



The continuing detention of a man suffering from cancer was not in breach of the Convention

In today's Chamber judgment¹ in the case of Gengoux v. Belgium (application no. 76512/11) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 2 (right to life) of the European Convention on Human Rights, and

no violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The case concerned the continuing detention of the applicant's seriously ill father.

Taking the view that no causal link could be established between the imprisonment of the applicant's father and his death, the Court considered it decisive that the applicant's father had not died from an infection or an immune deficiency but as a result of metastases of his cancer that had existed prior to his imprisonment.

The Court concluded that the situation was not one in which the proper administration of the criminal justice system had required measures to be taken other than those that had been adopted, and that the continuing detention of the applicant's father, notwithstanding his state of health and the progression of his condition, had not amounted to inhuman or degrading treatment.

Principal facts

The applicant, Mr Stanley Gengoux, is a Belgian national who was born in 1992 and lives in Vielsalm (Belgium). He is the only son of Yves Gengoux, who was born in 1961 and died on 16 May 2011.

On 1 October 2010 Yves Gengoux was admitted to the Citadelle de Liège Regional Hospital with respiratory problems. He was diagnosed with cancer and agreed to undergo chemotherapy. On 10 December 2010 he was held under suspicion of shooting and killing a man in a bar while under the influence of alcohol. He was placed under investigation for illegal possession of a weapon and was remanded in custody in Lantin Prison. The prison's chief medical officer was informed of the applicant's father's medical problems and arranged for his planned chemotherapy session to take place one week after the original date. The applicant's father apparently did not inform the prison management that the fourth cycle of chemotherapy was due to begin on 30 December 2010. On being contacted that day the prison management stated that, owing to a strike by prison staff, it would not be possible to take the applicant's father to hospital given the shortage of prison guards to escort him. The treatment was therefore postponed.

In a report written on 2 March 2011 Dr R., a doctor chosen by the applicant's father, expressed the view that, notwithstanding the care administered in prison and the dignified and helpful attitude of the prison staff, Mr Gengoux's imprisonment did not conform to the medical standards necessary to treat his condition satisfactorily. Dr R. concluded that imprisonment was worsening the applicant's father's prospects, if not of recovery, then at least in terms of his life expectancy and the conditions in which the disease was progressing.

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.

In a further report dated 9 May 2011 Dr R. noted that the applicant's father's condition had deteriorated "drastically" since February of that year. The doctor considered it medically unacceptable to continue to detain the patient in prison. The applicant's father was immediately transferred to hospital and was placed in a secure private room. Yves Gengoux died in hospital on 16 May 2011.

The order for the applicant's father's pre-trial detention was upheld on several occasions by the Liège Court of First Instance. On 11 April 2011 the applicant's father argued before the court that his state of health was incompatible with imprisonment. He applied to be released. On the same day the Committals Division rejected the application and ordered his continuing detention. On 12 April 2011 the applicant's father appealed against that decision to the Court of Appeal, which dismissed his claims and ordered that he continue to be held in pre-trial detention. The applicant's father lodged an appeal on points of law with the Court of Cassation, without success.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicant alleged that the authorities had not provided his father with the medical care which his condition required, thereby exposing him to a real risk to his life. He also alleged that his father's continuing detention constituted treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The application was lodged with the European Court of Human Rights on 10 November 2011.

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

Işıl Karakaş (Turkey), *President*,
 Julia Laffranque (Estonia),
 Nebojša Vučinić (Montenegro),
 Paul Lemmens (Belgium),
 Jon Fridrik Kjølbro (Denmark),
 Stéphanie Mourou-Vikström (Monaco),
 Georges Ravarani (Luxembourg),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 2

The Court observed that on 2 March 2011 Dr R. had expressed the view that the imprisonment of the applicant's father was worsening his prospects, if not of recovery, then in terms of his life expectancy and the conditions in which the disease was progressing. While the authorities could have released him following that report, the Court did not have any evidence affording grounds to criticise the authorities' attitude and to hold that the applicant's father had been deprived in prison of the medical care which his condition required. The poor prognosis given by the doctors with regard to the applicant's father had been based on the metastases which had existed prior to his imprisonment; moreover, each cycle of chemotherapy prescribed had been carried out. The Court was thus unable to find that there was a causal link between the imprisonment of the applicant's father and his death.

There had therefore been no violation of Article 2.

Article 3

The Court noted that the applicant did not complain about the manner of his father's detention as such. He did not dispute that his father's general practitioner and the prison medical service had been in regular contact with each other, or that his father had seen his general practitioner regularly in addition to being seen by the prison medical service and attending hospital as an outpatient for chemotherapy. The applicant's father had also been able to call on the services of an outside doctor who had examined him and given his opinion.

The applicant's father had received the chemotherapy prescribed for him between his arrival in prison on 10 December 2010 and his death on 16 May 2011.

The Court observed that the applicant did not allege that the postponement of the chemotherapy session of 30 December 2010 by one week had had any specific impact on his father's state of health. It appeared established that the medication had been provided night and day, including at weekends, and that the heart medication prescribed on 17 December 2010 had not been administered for medical reasons. However, the other drugs prescribed on that date had been administered only partially.

The Court noted that the failure to administer those drugs had not undermined the positive impact of the December and January chemotherapy sessions and that no infection had been reported arising out of the patient's immunosuppression linked to the chemotherapy. The Court was satisfied that the prison authorities had done everything that could reasonably be expected of them by contacting the general practitioner when the condition of the applicant's father had deteriorated sharply and transferring him to a better equipped hospital facility.

The Court considered it decisive that the applicant's father had not died from an infection or an immune deficiency but as a result of metastases of his cancer that had existed prior to his imprisonment. The Court noted that the domestic courts had examined the arguments advanced by the applicant as to the advisability of keeping his father in detention despite his state of health and the progression of his condition. The courts had reached the conclusion that, because of the danger which the applicant's father presented and the risk of a repeat offence, no alternative measure could be considered. The Court also noted that none of the medical reports had referred to any medical contraindication that would have completely precluded his continuing detention. Furthermore, the applicant's father had received the care required by his condition while he was in prison and, despite the difficulties inherent in detention, the chemotherapy had initially improved his condition and subsequently stabilised it.

When Dr R. had stated on 9 May 2011 that, in view of the drastic deterioration in the applicant's father's condition, it was "medically unacceptable" to keep him in prison, the patient had been transferred to hospital the same day. The Court concluded from this that, as soon as the applicant's father's condition had progressed to the point where hospitalisation was necessary, the prison authorities had acted accordingly. It considered that the situation was not one in which the proper administration of the criminal justice system had required measures to be taken other than those that had been adopted, and that the continuing detention of the applicant's father, notwithstanding his state of health and the progression of his condition, had not amounted to inhuman or degrading treatment.

There had therefore been no violation of Article 3 of the Convention.

The judgment 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.