



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

FIRST SECTION

CASE OF AINIS AND OTHERS v. ITALY

(Application no. 2264/12)

JUDGMENT

Art 2 (substantive) • Life • Positive obligations • Domestic authorities' failure to sufficiently and reasonably protect the life of the applicants' relative who died of a drug overdose while in police custody

STRASBOURG

14 September 2023

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 Ainis and Others v. Italy,

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

Marko Bošnjak, *President*,

Alena Poláčková,

Lətif Hüseyinov,

Péter Paczolay,

Ivana Jelić,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 2264/12) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Italian nationals, Ms Rosalba Ainis (“the first applicant”), Ms Nancy Calogero (“the second applicant”) and Ms Giuseppa Dammicela (“the third applicant”) on 23 December 2011;

the decision to give notice to the Italian Government (“the Government”) of the complaints concerning Article 2 of the Convention and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 4 July 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the death of the applicants’ relative, C.C., from a drug overdose while being held in police custody.

THE FACTS

2. The applicants were born in 1974, 1994 and 1946, respectively, and live in Milan. They are the partner, daughter and mother of C.C., who died of an acute cocaine intoxication in the Milan police headquarters (*questura*) on 10 May 2001. The applicants, who were granted legal aid in the proceedings before the Court, were represented by Mr A. Sgarrella and Mr C. Rubinetti, lawyers practising in Milan.

3. The Government were represented by their former Agent, Ms E. Spatafora, and their former Co-Agent, Ms P. Accardo.

I. EVENTS SURROUNDING C.C.'S DEATH

4. On 10 May 2001, at 2.30 a.m., C.C. was arrested on suspicion of drug trafficking while he was leaving his flat. Three other individuals were also arrested in the course of the same anti-drug trafficking operation.

5. As described by the patrol report written by the arresting officers, at the time of the arrest and, in particular, during the search of his flat, C.C. appeared to be in an impaired psychophysical condition probably owing to the consumption of drugs. He was experiencing what appeared to be panic attacks and sudden mood swings, and made what were described as attempts at self-harm by banging his head against the wall. While he was being escorted out of the building he had to be carried by the officers because he was uncooperative and kept falling down like a “dead weight”.

6. At 3.15 a.m. two police officers who had been called as backup arrived on the scene. According to their patrol report, upon their arrival C.C., who was handcuffed, was taken by the arresting officers to their police car so that they could transfer him to the police headquarters. Once seated in the vehicle, C.C. complained to the officers that he was not feeling well and asked not to be moved for a while longer. He was allowed to sit in the police car with his head and legs outside the vehicle for some time. He was described as sweating and dry heaving, with transparent liquid trickling from his mouth. Once C.C. stated that he was feeling better the officers handcuffed him and drove him to the police headquarters. The officers reported that, given what was referred to as C.C.'s “state of health”, they turned up the ventilation and drove slowly.

7. At 3.30 a.m. C.C. was transferred to the custody of personnel in the holding room at the police headquarters. The officers who handed him over specified in their report that C.C. was handcuffed at the time of the handover.

8. According to the report written by the officer in charge of the holding room, C.C. appeared calm and to be sleeping in the holding room until 5.50 a.m., when he asked to use the bathroom. While he was in a toilet cubicle C.C. started retching and soon after fell to the ground. The duty officer reported that he noticed saliva dripping from C.C.'s mouth and blood trickling from his nose. The officer alerted the shift commander, who immediately called an ambulance.

9. In a statement given to the public prosecutor on 7 February 2002 the officer in charge of the holding room further elaborated on his account of the events. The relevant parts of that statement read as follows:

“On the night of 9 and 10 May 2001 I was on duty at the holding room of the Milan police headquarters as the officer in charge ... Three other officers whose names I do not recall were also on duty ...

At approximately 3.30 [a.m.] on 10 May 2001, officers from the *Volante Sempione* (Sempione district police patrol) handed over [C.C.], whom I found handcuffed and already sitting on the bench inside our control post where we usually book incoming persons ... [C.C.] remained in our room, sleeping peacefully in a seated position; at approximately 5.50 a.m., [C.C.] woke up, retched, and requested that he be allowed to

go to the bathroom. At this point, after removing one handcuff, I personally escorted him to the bathroom entrance, which was about three meters down the hallway to the right; he then entered the bathroom and I stood outside, obviously keeping the door open. At this point [C.C.] started vomiting and fell face-first onto the squat toilet; I immediately entered the bathroom, noticed that saliva was dribbling from his mouth and blood from his nose; I immediately reached for a telephone, alerted dispatch and requested that they send an ambulance at once. Shortly thereafter ambulance personnel arrived in the holding room and they started providing [C.C.] with medical assistance. I was not present while first aid was being given in order not to get in the way of the paramedics. Afterwards, he was taken away on a stretcher, escorted by my colleagues from the *Volante Niguarda* (Niguarda district police patrol) who had been sent as backup by dispatch.

...

I don't remember specific details about [C.C.]'s person, his behaviour, or his appearance; his hair was slightly dishevelled. I must add that, obviously, I didn't pay continuous attention to [C.C.], as I was busy booking and taking photographs of other individuals. Obviously the room known as the control post is never abandoned by duty officers if there are arrested individuals as, according to our policy, one of us must always be present."

10. At 6 a.m. two police officers who had been called to escort the ambulance crew to the hospital arrived on the scene. It appears from their report that upon their arrival C.C. was lying on his back in what is referred to in the report as the entrance to the bathroom. His nose was bleeding and saliva was dripping from his mouth. To the officers, C.C. appeared cyanotic, to be experiencing breathing difficulties and to be having a convulsive crisis.

11. At 6.07 a.m. the ambulance personnel arrived on the scene. According to their report C.C. was lying on his back, unconscious, in the bathroom. They checked his vital signs, which were found to be deficient. He was described as cyanotic and convulsive, with shallow breathing and a slow heart rate. They noted signs of facial trauma and traces of vomit on his clothes. They transferred C.C. to the ambulance, where they started to perform cardiopulmonary resuscitation.

12. At 06.11 a.m. C.C. arrived at the Fatebenefratelli Hospital where he was handed over to medical personnel, who attempted unsuccessfully to resuscitate him.

13. C.C. was officially pronounced dead at 6.16 a.m. at the Fatebenefratelli Hospital in Milan.

II. ARREST REPORTS (*VERBALI DI ARRESTO*), SEARCH REPORTS (*VERBALI DI PERQUISIZIONE*) AND SEIZURE REPORTS (*VERBALI DI SEQUESTRO*)

14. Arrest reports for three individuals, G.B., M.G. and O.T., were issued in connection with the anti-drug trafficking operation carried out on the night of 10 May 2001. The reports mainly describe how the listed individuals had been caught *in flagrante delicto*.

15. The case file contains three search reports relating to searches of flats belonging to C.C., M.G. and G.B. It appears that C.C.'s flat was searched at 3 a.m. on the night of his arrest, but that nothing worthy of note was found.

16. One search report relates to a search carried out on M.G.'s person at 2.30 a.m. It emerges from the report that he was advised of his right to have a lawyer or another person of choice present during the search and that he waived that right. M.G.'s pockets were searched and the officers found cash and a small digital scale; having noted a suspicious bulge at the front of M.G.'s trousers, "in his intimate parts", the search further disclosed a plastic bag with what looked like ecstasy tablets and 142 grams of cocaine.

17. There are two seizure reports in the case file which concern C.C. The reports state that at 2.45 a.m. a number of items were seized from C.C.'s flat. In the first report, the items seized were 1,686,000 Italian lire in cash, a car key and a mobile phone found in C.C.'s coat pocket. In the second report, a credit card, two cheques and a folded banknote containing a substance resembling cocaine were taken from C.C.'s wallet, which was located in the back pocket of his trousers.

III. THE PUBLIC PROSECUTOR'S PRE-INVESTIGATION INQUIRY INTO C.C.'S DEATH

18. On 11 May 2001 an autopsy was performed on C.C.'s body at the request of the public prosecutor. The autopsy findings included cerebral oedema, pulmonary oedema caused by fluid blood, polivisceral congestion, and petechiae, which were compatible with a natural death characterised by a short agonal respiration or death by asphyxiation. The stomach contained liquid food residue. Based on the information available to him at the time, the pathologist was not able to determine the exact cause of death. On the same date specimens were sent for toxicological testing.

19. On 28 November 2001 the public prosecutor appointed two forensic pathologists as independent medical experts to review the autopsy and toxicology results and determine the cause of death.

20. In a report issued on 22 February 2003 the forensic pathologists determined the cause of death to be acute cocaine intoxication. Given the presence of the drug in the gastric liquid it was concluded that C.C. had taken the lethal dose by ingestion, and had done so at a time "very close to his death". Any other cause of death was ruled out. The pathologist stated that there was no evidence of trauma which could be connected to the death, or of any other detectable pre-existing medical condition.

21. The public prosecutor took witness statements from various individuals present at C.C.'s arrest, both in the flat belonging to C.C. and in the building. Two women who were staying in the flat testified that the arresting officers had asked them for some water for C.C., whom the officers stated was not feeling well.

22. On 3 April 2003 the public prosecutor decided that the evidence gathered during the pre-investigation inquiry did not disclose elements that could connect C.C.'s death with external events committed by a third party which could lead her to conclude that a criminal act had been committed. Therefore, the proceedings were discontinued without any criminal investigation being opened.

IV. CIVIL PROCEEDINGS LODGED BY THE APPLICANTS

A. Proceedings in the Milan District Court

23. On 22 June 2003 the applicants brought an action for damages against 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*).

24. On an unspecified date the court appointed the two forensic pathologists who had taken part in the public prosecutor's inquiry in 2001 (see paragraph 20 above) to review the documentation concerning C.C.'s death and determine whether it had been caused by the ingestion of cocaine, and when the consumption of the drug had taken place.

25. The court summarised the pertinent facts as they emerged mainly from the police officers' patrol reports and statements to the prosecutor, and the conclusions of the two independent medical experts appointed during the proceedings. The experts confirmed that C.C. had died due to acute cocaine intoxication and concluded that he had taken cocaine twice during the impugned events: once close to the time of his arrest and again at a time very close to his death. On the basis of the toxicological data they excluded the possibility that the first dose could have been linked to C.C.'s death. The second dose of cocaine had been the lethal one, and could have been taken, according to the experts, either immediately before C.C. had asked to use the bathroom or while he had been in the bathroom.

26. The court first pointed out that, at the time of the arrest, C.C. had displayed clear symptoms of drug intoxication. While the court considered that that circumstance had not entailed an obligation to immediately hospitalise C.C., it ought to have put the officers on alert and induced them to supervise C.C. with special rigour, especially as it had been known to the officers that he was a drug addict, had been arrested in the context of an anti-drug trafficking operation, had been found in possession of drugs, and had displayed behaviour suggestive of a desire to self-harm.

27. The fact that C.C. had managed to ingest a large quantity of cocaine presupposed, in the court's view, that he had either already been in possession of the substance at the time of the arrest or that he had obtained it from a third party while in the booking room at the police headquarters.

28. The first scenario would suggest that the search conducted of C.C.'s person at the time of his arrest had not been conducted diligently. The court specified that, according to the seizure report drafted after C.C.'s death, a number of items had been seized from him, but there was no evidence of a search report on file. The judge considered that under the circumstances a search of C.C.'s person ought to have been a particularly careful one. The court rejected the defendant Ministry's argument that C.C. could have ingested the cocaine in a bag which later ruptured in his stomach, as the autopsy revealed no traces of such a container in the abdominal cavity. Moreover, the judge considered that the fact that a judge's authorisation was required in order to perform an intimate body search (*ispezione personale*) did not exempt the officers from requesting one if they deemed it necessary.

29. The second scenario would suggest that the supervision of C.C. had been inadequate. Regardless of whether C.C. had had the drug on his person or had obtained it from someone else at the police headquarters, the court considered that the fact remained that C.C. had managed to ingest a lethal dose of cocaine while in police custody, which meant that the personnel at the police headquarters, who were under a duty to supervise him, had failed to do so adequately. The judge also highlighted that the officer on duty at the police headquarters had admitted that he had not paid particular attention to C.C. as he had been busy with other activities. The duty officer had only paid attention to C.C. when he had been called by the latter, but by that time C.C. may have just taken the lethal dose, which would explain why he was retching and asking to go to the bathroom. Alternatively he might have taken it once inside the bathroom, but that possibility appeared less likely to the court, as the duty officer had kept C.C. within view through the open bathroom door, as demonstrated by the fact that the officer had seen him vomit and fall forward.

30. In conclusion, the first-instance court found the Ministry of the Interior responsible for C.C.'s death. It awarded EUR 100,000 in damages to C.C.'s mother and EUR 125,000 to his daughter. The court did not award damages to C.C.'s partner, Ms Ainis, as it found that she had failed to demonstrate the existence of a *more uxorio* relationship with him.

B. Proceedings in the Milan Court of Appeal

31. On an unspecified date the Ministry of the Interior appealed against the first-instance judgment to the Milan Court of Appeal. They argued that the search at the time of the arrest had been carried out diligently; that there was no evidence that someone had approached C.C. to hand him drugs; that C.C. must have ingested the cocaine, which had been hidden in a place where it would not be found during a search, by briefly putting his hand in front of his mouth in a manner which could not have raised the suspicions of the duty officer.

32. By a judgment of 12 March 2008, the Court of Appeal found in favour of the Ministry of the Interior and the first-instance judgment was reversed on grounds that can be summarised as follows.

33. The court first stated that there was no evidence that someone had approached C.C. at the police headquarters and handed him the cocaine. Thus, in the court's view he must have had the drugs somewhere on his person.

34. The court then considered that C.C. had already been displaying symptoms of drug intoxication at the time of his arrest, but on the basis of the expert reports dismissed the applicants' contention that he ought to have been given immediate medical attention.

35. The court took the view that C.C.'s request to use the bathroom was of crucial importance, namely because it was while in the bathroom that he must have taken the cocaine from somewhere on his person, swallowed it and subsequently died. In support of this conclusion, the court considered that C.C. had a criminal record related to drug trafficking and must have known that he would have been prosecuted and convicted if the cocaine were to be found on him.

36. The court rejected the applicants' argument to the effect that the second, lethal ingestion of cocaine had been made possible by the negligence of the officers who had custody of C.C. The court considered that the fact that the duty officer at the police headquarters had not given C.C. his undivided attention could not be considered as amounting to inadequate supervision. The court emphasised that C.C. had been handcuffed the entire time and, therefore, his movements had been limited. In the court's view, the only time C.C. had enjoyed some freedom of movement had been while he was in the bathroom. The court reiterated that this was where, in its view, the lethal ingestion had occurred, as with a free hand C.C. could have swallowed the cocaine previously hidden somewhere on his person.

37. The court also addressed the applicants' argument to the effect that the police officers had not sought judicial authorisation to perform an intimate body search (*ispezione personale*), which could have allowed them to find an additional quantity of cocaine in addition to the amount that had been seized. The court considered that such a search had not been necessary in the light of the fact that the officers had already seized an amount of cocaine which had been present in C.C.'s wallet. Moreover, it underlined that a personal search of the kind advocated by the applicants was an exceptional means of obtaining evidence which could be resorted to only when there were strong reasons to believe a suspect was concealing evidence on his person or inside his body.

38. The court further concluded, without providing any reasoning, that, although the immediate cause of C.C.'s death had been the ingestion of a large quantity of cocaine at a time close to his death, it had also been caused by the ingestion of cocaine at the time of the arrest and that "the fatal crisis

occurred suddenly also because it found fertile territory in a body which had been put under severe strain by a previous ingestion – or ingestions – of drugs”.

39. The court therefore concluded that it could not establish any civil liability on the part of the Ministry of the Interior.

C. Proceedings in the Court of Cassation

40. On an unspecified date the applicants appealed against the judgment of the Court of Appeal to the Court of Cassation.

41. By a judgment of 17 May 2011 the Court of Cassation upheld the Court of Appeal’s judgment. The Court reiterated that it could not revisit the reconstruction of the facts as set out by the Court of Appeal and found that the latter court had reached its conclusions in a logical and reasoned manner.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

42. The applicants complained that the authorities had failed to take adequate steps to protect the life of their family member, C.C., who had died of a drug overdose while being held in police custody. The applicants relied on Article 2 of the Convention which, in so far as relevant to the present case, reads as follows:

“1. Everyone’s right to life shall be protected by law. ...
...”

A. Admissibility

43. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicants

44. The applicants argued that once C.C. had been arrested and lost his freedom, the authorities were under a duty to protect his life, yet they had failed to do so. The applicants alleged a number of specific shortcomings on the part of the authorities.

45. First, they argued that the arresting officers had failed to provide C.C. with medical attention and to take him to a hospital despite the fact that he

had been feeling ill and had been experiencing panic attacks and convulsions, and had in all likelihood taken drugs. They added that C.C. had not received medical attention at any point during the time he had spent in custody at the Milan police headquarters.

46. Second, they submitted, employing somewhat inconsistent terminology, that C.C. had not been searched. They highlighted that there was no evidence of a search of C.C.'s person having been carried out, and that even in the domestic civil proceedings the Ministry of the Interior had failed to produce such evidence. They pointed out that such evidence, namely a search report, did exist with respect to another individual who had been arrested during the same police operation. They took the view that the Government's statement, based on arguments put forward by the Ministry of the Interior in the domestic civil proceedings, to the effect that C.C. must have hidden the drugs in intimate areas of his body was a mere assumption. In any event, the exceptional and invasive nature of an intimate body search in order to verify whether that was the case, and the need to seek authorisation in order to perform such a search, did not mean that the authorities were precluded from carrying it out.

47. Lastly, the applicants contended that once in custody at the police headquarters the authorities were under a duty to supervise him and had not adequately done so. They noted the duty officer's own admission to the effect that he had not consistently watched over C.C.

48. The applicants highlighted, as an overarching consideration, that the reconstruction of the events surrounding C.C.'s death had been based exclusively on elements contained in reports and documents written by the authorities and included in the prosecutor's inquiry, which they had not had the opportunity to challenge.

(b) The Government

49. The Government reiterated that the positive obligations under Article 2 of the Convention must be interpreted in such a way as not to impose on the authorities impossible or disproportionate burdens, taking into account the difficulties associated with police work in modern societies, the unpredictability of human behaviour and the operational decisions that must be made in terms of priorities and resources. In that regard, they referred to *Osman v. the United Kingdom* (28 October 1998, *Reports of Judgments and Decisions* 1998-VIII).

50. In the Government's view, it could not be said that the authorities did not do everything that could reasonably have been expected to prevent the materialisation of a certain and immediate risk to C.C.'s life which, *a priori*, could not be considered to have been foreseeable.

51. In connection with C.C.'s arrest, they noted that the arresting officers had taken measures to protect C.C. from self-harm and waited until he had felt better before taking him to the police station.

52. The Government further submitted that the seizure report drafted by the arresting officers stated that certain items had been seized from C.C., including 1.6 grams of cocaine in a folded banknote found in his wallet (see paragraph 17 above), thus demonstrating that at the moment of his arrest C.C. had been subjected to a search, which was also referred to in the domestic proceedings as a check of items worn or carried on the person. Moreover, the Government noted that, according to the forensic reports in the case file, the second ingestion of cocaine – which had proved fatal to C.C. – had occurred either shortly before he had asked to use the bathroom or at that very moment. They contended that drug traffickers made use of techniques to conceal small amounts of drugs on their person and it was not possible to attribute the fact of the ingestion of the second dose to a lack of surveillance. The Government thus concluded that the authorities had taken the steps that were reasonable under the circumstances, highlighting that recourse to intimate body searches must be made only in exceptional circumstances due to their invasive nature. In this connection, the Government further relied on the Court’s judgment in *Osman* (cited above, § 116), where among the considerations found to be relevant by the Court was the need to ensure that the police exercised their powers to control and prevent crime in a manner which fully respected the principle of due process and other guarantees which legitimately placed constraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.

2. *The Court’s assessment*

(a) **General principles**

53. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. 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 their jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

54. The Court further emphasises that persons in custody are in a vulnerable position and the authorities are under an obligation to account for their treatment. The Court has also held that the obligation to protect the health and well-being of persons in detention clearly encompasses an obligation to take reasonable measures to protect them from harming themselves (see *Mižigárová v. Slovakia*, no. 74832/01, § 89, 14 December 2010; *Eremiášová and Pechová v. the Czech Republic*,

no. 23944/04, § 115, 16 February 2012; and *Daraibou v. Croatia*, no. 84523/17, § 88, 17 January 2023). As a general rule, the mere fact that an individual has died 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 (see *Slimani v. France*, no. 57671/00, § 27, ECHR 2004-IX (extracts)). Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see, among others, *Renolde v. France*, no. 5608/05, § 82, ECHR 2008 (extracts), and *Shumkova v. Russia*, no. 9296/06, § 90, 14 February 2012).

55. A positive obligation will arise, the Court has held, where it has been established that the authorities knew or ought to have known, at the relevant time, of the existence of a real and immediate risk posed to the life of an identified individual by a third party or by himself or herself and that they failed to take measures within the scope of their powers, which, judged reasonably, might have been expected to avoid that risk (see *Keenan*, cited above, § 90, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-II; and, *mutatis mutandis*, *Osman*, cited above, § 116). However, the Court has held that in some contexts, such as detention in police stations, even where it is not established that the authorities knew or ought to have known about any such risk, there are certain basic precautions which police officers should be expected to take in all cases in order to minimise any potential risk to the health and well-being of the arrested person (see *Daraibou*, cited above, § 84; *Fanziyeva v. Russia*, no. 41675/08, § 48, 18 June 2015; *Eremiášová and Pechová*, cited above, § 110; and, *mutatis mutandis*, *Mižigárová*, cited above, § 89, and *P.H. v. Slovakia*, no. 37574/19, § 113, 8 September 2022).

56. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109–11, ECHR 2002-IV).

57. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject complaints about loss of life to the most careful scrutiny, taking into consideration all relevant circumstances (see, amongst many other authorities, *Kotilainen and Others v. Finland*, no. 62439/12, § 84, 17 September 2020).

(b) Application of the above principles to the present case

58. The Court considers at the outset that, although there is insufficient evidence to show that the authorities knew or ought to have known there was a real and immediate risk that C.C. would ingest a lethal dose of cocaine, given that he was taken into custody at a police station, the authorities were under a duty to take basic precautions to minimise any potential risks to his health and well-being. In addition, the Court observes that, in the present case, the following information was available to the authorities at the time C.C. was taken into custody at the Milan police headquarters. First, there is evidence that C.C. was feeling unwell at the time of the arrest and displayed behaviour conducive to self-harm (see paragraphs 5, 6 and 21 above). Second, he was described by arresting officers as being in an impaired psychophysical condition at the time of his arrest owing to the probable consumption of drugs (see paragraph 5 above). Third, a small amount of cocaine was seized by the arresting officers at the time of the arrest (see paragraph 17 above). Lastly, the Court notes the finding by the first-instance court to the effect that C.C. was known to the arresting officers as being a drug addict (see paragraph 26 above). The Court considers that the information just described and which was known to the authorities must have provided them with a sufficient indication that C.C. was in a more vulnerable position than the average person who is taken into custody, thus triggering an enhanced duty of care on their part. Accordingly, in those specific circumstances, the Court takes the view that it could reasonably be expected that, once the authorities had decided to place a person in C.C.'s state in their custody, they would adopt some additional basic precautions, in view of his condition, in order to protect his health and physical integrity.

59. The Court will proceed to examine the authorities' conduct against that background.

60. The Court observes at the outset that at no time between his arrest and his death was C.C. given any form of medical attention, despite statements by police officers to the effect that he not only appeared to be feeling unwell, but also displayed signs of drug intoxication at the time of his arrest. The Court is not persuaded by the Government's argument that, given the non-serious nature and short duration of the malaise, the decision of the authorities not to give C.C. medical attention could not be considered unreasonable. The Court notes that C.C. was described as being probably under the influence of drugs and as experiencing panic attacks and sudden mood swings (see paragraph 5 above), as well as, subsequently, sweating and dry heaving, with transparent liquid trickling from his mouth (see paragraph 6 above). In that light, the Court is not persuaded that law-enforcement officers possessing no medical expertise could have made a reliable assessment of C.C.'s need of assistance.

61. Regarding the alleged shortcomings in the check carried out on C.C.'s person, as submitted by the applicants, the Court notes the Government's

statement to the effect that C.C. had been subjected to a search, which was also referred to in the domestic proceedings as a check of his personal belongings, at the time of his arrest. In support of their statement, the Government relied on the seizure report by the arresting officers (see paragraph 17 above) which, however, does not describe the way in which the officers came to seize C.C.'s personal effects. In that regard, the Court notes that there is no record of a search report having been drafted with respect to C.C. Such a document, as noted by the applicants, is present in the case file with respect to another person arrested in the context of the same police operation (see paragraph 16 above). Be that as it may, even assuming that the seizure of the drugs at the time of C.C.'s arrest occurred following a check carried out on C.C.'s person, as stated by the Government, the Court notes that, in any event, there is no evidence in the case file that C.C. was checked upon his arrival at the Milan police headquarters or at any other time during the approximately two and a half hours he was detained there. The Government have not submitted any material capable of leading to a different conclusion.

62. The Court notes the Government's argument to the effect that to subject C.C. to an intimate body search, which in their view would not, in any event, have been warranted in the present case, could have raised issues under other Articles of the Convention due to its invasive nature. The Court reiterates that the very essence of the Convention is respect for human dignity and human freedom and that the authorities must discharge their duties in a manner compatible with the rights and freedoms of the individual concerned (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 112, 31 January 2019). The Court has also considered that measures which may impinge upon human dignity taken without adequate justification may give rise to issues under other Articles of the Convention, such as Article 3 and Article 8 (see, *mutatis mutandis*, *Fabris and Parziale v. Italy*, no. 41603/13, § 77, 19 March 2020). Indeed, the Court considers that it would be excessive to request that all arrested individuals be subjected, as a basic precaution and therefore a matter of routine, to intimate body searches in order to prevent tragic events like that in the instant case, and agrees that such a requirement could give rise to issues under other Articles of the Convention (see, as an example, *Van der Ven v. the Netherlands*, no. 50901/99, §§ 61-62, ECHR 2003-II, where routine and long-term strip searches without convincing justification amounted to a violation of Article 3). At the same time, such a conclusion cannot be interpreted as dispensing the authorities from taking any steps at all to check C.C.'s person for the presence of dangerous or prohibited items, including drugs, upon his arrival at the Milan police headquarters, especially in the light of the information available (see paragraph 58 above) and the fact that the authorities had not provided C.C. with medical attention, despite their suspicion that he was under the influence of drugs. The Court

finds that the Government have not put forward any arguments or evidence to allow it to conclude that such steps were taken in the instant case.

63. Turning to C.C.'s supervision while in custody and the issue of its alleged inadequacy, in particular with regard to the duty officer's own admissions as to its discontinuous nature, the Court notes at the outset that the events that unfolded at the police headquarters were within the exclusive knowledge of the authorities. It further notes that the only documents in the case file which relate to the events at the police headquarters are a report and a statement both written by the officer who was in charge of the holding room on the night of the events in question (see paragraphs 8 and 9 above). In the latter document, which is a statement given to the prosecutor more than one year after the events had taken place, the officer stated that he had not given C.C. his continuous attention although he added that, according to policy, there ought to have been an officer present at all times (see paragraph 9 above). There is no information in the case file as to whether this policy was actually complied with at the time of the impugned events. There is, moreover, no evidence that the three officers who were mentioned in the report as being on duty at the relevant time, but whom the reporting officer was unable to identify, were interviewed by the prosecutor.

64. The Court is mindful that positive obligations must be interpreted in a way that does not impose a disproportionate burden on the authorities, and indeed it does not wish to suggest that C.C. should have been given the undivided attention of an individual officer throughout his custody. That said, bearing in mind the elements which were within the knowledge of the authorities (see paragraph 58 above), as well as the fact that C.C. had not been given any medical attention and his person had not been checked upon his arrival at the police headquarters, the authorities should have shown increased vigilance in his supervision. The Court finds that the Government have not provided satisfactory and convincing arguments or evidence to counter the applicants' allegations, supported by prima facie evidence, to the effect that C.C. had not been adequately supervised during his time in custody.

65. Against that background, the Court concludes that the Government have not convincingly demonstrated that the authorities provided C.C. with sufficient and reasonable protection of his life as required by Article 2 of the Convention. There has accordingly been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

67. The first applicant claimed 142,774.50 euros (EUR) in respect of pecuniary damage and EUR 71,387.25 in respect of non-pecuniary damage, the second applicant claimed EUR 479,748.98 in respect of pecuniary damage and EUR 132,000 in respect of non-pecuniary damage, and the third applicant left the amount to be awarded to the Court's discretion.

68. The Government contested those amounts. In particular, they argued that the second and third applicants had been awarded damages by the Milan District Court, and despite the fact that the first-instance judgment had been overturned, they had not returned the award.

69. The Court finds that the applicants have not sufficiently substantiated their claim for pecuniary damage. It therefore makes no award in that respect. At the same time, it considers that they must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicants EUR 30,000, jointly, in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

70. The applicants, who were granted legal aid in the proceedings before the Court, have not made any additional claims for costs and expenses in that respect.

71. As regards costs and expenses in the domestic proceedings, the first applicant submitted invoices for legal costs incurred in connection with the proceedings in the Milan District Court for a total of EUR 16,530.64 and, on her own behalf and on behalf of the second applicant, for a total of EUR 34,971.75 covering legal costs for the proceedings in the Milan Court of Appeal. The third applicant submitted invoices for a total of EUR 44,180.64 in connection with costs incurred in connection with the first and second instance proceedings.

72. The Government considered those amounts to be excessive.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000 to the applicants jointly in respect of the costs and expenses incurred in the domestic proceedings, plus any tax that may be chargeable to the applicants on that amount.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by 6 votes to 1, that there has been a violation of Article 2 of the Convention;
3. *Holds*, by 6 votes to 1,
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President

AINIS AND OTHERS v. ITALY JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Bošnjak is annexed to this judgment.

M.B.
R.D.

DISSENTING OPINION OF JUDGE BOŠNJAK

1. I respectfully disagree with the majority in their finding that there has been a violation of Article 2 of the Convention in the present case on account of allegedly insufficient protection of the life of the applicants' relative, C.C., during his custody.

2. It was undisputed between the parties that the death of C.C. had not resulted from police violence or from the commission of any other act by the State authorities. As had been established in the domestic proceedings, he had died from acute cocaine intoxication, since he had ingested a lethal dose very shortly before his death, while he had been in the bathroom. According to the findings of the Milan Court of Appeal, it was at that time that C.C. had been able to use his free hand to swallow the cocaine previously hidden somewhere on his person (see paragraph 36 of the judgment).

3. The applicants asserted that C.C.'s death had been caused by a number of omissions on the part of the authorities. Firstly, instead of taking him into custody, the arresting officers should have taken him to a hospital. In any event, C.C. had not received adequate medical attention while in custody. Secondly, the authorities should have searched him, which would have enabled them to find and seize the drugs which he had later ingested. Thirdly, C.C. had not been adequately supervised by police officers while in detention.

4. The majority in the Chamber agree, albeit cautiously, with the above. They observe that C.C. was not given any form of medical attention. Furthermore, they note that C.C.'s person was not checked for the presence of drugs upon his arrival at the Milan police headquarters. Finally, the majority point out that the police officers in charge failed to pay continuous attention to C.C., despite the fact that there ought to have been an officer present at all times (see paragraphs 60-63 of the judgment).

5. While the events of the present case are undoubtedly tragic, they should not overshadow the need for a thorough legal analysis of the applicants' complaint. To my understanding, the Court has yet to rule on the question of when an alleged omission by State authorities constitutes a failure to comply with the High Contracting Party's positive obligation to protect a person's right to life and should therefore lead to a finding of a violation of Article 2 of the Convention. To my regret, the Chamber in this case has missed an opportunity to do so.

6. The purpose of this dissenting opinion is not to offer a fully fledged set of principles and methodology for examining complaints like the one in the present case. Nevertheless, I wish to underscore that there is a long and winding legal path from alleging an omission to concluding that such an omission has indeed occurred and was the cause of the tragic outcome for which the respondent State should be held accountable. At the very least what should be established is (a) whether the State authorities had a duty to act in a specific way in the circumstances under review, (b) whether the State

authorities failed to act in accordance with such a duty and (c) whether, in the event that the State authorities had fulfilled that duty, the death would not have occurred.

7. Bearing the above in mind, I find the majority's position unconvincing. Firstly, with regard to the alleged lack of medical attention, I note that the expert reports which were accepted by the Milan Court of Appeal dismissed the applicants' contention that C.C.'s medical condition required immediate medical attention (see paragraph 34 of the judgment). I therefore find the majority's position in paragraph 60 of the judgment to be inconsistent with the domestic findings of fact, with no reasons given for disregarding those findings. Above all, the finding by the Milan Court of Appeal does not support the applicants' allegation that there had been a duty to hospitalise C.C. (instead of taking him into police custody) or that at the very least he should have received medical attention while in police custody. Even assuming that there had been a duty to provide medical assistance during custody in the present case, it is difficult to see how such assistance *per se* could have prevented C.C. from ingesting the lethal dose of cocaine which he had kept hidden and which, according to the findings of the domestic courts, he had consumed while in the bathroom.

8. Secondly, with regard to the alleged lack of a search, it is difficult to understand what kind of search the applicants or the majority are referring to. Putting this lack of clarity aside, it appears that Italian law does not impose any duty to search an arrested person. Furthermore, one may reasonably assume that C.C. was at least frisked, since, *inter alia*, a folded banknote containing a substance resembling cocaine was taken from his wallet, which was located in the back pocket of his trousers. Such a frisk or a "check of items worn or carried on the person" (see paragraph 52) was obviously insufficient to detect another dose of cocaine which he had most likely kept hidden in a way that only an intimate body search could have revealed. But in my reading, the majority expressly (and rightly) reject the idea that there is a duty to subject all arrested individuals, as a basic precaution and therefore as a matter of routine, to intimate body searches in order to prevent tragic events like the one in the instant case, as such intimate body searches could give rise to issues under other Articles of the Convention (see paragraph 62 of the judgment). Instead, the majority emphasise the failure to check C.C. for the presence of drugs upon his arrival at the Milan police headquarters, but it is difficult to see how such a "check" could have revealed more than the frisk, which was performed at an earlier point, immediately after his arrest, and during which a substance resembling cocaine was in any event found. In brief, I do not see any legal duty to search C.C. that the authorities failed to fulfil in the present case.

9. Finally, the majority doubt whether C.C. was continuously monitored and emphasise the statement of the officer in charge of the holding room to the effect that one of them (i.e. the officers) must always be present on the

control post. While there may well be a duty for an officer to be present on the control post monitoring the holding room at all times and this duty may not have been fully complied with, I struggle to see how this is relevant to the present case. In particular, in line with the Court of Appeal's factual finding, C.C. most likely ingested the lethal dose of cocaine in the bathroom and not in the holding room, where both of his hands were handcuffed. Therefore, in line with criterion (c) outlined in paragraph 6 of this dissenting opinion, it is impossible to conclude that had an officer been constantly present on the control post, C.C. could not have consumed the hidden drugs and his death would therefore not have occurred.

10. On the basis of the above, with all my profound respect for the applicants who lost a close relative, I cannot conclude that there are convincing arguments for holding the respondent State accountable for the death of C.C.

APPENDIX

List of applicants:

No.	Applicant's name	Year of birth	Nationality	Place of residence
1.	Rosalba AINIS	1974	Italian	Milan
2.	Nancy CALOGERO	1994	Italian	Milan
3.	Giuseppa DAMMICELA	1946	Italian	Milan