



Non-exhaustion of domestic remedies owing to failure to bring an action to establish State responsibility following a suicide in custody

In its decision in the case of [Benmouna and Others v. France](#) (application no. 51097/13) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the suicide by hanging of M.B., who had been taken into police custody in connection with an offence of attempted aggravated extortion.

An investigation revealed that the malfunctioning of the video surveillance system (blurred images and blind spots) and the deterioration of the wall covering had made it easier for M.B. to hang himself. However, the French courts considered that, given the unforeseeable nature of M.B.'s actions and the speed with which he had carried them out, no one could be held responsible for inadequate supervision.

With regard to the substantive aspect, the Court noted that the Benmouna family had not brought an action under Article L. 141-1 of the Judicature Code, which allowed State responsibility for the defective operation of the justice system to be recognised by the courts. The complaint under the substantive aspect of Article 2 (right to life) of the European Convention on Human Rights therefore had to be declared inadmissible for failure to exhaust domestic remedies.

As to the procedural aspect, the Court went on to note that an independent investigation had been opened immediately after the discovery of the incident, at the initiative of the domestic authorities. It considered in particular that the fact that no evidence had been heard from the deputy public prosecutor who had reported the dilapidated state of the police custody cells a few months previously had not undermined the effectiveness of the investigation. It further noted that the Benmouna family had not requested the investigating judge to take evidence from the prosecutor although that option had been available to them.

Principal facts

The applicants are Abdelkader Benmouna, an Algerian national who was born in 1958, and Malika Benmouna, born in 1968, Ahlem Benmouna, born in 1998, Rafelah Benmouna, born in 1992 and Djilali Benmouna, born in 1990, who are French nationals. They live in Saint-Etienne and are respectively the parents, sisters and brother of M.B.

The case concerned the suicide by hanging of M.B., who had been taken into custody in Chambon-Feugerolles police station in connection with an offence of attempted aggravated extortion. M.B. managed to thread a strip of fabric torn from his mattress cover through two holes in the cell wall and tie a knot in order to hang himself.

On 6 July 2009 M.B. was arrested and taken to his parents' home in order for a search to be carried out, during which he became agitated. A further incident occurred when M.B. was being searched, as he refused to remove the drawstring from his tracksuit and began to struggle. In the cell, M.B. appeared agitated, pacing up and down. At around 6.10 p.m. he was allowed to leave his cell to smoke a cigarette. At around 6.20 p.m. an official found him hanging and raised the alarm.

M.B.'s father lodged a complaint, saying that he did not believe that his son had committed suicide. Two autopsies were performed which did not raise any suspicions of third-party involvement.

The public prosecutor requested the opening of a judicial investigation for unintentional homicide. A reconstruction revealed that the police station's video surveillance system did not work properly, as the images from M.B.'s cell were blurred and there were blind spots enabling a person not to be seen. The investigation also pointed up the poor state of repair of the wall covering, which had made it easier for M.B. to hang himself. During a periodic inspection of the custody area on 4 March 2009 the deputy public prosecutor had noted the dilapidated state of the premises and the poor condition of the walls, which had extensive damage and a number of holes.

The investigating judge discontinued the proceedings on the grounds that, given the unforeseeable nature of M.B.'s actions, the unexpected use he had made of the holes in the wall and the mattress fabric, the speed with which he had carried out his actions and the fact that he had been able to leave his cell at 6.10 p.m. to smoke a cigarette, no one could be held responsible for inadequate supervision. The Investigation Division of the Lyons Court of Appeal dismissed an appeal by the Benmouna family against the decision to discontinue the proceedings, taking the view that due diligence had been shown in view of the resources available. The Court of Cassation dismissed an appeal on points of law by the Benmouna family.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 5 August 2013.

Relying on Article 2 (right to life), the applicants maintained that the domestic authorities had failed in their duty to protect the life of M.B. by placing him in a dilapidated cell with holes in the walls, a torn mattress and a defective video surveillance system, although they must have been aware of his vulnerability and state of anxiety. The applicants further alleged that the domestic judicial authorities had omitted to conduct all the relevant inquiries in respect of the persons who might have acted negligently, thereby failing in their obligation to carry out an effective investigation.

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

Angelika **Nußberger** (Germany), *President*,
Boštjan M. **Zupančič** (Slovenia),
Ganna **Yudkivska** (Ukraine),
Vincent A. **de Gaetano** (Malta),
André **Potocki** (France),
Helena **Jäderblom** (Sweden),
Síofra **O'Leary** (Ireland)

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

[Article 35 §§ 1 and 4 \(exhaustion of domestic remedies\)](#)

The Court noted that the Benmouna family had not brought an action under Article L. 141-1 of the Judicature Code, which allowed State responsibility for the defective operation of the judicial system to be recognised by the courts.

Accordingly, the Benmouna family's complaint under the substantive aspect of Article 2 had to be declared inadmissible for failure to exhaust domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention. Nevertheless, the Court noted that this ground of inadmissibility did not apply to the procedural limb of Article 2, as the family's claims concerning the inadequate nature of the investigation had been rejected by the Court of Cassation in a final ruling.

Procedural aspect of Article 2 (lack of an effective investigation)

The Court noted that an independent investigation had been opened immediately, at the initiative of the domestic authorities, that evidence had been taken from the police officials and from witnesses and that numerous forensic and medical tests had been performed. A judicial investigation had also been opened.

The Benmouna family complained of the fact that the investigating judge had not taken evidence from the deputy public prosecutor who had inspected the custody area on 4 March 2009. However, the Court noted that, while the family stated that they had referred to the absence of this measure in support of their appeal on points of law, they did not claim to have asked the investigating judge to take such a step, although that option had been available to them. Furthermore, the Court considered that the fact that no evidence had been heard from the deputy prosecutor had not undermined the effectiveness of the investigation aimed at establishing the cause of death and those responsible. Accordingly, it found that the investigation following M.B.'s death could not be regarded as ineffective.

It followed that the complaint under the procedural aspect of Article 2 of the Convention was manifestly ill-founded and had to be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

The decision is available only in French.

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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.