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

FIFTH SECTION

DECISION

Application no. 56318/21
Jiří FRANC and Libuše FRANCOVÁ
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 26 January 2023 as a Committee composed of:

Mārtiņš Mits*, President*,
María Elósegui,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 56318/21) 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") on 11 November 2021 by two Czech nationals, Mr Jiří Franc and Ms Libuše Francová ("the applicants"), who were born in 1974 and 1948 respectively and live in Vyšší Brod and who were represented by Ms K. Vacková, a lawyer practising in Prague;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the criminal investigation into the death of the applicants' relative, which occurred during a police intervention (Articles 2 and 3 of the Convention).

2. On 3 May 2019 the applicants' brother and son, L.F., suffered a seizure while at the premises of a leasing company. After an ambulance was called, the paramedics were unable to examine him owing to his violent reactions. They thus called the police to restrain him. Two police patrols that arrived managed to handcuff L.F. behind his back and to place him in the ambulance in a prone position (chest down). Since he continued to have uncontrolled reactions, a doctor was called. In the meantime, L.F. freed himself from the handcuffs. Because of a lack of space in the ambulance, the paramedics

briefly left it while two policemen from the second patrol restrained L.F. inside, communicating with one paramedic.

3. Since the doctor, upon her arrival, detected no pulse, she began resuscitation of L.F. and he was transported to the hospital. The resuscitation was unsuccessful and L.F. was declared dead on arrival.

4. A criminal investigation concerning the two policemen who had been with L.F. in the ambulance (the second patrol), carried out by the General Inspectorate of Security Forces ("the GISF"), was initiated the same day. A criminal investigation concerning the paramedics, within the competence of the police, was carried out separately (and closed on 4 May 2020).

5. On 3 and 4 May 2019 all four police officers drew up reports about the incident and the use of coercive measures, which their superiors considered lawful and proportionate. Between 3 May and 12 June 2019 the GISF interviewed the police officers involved, five witnesses who had been present at the scene and who had found the intervention adequate (although vigorous according to one of them), the doctor and the paramedics. At the GISF's request, specialist officers inspected the scene of the incident, took photographs and interviewed the employees.

6. An autopsy was carried out on 6 May 2005. The toxicological examination revealed high doses of several types of strong medication in L.F.'s blood and urine, including opioids, which according to an expert report of 18 July 2019 and the statements of its author could cause sedation, increase proneness to seizures and inhibit respiration.

7. A forensic expert report of 24 June 2019 found injuries which were probably sustained during the attempts at restraint and some more suspicious injuries which could have been caused by a stranglehold but alternatively by cardiopulmonary resuscitation. According to the experts, death had been caused by a cerebral oedema due to prolonged suffocation, in turn caused by a seizure and insufficient oxygenation of the brain, to which L.F.'s handcuffing behind his back could have contributed. One expert heard by the GISF considered that the force used against L.F. had been quite intense but said that it would not have led to the death of a healthy individual.

8. On 1 November 2019 the GISF closed the investigation since, based on the evidence described above, no criminal offence was found to have been committed. The police officers had only tried to ensure the security of the paramedics, using force which was proportionate to the situation, and could not have been expected to assess the seriousness of L.F.'s state of health.

9. On 2 December 2019 the Prague Municipal Prosecutor dismissed as unfounded a complaint in which the applicants challenged the assessment of evidence and the findings made by the GISF, as well as the fact that there had been no investigation of the officers of the first patrol. In that connection the prosecutor noted that the second patrol had had more intensive contact with L.F. and that the investigation had also clarified the actions of the first patrol.

He further emphasized that due to his health issues L.F. had been particularly aggressive, kicking around and attempting to bite.

10. Following a request for review lodged by the applicants, the High Prosecutor found on 7 February 2020 that further investigation was necessary.

11. The GISF subsequently secured a traumatology expert report (produced within the investigation concerning the paramedics) that did not find the paramedics' conduct to be in breach of the applicable rules and procedures, except for the brief abandonment of the ambulance which, however, had not affected the outcome. It emphasised that, because of the combination of high doses of strong medication, L.F. had reacted with unusual resistance; he had been disoriented, dangerous and in the state of insanity. The GISF also re-questioned one of the witnesses and on 17 June 2020 carried out a reconstruction of the incident, based on which an addendum to the forensic report was prepared. It established that the cause of L.F.'s death was a cerebral oedema due to protracted suffocation caused by postural asphyxia and pressure on his upper body. The expert acknowledged that L.F. had contributed to the outcome by having irresponsibly abused strong medication, which had had an impact on his conduct and reactivity, that the seriousness of his state of health could not have been foreseen by the police officers and that it must have been very difficult for them to assess what degree of force to use against him.

12. On 29 July 2020 the GISF closed the investigation on the grounds that the police officers had acted without any intent to harm L.F. and that they had only tried to restrain him, ensure his and others' security and enable the paramedics to offer him assistance. In the GISF's view, the police officers could hardly have been expected to be aware of the risks of the prone position, to know how to handle patients in such a state or to assess L.F.'s specific medical condition, since even the paramedics who had *de facto* continuously supervised their actions had not had such knowledge.

13. On 1 September 2020 the Municipal Prosecutor dismissed the applicants' complaint, emphasising that according to the reconstruction L.F. had been placed in the prone position by employees of the leasing company and the paramedics, while the four police officers had only pursued efforts to restrain him and to place him in the ambulance.

14. The applicants filed a request for review with the High Prosecutor, claiming that it was apparent from the file that the police intervention had been inappropriate and had led to L.F.'s death. Their request was dismissed on 14 January 2021 on the grounds that there were no reasonable doubts about the facts or the cause of death as established by the GISF.

15. By decision no. III. ÚS 848/21 of 10 May 2021 the Constitutional Court dismissed a constitutional appeal lodged by the applicants under the right to an effective investigation. It found that two investigations had been necessary since the GISF was only competent to investigate the police

officers, not the paramedics, that all the investigating authorities had cooperated to clarify the incident and that there had been no reason to investigate the officers of the first patrol, whose actions had nevertheless been reviewed. Furthermore, the GISF, as an independent body, had proceeded promptly, questioned all the persons present immediately after the events and collected wide-ranging evidence enabling it to establish the cause of L.F.'s death. The Constitutional Court endorsed the GISF's reasoning that the police officers had acted lawfully and under the supervision of the paramedics and could not have assessed the medical suitability of the intervention better than them.

As to the applicants' complaints that they had not been allowed to see L.F.'s body or been informed about the reconstruction or the additional questioning of one witness, the Constitutional Court noted that they had not raised those issues before although they had been involved throughout the entire investigation.

THE COURT'S ASSESSMENT

A. Alleged violation of Articles 2 and 3 of the Convention

16. The applicants complained that the investigation into their relative's death had not been effective. They challenged the fact that the paramedics and the police officers had been investigated separately and that there had been no investigation of the first police patrol. They disagreed with the assessment of the evidence and the conclusions reached by the investigative bodies, complaining of a failure to identify and punish the perpetrator. They also submitted that the investigation had not been prompt enough and that they had not been informed about the reconstruction or allowed to see L.F.'s body.

17. The Court will examine the case in the light of its well-established case-law. In summary, compliance with the procedural requirements of Article 2 is assessed on the basis of several interrelated criteria: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the deceased person's family and the independence of the investigation (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015).

18. Referring to the decision of the Constitutional Court (see paragraph 15 above), the Court observes that the applicants had not raised their complaints about not being able to participate in the reconstruction and to see L.F.'s body with the domestic authorities. In this respect, they did not exhaust domestic remedies. Those complaints must therefore be declared inadmissible for non-exhaustion of domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

19. The applicants further submitted that the investigation had not been prompt and effective, but did not point to any concrete avenues of enquiry that the GISF could in fact have pursued, their principal complaint appearing to be that the investigation ended without any prosecution.

20. The Court notes that the investigation of the police officers comprising the second patrol, which gave rise to the decisions challenged in the present case, was carried out by the GISF, which has been found to be an independent body (see *B.Ü. v. the Czech Republic*, no. 9264/15, § 96, 6 October 2022). It appears from the material submitted that the GISF acted promptly, initiating the investigation on the day of the incident and questioning all the police officers, the medical personnel and the eyewitnesses in the following days and weeks. Relying on the statements collected, several expert opinions and, later, a reconstruction, the GISF submitted the case to careful scrutiny. Its objective and thorough analysis allowed it to reach a plausible explanation for L.F.'s death and to conclude that the police intervention had been lawful and necessary and that the force employed had been justified and proportionate to the circumstances.

21. The Court further observes that the domestic authorities duly explained that since the police officers of the first patrol were not suspected of anything they had not been the subjects of any criminal investigation but their actions had nevertheless been duly reviewed without any unlawfulness being found (see paragraphs 9, 13 and 15 above). The Constitutional Court also set out reasons why the investigation of the paramedics, which was not within the competence of the GISF, had to be conducted separately.

22. Lastly, the Court notes that the applicants had had access to the investigation file and that they were notified promptly about the findings made and were able to file complaints, which led to a review of the file by the prosecution authorities and to a further investigation. In this way, the applicants' legitimate interests were duly safeguarded.

23. In conclusion, the Court does not find anything to support the applicants' allegations that the authorities did not properly investigate the cause of L.F.'s death. The investigation has not been shown to have infringed the minimum standard required under Articles 2 and 3 of the Convention.

24. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3(a) and 4 of the Convention.

B. Other alleged violations of the Convention

25. As to the other complaints raised by the applicants under Articles 6 and 8 of the Convention, 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.

26. 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 16 February 2023.

Martina Keller Deputy Registrar	Mārtiņš Mits President