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

FOURTH SECTION

DECISION

Application no. 53638/21
Amela ČIŠIĆ and Others
against Bosnia and Herzegovina

The European Court of Human Rights (Fourth Section), sitting on 5 July 2022 as a Committee composed of:

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 53638/21) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 October 2021 by the applicants listed in the appended table ("the applicants") who were represented by Ms E. Alić, a lawyer practising in Zenica;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the failure of prison authorities to take preventive measures to protect the life of a prisoner.

2. The first applicant is the widow and the second and third applicants are daughters of Mr A.Č.

3. On 9 March 2010, while he was serving a one-year prison sentence for manslaughter, A.Č. was found dead in Zenica Prison, which is run by the Federation of Bosnia and Herzegovina.[1]

4. On 4 January 2012 the applicants brought a civil claim against Zenica Prison seeking compensation for pecuniary and non-pecuniary damage for the loss of a family member. Their relevant arguments were threefold:

[1] Bosnia and Herzegovina consists of two Entities – the Federation of Bosnia and Herzegovina and the Republika Srpska – and the Brčko District.

(a) A.Č. had been unlawfully placed in solitary confinement, where he had lacked proper supervision;

(b) the prison doctor had prescribed him an excessive dose of diazepam, which had led to an overdose; and

(c) the security staff had failed to prevent A.Č. from having access to alcohol.

5. On 8 October 2018 the Zenica Cantonal Court allowed the applicants' claim in respect of non-pecuniary damage. The court found that A.Č. had been under special individual treatment at the time of his death because of a propensity to commit disciplinary offences against the prison rules. He had previously been found guilty of thirteen such offences, including five times for offences relating to drug use. Unlike the prisoners in solitary confinement, A.Č. was entitled to receive visitors and to take a daily two-hour walk with other inmates under special individual treatment. He received a visit by the applicants and a conjugal visit by the first applicant eight and two days respectively before his death.

6. After hearing a medical expert, the court found that A.Č. had died of respiratory depression caused by the combined effects of diazepam and alcohol. Given that alcohol was present in his blood but not in his urine, it was established that the alcohol had been consumed ten to fifteen minutes before his death.

7. The prison doctor testified that A.Č. had indeed been prescribed medication containing diazepam while serving his prison sentence. However, both the prison doctor and the medical expert submitted that the prescribed dosage was far from dangerous. The medication had been administered three times a day in the presence of medical and security staff. Moreover, it was documented that A.Č. had refused to take his medication on several occasions. The court thus concluded that the fatal dose of diazepam had not been prescribed by the prison doctor. It concluded instead that A.Č. had come into possession of both the alcohol and the additional diazepam in another, unidentified manner.

8. Nevertheless, the court held that the security staff of Zenica Prison had failed to search A.Č. and his prison cell and confiscate any illegal possessions. This omission had led to him having the substances which caused his death. The court attached particular weight to the fact that the security staff had been aware of A.Č.'s history of obtaining and using drugs within the confines of the prison (see paragraph 5 above). They had even suspected that another such attempt might take place and used a police dog to search the first applicant on her entry to prison. However, they had failed to take the further reasonable step of searching A.Č. and his prison cell.

9. As the security staff were under an obligation to safeguard all prisoners from physical harm, especially death, the court acknowledged that Zenica Prison had failed to protect the life of A.Č. as guaranteed by Article 2 of the Convention.

10. As regards the compensation to be awarded to the applicants, the court found that Zenica Prison could not be held solely responsible for A.Č.'s death, given that he had deliberately taken excessive amounts of diazepam combined with alcohol. The court therefore attributed 30% of the responsibility to Zenica Prison and the rest to A.Č. himself. The applicants were each awarded 6,000 convertible marks (BAM) (approximately 3,060 euros (EUR)) in compensation for non-pecuniary damage. The court dismissed their claim in respect of pecuniary damage as unsubstantiated by any relevant evidence.

11. On 10 June 2019 the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court") partly overturned the lower court's judgment. It upheld the above factual findings but held that Zenica Prison and A.Č. were equally responsible for the death. It therefore awarded each applicant BAM 10,000 (approximately EUR 5,100) in compensation for non-pecuniary damage.

12. On 7 April 2021 the Constitutional Court dismissed a complaint brought by the applicants under Article 2 of the Convention.

13. The applicants complained to the Court under the substantive limb of Article 2 § 1 of the Convention that the prison authorities had failed to protect the life of their husband and father. They submitted that the domestic courts had erred in concluding that A.Č. had contributed to his own death. However, they did not claim that his death had been intentionally inflicted by the prison authorities. They further maintained that the compensation awarded by the domestic courts had been inadequate.

THE COURT'S ASSESSMENT

14. The relevant principles as regards victim status in the context of unintentional death have been summarised in *Kekelashvili v. Georgia* ((dec.), no. 35861/11, §§ 41-55, 17 November 2020, with further references).

15. The civil proceedings against Zenica Prison provided the applicants with an opportunity to elucidate the circumstances of their family member's death. They were given detailed responses to their grievances (see paragraph 4 above). In particular, the domestic courts established that A.Č. had been under a special disciplinary arrangement, different from and less strict than solitary confinement, at the time of his death (see paragraph 5 above). They relied on an expert opinion to clarify whether the prescribed dosage of diazepam had been excessive and dangerous (see paragraph 7 above). More importantly, the domestic courts identified the shortcomings of Zenica Prison's security staff, recognised their role in A.Č.'s death and explicitly acknowledged the breach of Article 2 of the Convention (see paragraphs 8 and 9 above).

16. The applicants were awarded about EUR 5,100 each in compensation for non-pecuniary damage (see paragraph 11 above). This sum cannot be

considered unreasonable. Furthermore, there was no arbitrariness in either the domestic courts' finding that A.Č. bore some responsibility for his own death or in their decision to consider this as a factor in determining the compensation.

17. The foregoing is sufficient for the Court to find that the breach of Article 2 § 1 of the Convention has been acknowledged and appropriately redressed at the domestic level. Accordingly, this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4.

18. The applicants also raised other complaints under various Convention provisions.

19. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 September 2022.

Ilse Freiwirth Deputy Registrar	Tim Eicke President

Appendix

List of applicants

No.	Applicant's name	Year of birth	Nationality	Place of residence
1.	Amela ČIŠIĆ	1980	of Bosnia and Herzegovina	Zenica
2.	Alena ČIŠIĆ	2000	of Bosnia and Herzegovina	Zenica
3.	Amina ČIŠIĆ	1998	of Bosnia and Herzegovina	Zenica