



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

FIFTH SECTION

CASE OF JAKLOVÁ AND OTHERS v. THE CZECH REPUBLIC

(Application no. 38342/23)

JUDGMENT

Art 2 (procedural) • Positive obligations • Dismissal of the applicants' claim for damages for the death of a close relative after he unexpectedly left a hospital where he was admitted as a voluntary patient • Shortcomings undermined the capacity of the proceedings to ensure appropriate implementation of the relevant legislative and statutory framework • Lack of promptness and reasonable expedition

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 December 2025

FINAL

04/03/2026

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

In the case of Jaklová and others v. the Czech Republic,

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

Gilberto Felici, *President*,
Kateřina Šimáčková,
Georgios A. Serghides,
Diana Sârcu,
Mykola Gnatovskyy,
Vahe Grigoryan,
Sébastien Biancheri, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 38342/23) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Czech nationals listed in the appendix (“the applicants”) on 12 October 2023;

the decision to give notice of the application to the Czech Government (“the Government”) and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 4 November 2025,

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

INTRODUCTION

1. The case concerns the manner in which the domestic courts dealt with a civil action for damages brought by the applicants following the death from hypothermia of their relative, B.J., which occurred after he had unexpectedly left a hospital where he had been admitted as a voluntary patient. It raises issues under Article 2 of the Convention.

THE FACTS

2. The first applicant is B.J.’s mother, the second applicant is his wife, the third applicant is his brother and the fourth applicant is his daughter. The applicants’ names and personal details are listed in the appended table. The applicants were represented by Ms Z. Vondráčková, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. EVENTS AT THE HOSPITAL

5. Following a suspected epileptic seizure on 29 November 2009, B.J., who was 29 years old at the time, was admitted on a voluntary basis to Bulovka University Hospital in Prague (“the hospital”). On admission, the doctor on duty noted that B.J. was conscious and responsive, that he did not show any signs of being a danger to himself or to others and that his mental state was stable. B.J. was therefore admitted to an open neurology ward located in a building with outdoor access but which was locked overnight.

6. At around 3 p.m. on 30 November 2009, B.J. was seen by the same doctor. B.J. did not make any complaints about his health and his mental state remained stable, as the doctor later noted in his statement to the police (see paragraph 12 below). According to a statement submitted to the Government by the hospital on 31 May 2024 for the purposes of the proceedings before the Court, B.J. had shown no signs of mental illness during his time in hospital and that there had been no reason to restrict his movements within the hospital premises.

7. On the basis of the above statement by the hospital, the Government submitted in their observations that B.J. had repeatedly left the ward to smoke and had requested that the door be left unlocked at night. The applicants disputed that statement, arguing that there was no evidence to suggest that B.J. had left the ward repeatedly. They claimed that B.J. had left the ward only once at night, on the night before his disappearance. Moreover, another patient who had gone outside with him to smoke that night had later stated to the court (see paragraph 16 below) that a nurse had unlocked a lift so that they could go outside to smoke and that B.J. had been behaving unusually (making jerky body movements and shouting incomprehensibly).

8. At around 7.40 a.m. on 1 December 2009 it was noted during the morning ward round that B.J. was not in his room. According to subsequent accounts given by hospital staff, a nurse from another ward had called a security guard between 8 and 8.15 a.m., as she had seen B.J. in a dressing gown, tearing down posters and threatening staff. The security guard later stated to the police that when he had approached him, B.J. had first responded to his questions with a single word (“*Bulovka*”) but had then started talking calmly and had said that he would return to his room. The guard had therefore assumed that B.J. had only gone for a walk and that no further action was required of him.

9. At 11.45 a.m. the same day, B.J. failed to attend a scheduled EEG examination. At 1 p.m. the second applicant called the neurology ward for a second time asking to speak to her husband, who had not been responding to her calls. She was informed that the staff had not seen him since the early morning. At around 2.30 p.m. the second applicant arrived at the hospital and found that B.J. had left all his belongings in his room.

According to the applicants, the hospital staff had refused to address the situation, telling them that it was an open ward and that patients were free to leave at any time. The second applicant had therefore started to carry out her own search for her husband, with the help of a colleague. The third applicant had arrived later, accompanied by friends and a tracking dog, but they were ordered to leave on account of the presence of the dog.

According to the hospital's above-mentioned statement submitted to the Government, when B.J. had failed to attend the EEG examination, enquiries were made and it was discovered that he had left the neurology ward without taking any of his personal belongings (just as he had done previously whenever he had gone outside to smoke). Once the second applicant had informed the hospital that she was unable to reach B.J. on the telephone, hospital staff and security guards had started to search for him. After the search proved unsuccessful, they had reported his disappearance to the police.

According to police records from 1 December 2009, at 2.50 p.m. a nurse from the neurology ward had informed the police that B.J. had left the ward at 7 a.m. that day. The police considered him to be a missing person from 8 a.m., when he had last been seen by the hospital security guard. Following the nurse's report, the police initiated a search operation on the hospital premises and called other hospitals in Prague, emergency lines and public transport providers. On the same day, a nationwide search for B.J. was launched.

10. On 12 December 2009, during a new search operation seemingly initiated by the second applicant and carried out by her and B.J.'s friends together with a police patrol, B.J.'s body was found in a remote, difficult-to-access place close to the hospital complex. The attending doctor determined that he had died three to four days earlier from an unknown cause.

II. ENSUING INVESTIGATION

11. On 14 December 2009 the police opened an investigation into B.J.'s death. On the same day, they ordered a forensic post-mortem examination of his body, which found that B.J. had died of hypothermia several days after leaving the hospital.

12. On 29 January 2010 the neurologist who had admitted B.J. to the hospital gave a statement saying that B.J. had consented to his admission, that he had not posed any threat to himself or to others and that his state of health was normal. The neurologist also stated that on 30 November 2009 B.J. had repeatedly left the ward, despite being advised against it.

13. On 3 February 2010 the police set the case aside, on the grounds that the investigation had not established any criminal offence. The first applicant lodged a complaint against that decision, which the prosecutor rejected as unfounded on 10 March 2010.

III. PROCEEDINGS FOR DAMAGES

14. In November 2011 the applicants lodged a civil claim against the hospital, seeking 240,000 Czech korunas ((CZK) – approximately 9,600 euros (EUR)) in respect of non-pecuniary damage, and arguing, on the basis of Articles 415 and 420 of the Civil Code, that the hospital had breached its preventive duty in connection with B.J.'s disappearance and death. They argued that the hospital should have prevented B.J. from leaving the premises as there had been signs that he might have been suffering from a mental disorder, and that the hospital should have searched for him after he had disappeared, instead of compromising their own attempts to find him with the tracking dog.

15. During a hearing in the Prague 8 District Court on 27 May 2013, the head of the neurology ward stated that at the time of his admission, B.J. had been placed under enhanced supervision for three hours (because of his earlier seizure). By 30 November 2009 enhanced supervision had been discontinued, also because of insufficient capacity to provide it. Although there were indications that B.J. might be suffering from epilepsy, at that time his diagnosis had not yet been confirmed and further examinations had been planned. The neurologist stated that he had not noticed anything unusual in B.J.'s behaviour during the ward round on 30 November 2009. When he had learnt that B.J. had left the ward, he had checked to make sure that the applicable regulations had been complied with, which – to his knowledge – they had been.

The court also heard evidence from J.V., a colleague of the second applicant who had accompanied her to the hospital on 1 December 2009. She stated that they had had difficulties getting into the building and that when they had asked whether the hospital staff were searching for B.J., a nurse had told them that staff were not required to supervise patients on an open ward.

16. At a hearing on 5 December 2013, the patient who had gone outside to smoke with B.J. the night before his disappearance gave evidence and testified that B.J. had been behaving unusually (see paragraph 7 above). He also stated that he had seen B.J. on 1 December 2009 at around 10 a.m. in an underground corridor leading to the exit from the hospital.

The security guard stated that after the nurse had called him on the morning of 1 December 2009 (see paragraph 8 above) to report a verbally abusive patient behaving in a strange manner, he had found B.J. on a surgery ward reading some leaflets, seemingly calm.

17. By a judgment of 13 June 2016, the District Court ruled in favour of the applicants and ordered the hospital to pay them damages for the death of their relative. It held that the hospital staff had not acted in compliance with the applicable rules and procedures (*lege artis*) by not adequately supervising B.J., who had an undetermined diagnosis and signs of mental disorder, and by allowing him to wander about in the hospital, the only measure taken

having been to call a security guard. The hospital staff had failed to protect B.J. from self-harm and from leaving the hospital, and the breach of that preventive duty had led to B.J.'s death.

18. On 14 October 2016 the Prague Municipal Court quashed that judgment and remitted the case to the District Court, finding that an expert report was needed to determine whether or not the hospital staff had acted in compliance with the applicable rules and procedures.

19. The District Court ordered a report by a group of experts. The expert report dated 30 June 2017 concluded, on the basis of B.J.'s medical records, that there had been nothing to suggest that he had been suffering from a mental disorder calling for special protection against self-harm. In that connection, the experts found that placing a patient who had experienced one isolated seizure under routine supervision in a neurology ward was the standard level of care. Furthermore, changes in B.J.'s behaviour could not have been foreseen by the hospital staff. It remained unclear why B.J. had left the ward but the staff had followed the standard procedure for reporting an emergency incident as set out in the hospital's internal regulations.

20. On 20 September 2018 one of the experts gave evidence to the court. According to the applicants, the expert stated, in connection with B.J.'s behaviour that had been reported by the security guard and his failure to appear for the EEG examination, that had such incidents happened in the hospital where she worked, hospital staff would have called a specialist or would have transferred the patient to a ward where he could be examined; also, they would have requested that staff from the ward where the patient was admitted accompany him to the scheduled examination.

21. On 24 September 2018 the District Court ruled again in favour of the applicants, specifying that they had now limited their claims to the fact that the hospital had not prevented B.J. from leaving the premises, despite his strange behaviour. The hospital argued that B.J. had been admitted on a voluntary basis and there had been no reason to restrict his movements (for example, by detaining him). The court found that the case could not be decided solely on the basis of the medical evidence relating to the quality of the treatment provided to B.J. The core legal issue lay in the hospital's preventive duty to ensure patients' safety, which had been breached in B.J.'s case since the security guard had not reported the incident he had witnessed (see paragraph 8 above) to medical staff.

22. On 23 January 2019 the Municipal Court upheld that judgment. It found that while the care provided to B.J. had been in line with the applicable rules and procedures and that the security guard had not been at fault, staff had failed to monitor B.J.'s movements from the early morning until the afternoon of 1 December 2009 when his wife had arrived, or to follow the hospital's internal guidelines pertaining to a patient's departure from the hospital.

23. On 31 August 2020 the Supreme Court quashed both the above-mentioned judgments and remitted the case to the District Court, finding that under the regulations in force at the material time, medical examinations and treatment could be undertaken without the patient's consent only in exceptional situations where the patient posed a risk to himself or herself or to others (for example, where there were signs of mental illness, or a patient was intoxicated). Consequently, in circumstances where a hospital could not compel a patient to undergo treatment, it could hardly be required to continuously monitor whether the patient was complying with the treatment or to force him or her to do so if the patient decided to leave. Moreover, the fact of simply leaving the ward did not automatically imply a risk to the patient's life and health, even in cold weather. It was especially difficult in an open ward to distinguish, in a short time period, between a patient's temporary absence from the ward and a situation where his or her absence indicated an intention to leave the hospital. Nevertheless, the situation would be different in the case of a patient in respect of whom the hospital staff ought to have been aware that a prolonged absence might have an immediate negative impact on his or her health, or in the case of a patient with signs of a mental disorder and a risk of causing harm to himself or herself or to others.

The Supreme Court therefore considered that the issue to be determined in the case was whether the hospital staff had known or ought to have known of any specific factors (such as the presence of a mental disorder) which would have required extraordinary measures in monitoring or supervising B.J. had been present. Moreover, if there were any applicable internal regulations, the courts re-examining the case should clarify their nature and content; the courts should also examine whether there had been a causal link between the hospital's breach of its preventive duty and B.J.'s death.

24. On 29 September 2021 the second applicant gave evidence (for the first time) to the District Court and stated that when she had arrived at the hospital on 1 December 2009, the staff had not been cooperative. To start with, they had not let her onto the ward (because of a flu epidemic) and they had told her that they were unable to prevent patients from leaving an open ward. As they did not appear to be doing anything to locate B.J., she had immediately started searching for him on her own. She had later learnt that the third applicant, who had arrived with the dog, had not been allowed to enter the hospital premises. That was confirmed by the third applicant, who, when giving evidence, added that they had been asked not to enter the ward because of a flu epidemic and that he had returned alone at night in order to search the outer areas of the hospital complex. J.V. gave evidence which was similar to her evidence given on 27 May 2013 (see paragraph 15 above) and to that of the second applicant.

25. In their final submissions to the court, the applicants submitted that although the hospital staff had been aware that B.J., a neurological patient, had not been present during the morning ward round, that he had failed to

attend the subsequent EEG examination and that the second applicant had unsuccessfully tried to reach him by telephone, the staff had not tried to find out where he was or to search for him. In that connection, they referred to the oral statement of one of the experts regarding the appropriate way of responding to such a situation (see paragraph 20 above). They further argued that the medical staff should have been aware that B.J. was displaying signs of mental disorder, given that those signs had been apparent even to lay persons such as another patient and the security guard (see paragraph 16 above). Lastly, they submitted that in accordance with the hospital's internal guidelines, an unplanned departure of a patient from the ward was considered an extraordinary situation which required that a search for the patient be undertaken, and that security guards, the patient's contact person and the police be informed. However, that procedure had not been followed in B.J.'s case. In their view, there was no doubt that the hospital's failure had a direct causal link to B.J.'s death. Indeed, B.J.'s death could have been avoided if the hospital had promptly intervened and reacted to his disappearance.

26. On 15 December 2021 the District Court dismissed the applicants' claim. Pointing out that the applicants had limited themselves to arguing that the hospital had breached its duty by failing to prevent B.J. from leaving, it decided that the evidence given in support of their previous claims of other failings would no longer be considered. The court concluded that the hospital had not breached its preventive duty and that B.J., a voluntary patient, had been provided with proper medical care. The staff did not have the capacity to monitor patients' movements, especially in open wards, and the security guard had not breached any duty since he was not qualified to assess B.J.'s mental state and had no right to prevent him from leaving the hospital.

27. The applicants appealed, complaining, among other things, that the court had not explained what evidence it had relied on or how it had assessed the evidence of the witnesses heard on 29 September 2021 (see paragraph 24 above). Referring to the Supreme Court's opinion, the applicants argued that it had been proved in the proceedings that the hospital had been aware, or ought to have been aware, of the specific circumstances suggesting that B.J.'s absence was an extraordinary situation and that specific action should have been taken to search for him.

28. On 18 May 2022 the Municipal Court upheld the lower court's judgment, finding that the healthcare provided to B.J. by the hospital had been in compliance with the applicable rules and procedures, as stated in the expert report, and that the hospital had not breached its preventive duty. Given that B.J. had not been diagnosed with epilepsy, the approach of the staff had been standard procedure. B.J. had been admitted to an open ward and there had been no reason to restrict his movements. In any event, there had been no causal link between the allegedly unlawful conduct of the hospital and B.J.'s death. Despite the fact that his disappearance had been reported to the police within five hours, his body had not been found until 12 days later.

The court observed that in accordance with the existing case-law, it was not necessary to consider any evidence that could not serve as a basis for the decision.

29. On 9 January 2023 the Supreme Court dismissed an appeal on points of law by the applicants, endorsing the lower courts' conclusions that the hospital had not breached any duty and, in any event, that there had not been any causal link between the hospital's conduct and B.J.'s death. It pointed out that while the applicants had only referred to B.J.'s unusual behaviour or state of agitation shortly before he had gone missing, the expert report (see paragraph 19 above) had concluded that B.J.'s state of health had not required any exceptional measures with a view to limiting his freedom of movement or keeping him under enhanced supervision. As regards the applicants' arguments about the hospital's failure to comply with its internal regulations on the procedure to be followed in extraordinary situations (namely Section 4.3.6. of the guidelines no. 23/2005 on reporting and recording of emergency incidents, entitled "Absconding of a patient from a ward", which identified the persons and authorities to be notified of a patient's absconding from the ward), the Supreme Court noted that the applicants had sought to equate B.J.'s mere absence from the ward, which the hospital had not been under a duty to prevent, with an abscondment characterised by the patient's intention not to return. Concerning the applicants' complaint that the lower courts had failed to address, in particular, the evidence given on 29 September 2021, the Supreme Court observed that the courts did not have to consider evidence that could not serve as a basis for a decision on the merits. The evidence in question in the case did not provide any meaningful information about the hospital's conduct at the material time. In the Supreme Court's view, the procedural shortcomings complained of by the applicants were minor and not likely to amount to a violation of their fair-trial rights.

30. The applicants lodged a constitutional appeal, arguing under Articles 6 and 8 of the Convention that it had been proved in the proceedings that the hospital had known or ought to have known about the circumstances requiring the medical staff to respond to B.J.'s disappearance and to take measures to search for him. In that connection, they referred to the witness statements of the other patient and the security guard (see paragraph 16 above). The applicants reiterated that the lower courts had failed to address certain pieces of evidence, such as their witness statements and their arguments pertaining to the breach by the hospital of its preventive duty – which were supported in their view by one of the experts (see paragraph 20 above) – and also to the breach of its internal guidelines. The applicants also asserted that when dismissing their appeal on points of law, the Supreme Court had ignored the lower courts' shortcomings and had based its decision on findings which had not been made by those courts.

31. By decision no. II. ÚS 1037/23 of 7 June 2023 (served on 12 June 2023), the Constitutional Court dismissed the applicants'

constitutional appeal as manifestly ill-founded. It noted that the applicants had objected merely to the way in which the lower courts had assessed the evidence, and to their factual and legal conclusions. The Constitutional Court further considered that the findings of the lower courts that there had been neither a breach of the hospital's preventive duty nor a causal link between the hospital's alleged unlawful conduct and B.J.'s death had been duly reasoned.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CIVIL CODE (LAW No. 40/1964) AS IN FORCE UNTIL 31 DECEMBER 2013

32. Article 415 of the Civil Code, as in force until 31 December 2013, required all persons to act in such a way as to prevent damage to health, property, nature and the environment.

33. Article 420 provided that all persons would be liable for damage caused by a breach of a legal obligation but could be released from liability if they could show that they were not at fault in relation to the damage.

II. DOMESTIC PRACTICE

34. In judgment no. III. ÚS 2667/21 of 16 November 2021, the Constitutional Court found that the right to personal liberty had been breached in the context of judicial proceedings concerning the appellant's involuntary admission to a psychiatric hospital. It observed that the fact that a patient was suffering from or exhibiting signs of a mental disorder was not, in principle, sufficient to conclude that the conditions for involuntary admission were met; rather, that fact had to be accompanied by further elements, namely the patient's specific behaviour or actions which suggested that he or she posed an immediate and serious threat to himself or herself or to others.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

35. Relying on Articles 6 and 8 of the Convention, the applicants complained that the lower courts had failed to find the hospital liable for their relative's death and had failed to consider specific pieces of evidence or to address their arguments pertaining to the breach of the hospital's internal guidelines.

Being the master of the characterisation to be given in law to the facts of the case, the Court considers that, in so far as they relate to the death of their

relative following his admission to hospital, the applicants' complaints fall to be examined under 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

36. The Government submitted that the applicants had not exhausted the available domestic remedies. In their view, the crux of the case lay not in the hospital's failure to provide medical care but in the fact that B.J. had died a few days after his voluntary departure from the hospital (the official date of death being 6 December 2009, as established by the domestic courts). His death could not have been avoided if his disappearance had been reported by the hospital at an earlier stage, but only if he had been found earlier by the police. Indeed, it could reasonably be assumed that had B.J. been found in the first few days after his disappearance, he might have survived. That being so, the applicants should have brought a civil claim for damages under the State Liability Act on account of misconduct by police officers, namely their failure to carry out a sufficiently prompt and thorough search for B.J. Such a claim would not have duplicated the applicants' civil claim against the hospital because it would have entailed an examination of a different set of actions by a different defendant.

37. The applicants disagreed, arguing that an action against the police as suggested by the Government would not have been an adequate and effective remedy in their case, which had not involved police misconduct. The applicants' aim had been to clarify the circumstances of B.J.'s death and to establish the hospital's liability.

38. The Court notes that the applicants complained in their application that the domestic courts considering their civil claim for damages and, as a pre-condition, regarding the hospital's liability for the death of their relative had failed to deal with the matter in a manner compliant with the respondent State's positive obligations (see also paragraphs 40-42 below). In that regard, the remedies available to the applicants at the domestic level included a constitutional appeal, which they duly used. They did not, however, complain about any deficiencies in the actions of the police. Accordingly, the remedy suggested by the Government is unrelated to the complaint at issue and their objection must be dismissed.

39. 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

40. The Court notes at the outset that while, in their application form, the applicants mentioned a breach by the hospital of its preventive duty to take operational measures to protect their relative from self-harm – an issue that may touch upon the State’s positive substantive obligations under Article 2 of the Convention –, they did so only in respect of the courts’ examination of that issue and of their conclusion that there had been no breach of that duty. Consequently, the Government were notified of the application under the procedural limb of Article 2 only.

41. The Court observes, however, that in their observations the parties also commented on the substantive limb of Article 2. Even so, there was no disagreement between the parties as to the existence in the Czech Republic of a legislative and statutory framework compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients’ lives. The applicants’ complaint concerned instead the capacity of the judicial system to review compliance with those obligations by the medical staff and to penalise any breach of them (see, *mutatis mutandis*, *Altuğ and Others v. Turkey*, no. 32086/07, §§ 73-74, 30 June 2015).

42. In such circumstances, the Court considers it appropriate to focus its examination on only the procedural limb of Article 2 of the Convention, in determining whether or not the civil courts properly addressed all the relevant issues and evidence.

1. Submissions by the parties

43. The applicants submitted that the courts had not properly considered their objections and had not taken into account all the relevant evidence and circumstances. They argued that there had been extraordinary circumstances requiring that B.J. be placed under increased surveillance, including the unknown cause of his epileptic seizure, his absence during the morning ward round, his failure to attend the scheduled EEG examination and his aggressive behaviour as reported by the hospital security guard. The applicants contested the domestic courts’ findings to the contrary. In their view, it was not clear from the decisions in question on which evidence the courts had based their decisions, how that evidence had been assessed and what factual conclusions they had reached. Moreover, the courts had completely neglected the issues of compliance with the hospital’s internal regulations and of the causal link between the alleged breach of the hospital’s preventive duty and B.J.’s death.

44. The Government submitted that the case had been thoroughly addressed by the domestic courts at four levels of jurisdiction, and that the proceedings had been fair, adversarial and capable of providing the applicants with appropriate redress. In particular, the courts had examined whether the hospital had breached its preventive duty, in particular whether, at the relevant time, the hospital staff had been aware, or ought to have been aware,

of any extraordinary circumstances, such as a particular vulnerability, justifying the need for enhanced supervision. In concluding that that had not been the case, they had had regard to a report by a qualified independent expert, which had been a key and decisive piece of evidence, the correctness of which the Court was not called upon to assess (the Government referred to *Harutyun Karapetyan v. Armenia*, no. 53081/14, §§ 99-100, 29 October 2024). The courts had also adequately responded to the applicants' complaints that the hospital staff should have detected signs of mental disorder on the part of B.J., and they had duly reasoned their findings.

45. As regards the courts' findings relating to the hospital's internal regulations, the Government referred to the Supreme Court's opinion that those regulations applied to cases of absconding, which had to be distinguished from a merely temporary absence from a ward, and that they had not therefore been applicable in the present case.

2. The Court's assessment

(a) General principles

46. The general principles concerning the positive obligations incumbent on States in the field of medical care, in particular concerning the obligation to investigate when allegations of medical negligence are made, were summarised in *Lopes de Sousa Fernandes* (cited above, §§ 214-21).

47. The Court reiterates that it has interpreted the procedural obligation of Article 2 in the context of healthcare as requiring States to set up an effective and independent judicial system so that the cause of death or serious physical injury of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible held accountable. While, in some exceptional situations, where the fault attributable to the healthcare providers went beyond a mere error or medical negligence, the Court has considered that compliance with the procedural obligation must include recourse to criminal law, in all other cases where the infringement of the right to life or to personal integrity is not caused intentionally, the procedural obligation imposed by Article 2 does not necessarily require the provision of a criminal-law remedy. Thus, 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.

48. Article 2 will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice (see *Byrzykowski v. Poland*, no. 11562/05, § 105, 27 June 2006, and *Lopes de Sousa Fernandes*, cited above, § 216). Accordingly, the Court's task is to verify the effectiveness of the legal avenue used by the applicants, that is, to assess how it worked in the concrete circumstances of their case, whether it actually enabled them to have their allegations examined and

whether the domestic courts' assessment of the facts was comprehensive, relevant and persuasive, and also in line with its case-law on the issue (see *Hiller v. Austria*, no. 1967/14, § 52, 22 November 2016).

49. Furthermore, having in mind the fundamental importance of the right to life guaranteed under Article 2 of the Convention and the particular weight the Court has attached to the procedural requirement under that provision, the Court emphasises that when scrutinising the effectiveness of proceedings brought by applicants following the death of their relative, it must apply a strict approach in its determination of whether those proceedings satisfied all of the guarantees required by the Convention (see *Bajić v. Croatia*, no. 41108/10, § 92, 13 November 2012).

50. A requirement of independence of the domestic system set up to determine the cause of death of patients in the care of the medical profession is implicit in this context. This requires not only a lack of hierarchical or institutional connection but also that all parties tasked with conducting an assessment in the proceedings for determining the cause of death of patients enjoy formal and *de facto* independence from those implicated in the events. This requirement is particularly important when obtaining medical reports from expert witnesses, as such reports are very likely to carry crucial weight in a court's assessment of the highly complex issues of medical negligence, which gives them a particularly important role in the proceedings.

A further requirement is that the experts must examine carefully all the relevant points and set out in enough detail the reasons for their conclusions, and the courts or other authorities dealing with the case must then scrutinise those conclusions properly (see *Altuğ and Others*, cited above, §§ 78-82, and *Jurica v. Croatia*, no. 30376/13, § 86, 2 May 2017). A system in which an opinion given by a specialised institution is automatically regarded as conclusive evidence which precludes further expert examination of the relevant issues falls foul of this requirement (see *Eugenia Lazăr v. Romania*, no. 32146/05, §§ 76-80, 16 February 2010, and *Jurica*, cited above, § 86).

51. Likewise, the procedural obligation under Article 2 in the context of healthcare requires, *inter alia*, that the proceedings be completed within a reasonable time. In that connection the Court emphasises that, apart from the concern for respect for the rights inherent in Article 2 of the Convention in each individual case, more general considerations also call for a prompt examination of cases concerning medical negligence in a hospital setting. Knowledge of the facts and of possible errors committed in the course of medical care is essential to enable the institutions and medical staff concerned to remedy the potential deficiencies and prevent similar errors. The prompt examination of such cases is therefore important for the safety of all users of healthcare services (see *Byrzykowski v. Poland*, no. 11562/05, § 117, 27 June 2006; and *Dodov v. Bulgaria*, no. 59548/00, § 89, 17 January 2008).

52. Finally, the Court stresses that this procedural obligation is not an obligation as to results to be achieved but only as to means to be employed.

Thus, the mere fact that proceedings concerning medical negligence have ended unfavourably for the person concerned does not in itself mean that the respondent State has failed in its positive obligation under Article 2 of the Convention. Rather, the Court's task is to assess whether, in the specific circumstances of the case, given the fundamental importance of the right to life guaranteed under Article 2 of the Convention and the particular weight the Court has attached to the procedural requirement under that provision, the domestic authorities subjected the case to the careful scrutiny required and provided an adequate and timely response consonant with the State's obligations under Article 2 of the Convention (see *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, § 84, 19 July 2018, and *Lopes de Sousa Fernandes*, cited above, § 238).

(b) Application of those principles to the facts of the present case

53. The Court notes that the civil proceedings brought by the applicants ended with the dismissal of their claim for damages. Indeed, after two judgments ruling in the applicants' favour, the District Court ultimately concluded that the hospital had not breached its preventive duty and that B.J. had been provided with proper medical care following his voluntary admission. It considered that staff did not have the capacity to monitor patients' movements, especially on open wards, and that the security guard had not acted in breach of his duty in the case at hand since he was not qualified to assess B.J.'s mental state or to prevent him from leaving the hospital (see paragraph 26 above). That judgment was upheld by the Municipal Court, which referred to the expert report finding that the hospital staff had not acted negligently.

54. In view of this sequence of events, the Court considers that the applicants had arguable grounds to suspect that their relative's death could have been the result of medical negligence. The respondent State's duty to ensure compliance with the procedural obligations arising under Article 2 of the Convention, in the proceedings instituted in connection with the applicants' relative's death, is therefore engaged in the present case (see, *mutatis mutandis*, *Lopes de Sousa Fernandes*, cited above, § 222). The considerations that follow in this respect should not in any way be interpreted as encouraging States to limit the freedom of movement of hospital patients. The Court reiterates that from a Convention point of view it is not only permissible to grant hospitalised persons the maximum freedom of movement but also desirable in order to preserve as much as possible their dignity and their right to self-determination (see *Hiller*, cited above, § 54).

55. The Court observes that those decisions were handed down following a judgment of the Supreme Court quashing the lower courts' decisions (see paragraph 23 above) and referring the case back to them in order to determine whether the hospital had known or ought to have known of specific factors (such as the presence of a mental disorder) which would have required

extraordinary measures in monitoring or supervising B.J. The Supreme Court also instructed them to clarify the nature and the content of the hospital's internal regulations. The Court finds, however, that neither the District Court nor the Municipal Court addressed those aspects or dealt with them satisfactorily, despite the applicants' repeated requests and the fact that those issues were very important, if not decisive, for settling the dispute, and therefore required a specific and explicit response from the courts (see, *mutatis mutandis*, *Altuğ and Others*, cited above, § 82, and *Tülay Yıldız v. Turkey*, no. 61772/12, § 68, 1 December 2018).

56. It is also noteworthy that the expert report referred to by the courts, in which it was found that there had been nothing to suggest that B.J. was suffering from a mental disorder, was based solely on B.J.'s medical records and did not take account of the specific circumstances to which the applicants referred throughout the proceedings (see, in particular, paragraphs 25 and 43 above). Furthermore, although one of the experts later gave evidence and replied specifically to the applicants' concerns in that respect (see paragraph 20 above), her statement does not seem to have been taken into consideration by the courts.

57. The Court also shares the applicants' view that it is not entirely clear from the decisions in question on what evidence the courts had based their decisions and how they had assessed it. This is particularly true as regards the oral evidence given to the first-instance court by the second and third applicants (see paragraph 24 above). In this connection, it is noteworthy that the District Court, when deciding not to consider evidence related to the parts of the claim that the applicants had discontinued during the proceedings (see paragraph 26 above), failed to examine its relevance to the remaining claim, despite strong indications that it was relevant. In this respect, reiterating that the rules on the distribution of the burden of proof should not substantially disadvantage the applicants as the claimants (see *Storck v. Germany*, no. 61603/00, § 162, ECHR 2005-V), the Court considers that the reasons given by the Supreme Court to dismiss the applicants' complaint raised in that regard (see paragraph 29 above) do not provide an appropriate response to this issue either.

58. The Court reiterates in this connection that Article 2 of the Convention imposes specific procedural requirements upon the domestic authorities and that the conduct of those authorities must be subject to strict scrutiny (see paragraph 53 above). Thus, where there is a *prima facie* arguable claim of a chain of events possibly triggered by an allegedly negligent act that may have contributed to the death of a patient, the authorities may be expected to conduct a thorough examination into the matter (see *Lopes de Sousa Fernandes*, cited above, § 237). The Court also emphasises the right of the victim's family to obtain an accurate account of the circumstances regarding the death of their relative and a convincing response to their legitimate concerns regarding the substance of their complaints.

59. Although it is not for the Court to speculate on any potential liability of the hospital in question or the hypothetical outcome of the proceedings had the above-mentioned issues and statements been properly examined, it considers that those shortcomings undermined the capacity of the proceedings in the present case to ensure appropriate implementation of the relevant legislative and statutory framework designed to protect B.J.'s right to life.

60. Lastly, the Court reiterates that in Article 2 cases concerning medical negligence a requirement of promptness and reasonable expedition is implicit in determining the effectiveness of the domestic proceedings instituted to elucidate the circumstances of the patient's death (see *Bajić*, cited above, § 103).

61. Although the applicants stated that, notwithstanding the length of the proceedings, they did not intend to complain about the delays since their primary concern was to obtain an objective assessment of all the circumstances and the determination of the cause of B.J.'s death, the Court considers that this statement cannot prevent it from taking the diligence aspect into account in examining the complaint submitted to it, namely that the domestic courts did not act in a manner consistent with the State's procedural obligations at issue. The Court reiterates in this connection that the knowledge of facts and possible errors committed in the course of medical care should be established promptly in order to be disseminated to the medical staff of the institution concerned so as to prevent the repetition of similar errors and thereby contribute to the safety of users of all health services (see *Byrzykowski*, cited above, § 117). Indeed, in a number of cases before the Court concerning the implementation of a domestic regulatory framework for the protection of patients' lives, the finding of a violation was largely based on the unreasonable delays and the lack of diligence on the part of the authorities in conducting the proceedings (see, for example, *Dodov*, cited above, § 98; *Dvořáček and Dvořáčková v. Slovakia*, no. 30754/04, § 70, 28 July 2009; and *Bajić*, cited above, § 107).

62. In the present case the Court observes that the proceedings brought by the applicants lasted almost 12 years and were marked by repeated remittals of the case to the first-instance court for re-examination. In the Court's view, the fact that the first judgment on the matter was given almost five years after the applicants had instituted the proceedings, combined with the successive decisions quashing judgments of the lower courts, discloses a certain lack of diligence and a serious deficiency in the manner in which the courts approached the relevant issues in the particular circumstances of the present case. Despite the relative complexity of the case, the Court thus considers that the proceedings were not carried out with reasonable expedition.

63. Taking the foregoing into account, the Court concludes that the domestic courts failed to provide an adequate and timely response to the civil claims in relation to the applicants' relative's death, in a manner consistent

with the State's procedural obligations under Article 2. Consequently, there has been a violation of Article 2 in its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

64. The applicants complained, under Article 13 of the Convention, that the proceedings for damages which they had pursued at the domestic level could not be considered an effective remedy on account of the procedural shortcomings of the domestic courts' rulings.

65. The Court considers that those issues are subsumed by the procedural limb of Article 2, which encompasses the requirement of the effectiveness of the proceedings.

66. Having regard to its findings in this respect (see paragraph 63 above), the Court considers that it is not necessary to examine separately the admissibility and merits of the applicants' complaint under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. Relying on the provisions of the Czech Civil Code, the first, second and fourth applicants – that is, respectively, the mother, wife and daughter of the deceased – claimed 240,000 Czech korunas ((CZK) – approximately 10,000 euros (EUR)) each in respect of non-pecuniary damage; the third applicant, who is the deceased's brother, claimed CZK 175,000 (approximately EUR 7,290) under that head.

69. Noting that the applicants' main complaint was merely of a procedural nature, the Government submitted that any just satisfaction should be awarded on an equitable basis, reflecting both the scale of the particular violations found and the relevant case-law of the Court. At the same time, they argued that the amounts claimed by the applicants were excessive.

70. The Court considers that the applicants must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the nature of the violation found, and making its assessment on an equitable basis, the Court awards the applicants the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable: EUR 10,000 to the first applicant; EUR 10,000 to the second

applicant; EUR 7,000 to the third applicant; and EUR 10,000 to the fourth applicant.

B. Costs and expenses

71. The applicants also claimed CZK 126,526 (approximately EUR 5,272) for the costs and expenses incurred before the domestic courts and the Court. They submitted itemised invoices issued by their lawyer, from which it appears that the lawyer is not a registered VAT payer.

72. The Government acknowledged that the amount claimed by the applicants was duly substantiated by the relevant invoices.

73. 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 applicants jointly the sum of EUR 5,272 covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under the procedural limb of Article 2 of the Convention and the complaint under Article 13 admissible;
2. *Holds*, unanimously, that there has been a violation of the procedural limb of Article 2 of the Convention;
3. *Holds*, by six votes to one, that it is not necessary to examine separately the complaint under Article 13 of the Convention;
4. *Holds*, unanimously,
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) to the first applicant, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) to the second applicant, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) to the third applicant, EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (iv) to the fourth applicant, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (v) to the four applicants jointly, EUR 5,272 (five thousand two hundred and seventy-two euros), plus any tax that may be chargeable to them, 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;
5. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Gilberto Felici
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. As set out in the introduction to the judgment, the present case concerns the manner in which the domestic courts dealt with a civil action for damages brought by the applicants following the death from hypothermia of their relative, B.J., which occurred after he had unexpectedly left a hospital where he had been admitted as a voluntary patient. It raises issues under Articles 2 and 13 of the Convention and also resulted in complaints under Articles 6 and 8 of the Convention. However, since no separate question was put to the parties at the communication stage on the latter two complaints but the questions put to them were confined only to Articles 2 and 13, I will focus my opinion only on those Convention provisions.

2. I voted in favour of holding that there had been a violation of the procedural limb of Article 2 of the Convention (point 2) and all other points of the operative provisions of the judgment apart from point 3, holding that it was not necessary to examine separately the complaint under Article 13 of the Convention, and point 5, dismissing the remainder of the applicants' claim for just satisfaction.

3. I respectfully disagree with the judgment in considering that the Article 13 "issues are subsumed by the procedural limb of Article 2, which encompasses the requirement of the effectiveness of the proceedings" (paragraph 65 of the judgment), and with the conclusion that, "having regard to its findings in this respect (see paragraph 63 above), the Court considers that it is not necessary to examine separately the admissibility and merits of the applicants' complaint under Article 13 of the Convention" (paragraph 66 of the judgment). In paragraph 63, to which paragraph 66 refers, the Court concludes as follows on the issue of a violation of the procedural limb of Article 2 of the Convention:

"Taking the foregoing into account, the Court concludes that the domestic courts failed to provide an adequate and timely response to the civil claims in relation to the applicants' relative's death, in a manner consistent with the State's procedural obligations under Article 2. Consequently, there has been a violation of Article 2 in its procedural aspect."

4. In particular, my disagreement with the majority lies in the fact that the content and scope of the procedural obligation to conduct an effective investigation under Article 2 – arising from the development of the Court's case-law on positive obligations¹ – are conceptually and functionally distinct from those of Article 13 of the Convention, which guarantees the right to an effective remedy. The two rights share only the adjective "effective", which, however, denotes distinct legal concepts in each context. Unlike the said procedural obligation, the right under Article 13 is a stand-alone and

¹ Originating in 1968 in the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, Series A no. 6.

autonomous right. By declining to examine the complaint under Article 13, there is a risk of conflating two distinct protections: one tied to Article 2, founded on the principle of effectiveness², and the other ensuring effective remedies under Article 13. Such an approach undermines the cornerstone of the Convention, namely the right of individual application under Article 34, which secures the Convention’s effectiveness and the very essence of the rule of law.

5. This approach equally undermines the principles of subsidiarity and the exhaustion of domestic remedies. Article 13 gives concrete effect to the subsidiarity principle enshrined in the Preamble to the Convention. By failing to take account of this connection, the Court missed a crucial opportunity to offer States clarification as to the nature and scope of “effective remedies” and what such remedies should entail in practice. In this regard, the Court’s reasoning in *Kudła v. Poland* ([GC], no. 30210/96, § 152, ECHR 2000-XI), is particularly instructive:

“... Article 13, giving direct expression to the States’ obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights. The object of Article 13, as emerges from the *travaux préparatoires* (see the *Collected Edition of the ‘Travaux Préparatoires’ of the European Convention on Human Rights*, vol. II, pp. 485 and 490, and vol. III, p. 651), is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6 § 1, rather than being absorbed by the general obligation imposed by that Article not to subject individuals to inordinate delays in legal proceedings.”

6. Lastly, a right emerging from the Court’s case-law, such as the right examined in the present case under Article 2, cannot displace or diminish a right expressly anchored in the text of the Convention. Relying on a procedural breach of Article 2 of the Convention to avoid an Article 13 review would mean that some rights will have stronger *de facto* remedial protection than others – which is not a coherent remedial architecture. On the basis of the above, it must therefore be recognised that the two rights, being distinct in both scope and function, may give rise to different legal consequences when it comes to assessing an alleged violation. Consequently, the issue is not only of great conceptual importance but also of significant practical importance.

² It is this principle which, in my view, affords holistic protection of the rights guaranteed, operating through both substantive and procedural limbs. This dual approach reflects the need for States to respect negative obligations, by refraining from unjustified interference, and to fulfil positive duties, by taking measures to secure the effective enjoyment of those rights.

7. In view of the above, I respectfully disagree with the proposition that the Article 13 “issues are subsumed by the procedural limb of Article 2, which encompasses the requirement of effectiveness of proceedings” (see paragraph 65 of the judgment). As I have observed in other opinions, Convention rights are not fluid vessels, passively awaiting substance from other provisions. Each right possesses its own defined normative core, parameters of application, and distinct legal and moral character. To treat one right as an empty receptacle to be filled by another is to risk obscuring its purpose and weakening the architecture of protection that the Convention was designed to secure. Interpretation must remain rooted in principle and tethered to the original object and purpose of each provision. The Court has a responsibility not only to safeguard rights but also to preserve their individual identities within the Convention system. Conflating guarantees, even when partial overlap exists in their procedural dimensions, blurs doctrinal boundaries and dilutes the autonomous value of each safeguard. The fact that the procedural limb of Article 2 incorporates a requirement of effective investigation does not justify the absorption of complaints raised under Article 13. Overlap in practical effect does not equate to legal identity, nor does it extinguish the State’s separate obligation to provide an effective remedy as an independent and self-standing guarantee.

Article 13 serves a broader structural function: it ensures the enforceability of Convention rights at the domestic level, offering individuals a procedural pathway to challenge violations *before* they must seek recourse at the international level in Strasbourg. Its essence lies not in replicating investigative obligations, but in guaranteeing accessible, effective, and practical remedies within the national legal order. To collapse Article 13 into Article 2 is to narrow its reach, reduce its autonomy, and deprive applicants of a distinct layer of protection. Such an interpretative approach risks creating a hierarchy of rights where none was intended and weakens the Convention’s systemic coherence by allowing one provision to eclipse another.

A principled reading must instead recognise that where Article 2 imposes a duty to investigate, Article 13 requires that the legal system, in parallel, equips the individual with a remedy capable of addressing the substance of the grievance. The obligations are complementary, not interchangeable. The Convention system is strongest when each right is given full effect, not when rights are folded into one another in the name of procedural efficiency.

8. A blanket practice of saying “it is not necessary to examine separately the admissibility and merits of the applicants’ complaint under Article 13 of the Convention” risks making Article 13 illusory and undermines the Court’s own standard.

9. In the light of the foregoing, had I not been in the minority, I would have proceeded to examine the complaint under Article 13.

APPENDIX

List of applicants:

Application no. 38342/23

No.	Applicant's name	Year of birth	Nationality	Place of residence
1.	Erna JAKLOVÁ	1956	Czech	Prague
2.	Kateřina DOPITOVÁ JAKLOVÁ	1978	Czech	Svemyslice
3.	Jan JAKL	1982	Czech	Skvorec
4.	Anežka JAKLOVÁ	2009	Czech	Svemyslice