



Death of man after restraint by police: authorities found negligent

In today's **Chamber** judgment¹ in the case of [Semache v. France](#) (application no. 36083/16) 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.

The case concerned the death of the applicant's father, Mr Ziri, following his arrest by the police and his detention in Argenteuil police station.

The Court found in particular that the restraining of Mr Ziri by a "double-seated embrace" technique, during his transfer by car to the police station, had been justified and strictly proportionate to the aim pursued. However, Mr Ziri's situation at the Argenteuil police station had been dealt with negligently by the authorities, which had not done what could have been reasonably expected of them to prevent the risk of death.

While there had been certain deficiencies – failure to hold a reconstruction of events and the total length of the proceedings – the Court found that having regard to the measures taken, and in particular the medical assessments, the effectiveness of the investigation could not be called into question.

Principal facts

The applicant, Annissa Semache, is an Algerian national who was born in 1987 and lives in Argenteuil (France).

On 9 June 2009 Mr Ali Ziri, who was 69 years old and the applicant's father, and A.K., who was 60 years old, drove off in a vehicle after consuming alcoholic beverages. At about 8.35 p.m. a police patrol from the Argenteuil station waved them down. Mr Ziri, who refused to get out of the vehicle and began insulting the police officers, was handcuffed and placed in the back of the police car together with A.K. The latter insulted and spat at an officer, who immobilised him by bending him over, with his head touching his knees (the so-called "double-seated embrace" technique). Mr Ziri attempted to strike the officer and was also immobilised using the same technique. On their arrival at the police station Mr Ziri was taken out of the vehicle and transported, apparently without reacting, inside the building.

Inside the police station Mr Ziri and A.K. were laid out flat with their hands cuffed behind their backs. They vomited several times. Half an hour later the head of the police station asked a team to take both men to hospital. They allegedly waited for 45 minutes in the police van, in handcuffs, before being taken to the hospital. Mr Ziri and A.K. arrived at the hospital just after 10 p.m. While waiting for the medical staff, the police officers noted that Mr Ziri was vomiting and choking on his

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.

vomit. At 10.45 p.m. a doctor recorded cardiac arrest. Mr Ziri was taken to intensive care, where he remained in a coma. He died of a second heart attack at 7.30 a.m. on 11 June 2009.

A preliminary police investigation was opened against persons unknown for manslaughter. On 7 July 2009 the public prosecutor discontinued the case on the grounds that no offence had been committed, in the absence of sufficient evidence to engage the liability of the police officers or the hospital staff. A criminal complaint, together with an application to join the proceedings as civil parties, had been lodged by Mr Ziri's family, including the applicant, leading to the opening of a judicial investigation against persons unknown on the same charge. The investigating judge ordered autopsies. Various expert assessments were carried out. In a report issued on 31 August 2009, the doctors concluded that Mr Ziri had died of "hypoxic [caused by lack of oxygen] cardiac arrest by multifactorial suffocation". Another expert report also opted for the hypothesis of "cardiac consequences of a hypoxic episode".

On 15 October 2012 the investigating judge issued a discontinuance decision, upheld by the Versailles Court of Appeal. The applicant appealed on points of law. The Court of Cassation set aside the judgment on the grounds that the Investigation Division had failed to ascertain whether the restraint techniques used had been excessive in the light of the person's conduct and whether the assistance provided had been appropriate. It remitted the case to the Rennes Court of Appeal.

In a judgment of 12 December 2014 the Rennes Court of Appeal held that there was no need to supplement or continue the judicial investigation and upheld the discontinuance decision. It found that the expert assessments had set out different hypotheses and had reached diverging conclusions, making it impossible to identify one definite cause of Mr Ziri's death. The Court of Cassation dismissed the applicant's appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicant complained about her father's death following his arrest by the police and his subsequent detention in Argenteuil police station. She argued that the authorities had failed to take the requisite action and that the investigation was not effective. Relying on Article 3 (prohibition of inhuman or degrading treatment) she submitted that he had sustained inhuman and degrading treatment while under the control of the police.

The application was lodged with the European Court of Human Rights on 21 June 2016.

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

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
Yonko **Grozev** (Bulgaria),
Síofra **O'Leary** (Ireland),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan) and,
Jean-Marie **Delarue** (France), *ad hoc Judge*,

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

Decision of the Court

Article 2

Use of force against Mr Ziri

The Court observed that the autopsies and expert assessments had not ruled out a link between Mr Ziri's forced immobilisation when he was being transferred to the police station and his death. It noted in particular from the report of 20 July 2009 that the death had been caused by a "probable lack of oxygen due to multiple factors" and the report of 31 July 2009 concluded that the victim had died from a "hypoxic cardiac arrest by suffocation". The Court further noted that the Investigation Division of Rennes Court of Appeal had not ruled out a causal link between the force used against Mr Ziri at the time of his transfer and his death, but had not indicated whether or not it could have been a direct link.

It transpired from the investigation and the judgment of Rennes Court of Appeal of 12 December 2014 that the purpose of Mr Ziri's immobilisation had been to restrain him when his agitated state presented a risk for his own safety and for the safety of other passengers in the vehicle and other road users. The measure had therefore pursued a legitimate aim.

That judgment had also contained very specific reasoning as regards the proportionality of the use of force against Mr Ziri. The Court thus found that the restraining of the applicant's father, when he was being taken in the police car to the station, was justified and strictly proportionate to the aim pursued.

Mr Ziri's situation in Argenteuil police station

The Court found that the officers could not have been unaware of Mr Ziri's condition on his arrival at the police station. He was an elderly man of 69 in a drunken state. He had vomited when he was taken into the station and could hardly stand up. He had been manhandled during his arrest and transfer, and on being removed from the car, and he had just been restrained for several minutes using a technique that the police must have known to be dangerous.

The authorities' obligation of vigilance *vis-à-vis* private individuals in custody had been greater in the present case as a result of Mr Ziri's age and weakness at the time of his arrival at the police station. Mr Ziri had been left lying on the ground handcuffed, in his own vomit, without any immediate medical care or supervision. It was not established that he had been placed in a safe lying-down position. Mr Ziri remained in the police station without any medical care for about an hour and a quarter.

As to the arrangements for Mr Ziri's reception at Argenteuil police station, the Court observed that the judgment of the Rennes Court of Appeal of 12 December 2014, to which the Government had referred, did not analyse in any depth whether his treatment had been appropriate in the light of his general condition, of the greater vigilance required of the authorities or of the circumstances in which he had been taken to the police station and removed from the car on arrival. It thus appeared, as shown by the opinion issued in the present case by the National Security Ethics Commission, that Mr Ziri's situation at the Argenteuil police station had been dealt with negligently by the authorities. The Court therefore took the view that the authorities had not done what could have been reasonably expected of them to prevent the risk of death, and that there had been a violation of Article 2 in its substantive aspect.

Subsequent investigation

The Court first observed that the authorities had acted promptly.

While the public prosecutor had dropped the case on 7 July 2009, the deceased's family members had lodged a complaint as civil parties and a judicial investigation for manslaughter, against persons unknown, had thus been opened on 8 July 2009. The investigation had thereafter been in the hands of an investigating judge, who was an independent judicial authority without any hierarchical or structural links to the police.

From the time when the investigation was taken over by an investigating judge, the victim's relatives, as civil parties, had had access to the case file, had been able to request any investigative acts and had been entitled to seek a procedural review.

As to the measures taken in the course of the investigation in the search for evidence, the Court noted that two autopsies had been performed and two medical reports had been produced, along with various other investigative acts. While the investigating judge had not himself performed those acts, as the interviews with the police officers concerned and with witnesses had been entrusted to the National Police Inspectorate, the Court observed that all the acts in question had been ordered and supervised by the judge. The applicant had not called into question the independence or impartiality of the Inspectorate or its investigators. Lastly, the Court noted that the investigating judge had actively pursued the investigation.

However, the Court noted that the proceedings had lasted for a total of six years and eight months, ending with the Court of Cassation's judgment of 16 February 2016. The fact that no reconstruction of events had been held was another deficiency.

Those deficiencies did not, however, suffice to undermine the effectiveness of the investigation as a whole. The Court thus found that there had been no violation of Article 2 in its procedural aspect.

Article 3

Having found a violation of Article 2 in its substantive aspect, the Court found that it was not necessary to examine whether there had been a violation of Article 3 of the Convention.

Just satisfaction (Article 41)

The Court held that France was to pay the applicant 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,500 for costs and expenses.

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.