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

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Police failed to take adequate steps to prevent drug overdose in custody

In today's **Chamber** judgment[1] in the case of Ainis and Others v. Italy (application no. 2264/12) the European Court of Human Rights held, by 6 votes to 1, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights.

The case concerned the applicants' relative, C.C., who had died from a drug overdose while in police custody in Milan. He had been arrested as part of an anti-drug-trafficking operation. The Italian courts had found no liability on the part of the Ministry of the Interior.

The Court found in particular that the Government had failed to provide convincing arguments or evidence that sufficient steps – such as searches or medical assistance – had been taken to protect the life of C.C. while in the Milan police headquarters.

Principal facts

The applicants, Rosalba Ainis, Nancy Calogero and Giuseppa Dammicela, are three Italian nationals who were born in 1974, 1994 and 1946 respectively and live in Milan. They were the mother, daughter and partner of C.C.

In the early morning of 10 May 2001 C.C. was arrested along with three other individuals in an anti-drug-trafficking operation while he was leaving his flat in Milan. C.C. appeared to be in poor psychological and physical condition, possibly owing to consumption of drugs. He was allowed to rest half-in and half-out of a police car. He was dry retching, with clear liquid trickling from his mouth.

At 3.30 a.m. C.C. was transferred, handcuffed, to a holding cell in the Milan police headquarters. At 5.50 a.m. he asked to use the toilet. He began to vomit and collapsed; the report noted saliva coming from his mouth and blood from his nose. The officer who had taken him to the toilet stated that he had not paid "continuous attention to [C.C.], as [I had been] busy booking and taking photographs of other individuals".

An ambulance was called, with C.C. appearing to be in a cyanotic state, with breathing difficulties and convulsions. At 6.07 a.m. an ambulance arrived. C.C. was pronounced dead at 6.16 a.m. at Fatebenefratelli Hospital.

An autopsy was performed, which found brain and lung swelling caused by fluid blood, congestion in the internal organs, and petechial spots compatible with a natural death characterised by respiratory difficulties or death by asphyxiation. The pathologist was not able to determine the exact cause of death. A later report issued in 2003 concluded the cause of death had been acute cocaine intoxication taken at a time "very close to his death".

In April 2003 prosecutors decided not to open an investigation as there was no evidence a criminal act by a third party had been committed.

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.

The applicants sued the Ministry of the Interior on the grounds of failure to provide assistance to a person in danger (*omissione di soccorso*) and failure to adequately supervise (*omessa sorveglianza*). The Milan District Court found the Ministry responsible, concluding that the police had either failed to search C.C.'s person at the time of arrest, or that the supervision of him had been inadequate, as he had either been in possession of a large amount of cocaine at the time of his arrest, or had acquired it while at the police headquarters. It added that there had been a responsibility on police officers in this case to have sought court permission to conduct an intimate body search. The court awarded 100,000 euros (EUR) in damages to C.C.'s mother and EUR 125,000 to his daughter.

However the Milan Court of Appeal overturned that decision, finding no civil liability on the part of the Ministry. It highlighted – without specific reasoning – that although the immediate cause of C.C.'s death had been the ingestion of a large quantity of cocaine shortly before his death, it had also been caused by the ingestion of cocaine at the time of the arrest and that the fatal attack had occurred suddenly "because it [had] found fertile territory in a body which had been put under severe strain by a previous ingestion – or ingestions – of drugs".

In 2011 the Court of Cassation ruled that it could not revisit the reconstruction of the facts as set out by the Court of Appeal and that the latter court had reached its conclusions in a logical and reasoned manner.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), complained that the authorities had failed to take adequate steps to protect the life of C.C. while in police custody.

The application was lodged with the European Court of Human Rights on 23 December 2011.

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

Marko **Bošnjak** (Slovenia), *President*,
Alena **Poláčková** (Slovakia),
Lətif **Hüseynov** (Azerbaijan),
Péter **Paczolay** (Hungary),
Ivana **Jelić** (Montenegro),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Renata **Degener**, *Section Registrar.*

Decision of the Court

The Court reiterated that the right to life is one of the most fundamental provisions of the Convention, and that the authorities were obliged to account for the treatment of individuals in police custody owing to their vulnerable position. It reiterated that, in respect of injuries and death occurring during detention, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.

It stated at the outset that, although there was insufficient evidence to show that the authorities had known or ought to have known there had been a real and immediate risk that C.C. would ingest a lethal dose of cocaine, they had had a duty to take basic precautions to minimise any potential risks to his health and wellbeing, particularly given that he had been unwell and in an impaired state, cocaine had been seized on his person at the time of his arrest, and he had been known to the police as a drug addict.

At no time had C.C. received medical attention following his arrest. There was no record of his having been searched at the Milan police headquarters. As concerned the Government's argument that an intimate search of C.C.'s body would have raised issues under other Convention articles, the Court affirmed that it would be excessive to search everyone arrested, but that nevertheless had not released the authorities from any obligations in the matter, in particular to ensure that in this case C.C. had not been carrying drugs when he had arrived at the Milan police headquarters. The Court was unable to conclude that any such steps had been taken.

Furthermore, it was unclear whether C.C. had been properly supervised, and not all the officers involved had not been questioned by prosecutors in the case. The Government failed to rebut the allegations of the applicants with adequate arguments or evidence.

The Court concluded that the authorities had not provided C.C. with sufficient and reasonable protection of his life, in violation of Article 2 of the Convention.

Just satisfaction (Article 41)

The Court held, by 6 votes to 1, that Italy was to pay the applicants jointly 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

Separate opinions

Judges Bošnjak expressed a dissenting opinion, which is annexed to the judgment.

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.