the fire.

40. Officer T.S. stated that the officers in the operations room monitored the room via the video surveillance system as much as they could, given the vast scope of their duties. There had been no person permanently assigned to monitoring the detainees. Subsequently, after the opening of a new police station building, that task has been assigned to a designated video surveillance operator. T.S. had tasked Officers V.K. and J.I. to guard and supervise the detainees by remaining physically present in the corridor next to the detention room. When his other tasks had allowed, he had occasionally looked at the surveillance monitor and he saw the detainees lying down. Passing through the corridor, at some point he had encountered Officer V.K. who was preparing dinner for the detainees. Upon his return to the operations room, at around 8.30 p.m. the fire alarm had sounded. Upon returning to the basement area, he had heard cries for help, but had been unable to see anyone because of the smoke. The power had gone out. He had again tried to enter the detention room, but to no avail because it had been dark and extremely hot and there had been a lot of smoke. Having broken a nearby window, Officers P.T. and I.J. had managed to pull out the detainees.

41. Officer V.K., who had been in charge of supervising the detainees, stated that when one of them had yelled that they were hungry, he had left to the kitchen to prepare them dinner. A few minutes after he had left, the fire alarm had sounded, and smoke had appeared. He had immediately started to rescue the detainees. Since there had been a lot of smoke, he had had to go up to get some air several times. He had also been hospitalised for several

hours. He said that Officer P.T. had managed to enter the basement detention room through a little window.

42. On 21 August 2018 Officer J.L. stated that he and Officer V.K. had been tasked with guarding the detainees. They had been told that one of them had to remain in front of the detention room at all times. At one point, he had told Officer V.K. that he had to finish typing a report as ordered by the shift supervisor. At that time the detainees had been quiet. Ten minutes after he had begun writing the report, the fire alarm had sounded, and everybody had gone towards the basement from where the smoke had been emerging. Only Officer P.T. had managed to get down as the others were prevented by dense smoke. He had been hospitalised for a few hours.

43. On 12 September 2018 Officer P.T., the shift supervisor for the day in question, stated that he had informed V.K. and J.L. that the detainees were restless and that one of them should remain with them at all times. When the fire had broken out, he had run downstairs, attempting to rescue the detainees. He had broken a small window and had managed to extract two persons, one of whom had been found dead. Following the incident, he had had to be hospitalised until the early morning following smoke inhalation. He had been unable to return to work for two months after the fire owing to psychological problems. He had been transferred to another duty station and had undergone extensive therapy.

44. On 31 December 2018 the Vukovar County Court dismissed the applicant's appeal against the decision to open an investigation in respect of him. It concluded that the available evidence had confirmed a reasonable suspicion that the applicant had committed a criminal offence defined under Article 222 in conjunction with Article 215 §§ 1 and 3 of the Criminal Code.

45. On 27 June 2019 the investigation in respect of the applicant was terminated because he had left Croatia and his current address was unknown.

RELEVANT LEGAL FRAMEWORK

46. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette 125/11, with subsequent amendments), read as follows:

Endangering Life and Property by a Generally Dangerous Act or Means Article 215

“(1) Whoever endangers the life or limb of people or property of substantial value by fire, flood, explosives, poison or poisonous gas, ionising radiation, mechanical force, electricity or another [form of] energy or by some generally dangerous act or generally dangerous means, shall be punished by imprisonment [for a term lasting] between six months and five years.

...

(3) Whoever commits the criminal offence referred to in paragraph 1 ... of this Article through negligence shall be punished by imprisonment [for a term] not exceeding three years.”

**Serious Criminal Offences Against General Safety
Article 222**

“(3) If, as a result of the criminal offence referred to in paragraph 3 of Article 215 ... of this Code a serious bodily injury is inflicted on a person or if extensive material damage is caused, the perpetrator shall be punished by imprisonment [for a term lasting] between six months and five years.

(4) If, as a result of the criminal offence referred to in paragraph 3 of this Article, one or more persons die, the perpetrator shall be punished by imprisonment [for a term lasting] between one and eight years.”

47. The relevant provision of the Code of Criminal Procedure (*Zakon o kaznenom postupku*; Official Gazette no. 152/08, with subsequent amendments), read as follows:

Article 206.f

“(1) Criminal enquiries shall be secret.

(2) The authority taking action shall warn the persons involved that disclosing a secret is a criminal offence. ...”

48. The relevant provisions of the Fire Protection Act (*Zakon o zaštiti od požara*; Official Gazette no. 92/10), as in force at the material time, read as follows:

Section 10

“Owners or users of buildings and other property ... are under an obligation to:

- ensure the implementation of measures prescribed by this Act ... [and compliance with] regulations based on this Act and [with] other laws, plans, legal instruments and decisions relating to fire protection in their vicinity or [property];
- undertake measures to reduce the risk or spreading of fire, as well as measures for the improvement of fire protection ... on their property, taking into account the danger [of fire] and [the level] of fire protection;
- own vehicles, machines, equipment [and] tools for [ascertaining] information regarding – and extinguishing and preventing the spread of – fires on their property ...”

Section 20

“(3) Owners or users of buildings [belonging to certain categories] ... are under an obligation to adopt a fire protection plan, [assess] the danger of fire, and organise [the installment of] fire protection [devices].”

Section 36

“(1) Every building or a part thereof, depending on the nature of its use, must ... be maintained so as to fulfil important fire protection requirements.”

Section 37

“The owners or users of buildings ... are obliged to maintain accessible and properly marked evacuation routes, as well as access for firefighters.”

Section 38

“(1) Owners or users of buildings ... must possess fire extinguishing machines, equipment and tools....”

49. On 23 December 2014 the Constitutional Court issued a decision amending the Rules of the Constitutional Court (*Poslovnik Ustavnog suda Republike Hrvatske*; Official Gazette no. 2/2015). The amended section 54(1) introduced a special reference, “U-IIIBi”, to designate proceedings instituted before the Constitutional Court by means of lodging constitutional complaints alleging the lack of an effective investigation into crimes under Articles 2 and 3 of the Convention. The relevant part of the Constitutional Court Rules now reads:

Designating Constitutional Court cases

Section 54(1)

“The references [used to designate] Constitutional Court cases are the following:

...

U-IIIBi- proceedings following a constitutional complaint [lodged] prior to the exhaustion of legal remedies regarding failure to conduct an investigation (ineffective investigation) into criminal offences related to Article 2 (right to life) and Article 3 (prohibition of torture) of the Convention;

...”

50. The relevant provisions of the Rules on Admission and Treatment of an Arrestee and Detainee (*Pravilnik o prijemu i postupanju s uhićenikom i pritvorenikom*, Official Gazette no. 88/2009), as in force at the material time, read as follows:

Section 13

“(4) Upon the admission of an arrestee, the detention supervisor will order the police officers in the detention police unit to search the arrestee with a view to finding and seizing means [that could be used for the purposes of] for attack, self-harm or escape. Such temporarily seized objects shall be registered in the detention register, and a certificate shall be issued ...

(5) A detailed personal search of an arrestee shall be performed in such a way so as not to harm his dignity and personal integrity. As a rule, such a search shall be performed by two police officers of the same sex as the arrestee.”

Section 26

“(1) A personal search [or a] search of [a detainee’s] belongings or of space in which detainees are accommodated may be performed at any time, according to the [need to ensure] safety.”

Section 39

“(1) Internal security encompasses the supervision of detainees, the maintenance of internal order and discipline among detainees, [and] the protection of employees and persons who are authorised to be present in the detention police unit and [on] its property.

(2) The police officer in charge of internal security shall:

- monitor detainees during their daily schedule and during [their] sleep,
- register observations on the behaviour of the detainees relevant for the maintenance of order, discipline and safety,

...

- disable a detainee [who is] making objects that could be used for an attack or other objects whose possession is prohibited,
- conduct searches of detainees.”

Section 43

“A detailed search of a detainee shall be performed:

- upon [his or her] admission to the detention police unit,
- prior to [his or her being assigned] accommodation in a special room while separated from other detainees,

...

- if there is a doubt that he or she possesses or is hiding objects or materials whose possession is prohibited.”

THE LAW

I. PRELIMINARY REMARKS

51. The Government invited the Court to strike the application out of its list of cases owing to the applicant’s loss of interest in pursuing the proceedings. The applicant had permanently left Croatia on 30 May 2018 and the Government had no further information concerning his whereabouts or whether he was still in contact with his lawyer. In that sense, the present case was similar to *V.M. and Others v. Belgium* ((striking out) [GC], no. 60125/11, 17 November 2016), which had been struck out by the Grand Chamber because the applicants’ lawyer had been unable to prove that he was in continued contact with them following their failed asylum request and return to their home country.

52. The applicant’s lawyer submitted that, contrary to the Government’s allegations, she was in regular email contact with the applicant, and kept him consistently informing of the status of his case before the Court. She submitted a statement signed by the applicant dated 29 April 2019 affirming

that he was fully informed of the status of the case and that he wished to pursue his application.

53. The Court reiterates that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court) but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application (see *Sharifi and Others v. Italy and Greece*, no. 16643/09, § 124, 21 October 2014, and *V.M. and Others*, cited above, § 35).

54. However, unlike in the case referred to by the Government, in which the applicants' lawyer acknowledged to having lost contact with the applicants following their expulsion from the respondent State (see *V.M. and Others*, cited above, § 32), in the present case the applicant submitted a signed statement that he had been acquainted with the status of the case and that he wished to pursue his application.

55. In such circumstances, the Government's request must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

56. Relying on the substantive and procedural aspect of both Articles 2 and 3 of the Convention, the applicant complained that the State had been responsible for not preventing the fire in the detention centre as a result of which he had suffered severe life-threatening injuries. He further maintained that no effective investigation had been carried out in that respect.

57. As master of the characterisation to be given in law to the facts of the case before it, and bearing in mind its previous case-law in respect of such matters (see, for example, *Mustafayev v. Azerbaijan*, no. 47095/09, § 42, 4 May 2017), the Court considers that the case falls to be examined under both the substantive and the procedural limb of Article 2 of the Convention, the relevant part of which reads as follows:

“1. Everyone's right to life shall be protected by law.”

A. Admissibility

1. *The parties' observations*

(a) **The Government**

58. The Government submitted that the applicant had failed to exhaust an effective domestic remedy in that he had never lodged a constitutional complaint before addressing the Court.

59. The Government explained that the amended Rules of Procedure of the Constitutional Court, in force as of January 2015, had introduced a special

reference “U-IIIBi” to designate constitutional complaints concerning the lack of an effective investigation under Articles 2 and 3 of the Convention. According to the Government, at its plenary meeting held in February 2016, the Constitutional Court had expanded that designation to encompass constitutional complaints concerning the substantive limb of Articles 2 and 3 of the Convention, including cases concerning conditions of detention. In the meantime, it had delivered several decisions in which it had examined the merits of negative, positive and procedural obligations of the State, referring to numerous Court judgments.

60. In particular, the Government pointed to decision no. U-IIIBi-1385/2018 of 18 December 2018, in which the Constitutional Court had examined not only the complaint under the procedural aspect of Article 3 of the Convention, but also the conditions of the complainants’ accommodation in a reception centre for migrants (for details concerning the said decision, see *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 45, 18 November 2021). That decision showed that the Constitutional Court had examined issues virtually identical to those raised in the present case, relating to the accommodation of migrants in a closed area, under both the procedural and substantive limbs of Articles 2 and 3 of the Convention.

61. Lastly, in reply to the applicant’s contention that he had never been fairly compensated by the State, the Government noted that he had never initiated any proceedings for compensation before the domestic courts and that such a complaint could only be raised after the exhaustion of ordinary legal remedies in civil proceedings.

(b) The applicant

62. The applicant maintained that he had had no effective remedy at his disposal. He submitted that, in relation to fatal accidents arising out of dangerous activities that fell within the responsibility of the State, Article 2 required the authorities to carry out an effective criminal investigation that satisfied certain minimum conditions. Without such an investigation, the applicant had not been in a position to use any remedy available, given that the ability to elucidate the facts of a case was often in the sole hands of State officials or authorities.

63. The applicant had no knowledge of the decision of the Criminal department of the Vukovar Municipal State Attorney’s Office, by which it had concluded that no criminal proceeding would be initiated against the police officers (see paragraph 33 above). When lodging his application with the Court, he had been convinced that the authorities were conducting criminal proceeding against those persons who had been under an obligation to prevent the fire and that he had had the status of a victim in those proceedings.

64. The applicant stressed that he could not have lodged a constitutional complaint under sections 62 or 63 of the Constitutional Court Act because,

firstly, there had been no final decision had been on his rights or obligations. He had never had the status of a victim, but rather that of a suspect in the criminal enquiries; it was unclear why the Government considered that he could have successfully, as a victim, sought just satisfaction from the Constitutional Court. Moreover, the Constitutional Court's practice in respect of such matters had been inconsistent, and in any event, its decision could not have changed his status in the criminal proceedings.

2. *The Court's assessment*

65. The Court refers to the general principles on the requirement to exhaust domestic remedies set out in the case of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

66. The Court notes that in *Kušić v. Croatia* ((dec.), no. 71667/17, 10 December 2019) it had found that in 2019 a constitutional complaint had indeed become an effective domestic remedy for complaints concerning ineffective investigations under Articles 2 and 3 of the Convention (*ibid.*, §§ 93 and 99). It also held that the exception regarding the rule of exhaustion of the domestic remedies was to be applied in cases of this sort, in that the applicants in such cases should be required to file a constitutional complaint, even if they had lodged their application with the Court before such a complaint had proved to be effective (*ibid.*, §§ 101-105 and the case-law cited therein).

67. In the present case, the Court notes that the competent State Attorney's Office decided that no criminal proceedings against the police would be instituted in December 2017, whereas the constitutional complaint became effective only in 2019. Moreover, no criminal investigation is currently pending as regards the event complained of (see paragraph 45 above). In such circumstances, the Court does not consider it appropriate to reject the applicant's complaint under the procedural limb of Article 2 on these grounds (contrast *Kušić*, cited above, § 106; and *Marić v. Croatia* (dec.), no. 37333/17, § 43, 10 November 2020).

68. As regards the applicant's complaint under the substantive limb of Article 2 of the Convention, the Court reiterates that the burden of proof to show that there had existed an available and effective domestic remedy both in theory and in practice for the applicant's Convention grievances lies on the Government (see *Vučković and Others*, cited above, § 77). It notes in this connection that the decision of the Constitutional Court referred to by the Government concerned a complaint under the State's negative obligation not to expose the complainants to inadequate conditions of detention, whereas the applicant's complaint in the present case related to the authorities' positive obligation to prevent a life-endangering fire in a detention facility. The two situations are therefore not identical, as the Government seemed to

suggest (see paragraph 60 above). In any event, the said decision was adopted a year after the applicant had lodged his application with the Court; given the circumstances, the Court sees no reason to depart from the general rule on exhaustion of domestic remedies (contrast *Kušić*, cited above, §§ 101-105). In view of the above, the Court considers that the Government did not succeed in showing that, at the time of the lodging of his application with the Court on 19 December 2017, a constitutional complaint constituted an effective remedy concerning positive obligations of the State under Article 2 of the Convention.

69. It follows that the Government's objection of non-exhaustion of domestic remedies based on the applicant's alleged failure to lodge a constitutional complaint must be dismissed.

70. In so far as the Government may be understood to have put forward arguments regarding non-exhaustion of a civil claim for damages, the Court joins that objection to the merits of the applicant's complaint under the procedural aspect of Article 2 (see paragraph 111 below).

71. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Substantive limb of Article 2 of the Convention

(a) The parties' arguments

(i) The applicant

72. Relying on *Osman v. the United Kingdom* (no. 23452/94, 28 October 1998) and *Salman v. Turkey* (no. 21986/93, § 90, 27 June 2000), the applicant claimed that the State was under an obligation to take preventive measures when the authorities knew or ought to know of the existence of real and immediate danger to life of a particular individual. The applicant's life had been endangered by another detainee and the authorities had had an obligation to ensure the safety of persons deprived of liberty. Even if the applicant had taken part in starting the fire, which he denied, it had been the authorities' obligation to react promptly and extinguish the fire before anyone was injured.

73. The applicant maintained that there had been extreme negligence on the part of the police officers in charge of the security of the detainees. The detainees had been searched upon their arrival, but not before or during their accommodation in the detention room, contrary to the Rules on the Admission and Treatment of an Arrestee and Detainee. As a result, B.B. had been able to get hold of an incendiary device, which he had used to start the fire.

74. The applicant further stressed that there had been serious security issues in the building where he had been detained. As indicated in a handwritten note in the criminal file submitted by the Government, the building had not had a use permit. According to the applicant, it also had not had an adequate fire evacuation plan, and the number of fire extinguishers or of access points for the firefighters had been insufficient. The authorities were obviously using for detention of migrants a building which had not met adequate fire protection standards.

75. The applicant further pointed out that the authorities should have shown increased vigilance and supervise the detainees properly. Officer P.T. had stated that he had been informed by the head of the previous shift that the detainees had been restless, making noise, screaming and lashing on the wire. Officer H.J. had stated to the authorities that they were recidivists as they had already tried to clandestinely enter Croatia on a previous occasion and had been held in a detention facility several days earlier. Also, the fact that the police officers had had other demanding tasks and could not therefore continuously monitor the video surveillance screen, could not absolve the State of liability since the lives of persons within their control should have been their absolute priority.

(ii) *The Government*

76. The Government reiterated that positive obligations to prevent violence must be interpreted in such a way as not to impose on the authorities impossible or disproportionate burdens, taking into account the difficulties associated with police work in modern societies, the unpredictability of human behaviour and the operational decisions that must be made in terms of priorities and resources. In that regard, they referred to the case of *Osman v. the United Kingdom* (cited above). In the Government's view, the State's positive obligations had not been engaged in the present case.

77. Upon the migrants' arrival at the police station, the police had conducted a thorough personal search of them and had seized their belongings. The search had been conducted professionally, thoroughly and correctly, respecting the personal integrity of the persons. Throughout the period in question, the detainees had remained relatively calm and had not shown any signs of aggression. The domestic authorities had therefore had no basis to conclude that they posed a danger to themselves or to others; during the initial examination of the migrants and subsequent conversations with them there had been no sign that they were suffering of any mental disorders or from pyromania, and it had not been necessary to take additional measures to protect their lives and safety.

78. This notwithstanding, with a view to securing the premises and preventing escape, the police had taken additional measures such as video surveillance and placing two police officers in front of the door of their detention room, without thereby reducing or disturbing the personal

autonomy of the detainees. In the light of the relatively peaceful situation and the behaviour of the detainees which had not indicated that they were preparing a large-scale incident, it had not been deemed necessary to take additional safety measures. In this case, the fire had been the result of unpredictable behaviour, of which there had been no particular indications, taking into consideration all the circumstances of the case and reasonable judgment used by the police.

79. As regards the conditions of the applicant's detention, according to the official report of the Ministry of Interior, the detention room had been suitable and appropriate in terms of size for four persons. Although it had not had a toilet or running water, the detainees had had the possibility of being given access to such facilities in the adjoining room, upon request. The detention room had been situated in the building's basement and had been equipped with lighting, curtains, bedding. It had met the minimum standards for the accommodation of migrants for several hours, until their expulsion the following day.

80. Moreover, the Government contended that the applicant had been placed in a room with his friends with whom he had travelled across south-eastern Europe and who had not been suspected of committing any criminal offence. At the relevant time, there had therefore been no real or immediate threat to the applicant's life from a criminal act or self-injury, or a danger posed by another individual.

81. The Government stressed that the injuries the applicant had suffered had not been a consequence of police abuse, but of his own unlawful conduct causing a fire together with the other detainees. Owing to the prompt and timely intervention of the police officers, the applicant had been saved from more serious injuries at the last moment. Immediately upon the sounding of the alarm, the police officers had run to the basement area. The rescue operation had been complicated owing to a power shortage, dense smoke and the high temperature. Nevertheless, the police officers had exposed themselves to danger and had entered the detention room through a small window, managing to pull out alive three persons, two of whom had unfortunately already died. After the intervention, eight police officers had had to seek medical help and had been transported to the hospital owing to difficulties in breathing caused by the inhalation of smoke and toxic fumes. Four years later, one of the police officers had continued to experience psychological problems.

(b) The Court's assessment

(i) General principles

82. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic

values of the democratic societies making up the Council of Europe. The first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life “intentionally” or by the “use of force” disproportionate to the legitimate aims referred to in sub-paragraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

83. The Court further emphasises that persons in custody are in a particularly vulnerable position and the authorities are under an obligation to account for their treatment. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person’s right to life (see *Slimani v. France*, no. 57671/00, § 27, ECHR 2004-IX (extracts); *Salman v. Turkey* [GC], no. 21986/93, § 99, 27 June 2000; and *Tekin and Arlsan v Belgium*, no. 37795/13, § 83, 5 September 2017). Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising.

84. A positive obligation will arise, the Court has held, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Keenan*, cited above, § 90; *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-III). However, even where it is not established that the authorities knew or ought to have known about any such risk, there are certain basic precautions which police officers and prison officers should be expected to take in all cases in order to minimise any potential risk to protect the health and well-being of the arrested person (see *Fanziyeva v. Russia*, no. 41675/08, § 48, 18 June 2015 ; *Keller v. Russia*, no. 26824/04, § 88, 17 October 2013; *Eremiášová and Pechová v. the Czech Republic*, no. 23944/04, § 110, 16 February 2012; and *Mižigárová v. Slovakia*, no. 74832/01, § 89, 14 December 2010).

85. In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt”. However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in

respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109–11, ECHR 2002–IV).

(ii) *Application to the present case*

86. The Court notes at the outset that the parties did not dispute the applicability of Article 2 of the Convention to the circumstances of the present case. Indeed, the Court has emphasised on many occasions that Article 2 of the Convention may come into play even if a person whose right to life was allegedly breached did not die (see, among many other authorities, *Makaratzis v. Greece* [GC], no. 50385/99, § 55, ECHR 2004–XI; and *Fergec v. Croatia*, no. 68516/14, §§ 21–24, 9 May 2017 and the cases cited therein). It sees no reason to reach a different conclusion in the present case, where the applicant suffered serious injuries and three other persons who were detained with him had lost their lives.

87. Turning to the applicant’s allegation that the authorities were under a positive obligation to protect his life, notwithstanding certain elements which might have indicated that the detainees could become dangerous (see, for instance, paragraphs 32 and 43 above), the Court does not discern sufficient evidence to show that the authorities knew or ought to have known that there had been a real and immediate risk that the applicant and other detainees would try to set fire or injure themselves in any other way.

88. However, the Court has accepted that, even when the authorities had had no reasons to suspect a specific turn of events, the obligation to protect the health and well-being of persons in detention clearly encompassed their obligation to protect the life of arrested and detained persons from a foreseeable danger (see *Eremiášová and Pechová*, cited above, § 110, and *Keller*, cited above, § 88) or indeed from harming themselves (see *Mižigárová*, cited above, § 89). The Court considers that the same reasoning can be applied to the facts of the present case, where the danger in question had been a life-threatening fire breaking out at the detention site. In the Court’s view, there were certain basic precautions the police should have been expected to take in respect of the persons held in their custody in order to minimise any potential risk of grave accidents such as the one in the present case (*ibid.*).

89. In that connection, the Court notes that, according to the results of the domestic investigation, the fire was started by the detainees inside their room by using an open flame, probably a lighter (see paragraph 27 above). Although the detainees were subjected to a search at their arrival to the Bajakovo police station and two lighters, were seized from them (see paragraphs 6 and 30 above), as indicated in the report of the Office of the Chief of Police, that search had not been thorough since another lighter had been found in the detainees’ belongings left in the area in front of their

detention room and cigarette stubs within the room, indicating that the migrants had been smoking there (see paragraph 20 above). Such a situation is most likely to have been the result of negligence by the police officers in charge of searching and monitoring the detainees, but this notwithstanding, it was never established how the detainees could have come about to possess an incendiary device which, under domestic law, should have been taken away from them in order to prevent them from harming themselves, other persons or property around them (see paragraph 50 above; also compare *P.H. v. Slovakia*, no. 37574/19, § 114, 8 September 2022).

90. Furthermore, the Court notes serious shortcomings in the manner in which the detainees had been monitored during their stay at the Bajakovo police station. Although there was some sort of video surveillance system in place, it turns out that it had not been used by the police to monitor the detainees at all times. According to a witness statement of one of the police officers on duty the evening in question, even when he had noticed that the screen projecting the surveillance had gone blank, he simply assumed that there had been a technical problem and does not appear to have taken any action in that respect (see paragraph 39 above). Moreover, two police officers had been designated to guard the detention room, with a clear instruction for one of them to remain there at all times (see paragraph 10 above). However, both police officers eventually left their duty station, which allowed the detainees to start the lethal fire. These deficiencies were indisputably established by the relevant authorities and resulted in a disciplinary sanction being imposed on one of the police officers (see paragraphs 20 and 22 above).

91. Lastly, the Court notes that the applicant made certain very serious allegations as regards the Bajakovo police station premises at the material time, such as the fact that the building where he had been detained had had no use permit or a fire escape plan in place. He relied on a handwritten note authored by an unidentified person contained in the criminal file, which had been submitted to the Court by the Government (see paragraph 74 above). However, this fact does not appear to have ever been scrutinized by the domestic authorities by way of, for instance, obtaining an expert report in respect of the fire-protection measures in place at the Bajakovo police station at the material time, despite a clear requirement under domestic law that all building must have such measures in place (see paragraph 48 above); nor have the Government sought to refute or even comment on those allegations.

92. It transpires from the Government's description of the event as well as from the police officers' witness statements (see paragraphs 40, 41, 43 and 81 above) that, once the fire alarm went off on the night in question, there was a loss of electric power in the entire building and a general commotion, during which a number of police officers tried to enter the detention room located in the basement of the building in various ways. Moreover, the Court notes that, when deciding on Officer V.K.'s disciplinary liability, the disciplinary court referred to "the inadequacy of the space and some

organisational shortcomings”, without further elaborating on this point (see paragraph 22 above). Due to the lack of sufficient information, the Court is thus not in a position to take a final stance on all the allegations put forward by the applicant. However, the foregoing clearly indicates that the Bajakovo police station building and its personnel were rather ill-prepared to deal with a fire outbreak on their premises.

93. In the light of the foregoing, the Court cannot but conclude that the State authorities failed to provide the applicant with sufficient and reasonable protection of his life and limb as required by Article 2 of the Convention. There has accordingly been a violation of that provision in its substantive aspect.

2. Procedural limb of Article 2 of the Convention

(a) The parties’ arguments

(i) The applicant

94. The applicant maintained that in cases of loss of life, Article 2 of the Convention provided an obligation on the authorities to conduct an official investigation not only because any allegations of such an offence normally gave rise to criminal liability, but also because the true circumstances of such an event may often be largely confined within the knowledge of the State authorities.

95. The applicant pointed out that in October 2017 the relevant State Attorney’s Office had decided that no criminal proceedings would be conducted against the police officers without any explanation and without informing the applicant. Disciplinary proceedings against two police officers had resulted in only one of them being found guilty (and sanctioned with a reduction in his salary for a period of three months). No proceedings had ever been initiated against the police officers who had overseen the video surveillance.

96. The applicant further contended that the investigation into the event had been deficient and protracted, since over a period of three years the authorities had failed to identify the State authorities or officials who had been responsible for the unfortunate event. The applicant also maintained that he had never been fairly compensated by the State for the injuries that he had sustained.

(ii) The Government

97. The Government maintained that the investigation into the incident had been comprehensive, expedient and independent. After receiving information about the fire, the relevant domestic authorities had conducted an on-site inspection and obtained relevant evidence (including eyewitness testimony, forensic evidence, and the results of the autopsies and the formal identification of the victims). The authorities had acted expeditiously, and the

investigative actions had been carried out in a continuous and logical sequence, without unnecessary delays. The authorities involved in the investigation had acted swiftly and efficiently, using all available resources, criminal knowledge and rules of the profession to shed light on the circumstances of the case. In view of the above, the duration of the investigation could not be considered excessive.

98. The competent State Attorney's Office conducted the investigation in two directions. Firstly, it had sought to ascertain whether the applicant had been involved in starting the fire. Once the criminal enquiries had demonstrated the existence of a reasonable suspicion that he had indeed had, in May 2018 the relevant authorities had opened a criminal investigation in respect of him. Secondly, the investigation had been aimed at clarifying (i) the circumstances in which the detainees could have obtained the lighter and (ii) whether there had been any related failings on the part of the police officers who had secured the facility. In this regard, and after analysing the overall case file, in December 2017 the Vukovar Municipal State Attorney's Office had concluded that there had been insufficient grounds on which to initiate criminal proceedings against any of the police officers.

99. Furthermore, the Government added, the investigation had been independent. The criminal investigation into the incident had been carried out by the State Attorney's Office, an independent and autonomous State body separate from the police. All the steps taken had been reasonable and useful, given the circumstances, and the applicant had been interviewed by the police twice. Following a completely separate investigation, carried out by the Office of the Chief of Police (which was institutionally separate from the Ministry of the Interior), Officers V.K. and J.K. had been subject to disciplinary proceedings, which had resulted in finding one of them guilty of a serious breach of official duty.

100. The Government pointed out that the applicant had never had the formal status of victim during the investigation. On the contrary, a reasonable suspicion existed that he had been the perpetrator of the criminal offence of endangering life and property by means of a generally dangerous act, as a result of which an investigation had been initiated against him. The relevant authorities had responded on his behalf to all enquiries from both the applicant's lawyer and an NGO. In accordance with the provisions of the domestic law, criminal enquiries had been conducted in secrecy; hence, the applicant could not have been informed of the results of those enquiries – or of police reports and other investigative material – as this could have jeopardised the progress of the investigation, which in itself had not constituted an action contrary to the requirements of Article 2 of the Convention.

101. The relevant State Attorney's Office had also regularly kept the Municipal, County and State Attorney's Offices informed of its actions, which had been following the progress of the case. In reply to the applicant's

contention that he had never been fairly compensated by the State, the Government noted that he had never initiated any proceedings for compensation before the domestic courts and that such a complaint could only be raised after the exhaustion of ordinary legal remedies in civil proceedings. Moreover, the applicant had received immediate medical care and had been swiftly taken to a hospital. After his recovery, he had been taken to a reception centre for foreigners, where he had been provided with all the necessary help and an opportunity to receive visits. The subsequent rulings on expulsion, on the ban on his residing in Croatia and on his having to leave the European Economic Area had been based on the law, issued in expeditious administrative proceedings, and subjected to the oversight of the Administrative Court.

(b) The Court's assessment

(i) General principles

102. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are curtailed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004).

103. Whenever a detainee dies in suspicious circumstances, Article 2 requires the authorities to conduct an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness (see, for example, *Paul and Audrey Edwards*, cited above, §§ 69-73, and *Trubnikov v. Russia*, no. 49790/99, § 88, 5 July 2005). Accordingly, the relevant authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations which would be capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved.

104. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Fanzyeva*, cited above, § 50).

(ii) Application to the present case

105. The Court considers that in the present case a procedural obligation arose to investigate the circumstances of the fire and the applicant's injuries. He was a detained migrant under the care and responsibility of the authorities when he sustained life-threatening injuries and another three persons died as a result of what appeared to be an accident. An official investigation was necessary to establish, firstly, the circumstances in which the incident took place, and, secondly, whether the authorities were in any way responsible for their failure to prevent its occurrence.

106. In that connection, the Court notes that the relevant authorities' initial reaction to the incident was prompt: they conducted an on-site inspection immediately after the fire had been extinguished, interviewed the applicant and about thirty police officers, conducted an autopsy on the body of the deceased A.L. and obtained an expert opinion on the cause of the fire (see paragraphs 14, 16, 25, 26 and 27 above). The Vukovar State Attorney's Office immediately initiated criminal enquiries into the tragic event (see paragraph 23 above); those enquiries lasted for about two and a half years and resulted in the conclusion that the failures on the part of the individual police officers who had been designated to guard the migrants' detention room (with clear instructions for one of them to remain there at all times – see paragraph 10 above) had not amounted to a criminal offence (see paragraph 33 above). The two police officers were instead subject to disciplinary proceedings, in which a modest sanction was imposed on one of them (see paragraphs 20 and 22 above).

107. Turning to the thoroughness of the investigation, the Court has already found that a number of questions seem to have been left unanswered in the present case, in particular issues related to the search and the monitoring of the of detainees, as well as the adequacy of the premises at which they were detained (see paragraphs 89-92 above).

108. More generally, as the Grand Chamber has pointed out most recently in *Armani Da Silva v. the United Kingdom*, a case concerning fatal shooting by the police of a person mistakenly identified as a suspected terrorist, sometimes lives are lost as a result of failures in the overall system rather than individual error entailing criminal or disciplinary liability (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 284, 30 March 2016). In that case both the institutional responsibility of the police and the individual responsibility of the relevant officers were considered in depth, institutional and operational failings were identified, and detailed recommendations were made to ensure that such mistakes were not repeated (*ibid.*). In *Öneryıldız*, which concerned an accidental explosion at a rubbish tip, the Court criticised the fact that the mayors of the towns in question had been sentenced to suspended derisory fines in criminal proceedings only for negligence in the performance of their duties, and not for the failure to protect the right to life, which did not secure the full accountability of State officials or authorities for

their role in the fatal accident (see *Öneryıldız*, cited above, §§ 116-118). In the perhaps factually most similar previous case to the present one, which concerned the death of detainees in a fire, the Court was satisfied that, following an independent committee's investigation, two ministers responsible for the safety and care of the detainees had resigned on grounds of political responsibility (see *Van Melle and Others v. the Netherlands* (dec.), no. 19221/08, 29 September 2009).

109. In the present case, although the Ministry of the Interior had formed an expert team which produced a report with the Office of the Chief of Police pointing out to a number of shortcomings (see paragraphs 19 and 20 above), the foregoing merely resulted in the disciplinary proceedings being initiated against Officers V.K. and J.L. Those proceedings, as well as the criminal enquiries conducted, concerned only the narrow issue of the existence of possible criminal or disciplinary liability of individual police officers and did not deal with the more comprehensive question of whether there had been any broader institutional shortcomings or errors which allowed for the tragic accident to occur.

110. The Court notes in this connection that no further attempts were made to identify the “inadequacy of the space and some organisational shortcomings” referred to by the disciplinary court (see paragraph 22 above) by way of any official channels of inquiry, despite the obligation of the authorities to identify any shortcomings in the operation of the regulatory system (see paragraph 103 above). In other words, no further institutional investigation seems to have taken place with a view to establishing the possible shortcomings that led to the tragic event, remedying the potential deficiencies and preventing similar errors in the future (compare in this sense and *mutatis mutandis*, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 218, 19 December 2017).

111. Nor have the Government argued or indeed proved that civil proceedings would have been the appropriate avenue through which to seek to establish any institutional liability on the part of the authorities in the present case. In any event, the Court considers that the prospects of success of any further remedies based on the outcome of an investigation which had in the Court's view been insufficiently thorough and comprehensive (see paragraph 107-110 above), were limited (see *P.H. v. Slovakia*, cited above, § 108). The remainder of the Government's non-exhaustion plea must therefore be rejected.

112. In the light of the foregoing, the Court cannot but conclude that the domestic authorities failed to implement the provisions of domestic law guaranteeing respect for the right to life; in particular, they failed to deter similar life-endangering conduct in the future.

113. There has accordingly been a violation of Article 2 of the Convention in its procedural aspect.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

115. The applicant claimed 80,000 euros (EUR) in respect of non-pecuniary damage.

116. The Government contested that claim.

117. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

118. The applicant also claimed 33,125 Croatian kunas (HRK; approximately EUR 4,500) for the costs and expenses incurred before the domestic courts, HRK 35,625 (approximately EUR 4,850) for costs of representation before the Court, calculated at a rate of HRK 625 per hour for 57 hours of work. The applicant also claimed HRK 10,470 (approximately EUR 1,400) in respect of translation expenses.

119. The Government contested those claims.

120. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

121. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits of the complaint under the procedural aspect of Article 2 of the Convention the Government’s objection of non-exhaustion concerning a civil action in damages, and *dismisses* it

2. *Declares* the complaint under Article 2 admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;
4. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President