



## Death of Rémi Fraisse during law-enforcement operations at Sivens site: Court finds no breach of procedural obligations but substantive violation of Article 2 resulting from authorities' failure to ensure requisite level of protection to avert risk to life

In today's **Chamber** judgment<sup>1</sup> in the case of [Fraisse and Others v. France](#) (applications nos. 22525/21 and 47626/21) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 2 (right to life) of the European Convention on Human Rights in its substantive aspect, and**

**no violation of Article 2 in its procedural aspect.**

Rémi Fraisse, a twenty-one-year-old student, died on the night of 25-26 October 2014 as a result of the explosion of a blast-effect dispersal weapon, namely an OF-F1 concussion grenade launched by Staff Sergeant J. in the context of a law-enforcement operation at the Sivens construction site (in the municipality of Lisle-sur-Tarn), during violent clashes between protesters opposed to the construction of a dam and mobile *gendarmes* forces.

Regarding the fulfilment of the State's positive obligations under Article 2 of the Convention, the Court first pointed out that it was not its task to rule on individual responsibility and that it was mindful of the difficulties faced by law enforcement when confronted with violent acts. It went on to conclude that, owing to the deficiencies in the legal and administrative framework applicable at the time and the shortcomings in the supervision of the preparation and conduct of the impugned operations, the requisite level of protection in the event of the use of potentially lethal force had not been guaranteed. There had thus been, in the particular circumstances of the case, a violation of Article 2 in its substantive aspect.

As to the procedural aspect of Article 2, the Court considered that the proceedings as a whole had not been vitiated by any lack of independence or impartiality. It found that, following both the investigation conducted by the judicial authorities and the thorough examination, after the events in issue, of the legislative and regulatory, organisational and operational deficiencies, which had been analysed without, however, being found to have entailed acts or conduct constitutive of criminal offences, substantial changes had been made to the legal and administrative framework to address the shortcomings identified. It concluded that the domestic authorities had not failed to discharge their procedural obligation under Article 2 of the Convention to conduct an effective investigation that was capable of leading to the establishment of the facts and a determination of whether the use of force had been justified in the circumstances of the case. There had therefore been no violation of Article 2 of the Convention in its procedural aspect.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Principal facts

The applicants, Jean-Pierre Fraisse (no. 47626/21), Véronique Voiturier, Chloé Fraisse and France Voiturier (no. 22525/21), the father, mother, sister and grand-mother of Rémi Fraisse, are French nationals who were born respectively in 1950, 1965, 1990 and 1942.

As early as 2011 the Sivens dam construction project met with vehement opposition. In August and September 2014 violent clashes took place between “zadist” (from *zone à défendre* – “zone to defend”) activists, who had set up camp on the site in February 2014, and law enforcement. An on-site demonstration was scheduled for Saturday 25 October 2014. A march was to head towards the site’s “base camp” – an area measuring thirty metres by thirty metres, enclosed by a two-metre-high double fence and surrounded by a ditch – where construction machinery had initially been stored.

At approximately 4.30 p.m. on 25 October 2014 Rémi Fraisse, a twenty-one-year-old student, arrived at the demonstration site.

In the afternoon, a number of demonstrators, of which Rémi Fraisse was not a part, left the march and mounted a slope across from the “base camp” and from the law-enforcement officers deployed there to keep the demonstrators out. The situation deteriorated upon the arrival of individuals who threw, in particular, Molotov cocktails at the law-enforcement officers. At 4.30 p.m. Lieutenant-Colonel R., who was responsible for directing the law-enforcement operations, decided to resort to the use of force to secure the “base camp”. The clashes lasted until 7 p.m., at which point the situation calmed down, following the departure of the violent protesters.

Lieutenant-Colonel R. left the site at 9.30 p.m. and command fell to the operational hierarchy.

From 12.35 a.m. on 26 October the *gendarmes* who had remained on-site were targeted by projectiles hurled by an ever-growing number of demonstrators who were advancing towards them. By loudspeaker, the *gendarmes* repeatedly ordered the demonstrators to halt their progress and withdraw. At 12.49 a.m., finding that their warnings were not being heeded, they announced that they were going to use force. The *gendarmes* launched tear-gas grenades and Lieutenant-Colonel L., the commander of the *gendarmerie* tactical group (GTG), authorised the use of weapons classified as “firearms”.

Shortly before 1.45 a.m. on 26 October 2014 Rémi Fraisse entered the area where the clashes were underway without, however, taking part in them. He moved towards the mobile *gendarmes*, at a distance of some ten to twenty metres from the “base camp”. At 1.45 a.m., after shouting out a warning to the protesters – the loudspeaker being out of order at the time – Staff Sergeant J. tossed an OF-F1 grenade over the fence, using a “high arc” throwing technique. Rémi Fraisse was killed. Upon their arrival at the scene at 2.17 a.m., firefighters confirmed the death of Rémi Fraisse, which had occurred at 1.53 a.m., and transported the body behind the base for initial examination by a doctor. Lieutenant-Colonel R. was informed of Rémi Fraisse’s death and arrived on the site at roughly 3 a.m.

On 28 October 2014 the Minister of the Interior ordered the suspension of the use of OF-F1 grenades. The same day the Albi public prosecutor announced that it was established that Rémi Fraisse’s death had been caused by the explosion on contact of an OF-F1-type concussion grenade. The applicants, together with Rémi Fraisse’s second grandmother, lodged a criminal complaint against a person or persons unknown, together with an application to join the proceedings as a civil party, alleging intentional homicide, and the Toulouse public prosecutor’s office opened a judicial investigation on charges of manslaughter by wounding committed by a person exercising public authority. The two sets of proceedings were joined on 31 October 2014. Two investigating judges of the Toulouse *tribunal de grande instance*, which had military jurisdiction, were appointed to direct the investigations. The internal affairs department of the national *gendarmerie* (*Inspection générale de la gendarmerie nationale* – IGGN) and the investigation section of the Toulouse *gendarmerie* were jointly instructed to gather evidence.

In a decision of 8 January 2018 the investigating judges of the Toulouse *tribunal de grande instance* ruled that, as matters stood, there were no grounds to prosecute anyone for manslaughter by wounding, intentional homicide or unintentional homicide.

The applicants and Rémi Fraisse's second grandmother appealed against that decision.

In a judgment of 9 January 2020 the Investigation Division of the Toulouse Court of Appeal, sitting with military jurisdiction, upheld the discontinuance decision.

The applicants and Rémi Fraisse's second grandmother lodged an appeal on points of law, alleging a breach of Article 2 of the Convention under its substantive and procedural limbs. In a judgment of 23 March 2021 the Court of Cassation dismissed their appeal.

On 21 November 2018 the applicants and Rémi Fraisse's second grandmother applied to the Toulouse Administrative Court seeking an order requiring the State to pay them compensation in the amount of 75,000 euros each for the non-pecuniary damage caused by the death of their family member.

After the applications had been lodged with the Court, in a judgment of 25 November 2021, the Toulouse Administrative Court held that the State had incurred strict liability under Article L. 211-10 of the Domestic Security Code, which provided as follows: "The State shall bear civil liability for damage resulting from major offences committed, using force or violence, by armed or unarmed mobs or rallies, against persons or property...". It also held that the victim had acted recklessly, partly releasing the State from its liability.

In a judgment of 21 February 2023 the Toulouse Administrative Court of Appeal dismissed the applicants' appeal (application no. 22525/21). The applicants did not lodge an appeal on points of law.

## Complaints, procedure and composition of the Court

Under the substantive limb of Article 2 of the Convention, the applicants submitted that the use of force on the part of the *gendarme* who had thrown the OF-F1 grenade that had caused the death of their family member had been neither necessary nor proportionate. They further submitted, in view of the Government's positive obligations under Article 2, that the equipment used by the officers involved in the operation had been inappropriate and that the operation as such, which had not been sufficiently prepared in advance, had not been properly supervised as it had unfolded. Under the procedural limb of Article 2, the applicants mainly argued that the investigation into the circumstances surrounding the death of their family member had been ineffective owing to a lack of independence of the police investigators and investigating judges, who had refused to carry out a number of additional investigative measures.

The applications were lodged with the European Court of Human Rights on 26 April 2021 (no. 22525/21) and 17 September 2021 (no. 47626/21).

Noting that the applications had been prompted by the same facts and raised the same complaints, the Court found it appropriate to examine them jointly.

Judgment was given by a Chamber of seven judges, composed as follows:

María Elósegui (Spain), *President*,  
 Mattias Guyomar (France),  
 Armen Harutyunyan (Armenia),  
 Stéphanie Mourou-Vikström (Monaco),  
 Andreas Zünd (Switzerland),  
 Diana Sârcu (the Republic of Moldova),  
 Mykola Gnatovskyy (Ukraine),

and also Victor **Soloveytchik**, *Section Registrar*.

## Decision of the Court

### Article 2

#### ***Substantive limb of Article 2***

As recognised by the domestic courts, Rémi Fraisse had died as a result of the explosion of a blast-effect dispersal weapon, namely an OF-F1 concussion grenade thrown by Staff Sergeant J. in the context of a law-enforcement operation, which had accidentally fallen between the victim's neck and the backpack he had been wearing.

As to the particular circumstances of the case, the Court noted that the evening of 25 October and the night of 25-26 October 2014 at the Sivens construction site had been marked by particularly violent clashes between radical protesters and law-enforcement officers. It could be seen from the domestic proceedings and the parties' submissions that, in an extremely tense situation, certain demonstrators had launched genuine attacks against the mobile *gendarmes*, the Investigation Division of the Court of Appeal having gone so far as to describe the situation that evening as a "guerrilla-type" assault. In this context, Rémi Fraisse, who had not displayed aggressive conduct at any time, had recklessly left the peaceful area of the demonstration and entered the area where clashes had been underway. The Court considered that there was nothing in the case file to prompt it to call into question the national authorities' assessments to the effect that the circumstances had been such as to elicit the use of force by the *gendarmes*, in particular by Staff Sergeant J., against violent protesters, whom Rémi Fraisse had joined.

#### ***Legal and administrative framework for the use of force***

The Court referred to a joint report of 13 November 2014 by the IGGN and the National Police Inspectorate (IGPN), a decision delivered by the *Défenseur des droits* on 25 November 2016 following the death of Rémi Fraisse and its report of December 2017 on law-enforcement operations, in which were noted, with regard to the operation at the Sivens site on 25 and 26 October 2014, both the complexity and shortcomings of the legal and administrative framework for the use of force, as applicable at that time.

Concerning the use of force, the Court noted that the principles of proportionality and necessity with regard to the use of force by law enforcement were generally prescribed, at the material time, in Articles R. 211-13 and R. 434-18 of the Domestic Security Code, but found that the applicable legal framework, by permitting the use of weapons classified as "firearms" without providing the necessary clarification to determine, in practice, which weapon was best suited to a given threat or how to use such weapons in a truly incremental manner, had left mobile *gendarmes* engaged in law-enforcement operations without clear guidance. While noting that improvements had been made to the legal and administrative framework in this regard following the events in question, the Court took the view that the regulations applicable at that time had been neither comprehensive nor sufficiently precise to allow for a truly incremental use of force.

Concerning OF-F1 grenades specifically, while the Court noted that their use had had basis in law at the material time, namely Article D. 211-17 of the DSC, which had subsequently been amended to take into consideration the fact that the use of this type of grenade had been prohibited following the events in issue, the Court found that this weapon was exceptionally dangerous. Although there had been a legal basis for the use of OF-F1 grenades, and law-enforcement officers had been required to use them in accordance with the principles of absolute necessity and strict proportionality in the use of force, the Court took the view that the allotment of this type of weapon had been problematic owing to the absence of a clear and protective framework for its use.

*Preparation and supervision of the operation and the absence of civilian authority*

Concerning preparations for the operation, the Court noted that the authorities had set up a system for defending the “base camp” as a result of disturbances at the site in the previous days.

With regard to the *gendarmes*’ training, the Court noted that Staff Sergeant J. had duly received training in policing techniques but observed that there had been, at the time, no specific training on the dangerousness of such grenades, no information on the damage likely to be caused, no prohibition of the “high arc” throwing technique, no firing in teams or pairs and no safe-distance kept.

As to the equipment and material that had been placed at the disposal of the *gendarmes* for that operation, the Court noted, firstly, that the *gendarmes* had been armed only with weapons that were in theory non-lethal. The Court further observed that the *gendarmes* had had to defend themselves at night with very little light, that the loudspeaker which Staff Sergeant J. was supposed to have used for warnings – even though, theoretically, he had not been required to do so – had proved defective and that it was not apparent from the case file that the *gendarmes* had been in possession of red flares, which were normally to be used in the absence of a loudspeaker.

Regarding the conduct of the operation, the Court noted the deficiencies in the chain of command, in particular, as the *Défenseur des droits* had observed in its decision of 25 November 2016, the absence of a civilian authority on the scene at the relevant time.

Having regard to all the shortcomings in the supervision of the impugned operation, the Court considered that the requisite level of protection to ensure that any risk to life was kept to a minimum had not been reached.

The Court, pointing out that it was not its task to rule on individual liability and that it was mindful of the difficulties faced by law enforcement when confronted with violent acts, concluded that, having regard both to the shortcomings in the legal and administrative framework applicable at the time and to the shortcomings in the supervision of the preparation and conduct of the impugned operations, the level of safeguards required in the event of the use of potentially lethal force had not, in the particular circumstances of the case, been guaranteed and that there had been a violation of Article 2 of the Convention in its substantive aspect.

***Procedural limb of Article 2***

The Court did not identify any such failing as might have called into question the adequacy and independence of the investigation. It observed that the proceedings as a whole had not been vitiated by any lack of independence or impartiality.

It also noted that, following the investigation conducted by the judicial authorities and the thorough examination, after the events in issue, of the legislative and regulatory, organisational and operational deficiencies, substantial changes had been made to the legal and administrative framework to address the shortcomings identified.

The Court concluded that the domestic authorities had not failed to discharge their procedural obligation under Article 2 of the Convention to conduct an effective investigation that was capable of leading to the establishment of the facts and a determination of whether the use of force had been justified in the circumstances of the case. There had been no violation of Article 2 of the Convention in its procedural aspect.

***Just satisfaction (Article 41)***

The Court held that France was to pay 5,600 euros (EUR) to Véronique Voiturier, EUR 5,600 to Jean-Pierre Fraisse, EUR 10,400 to Chloé Fraisse and EUR 16,000 to France Voiturier in respect of non-pecuniary damage, and EUR 5,300 to Véronique Voiturier, EUR 5,300 to Chloé Fraisse and EUR 2,500 to Jean-Pierre Fraisse in respect of costs and expenses.

*The judgment is available only in French.*

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