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

SECOND SECTION

CASE OF SLIMANI v. FRANCE

(Application no. 57671/00)

FINAL

27/10/2004

JUDGMENT
[Extracts]

STRASBOURG

27 July 2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Slimani v. France,

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

Mr A.B. BAKA, *President*,
Mr J.-P. COSTA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 8 April 2003 and 6 July 2004,

Delivers the following judgment, adopted on the above-mentioned date:

...

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1969 and lives in Marseilles. Her late partner, Mr Sliti, born in 1958, was a Tunisian national.

A. Mr Sliti's criminal and medical record

7. Mr Sliti had been committed to a psychiatric hospital several times both in Tunisia and in France.

8. Mr Sliti had been sentenced to four years' imprisonment and permanently excluded from French territory by a judgment of the Marseilles Criminal Court of 2 October 1990. The order permanently excluding him from French territory was not enforced immediately after he had served his prison sentence.

9. In 1998 Mr Sliti set fire to the applicant's house and threatened to throw himself out of the window with their eighteen-month-old son. He was sentenced to one year's imprisonment for this by a judgment of the Marseilles Criminal Court of 21 September 1998.

After being compulsorily detained in Edouard Toulouse Hospital in Marseilles (*Centre Hospitalier Edouard Toulouse* – "the CHET") between 29 July and 25 August 1998 (psychiatric department), Mr Sliti had later been transferred to Beaumettes Prison to serve the above-mentioned sentence.

10. A psychiatrist's report ordered by the President of the Marseilles *tribunal de grande instance*, dated 1 September 1998 and prepared by Dr Goujon of the CHET, concluded, among other things, that Mr Sliti should undergo "long-term psychiatric treatment, or even [hospitalisation] in a psychiatric ward".

There was also a letter (dated 4 May 1999) from Dr Chabannes, a psychiatrist at the CHET, saying that Mr Sliti's "depressive and anxious" condition had made it necessary to keep him in hospital for some twenty days in September 1998, his "suicide threats suggest[ing] that he might harm himself".

A medical certificate dated 9 February 1999 and issued by the same doctor contained the following observations:

> " ... [Mr Sliti], whose condition is currently stable ... is being treated with a combination of anti-depressants, tranquillizers and neuroleptics. It is in [his] best interests to continue receiving psychiatric care once he is released especially [as he] has himself requested psychiatric support. One of the practitioners at Edouard Toulouse Hospital will continue to act as his responsible medical officer".

The medical treatment prescribed to Mr Sliti before his placement in administrative detention was composed of the following anti-depressants, neuroleptics and tranquillizers: Lysanxia - 40 mg (two tablets every 24 hours), Deroxat - 20 mg (one tablet every 24 hours), Phenergan (four tablets every 24 hours) and Risperdal - 2 mg (two tablets every 24 hours).

B. Mr Sliti's placement in Marseilles-Arenc Administrative Detention Centre

11. On 22 May 1999 the Bouches-du-Rhône Prefect decided to enforce the order that had been made on 2 October 1990 permanently excluding Mr Sliti from France and ordered him to be deported to Tunisia. To that end he ordered Mr Sliti to be held in Marseilles-Arenc Administrative Detention Centre until 24 May 1999.

Mr Sliti was still receiving medical treatment, as evidenced by a prescription made out by Dr Chabannes on 21 May 1999.

At Marseilles-Arenc Detention Centre the police took responsibility for fetching the medicine prescribed to Mr Sliti and giving it to him.

12. In an order of 24 May 1999 the President of the Marseilles *tribunal de grande instance* extended the detention order in Arenc to 10 p.m. on 26 May 1999 pending issue of a cross-border pass. An appeal lodged on 25 May 1999 was dismissed on 26 May 1999 by an order of the President of the Court of Appeal on the grounds that the procedure had been lawful and that "Mr Sliti [had] been removed that day [so that] the administrative detention measure had been lifted and the appeal therefore [had to be] declared devoid of purpose".

C. Mr Sliti's death

13. In the morning of 26 May 1999 Mr Sliti twice refused to take his medicine. He was not examined by a doctor despite – according to the Government's memorial – having been in a state of extreme agitation. At about 10.30 a.m. he was taken ill and collapsed. After being alerted by other detainees, police officers on duty at Arenc quickly arrived on the premises and turned him onto his side in the recovery position before alerting the Navy firefighters (*marins-pompiers*). At about 10.45 a.m. the Navy firefighters doctor gave him first aid. He observed that he had fallen into a coma and administered medical treatment on the premises. A 12.15 p.m. Mr Sliti was taken to Conception Hospital in Marseilles where he was admitted to the intensive care unit at approximately 12.50 p.m. He died there at 2.50 p.m.

D. Inquest to "investigate the causes of death"

14. On 26 May 1999 an inquest was commenced in accordance with Article 74 of the Code of Criminal Procedure (CCP) "to determine the causes of the death" of Mr Sliti.

On 27 May 1999 the investigating judge sent instructions to Marseilles Central Police Station to pursue the inquiry and, to that end "take evidence from any relevant witnesses capable of providing information, make all necessary findings, investigations, lawful searches wherever necessary, and seize any items necessary for establishing the truth" and "send ... any necessary requests to any public authorities or private bodies, any civil servants and public or ministerial officers, and more generally any persons capable of providing information or documents that will assist in establishing the truth".

An autopsy was carried out on 27 May 1999. The autopsy report, of the same date, made the following conclusions:

> "The examination and autopsy of Mr Moshen Sliti's body show:
>
> – signs of resuscitation.
>
> The mark observed in the left abdominal region may have been left by cardiopuncture. This needs to be confirmed by an anatomicopathological examination of the heart and an examination of the medical file.
>
> – no suspicious signs suggesting violence.
>
> – diffused polyvisceral hyperaemia.
>
> – the presence of abundant spume in the trachea and bronchi and of macroscopic heart transformations that may indicate acute cardiorespiratory failure, subject to confirmation by expert anatomicopathological and toxicological opinion".

On 27 May 1999, on the basis of the above-mentioned instructions, a senior police officer heard evidence from two police officers who had been on duty at Arenc during the morning of 26 May 1999. On 28 May 1999 he heard evidence from the deceased's uncle and on 3 June 1999 the Navy firefighters doctor who had treated Mr Sliti after he had been taken ill.

On 31 May 1999 another police officer heard evidence from two persons who had been detained at Arenc at the time of the events (Mr T.S. Smain and Mr E. Louis) and were eyewitnesses to them. The records of these interviews show that about ten people had been in the vicinity of the place where Mr Sliti had been taken ill and had been present during the events. They also show that Mr Sliti had already been in a state of agitation the day before the events in question occurred.

Further medical samples were taken from the victim's body on 15 June 1999.

15. An anatomicopathological examination of swabs taken from Mr Sliti's body was carried out on 15 October 1999 by Dr H.P. Bonneau, who had been appointed for the purpose by the investigating judge. He made the following conclusions in his report:

> "Anatomicopathological examination of the autopsy swabs (treated with formalin) showing an acute pulmonary oedema, the cause of Mr Sliti's death.
>
> The aetiology of this acute pulmonary oedema must be compared with the facts in the expert toxicological report.
>
> The other organs are histologically normal."

The investigating judge ordered a toxicologist's report (orders of 31 May and 15 June 1999) and appointed Dr M. Fornaris to prepare it. She carried out her examination on 20 June 2000 and made the following conclusions in her report, dated 19 July 2000:

> "... the toxics found all result from medication; they are present in various pathologies (anxiety, pain, convulsions...).
>
> They do not appear likely, either inherently or by their association or level in the blood (at the time of death, or even when the first disorders were felt) to have been the direct cause of the death or to have contributed to its occurrence."

16. The applicant unsuccessfully requested access to the autopsy and toxicology reports. She was never interviewed by the investigating judge and was excluded from the investigation.

On 22 April 2000 she asked the investigating judge to send the investigation file to the public prosecutor for a supplementary application to be made extending the investigation to include a count of manslaughter. As the investigating judge did not reply within one month, on 24 May 2000 she addressed her request to the President of the Indictment Division of the Aix-en-Provence Court of Appeal under Article 81 of the CCP. Her request was

declared inadmissible by an order of 29 May 2000 on the ground, *inter alia*, that "in the proceedings to investigate the causes of death, Ms Slimani does not have standing to request investigative measures".

17. In orders of 6 and 20 November 2000 the investigating judge appointed Doctor Boudouresques and Doctor Romano to carry out the following instructions:

> "Consult Mr Sliti's medical file at Conception Hospital and the attached copies of the procedural documents.
>
> (i) Determine the cause of Sliti Moshen's death and establish, *inter alia*, whether the treatment administered was in conformity with current medical knowledge.
>
> (ii) Describe the medical infrastructure of the Marseilles Arenc Centre and state whether it complies with the laws and regulations in force.
>
> In the event that you find deficiencies or anomalies, give details of these in your report and indicate the persons or persons who may be deemed responsible from a medical point of view.
>
> You may question anyone whose evidence you consider helpful and request from any public or private establishment any documents that you consider it necessary to consult.
>
> You are asked to make any observations that may assist in establishing the truth."

The report, dated 2 May 2001, described the medical infrastructure of the Arenc Centre as it was on 17 March 2001. It stated that "prior to September 2000, no medical structure existed[;] medicines were distributed to detainees by police officers". Regarding the cause of death, it made the following observations among others:

> " ...
>
> The various evidence suggests that the treatment given to Mr Sliti was administered between 15 and 20 minutes after he was taken ill.
>
> The description of the clinical disorders presented by Mr Sliti corresponds to generalised and recurring epileptic fits, thus an epileptic condition.
>
> This epileptic condition can be regarded as inaugural in so far as Mr Sliti had no known epileptic history.
>
> It is possible that the refusal to take his medicine (we are thinking in particular of the Benzodiazepines: 80 mg of Lysanxia) contributed to the onset of this epileptic condition.
>
> Regarding the results of the toxicological analysis, no toxic substance other than a medicinal one has been found. Moreover, according to the toxicology report these medicinal substances do not appear, inherently, by their association or level in the blood, to have caused the death or to have contributed to its occurrence.

The treatment administered by the Navy firefighters doctor at Arenc Centre is that habitually given in cases of epilepsy.

The treatment included the prescription of anticonvulsive drugs and then, when these proved ineffective, barbiturates.

A tube was inserted into the trachea.

The patient was given medical treatment at Arenc Centre for one and a half hours before being taken to Conception Hospital in Marseilles at approximately 12.15 p.m.

After being treated with barbiturates he stopped having convulsions, whereupon it was possible to transfer him.

According to Dr F. Topin, there was no sign of heart failure. The treatment administered first by the Navy firefighters doctor and then in the multi-purpose intensive care unit at Conception Hospital is that habitually proposed in this type of medical emergency.

Despite being resuscitated very quickly and efficiently by means of intubation, artificial respiration, drip, external heart massage, with alkalinisation, Mr Sliti suffered a cardiac arrest resulting in his death at approximately 2.50 p.m.

The treatment administered at Arenc Detention Centre on 26 May 1999 and the immediate intervention of the officers at approximately 10.30 a.m., the rapid intervention of the SAMU [Mobile Emergency Medical Service] owing to the efficiency of the police officers present on the premises[,] at approximately 10.45 a.m. the provision of emergency medical treatment (full clinical examination, an electrocardiogram, insertion of a catheter, with the use of medication appropriate to an epileptic condition, insertion of tube in trachea), the conditions of transfer to Conception Hospital in Marseilles, the treatment administered by the intensive care unit at Conception Hospital were in conformity with current medical knowledge.

The analysis of the toxicologist's report made by Mrs M. Fornaris on 20 July 2000 does not allow identification of any toxic substance that might have caused the death.

The autopsy of Mr Mohsen (sic) Sliti's body showed both signs of resuscitation, and in particular cardiopuncture, and the presence of large quantities of spume in the trachea of the bronchi and macroscopic heart transformations suggestive of acute cardiorespiratory failure.

Lastly, the anatomicopathological examination performed by Dr H.P. Bonneau on 15 October 1999 showed an acute pulmonary oedema as the cause of Mr Sliti's death.

Conclusion:

The cause of Mr Sliti Mohsen's (sic) death was a cardiac arrest following an acute pulmonary oedema (acute failure of left auricle) after an inaugural epileptic condition (possibly induced by Mr Sliti's refusal to take his usual treatment).

> The treatment administered was done so in accordance with current medical knowledge (at Arenc Detention Centre by the SAMU and then at Conception Hospital)".

18. On 26 June 2001 the public prosecutor discontinued the proceedings "in the light of the conclusions of the medical experts" and "the lack of any evidence of a crime or major offence as the cause of death".

19. On 21 February 2003 the applicant, acting on behalf of herself and her children, applied to the Minister of the Interior for compensation. She based her claim on the documents produced by the Government in the proceedings before the Court, stating that she had not previously had access to them. In her submission, they showed that "the death of Mr Sliti [was] the consequence of a serious breakdown in the operation of the service at Arenc Detention Centre". She complained, in particular, of insufficient medical facilities and staff at the material time.

II. RELEVANT DOMESTIC LAW

20. Article 74 of the CCP provides:

> "On discovery of a dead body, regardless of whether the deceased suffered a violent death, but wherever the cause of death is unknown or suspicious, the senior police officer who is advised thereof shall immediately notify the public prosecutor, promptly visit the place of discovery and make initial observations.
>
> The public prosecutor shall visit the place if he deems it necessary and shall call on the assistance of persons qualified to assess the circumstances in which death occurred. He may, however, delegate those tasks to a senior police officer of his choice.
>
> Except where their names appear in one of the lists provided for in Article 157, persons appointed in this way shall take a written oath to assist the courts on their honour and according to their conscience.
>
> The public prosecutor may also call for an inquest to determine the causes of death."

Article 80-4 CCP, which was added to the Code of Criminal Procedure by Law no. 2002-1138 of 9 September 2002 (Official Journal of 10 September 2002), is worded as follows:

> "...
>
> The members of the family or the close relatives of the deceased or missing person may apply to join the criminal proceedings as a civil party seeking damages. However, if the missing person is found, the latter's address and other matters that would lead to the direct or indirect disclosure of this address may not be revealed to the civil party without the consent of the party concerned if he is an adult or with the consent of the investigating judge in the case of minors or of adults under a guardianship order."

21. Article 85 of the CCP provides:

"Anyone who claims to have suffered damage as a result of a serious crime or serious offence may, by lodging a criminal complaint, join the criminal proceedings as a civil party on application to the relevant investigating judge."

III. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("CPT")

A. Report to the French Government on the visit to France from 6 to 18 October 1996 (adopted on 14 May 1998)

22. Part of the report is devoted to "administrative detention centres for foreign nationals". Paragraph 202 is worded as follows:

(Unofficial translation)

"..., the holding conditions at Marseilles-Arenc Administrative Detention Centre left a lot to be desired. The material conditions were mediocre and the foreign nationals were given no opportunity to take any walks outside throughout the entire duration of their stay. Furthermore, there was no provision for any specific medical attention or nursing cover. In addition to the difficulties in seeing a doctor, the situation inevitably gave rise to unacceptable consequences from a medical-ethics standpoint. Lastly, the delegation found that the detainees were insufficiently informed about their rights and obligations and that the procedure for placing detainees in isolation needed to be clarified.

The delegation expressed its serious concerns about Marseilles-Arenc Administrative Detention Centre at the end-of-visit interview. Subsequently, the French authorities informed the CPT of a series of measures designed to improve health and safety at Marseilles-Arenc Administrative Detention Centre and the medical care of detainees; measures were also taken with regard to informing detainees about their rights and the applicable procedure in the event of placing a detainee in isolation. That being said, the French authorities indicated that it was undeniable that the building was ill-adapted to the needs of the centre.

The CPT expressed its satisfaction with the speed at which the authorities reacted to the delegation's observations. The Committee pointed out, however, that it was unacceptable for detainees to be deprived of any opportunity to take exercise outside during prolonged periods and that a day nurse should be present inside the centre. It accordingly recommended that the French authorities take appropriate measures immediately in those two respects. More generally, the CPT asked the French authorities to reconsider setting up a new detention centre in Marseilles".

B. Report to the French Government on the visit to France from 14 to 26 May 2000 (adopted on 9 July 2001)

23. The relevant paragraphs of this report are the following:

(Unofficial translation)

"59. With the exception of the Marseilles-Arenc Administrative Detention Centre, access to a doctor and medical care in the places visited in May 2000 could be deemed satisfactory. In particular, in all these establishments access to a doctor and medicines was free of charge for the foreign nationals concerned.

...

60. As in 1996, the situation at Marseilles-Arenc was still unacceptable, however, from the medical-ethics and – it has to be added – human standpoint. In July 1998 the organisation *Médecins du Monde* terminated the Mutual Assistance Agreement for the Medical Care of Detainees. The organisation *SOS Médecins*, for its part, agreed to visit the Centre only in exceptional circumstances. The delegation heard widespread complaints from detainees who, on asking to see a doctor, were told by police officers that they had to be able to pay. Some also complained that their medicine supplies (for example, maintenance or medicine for asthma sufferers) were about to run out.

In addition, since the *ad hoc* agreement has still not been signed, no nurse was present. Nor did the centre have a single first-aid kit (not even dressings) and medicines, kept in a cardboard box, were distributed by surveillance staff in accordance with the needs expressed by the detainees.

In response to the delegation's immediate observation, the French authorities have informed the CPT that an agreement on the provision of health services was signed on 14 June 2000 between the Bouches-du-Rhône Prefect and the Marseilles public hospitals authority. From 1 September 2000 there will be nursing cover at the centre seven days a week and a doctor in attendance half time. The CPT wishes to express its satisfaction with the measures taken."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION, AND OF ARTICLE 13 TAKEN TOGETHER WITH ARTICLE 2 OR ARTICLE 3

...

B. The Court's assessment

1. General principles

27. The Court reiterates that the first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life "intentionally"

or by the "use of force" disproportionate to the legitimate aims referred to in sub-paragraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, § 36, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

The obligations on Contracting States take on a particular dimension where detainees are concerned since detainees are entirely under the control of the authorities. In view of their vulnerability, the authorities are under a duty to protect them. The Court has accordingly found, under Article 3 of the Convention, that, where applicable, it is incumbent on the State to give a convincing explanation for any injuries suffered in custody (see, for example, *Ribitch v. Austria*, 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII) or during other forms of deprivation of liberty (see, for example, *Keenan*, cited above, § 91, and *Paul and Audrey Edwards v. the United Kingdom*, 14 March 2002, no. 46477/99, § 56), which obligation is particularly stringent where that individual dies (ibid.).

Having also held that Article 3 of the Convention requires the State to protect the health and physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see, *inter alia*, *Keenan*, cited above, § 111; *Mouisel v. France*, no. 67263/01, § 40; ECHR 2002-IX; and *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-...), the Court considers that, where a detainee dies as a result of a health problem, the State must offer an explanation as to the cause of death and the treatment administered to the person concerned prior to their death.

As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person's right to life.

28. It should also be added that Article 3 of the Convention includes the right of all prisoners to conditions of detention which are compatible with human dignity, so as to ensure that the manner and method of execution of the measures imposed do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention; in addition, besides the health of prisoners, their well-being also has to be adequately secured, given the practical demands of imprisonment (see, for example, *Mouisel,* and *McGlinchey and Others,* cited above, loc. cit.). In this context account has to be taken of the particular vulnerability of mentally ill persons (see, for example, *Keenan*, cited above).

These guarantees must, by analogy, benefit other persons deprived of their liberty, such as persons placed in administrative detention.

29. The Court has also held that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's

general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when an individual has been killed as a result of the use of force. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. The kind of investigation that will achieve those purposes may vary according to the circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, for example, *McKerr v. the United Kingdom*, no. 28883/95, § 111, ECHR 2001-III).

30. In the Court's opinion, the same is true in any case in which a detainee dies in suspicious circumstances: an "official and effective investigation" capable of establishing the causes of death and identifying and punishing those responsible must be carried out of the authorities' own motion (see, in this regard, *Paul and Audrey Edwards*, cited above, § 74).

31. An investigation of that sort must also be carried out where an individual makes a credible assertion that he has suffered treatment infringing Article 3 of the Convention at the hands of the police or other similar authorities (see, for example, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports*, 1998-VIII, § 102).

32. For the investigation to be effective, it is necessary for the persons responsible for carrying it out to be independent from those implicated in the death. They should not be hierarchically or institutionally subordinate to them but independent in practice (see, for example, *McKerr*, § 112, and *Paul and Audrey Edwards*, § 70, cited above).

The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see, *inter alia*, *McKerr*, cited above, § 113, and *Paul and Audrey Edwards*, § 71, cited above).

Moreover, in cases in which the use of force by the authorities had resulted in the death of individuals, the Court has held that "a requirement of promptness and reasonable expedition is implicit in this context", emphasising in that connection that a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in

their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, for example, *McKerr*, § 114, and *Paul and Audrey Edwards*, cited above, § 72). The Court considers that this applies in any case in which a person dies while in the custody of the authorities since, with the passing of time, it becomes more and more difficult to gather evidence from which to determine the cause of death.

In the same type of case the Court has stressed that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. It has specified that although the degree of public scrutiny required may vary from case to case the next-of-kin of the victim must in all cases be involved in the procedure to the extent necessary to safeguard their legitimate interests (see, *inter alia*, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, 4 May 2001; *McKerr*, § 115; and *Paul and Audrey Edwards*, § 73). It considers that this must be the case where a person dies while in the custody of authorities.

2. Application in the present case

33. In the present case it is not alleged that the authorities "intentionally" killed Mr Sliti or that his death was caused by a disproportionate use of force. Under Articles 2 and 3 of the Convention the applicant's main complaint against the authorities was that they detained Mr Sliti in a place that was not equipped with the medical facilities or care that his state of health required and that they failed to administer the appropriate treatment when he fell fatally ill.

34. The case file shows that Mr Sliti had been hospitalised in a number of psychiatric institutions, was receiving medical care prior to his placement in Marseilles-Arenc Detention Centre and was under heavy medication when that measure was taken, and that the authorities were informed accordingly. Furthermore, the reports of the CPT of 14 May 1998 and 9 July 2001 (see paragraphs 22-23 above) show that at the time when Mr Sliti was being held in Marseilles-Arenc Detention Centre it had no medical facilities or medical staff and that the material conditions of his detention were poor.

That suffices for the Court to hold that the principles set out in paragraphs 27-32 above apply in the instant case.

(a) The alleged responsibility of the authorities for Mr Sliti's death, the conditions of his detention and the complaint based on Article 13 of the Convention read in conjunction with Article 2 or Article 3 of the Convention

35. The Government criticised the applicant for failing to lodge a criminal complaint for homicide together with an application to join the proceedings as a civil party or to bring an action in the administrative courts to establish the liability of the State before lodging her application with the Court. They raised a preliminary objection of failure to exhaust domestic

remedies in respect of the complaint based on Article 2 and concerning the alleged responsibility of the authorities for Mr Sliti's death, and the complaint based on Article 3 and concerning the conditions of Mr Sliti's detention in Marseilles-Arenc Centre.

36. In its admissibility decision of 8 April 2003 the Court joined that objection to the merits on the ground that the Government's submission regarding failure to exhaust domestic remedies was closely linked to the applicant's other complaints under Articles 2 and 3 of the Convention and the complaint based on Article 13 of the Convention.

37. The Court considers, however, that this objection should be severed from the merits and examined now.

38. That being so, the Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. The rule under Article 35 § 1 is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity –, that there is an effective remedy available in respect of the alleged breach in the domestic system, which remedy must also "relate to the breaches alleged and be available and sufficient" (see, for example *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII).

39. In the instant case, like "anyone who claims to have suffered damage as a result of a serious crime or serious offence", the applicant could have lodged a criminal complaint for homicide with the relevant investigating judge and sought leave to join the proceedings as a civil party (Article 85 of the Code of Criminal Procedure).

Such a complaint – which can be made against persons unknown – sets the criminal proceedings in motion. The investigating judge is under a duty to investigate in the same way as if an application to open an investigation had been lodged by the public prosecutor (there is long-established and consistent case-law on this point; for a recent example, see Cass. Crim., 21 September 1999, Bull. no. 188). Where the investigation discloses that the facts complained of can be classified as criminal, it may lead to the case being brought before the criminal courts, which then have power not only to decide the questions of law submitted to them but also to rule on the civil action and, if applicable, make good the loss sustained by the civil party as a result of the offence.

If the investigating judge dealing with a complaint lodged by the next-of-kin of a person who died in suspicious circumstances considers, at the end of the investigation, that the death was not caused by acts or omissions capable of being classified as criminal, he or she issues an order discontinuing the proceedings, which terminates the prosecution. If it appears to the victim's next-of-kin – in the light, where applicable, of the

results of the investigation – that the death is likely to have been caused by a breakdown in the administrative departments responsible for the deceased, or by shortcomings on the part of the staff in those departments, they can still sue the State for damages in the administrative courts.

40. Those considerations also apply in respect of facts that may fall to be considered under Article 3 of the Convention.

41. The Court concludes from this that the applicant had a remedy under domestic law which fulfilled the above-mentioned conditions, that is, was accessible, capable of providing redress in respect of her complaints and offered reasonable prospects of success (see, for example, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). She was therefore obliged to use it before applying to the Court. As she did not do so, the Court cannot examine the merits of the complaints.

The Court therefore allows the Government's objection on the grounds of inadmissibility. Accordingly, it cannot consider either the merits of the complaint based on a substantive breach of Article 2 of the Convention and regarding the alleged responsibility of the authorities for Mr Sliti's death or the merits of the complaint based on Article 3 of the Convention and regarding the conditions of Mr Sliti's detention in Marseilles-Arenc Centre.

42. Given the close affinities between Article 13 and Article 35 § 1 of the Convention, the Court also concludes that there has not been a violation of Article 13 read in conjunction with Article 2 or Article 3 of the Convention.

(b) The conduct of the "official and effective investigation" required by Articles 2 and 3 of the Convention

43. The Court notes that an inquest to "determine the causes of death" (Article 74 CCP) was opened automatically on the very day of Mr Sliti's death. An investigating judge was properly given charge of the inquest.

Such an inquest is designed to determine whether the person died as a result of a serious crime or major offence. If this is the case, the investigating judge cannot proceed to bring charges, but a judicial investigation can be opened on an application by the public prosecutor under Article 80 of the CCP. Where applicable, persons suspected of being responsible for the death may be prosecuted in the criminal courts.

There is therefore no doubt that an inquest to "determine the causes of death" is, in theory, an "official investigation" capable of leading to the identification and punishment of those responsible. It remains to be determined whether it was "effective" in the present case.

44. In that connection the Court notes that the applicant was excluded from the inquest. She could not obtain access to the documents or take part in the inquiry or even be interviewed by the investigating judge. She was not given any information about the progress of the inquiry. She was not even informed of the decision to discontinue the proceedings, made on

26 June 2001. The position at the material time was that where an inquest was under way to "determine the causes of death", the deceased's next-of-kin could neither obtain access to the file nor take part in the proceedings in any way.

45. The Government replied that the applicant could nonetheless have taken steps to become involved in the proceedings by lodging a criminal complaint with the relevant investigating judge against persons unknown for homicide and applying for leave to join the proceedings as a civil party. The inquest to determine the causes of death would thus have been closed and joined to the new proceedings.

46. The Court has already observed that the applicant could have lodged a criminal complaint and applied to join the proceedings as a civil party (see paragraph 39 above). It is true that, as a party to the inquest, a civil party has a number of means by which to gain access to the "investigation": they can be assisted by a lawyer, who can obtain copies of the procedural documents (Article 114 of the Code of Criminal Procedure); they can ask the investigating judge to order all necessary measures (Article 81 CCP), to hear their evidence or that of a witness, to hold a confrontation or arrange an inspection of the scene of the events; or to order the production by another party of a document relevant to the investigation (Article 82-1 CCP) or an expert report or a supplementary or second expert opinion (Articles 156 and 167 CCP). Should the investigating judge refuse their request or fail to reply within one month, they have a remedy before the President of the Investigation Division (at the time of the facts of the present case this was the President of the Indictment Division); they are served (Article 181 CCP) with committal for trial orders and, *inter alia*, decisions not to investigate, orders discontinuing the proceedings or orders adverse to their civil interests (against which they can, moreover, appeal – Article 186 CCP); lastly, in certain conditions civil parties can ask the investigating judge to commit the case for trial or declare that there is no need to pursue the investigation; failing a reply within one month, they can lodge their application directly with the Investigation Division (Article 175-1 CCP).

47. Nevertheless, as the Court has already stressed, whenever a person in detention dies in suspicious circumstances, Article 2 requires the authorities to conduct an "effective and official investigation" of their own motion as soon as the case comes to their attention to enable the causes of death to be established and anyone responsible for the death to be identified and punished. The authorities cannot leave it to the initiative of the deceased's next-of-kin either to lodge a formal complaint or to take responsibility for any investigative procedure. To that should be added that such an investigation cannot be described as "effective" unless, among other things, the victim's next-of-kin are involved in the procedure to the extent necessary to safeguard their legitimate interests (see paragraphs 29-32 above).

In the Court's opinion, requiring a deceased's next-of-kin to lodge a criminal complaint together with an application to join the proceedings as a civil party if they wish to be involved in the investigation proceedings contravenes these principles. It considers that as soon as the authorities become aware of a death in suspicious circumstances, they should carry out an investigation of their own motion in which the deceased's next-of-kin should automatically be involved.

48. The Court concludes from the foregoing that, in order for Article 2 of the Convention to be complied with, the applicant should have been allowed to take part in the inquest to determine the causes of Mr Sliti's death without having to lodge a criminal complaint beforehand, which was not the case here. It further notes that French law has recently been amended accordingly: a deceased's next-of-kin can now apply to join the proceedings as a civil party in the context of such an inquest (see paragraph 20 above), which gives them effective access to the "investigation" without however obliging them to lodge a criminal complaint themselves together with an application to join the proceedings as a civil party.

49. It is accordingly sufficient for the Court to note that the applicant was unable to obtain access to the inquest to determine the causes of Mr Sliti's death to conclude that the investigation was not "effective". There has therefore been a violation of the procedural limb of Article 2 of the Convention in that respect.

50. This conclusion makes it unnecessary for the Court to decide whether the investigation complied with the requirements of Article 3 of the Convention.

...

FOR THESE REASONS, THE COURT

1. *Allows*, by five votes to two, the Government's preliminary objection;

2. *Holds,* by five votes to two, that it cannot therefore examine either the merits of the complaint of a substantive violation of Article 2 of the Convention and regarding the alleged responsibility of the authorities for Mr Sliti's death or the merits of the complaint of a substantive violation of Article 3 of the Convention and regarding the conditions of Mr Sliti's detention at Marseilles-Arenc Centre;

3. *Holds*, unanimously, that there has not been a violation of Article 13 of the Convention taken in conjunction with Article 2 or Article 3 of the Convention;

4. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention on account of the applicant's inability to take part in the inquest to determine the causes of Mr Sliti's death and gain access to that inquest;

5. *Holds*, unanimously, that it is not necessary to decide whether the investigation complied with the procedural requirements of Article 3 of the Convention;

...

Done in French and notified in writing on 27 July 2004, in accordance with Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Loucaides, joined by Judge Mularoni is annexed to this judgment.

A.B.B.
S.D.

PARTLY DISSENTING OPINION OF JUDGE LOUCAIDES, JOINED BY JUDGE MULARONI

1. I entirely agree with the general principles set out in paragraphs 27-32 of the judgment, and I fully subscribe to the Court's conclusion that there has in this case been a violation of Article 2 of the Convention on account of the applicant's inability to take part in the inquest to determine the causes of her partner's death. I consider, though, that there were other shortcomings in the investigation carried out in the present case, which, in my view, should have been emphasised in the judgment. Moreover, I am not convinced by the reasoning that led the majority to allow the Government's objection on grounds of failure to exhaust domestic remedies regarding the complaint of a violation of Article 2 of the Convention and relating to the alleged responsibility of the authorities for Mr Sliti's death, and I consider that there has been a violation of that provision under this head as well.

A. As regards the conduct of an "official and effective investigation" in the present case

2. I entirely agree with the majority that the "inquest to determine the causes of death" referred to in Article 74 of the Code of Criminal Procedure is in theory an "official investigation" capable of leading to the identification and punishment of those responsible (see paragraph 43 of the judgment), and that, in the present case, it was sufficient to note that the applicant had no access to that inquest to conclude that it was not "effective" (see paragraphs 44-49).

I wish to stress, however, that, in my view, other criteria established in this field by the Court's case-law and reiterated in paragraph 32 of the judgment do not appear to have been satisfied either.

3. I would point out, first of all, that the investigating judge did not himself undertake any investigation: the inquiry was fully entrusted to the senior police officers in accordance with general instructions issued on 27 May 1999. The investigating judge, and the medical experts appointed by him, based themselves entirely on the facts as established by the police. The possibility could not be ruled out that Mr Sliti had died as a result of negligence by the police: the police are responsible for managing and supervising Arenc Centre, subject to the authority of the public prosecutor; in the absence of medical staff, medicines were distributed to detainees by police officers; in the present case first aid was administered by those officers.

Moreover, in so far as it can be reconstructed from the documents produced by the parties, there were a number of shortcomings in the investigation: (1) I am surprised, first of all, that it lasted more than two years and, in particular, that the anatomicopathological report (of

15 October 1999) and the toxicological report (of 19 July 2000) were made so long after the death, and that an expert medical opinion comparing the conclusions of those two expert reports with the data in the deceased's medical file was not sought until 6 November 2000 (and closed on 2 May 2001, that is, nearly two years after the death); (2) only two of the deceased's "fellow detainees" were questioned, whereas the file shows that some ten people were present during the events; (3) although the two "fellow detainees" who were interviewed stated that the deceased had been agitated the day before he was taken ill, and his medical history was known, the authorities did not attempt to establish whether there was a link between the death, the applicant's condition prior to being taken ill and the failure to treat him beforehand; (4) neither the Navy firefighters who intervened at the scene (except the doctor) nor the medical staff who subsequently took charge of the applicant until his death were questioned; (5) evidence was not heard from the applicant, who had been the person closest to the deceased; (6) as has been stressed previously, the investigating judge did not carry out any investigation – he does not even appear to have gone to the scene of the incident.

B. As regards the authorities' responsibility for Mr Sliti's death

1. Exhaustion of domestic remedies

4. I do not share the majority's view that as the applicant did not lodge a criminal complaint together with an application to join the proceedings as a civil party, she failed to exhaust domestic remedies. I doubt that such a remedy (which is a criminal-law remedy) would be effective or adequate where, as could have been the case here, the death complained of is not attributable to one or more individuals in particular, but likely to have been caused by "institutional" negligence. Moreover, the applicant's submission that such a complaint was difficult to justify without having prior access to a minimum amount of information about the circumstances of the death is not unfounded; I find that argument all the more persuasive in that the complaint would in that case have been lodged by an "indirect victim" who had not witnessed the facts. Furthermore, since the Court has held in the present case, regarding the "procedural obligations" under Article 2 of the Convention, that the applicant should automatically have been allowed access to the inquest to determine the causes of death, I find it contradictory to consider that she has not exhausted domestic remedies because she did not lodge a criminal complaint together with an application to join the proceedings as a civil party.

5. With regard to the possibility of raising her complaint before the administrative courts, in the context of an application for compensation, I

note that, on the basis of the documents produced by the Government in the proceedings before the Court, the applicant (on 21 February 2003) lodged an application with the Minister of the Interior (see paragraph 19 of the judgment); if applicable, she should be able to challenge a refusal of that request in the administrative courts. The case-law appears to indicate, however, that where no effective investigation has been carried out, an application for compensation cannot be regarded as "effective" within the meaning of Article 13 taken in conjunction with Article 2 and within the meaning of Article 35 § 1[1] (see *Hugh Jordan* and *McKerr*, cited above, §§ 111 et seq. and 159 et seq., and §§ 117 et seq. and 170 et seq. respectively).

6. That being stressed, I note that the applicant was totally excluded from the investigation (she did not even have access to the autopsy report) – which does not seem to have been "effective" in other respects either – ; she did not have any concrete evidence from which to judge whether her partner's death could have resulted from negligent omission. In the end, her only means of gaining access to the documents in the domestic proceedings was through the Court proceedings. In theory, the question whether domestic remedies have been exhausted is judged on the basis of the date on which the application is lodged (see, for example, *Zutter v. France*, no. 30197/96, decision of 27 June 2000; *Van der Kar and Lissaur van West v. France*, nos. 44952/98 and 44953/98, 7 November 2000; and *Malve v. France*, no. 46051/99, decision of 20 March 2001). In addition, there may be special circumstances which absolve applicants from the obligation to exhaust the domestic remedies at their disposal: the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicants (see, for example, *Van Oosterwijck v. Belgium*, judgment of 6 November 1980, Series A no. 40, p. , §§ 36-40, and *Selmouni v. France* [GC], no. 25803/94, § 75 et seq., ECHR 1999-V). Thus, in any event, on the date when the application was lodged with the Court the applicant was not in a position to use the remedies theoretically available to her. I deduce from this that there was no problem of exhaustion in the present case and that the Court was required to examine on the merits the complaint lodged under Article 2 and relating to the authorities' responsibility for Mr Sliti's death.

2. As to the merits

7. Where an individual dies in detention, it is incumbent on the State to account for the events that caused the death, failing which the authorities

1. Given the close affinities between Articles 13 and 35 § 1 regarding the concept of effective remedy (see, *inter alia*, *Kudla v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI), these two questions merge together in the instant case.

will be held responsible for the purposes of Article 2 of the Convention: strong presumptions of fact will arise in respect of death occurring during that detention. The burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, for example, *mutatis mutandis*, *Velikova v. Bulgaria*, no. 41488/98, §§ 70, ECHR 2000-VI).

8. In the instant case the treatment administered to the applicant's partner after he was taken ill does not appear to be at issue; that is in any event the conclusion of the experts appointed by the investigating judge, who found the treatment to have been "in conformity with current medical knowledge" (report of 2 May 2001). The foreseeability of the events is also difficult to establish.

9. Nevertheless, I consider that Mr Sliti's detention in a place with no medical facilities and no organised medical follow-up in itself endangers the health and life of those concerned[1] and, as such, discloses negligence on the part of the authorities: the State's responsibility is engaged under Article 2 on account of the death alone, in such circumstances, of a person deprived of their liberty in such a place, unless it is shown that there is no link between the death and the lack of adequate medical care. In other words, the above-mentioned principle of the presumption of responsibility of the State has to apply.

Two reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT" – see paragraphs 22-23 of the judgment) show that at the time of the facts of this case "the holding conditions at Marseilles-Arenc Administrative Detention Centre left a lot to be desired: there was no provision for any specific medical attention or nursing cover; medicines were distributed by the surveillance staff (police officers) "in accordance with the needs expressed by the detainees". According to the CPT, "in addition to the difficulties in seeing a doctor, the situation inevitably gave rise to unacceptable consequences from a medical-ethics standpoint".

It is therefore clear that at the material time there was no medical infrastructure or medical staff at Arenc and that the medicines were distributed to the detainees by police officers. Furthermore, in the present case, notwithstanding Mr Sliti's serious medical history and the heavy medication that had to be administered to him, the authorities were not concerned about his refusal to take his medicine or his state of agitation, and omitted to seek medical advice immediately. In my view, that amounts to a form of negligence attributable to the respondent State. As the Government have not provided any evidence to show that there is no link between that

1. As reiterated in paragraph 28 of the judgment, the Court has held, in the context of Article 3, that the authorities have an obligation to protect the health of persons deprived of liberty.

negligence and Mr Sliti's death, I consider that there has been a violation of Article 2.

10. I consider that, in the light of my conclusions under Article 2, it is not necessary to examine the complaint under Article 13 of the Convention.