

Fatal fire in police-station basement room used to detain illegal migrants, violations of the European Convention

In today's Chamber judgment¹ in the case of [Daraibou v. Croatia](#) (application no. 84523/17) the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 2 (right to life/investigation) of the European Convention on Human Rights.

The case concerned a fire that broke out in the basement room of Bajakovo police station, which at the time had acted as an illegal-migrant detention centre. Three migrants detained in the room had died in the fire and the applicant, also a detained migrant, had suffered severe injuries.

The Court found that the police station and its personnel had clearly been ill-prepared to deal with the outbreak of a fire, and that a number of questions have been left unanswered, despite a prompt start to the investigation. In particular, there had been shortcomings in the searching and monitoring of the detainees, who had apparently managed to keep a cigarette lighter and set fire to their bedding when left unguarded. Nor had the authorities looked into the applicant's very serious allegations with regard to the adequacy of the premises and any fire precautions in place. Moreover, no attempt had been made to establish whether there had been broader institutional shortcomings which could have prevented a similar such tragedy happening again in the future.

Principal facts

The applicant, Abdeljalil Daraibou, is a Moroccan national who was born in 1992 and lives in Morocco.

On 27 March 2015 in the early hours of the morning the border police found the applicant and three other persons in a lorry who had clandestinely entered Croatia from Serbia. They were taken to Bajakovo police station, arrested and put in a basement room used for the detention of illegal migrants pending their expulsion back to Serbia the next day.

However, later that evening a fire broke out in the basement room. According to the Government, the applicant and other detainees set fire to their mattresses, bedsheets and clothes, probably using a cigarette lighter. The fire was intense and spread uncontrollably. A number of police officers rushed into the basement area to rescue the detainees. One of the detainees died at the scene of incident, while two others later succumbed to their injuries. The applicant suffered burns to his forearms, hands, lower legs and feet, requiring surgery.

The authorities immediately conducted an on-site inspection, interviewed the applicant and about 30 police officers, conducted an autopsy (on the detainee who had died during the fire) and obtained an expert opinion on the cause of the fire.

The Vukovar State Attorney's Office immediately initiated criminal enquiries which lasted for about two and a half years and concluded that two police officers responsible for the detainees' safety had

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.

not followed clear instructions to guard the migrants' detention room at all times. However, it was decided that those failings came within the domain of disciplinary liability and that no criminal proceedings against the officers were called for.

In the meantime, disciplinary proceedings had been brought against those two officers at the recommendation of a report drawn up by an independent team of experts formed by the Ministry of the Interior. The team's report concluded that there had been failings in the surveillance of the migrants at the crucial moment when the fire had been lit: one of the police officers responsible for guarding them had left to write a report, while the other had gone to the kitchenette to prepare them dinner. It also concluded that a search of the migrants had not been thorough since cigarette stubs had been found in the detention room, indicating that they had been smoking.

One of the officers was acquitted in those proceedings, while the other was found responsible for a serious breach of official duty for not supervising the detainees, allowing them to start the fire. He was fined 10% of his monthly salary for three months, taking account of mitigating factors such as his risking his life to rescue the detainees. The disciplinary court noted that the tragic event had also been caused by other factors, including "the inadequacy of the space, and some organisational shortcomings."

In May 2018 the Attorney's Office opened a criminal investigation against the applicant on the suspicion that he had started the fire together with the other – deceased – migrants. That investigation was terminated in June 2019 because he had, in the meantime, been expelled from Croatia to Morocco.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life/investigation) of the European Convention, the applicant alleged that his life had been put in danger and he had suffered serious injuries through the negligence of the police officers in charge of detainees' safety in the illegal immigrant centre. He alleged that the State had ultimately therefore been responsible for failing to prevent the fire and that their ensuing investigation had been ineffective.

The application was lodged with the European Court of Human Rights on 19 December 2017.

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

Arnfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Egidijus Kūris (Lithuania),
Saadet Yüksel (Türkiye),
Lorraine Schembri Orland (Malta),
Frédéric Krenc (Belgium),
Davor Derenčinović (Croatia),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

The Court considered that the authorities could not have known that there had been a real and immediate risk that the applicant and other detainees would try to set fire or injure themselves. On the other hand, the police should have been expected to take certain basic precautions to minimise the risk of grave accidents in respect of the individuals held in their custody, who as such were in a particularly vulnerable position.

The Court found, however, that there had been serious shortcomings in the search and supervision of the detainees in the present case. Firstly, how had detainees come to possess a lighter which, pursuant to domestic law, should have been taken away from them either on their arrival at the police station or afterwards during monitoring. Furthermore, although a video surveillance system had been in place, it had apparently not been in use at all times; and, the two officers assigned to permanently guard the migrants had eventually left their posts to carry out other duties.

Nor had the authorities looked into the applicant's allegations as concerned serious security issues at the police station such as the lack of a fire evacuation plan, inadequate fire extinguishers and access points for firefighters.

The Court was not in a position to take a final stance on all of the applicant's allegations because of the insufficient information available. For example, no expert report on fire-protection measures at the police station at the time has ever been ordered and the disciplinary court did not elaborate further on its comment "the inadequacy of the space and organisational shortcomings". What was clear, however, was that the Bajakovo police station and its personnel had been ill-prepared to deal with the outbreak of a fire.

The Court therefore concluded that the authorities had failed to provide the applicant with sufficient and reasonable protection of his life and limb, in violation of Article 2.

It also held that there had been a further violation of Article 2 as concerned the investigation into the tragic fire. Although the authorities' initial reaction had been prompt, certain questions – concerning searches and monitoring of detainees, as well as the adequacy of the premises – had been left unanswered and no attempt had been made to establish whether there had been broader institutional shortcomings which could have prevented similar errors in the future.

Just satisfaction (Article 41)

The Court held that Croatia was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.