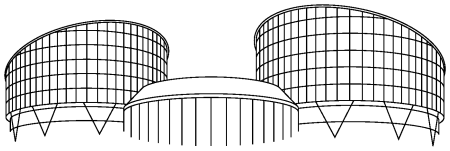

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TEKIN AND ARSLAN v. BELGIUM

(Application no. 37795/13)

JUDGMENT
(Extract)

STRASBOURG

5 September 2017

FINAL

05/12/2017

This judgment is final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tekin and Arslan v. Belgium,

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

Robert Spano, *President,*
Julia Laffranque,
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 4 July 2017,

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

PROCEDURE

1. The case originated in an application (no. 37795/13) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Belgian nationals, who also hold Turkish nationality, Mr Ilhamı Tekin and Mrs Döne Arslan ("the applicants"), on 28 May 2013.

2. The applicants were represented by Mrs S. Karsikaya and Mr Z Chiahaoui, lawyers practising in Brussels. The Belgian Government ("the Government") were represented by their Agent, Mrs I. Niedlispacher, Federal Justice Department.

3. The applicants alleged, in particular, that the death of their son, Michael Tekin, during his detention in Jamioulx Prison amounted to a violation of his right to life as secured under Article 2 of the Convention.

4. On 21 October 2015 the application was communicated to the Government. The applicant and the respondent Government submitted written observations (Rule 54 § 2 of the Rules of Court). The Turkish Government did not avail themselves of their right to intervene in the proceedings (Article 36 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1961 and 1960 respectively and live in Charleroi and Antwerp.

A. Background to the case

6. The applicants are the parents of Michael Tekin, who was born in 1978.

7. The latter was detained in the psychiatric wing of Jamioulx Prison on two occasions, from 1 February 2007 to 11 July 2007 and from 17 May 2008 to 7 July 2008, that is to say for a total period of about seven months. On both occasions he benefited from discharges on probation.

8. On 19 January 2009 Charleroi Criminal Court, sitting in private session, once again ordered the detention of the applicants' son under the 9 April 1930 Social Protection in respect of Mental Defectives, Habitual Offenders and Specific Sexual Offenders Act as amended by act of 1 July 1964 ("the Social Protection Act"). During his detention in the psychiatric wing of Jamioulx Prison he was the subject of several disciplinary measures owing to his aggressive attitude to staff and other detainees.

9. On 3 July 2009 the Jamioulx Prison's Social Protection Commission ("the CDS") ordered his discharge on probation and made him subject to medico-social supervision by attaching a number de conditions to his provisional discharge.

10. By order of 7 August 2009, owing to his non-compliance with his conditions of discharge, the Public Prosecutor with the Charleroi Court of First Instance decided to return the applicants' son to the psychiatric wing of Jamioulx Prison. Michael Tekin was arrested on that same date and detained for insulting and threatening two police officers.

11. On his arrival at the police station later the same day, he was examined by a general practitioner before being transferred in the evening to Jamioulx Prison, where he was examined by Dr S., who prescribed a sedative and a sleeping tablet.

12. The applicants' son was then placed in an individual cell in an ordinary section of Jamioulx Prison.

B. The course of events during the morning of 8 August 2009

13. The course of events as set out below was established following the judicial investigation and proceedings and is undisputed by the parties.

14. At around 9.30 a.m. on 8 August 2009 Michael Tekin was presented before the Deputy Director of Jamioulx Prison for his interview as a new arrival. After the interview, the Deputy Director decided to implement special security measures for a week. Those measures were adopted owing to Michael Tekin's nervous, agitated state and because he considered his detention to be arbitrary and was demanding his release. The following special security measures were ordered: placement in an individual cell, individual access to the prison yard, receiving visits in a booth rather than in the collective visiting area, use of plastic knives and forks, opening of the cell only by heads of section accompanied by two prison officers, accompaniment by a member of staff during the detainee's movements and implementation of special surveillance involving checks on the cell by a prison officer every fifteen minutes to ensure that nothing abnormal was happening.

15. Prison officer R., who had accompanied Michael Tekin since his return to prison, was instructed to inform him of those special security measures in his capacity as head of section acting as a prison assistant. He was accompanied by two other officers, L. and D.

16. On their arrival in the cell at about 11.30 a.m., Michael Tekin was just finishing his lunch. R. read out the special security measures ordered by the Director. According to R. – as confirmed by L. and D. – Michael Tekin provoked him by deliberately sneezing (or "spitting", according to the Government) on him. When R. told the detainee to stop his provocative behaviour, otherwise he would be moved to an isolation cell, Michael Tekin moved up to him and placed his head so close to R.'s that all three officers thought that they was about to be attacked.

17. In view of Michael Tekin's reaction and his previous history, R. decided to place him in an isolation cell. He seized Michael Tekin by the scruff of his neck and D. grabbed his shoulder in order to whisk him out of the cell.

18. R. explained that owing to the exiguity of the cell, he was unable to maintain his grip on the back of the detainee's neck and he decided to resort to a different stranglehold technique, which involved an "armlock" around the detainee's neck, while forcing him down to the ground. When Michael Tekin was face-down on the floor, he was still immobilised in an armlock by R., who was also leaning his full weight on the upper part of his back. Michael Tekin had allegedly then complained that he could not get any air and was suffocating. L. blocked the detainee's right arm; his left arm was already blocked under L's body. Finally, D. squatted on top of the detainee.

19. Reinforcements were called in, and several more officers arrived on the spot. A total of about ten officers were now present. Some of them helped with keeping Michael Tekin under control while others remained passive. Michael Tekin was handcuffed and shackles were placed on his ankles.

20. He was then lifted to his feet to be transported by two officers, including D., to the isolation cell. The officers' witness statements diverge on Michael Tekin's ability to talk and breathe on his way to the cell. However, they all agree that they had to drag him along, supporting him under the shoulders and then carrying him, and that his head was hanging down. The officers noted that he had urinated on himself. They had to carry him down twenty or so steps to reach the isolation cell.

21. On arrival at the door to the isolation cell, the officers placed Michael Tekin face down on the floor owing to the narrowness of the door, and dragged him inside. Once they were inside the isolation cell they turned him over, only to note that his face was cyanotic.

22. At about 11.50 a.m. the prison nurse received a telephone call to inform her that Michael Tekin was unconscious. She alerted the duty doctor and prepared the medical equipment.

23. When the nurse and the duty doctor arrived at the inner security gate of the prison, an officer, who had been a witness to the events, informed them that the "service 100" (the medical emergency service) and the SMUR (emergency ambulance service) had been called at about 11.54 a.m. A transcription of the call is included in the case file.

24. Pending the arrival of those services, the duty doctor and the prison nurse began a cardiac massage at 12 noon, having noted that Michael Tekin was not breathing and had no pulse.

25. The "service 100" paramedics arrived at 12.15 p.m. However, they noted that the SMUR had not been contacted, and decided to request its emergency intervention. A "service 100" nurse subsequently stated that they had been called for a straightforward assault and had therefore not been informed of the gravity of the situation.

26. The SMUR arrived at 12.35 p.m. and Michael Tekin was immediately intubated and put on a drip. However, the doctor could only note that in the absence of electrical activity it was pointless to continue the attempts at resuscitation.

27. Michael Tekin's death was recorded at 12.50 p.m.

C. Inquiries before and after the instigation of the judicial investigation

28. An inquiry was immediately instigated *ex officio*. The forensic pathologist instructed by the Public Prosecutor travelled to the scene of the events at 2.20 p.m. on the same day and noted very extensive cyanosis of the face and the neck region, and the presence of food products in the region of the nostrils and mouth.

29. All the main witnesses were heard on the same day or in the ensuing days.

30. At his first hearing on 8 August 2009, R. stated the following, as regards the prison officers' intervention:

"Michael Tekin arrived in prison yesterday in a state of high nervous tension. In fact the police officers accompanying him described him as very dangerous.

On arrival Michael Tekin was very worked up against the police. We took over and he calmed down.

We knew Michael Tekin from his previous detention, and so, for security reasons we placed him in an individual cell in the 9th section, cell no. 9229. According to my information he didn't cause any trouble during the night.

This morning Michael Tekin went to see Director [H.] for the 'incomer's report', as for every new arrival.

I was present during this interview in the office used for that purpose.

Michael Tekin started shouted about the police officers, calling them disabled and claiming it was their fault he was there.

The Director explained that he had to visit the CDS (the Social Protection Commission). Michael Tekin replied that he did not have to wait around and that he was going to fetch his keys in the cloakroom and leave. When we told him that was impossible, he threatened us with the words 'you'll get what's coming to you'.

Knowing that Michael Tekin had a capricious and unforeseeable character and had already attacked officers in the past, the Director imposed special measures on him such as an individual cell, opening the cell door by several officers, using plastic knives and forks, etc.

He was taken back to his cell by a number of officers, without incident.

Where special measures are ordered, they must be entered in writing and signed by the detainee.

At about 11.45 a.m. I went to his cell accompanied by [L., D. and C.]. Michael Tekin was eating when we went in.

When I explained the measures to him, Michael Tekin got up and pretended to sneeze, spitting some of his dinner (vol-au-vent) in my face. I stepped back. Michael Tekin moved towards me and started sneezing again.

I immediately told him to calm down and to spit somewhere else. He moved towards me again. I told him that if he did not calm down he would be moved to the isolation cell. He came right up to me, with his head against mine, and said 'I'd like to see you doing that'. I then grabbed him by the neck in order to force him to the ground and take him to the isolation cell. I should point out that I got him in an armlock before pushing him off balance.

My colleagues were holding him by the arms and legs. We called for reinforcements. While I was holding him I spoke to him and he answered 'I'm choking'. I relaxed my hold and told him that if he could talk he was not choking.

Michael Tekin was gesticulating with his arms and legs. I would specify that I fell to the ground with Michael Tekin and he was on his side. In the end I was no longer holding him around the neck but exerting pressure on his head.

The reinforcements arrived and we managed to handcuff him. We lifted him to his feet in order to take him to the isolation cell. The reinforcements took charge of

Michael Tekin, and I started following them up near the rotunda after I'd got my breath back. Michael Tekin was no longer protesting, relaxing to the extent that the officers had to carry him. Arriving at the cell I realised that Michael Tekin was not pretending, as his face was turning blue. We called the infirmary and also the SMUR. Dr [L.] was at the prison, and Tekin was given first aid, including artificial respiration, for at least 15 minutes. He was also defibrillated. I stayed beside the doctor the whole time. The ambulance arrived and I stayed in the cell to help them. When the SMUR arrived I left the cell and waited in the corridor. From what I heard it was already too late. They hadn't managed to resuscitate him."

31. Later on the same day R. was questioned again, and he added the following statement:

"I would point out that during my explanation of the reasons for the [special security] measures I noticed the expression in Michael Tekin's eyes changing and becoming more threatening, such that I was already on my guard when he got up.

When he was there with his forehead pressed against mine, I moved aside and got him in an armlock, that is I placed my right arm around his neck and fell to the ground with him. You ask me if I exerted pressure on his neck, and I would reply that I did not press on the front of his throat. Once we were on the floor on the corridor side of the cell door I reduced the pressure. When he started to struggle again I exerted a small amount of pressure and slackened it immediately. In any case he was talking to me, as I mentioned in my first statement.

...

We have not been trained in restraining detainees in critical situations. Following the events at Lantin we were given 'conflict management training', learning how to manage a conflict by talking, and especially how to prevent things getting out of hand. My answer to your question is that in the event of an attack by a detainee we just have to do our best to restrain him."

32. Officer D. made the following statement:

"We pinned Michael Tekin to the ground. ... I didn't hear Michael Tekin speaking, but I think he was trying to talk but nothing came out. ... On the way to the isolation cell I didn't hear him talking or complaining. ... I think he was still alive because several times I felt resistance in his arm."

33. Dr B. carried out the autopsy the next day, on 9 August 2009. The autopsy report of 14 August 2009 concluded that the manoeuvres on his neck had caused injuries deep enough to fracture the right upper horn of the thyroid cartilage and that those injuries had been prolonged, because symptoms of asphyxiation had been observed. The report added that the loss of urine reported by the investigators pointed to the moment when the loss of consciousness became so deep as to inhibit the sphincter reflex mechanism. Such an inhibition could be observed, for instance, during the unconscious phases occurring in epileptic episodes. As regards the "armlock" restraint technique, the autopsy report stated:

"During the compression exerted by a forearm (acting as a lever, with the person standing behind the victim), the lethal mechanism is virtually identical to traditional manual strangulation.

Such particularly severe compression causes a bilateral vascular obstruction and a flattening of the upper respiratory channels against the cervical vertebrae."

34. An investigation was instigated on 10 August 2009 against persons unknown on charges of grievous bodily harm having led to unintentional death. The applicants applied to join the proceedings as civil parties.

35. The reconstruction of the events led Dr B., who had carried out the autopsy, to the conclusion that the cervical manoeuvres had been caused by the armlock applied by R., while the weight applied by L. on Michael Tekin's thorax had had a negative effect on the latter's respiratory mechanism and been conducive to asphyxia, his respiration being further hindered by the manner in which he had been transported to the isolation cell.

36. By judgment of 20 March 2012 the Indictments Division of the Mons Court of Appeal committed the three accused, that is to say R., L. and D., for trial before the Charleroi Criminal Court on charges of grievous bodily harm having led to unintentional death.

D. The Criminal Court's judgment

37. At the 24 October 2012 hearing before the Charleroi Criminal Court, Dr B. submitted that it was not impossible that the detainee's fall to the ground had produced the force leading to the fracture of the right upper horn of the thyroid cartilage and that it had been quite possible that the armlock had on its own been sufficient to bring about the fatal outcome. He was, however, unable to affirm that if the strangulation had ceased after the thyroid cartilage had been broken Michael Tekin would have been able to breathe again normally and survive, since the outcome would have depended on the injuries sustained previously. Furthermore, Dr B. took the view that the compression of the thorax and the fact that Tekin had been carried to the isolation cell were not, in themselves, sufficient to have caused his death. Finally, he confirmed that the version of events provided by R. during the reconstruction had been compatible with the medical findings.

38. On 28 November 2012 the Charleroi Criminal Court acquitted R. The court held that R.'s intervention had indisputably been a matter of self-defence, which ruled out any responsibility on his part. Having regard to Michael Tekin's personality and his nervous, agitated state, R. could reasonably have feared an imminent serious attack against L. and himself. The accused's reaction had therefore been absolutely necessary. The court accordingly considered that R. had react proportionately to the attack by applying a hold which he had learnt during training in the management of that kind of incident, and in respect of which nothing in the case file suggested that it had been wrongly executed. Subsequently, the continuation of the armlock had been equally justified and proportional in view of the

fact that Michael Tekin had continued to struggle. According to the court, there was no objective evidence to suggest that the accused's actions had been dangerous, or that R. had used force not strictly necessary for the execution of the restraint technique. There was no indication that R. had known, or should have known, about the risk of fracture of the thyroid cartilage since that risk was not mentioned in the training programmes included in the case file; nor could he have been aware that in maintaining the hold he had been exacerbating the decrease in the oxygenation of Michael Tekin's blood, particularly since R. had not known what his colleagues were doing. Moreover, the court considered that R. must not have been alarmed by the detainee's reactions since he had continued to struggle and R. had regularly relaxed his grip to let him breathe. There was no evidence that the accused had noticed any change in the detainee's voice resulting from the fracture of the thyroid cartilage, nor, in any event, that they could have connected that putative change with any risk to Michael Tekin's physical integrity.

L. and D. were also acquitted under the rules on co-perpetration.

Moreover, the Criminal Court relinquished jurisdiction for determining the applications for civil-party status owing to the accused's acquittal.

39. The applicants, as civil parties, appealed against the judgment as regards its civil-law provisions. The prosecution did not follow suit. The appeal has been pending before the Mons Court of Appeal since December 2012. The Government submitted that the applicants had not requested notification of the hearing such as to facilitate adjudication of the civil-law interests.

E. Proceedings held after the lodging of the application

40. On 28 July 2014 the applicants lodged a criminal complaint, together with an application to join the proceedings as civil parties, against the three acquitted prison officers and three of their colleagues for failure to assist a person in danger.

On 9 May 2016 the Charleroi Court of First Instance, sitting in private session, declared inadmissible the application to join the proceedings as civil parties to the extent that it concerned the three prison officers acquitted by judgment of the Criminal Court on 28 November 2012 on the grounds that the facts were identical to those of the first set of criminal proceedings, and gave a discontinuance decision in respect of the other three accused on the grounds that the investigation had not uncovered sufficient evidence against them.

41. On 1 August 2014 the applicants further filed an action for damages before the Brussels Court of First Instance seeking a finding that the Belgian State had been responsible for Michael Tekin's death and for the

suffering which he had sustained owing to his placement in an ordinary cell instead of in the psychiatric wing of the Jamioulx Prison.

By judgment of 19 February 2016 the Brussels Court of First Instance declared the claim inadmissible as being time-barred.

42. Furthermore, the Government submitted that the applicants had complained about the same facts in Turkey, Michael Tekin's country of origin, and that that complaint had given rise to letters rogatory addressed to the Belgian Public Prosecutor's Office by the Turkish public prosecutor of the town of Sivas. On 6 May 2015 the Belgian authorities had allegedly sent a scanned copy of the criminal case file to the Turkish judicial authorities.

The applicants, however, denied ever having brought proceedings in Turkey.

...

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

73. The applicants complained that the force used by the prison officers to immobilise their son had been neither absolutely necessary nor strictly proportionate for the purposes of Article 2 of the Convention, and that the State had failed in its positive obligation under that provision to protect their son's life by administering treatment capable of averting a fatal outcome. Article 2 provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a crime for which this penalty is provided for by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

74. The Government contested that argument.

A. The parties' submissions

1. The applicants

75. The applicants considered that the use of force by the prison officers to restrain their son had been neither necessary nor strictly proportionate to the latter's conduct. They pointed out that regard should be had not only to the actions of the prison officers but also to all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 150, Series A no. 324). In that connection, they argued that in the present case regard should be had to their son's particular vulnerability in the context of his detention and to his mental condition, of which the officers had been aware. They alleged that the methods used by the officers to restrain Michael Tekin had been completely disproportionate to his behaviour and that dialogue had at no stage been considered. In view of the officers' knowledge of Michael Tekin's psychiatric problems, they should have prepared their intervention in anticipation of a probable negative reaction on his part to the notification of new stricter security measures. In the present case, the officers should have treated their son as if he had been a person in full possession of his mental faculties. In the absence of appropriate training, they had not known how to react to Michael Tekin.

76. Furthermore, Michael Tekin had been pinned to the ground by more than six officers, in handcuffs and leg shackles, which, in the applicants' view, had been unnecessary, constituting an exceptional measure in the prison context. So the choice of the operational method, that is to say an armlock, had been neither appropriate nor proportionate, especially after Michael Tekin had been immobilised on the floor. The applicants held that it was impossible to affirm that the risk of asphyxia, and therefore the lethal risk, of such an immobilisation technique had been unknown to a prison officer with fourteen years' professional experience in the prison environment. Moreover, the applicants submitted that the reports of the hearings of the prison officers clearly showed that they had had very incomplete training and had an inadequate command of the armlock technique, which was dangerous because it focused on the throat, a particularly sensitive area of the body.

77. The applicants also considered that the Belgian State had failed in its obligation to protect the life of their son, who was detained in Jamioulx Prison, owing to the negligence shown in both the methods used for restraining Michael Tekin and the request for intervention by a medical team. The medical treatment had not been carefully administered so as to prevent a fatal outcome. Firstly, that negligence stemmed from the fact that the prison officers had not verified Michael Tekin's state of health once he had been forced to the floor and restrained and before transporting him to

the isolation cell. Secondly, the lack of coordination between the different persons involved had led to the late arrival of the SMUR, that is to say the only professionals who could have helped the "service 100" paramedics by means of their resuscitation equipment and the intervention of their doctor.

2. The Government

78. The Government considered that the investigation conducted after Michael Tekin's death had been effective: it had been prompt and subject to a judicial procedure that had been conducted properly and normally. The Criminal Court had delivered a reasoned judgment finding that the prison officers in question had acted in self-defence, and had acquitted them. The Government therefore argued that it would be unfair to repeat the proceedings against the prison officers before the Court, which could not substitute its views for those of the Belgian judiciary.

79. They stated that the use of force had been necessitated by Michael Tekin's provocative and threatening attitude and had been proportionate to the force used by the latter in resisting. The Government considered that the applicants' alternative proposals were not based on any expert knowledge or any objective evidence showing that the prison officers could have acted differently in the circumstances.

The Government therefore considered that they had taken the requisite action to ensure compliance with Article 2 of the Convention by organising training for its prison officers. In the instant case, R. had correctly implemented the immobilisation technique which he had been taught, and he had taken into account the only risk about which he had learnt, that is to say lack of oxygenation and fainting, loosening his armlock several times. The prison authorities had not known of the lethal risk of the technique used. In view of that risk, prison officers would no longer be using the armlock in question.

80. As regards the positive obligation to protect the right to life, the Government emphasised that the prison officers had been unable to see Michael Tekin's face owing to the manner of his transport, and that it was therefore logical that they had not noticed the colour of his face until they had turned him over in the isolation cell. The officers who had transported Michael Tekin could therefore not be accused of negligence. Finally, as regards the medical treatment administered to the latter, the Government considered that the prison medical service and the ambulance service had been swiftly alerted and had arrived as quickly as possible with all the requisite equipment, such that they could not be accused of any negligence. Furthermore, the delay in calling the SMUR had not been a decisive factor in Michael Tekin's death.

B. The Court's assessment

81. First and foremost, the Court reiterates that when there have been criminal proceedings in the domestic courts concerning those same allegations of violations of Articles 2 and 3 of the Convention, it must be borne in mind that criminal liability is distinct from the State's responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions which are to be interpreted in the light of the object and purpose of the Convention, taking into account any relevant rules or principles of international law. The responsibility of a State under the Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense al (see *Giuliani and Gaggio*, cited above, § 182, and *Maslova*, cited above, § 70).

1. Applicable general principles

82. In its judgment in the case of *Salman v. Turkey* ([GC], no. 21986/93, ECHR 2000-VII), the Court held as follows:

> "97. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see the *McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-47).
>
> 98. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor, however, to be taken into account in assessing its necessity. Any use of force must be no more than 'absolutely necessary' for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is 'necessary in a democratic society' under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (see the *McCann and Others* judgment cited above, p. 46, §§ 148-49)."

83. Having regard to the importance of the protection of Article 2, la Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances (see

McCann and Others, cited above, § 150). Persons in custody are in a vulnerable position and the authorities are under a duty to protect them (*Salman*, cited above, § 99). Consequently, where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies (see *Salman*, cited above, § 99).

84. Moreover, the primary duty on the State to secure the right to life entails putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI). National law governing policing operations must provide a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident (see *Makaratzis*, cited above, § 58).

85. Furthermore, the Court reiterates that the authorities have an obligation to protect the health of persons who are in detention or police custody or who, as in the case of M.B, have just been arrested and whose relationship with the State authorities is therefore one of dependence. That entails providing prompt medical care where the person's state of health so requires in order to prevent a fatal outcome (see, *mutatis mutandis*, *Anguelova v. Bulgaria*, no. 38361/97, §§ 125-131, ECHR 2002-IV, and *Scavuzzo-Hager and Others*, cited above, § 65). It should be remembered that the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. In other words, only the fact that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life can constitute a possible violation of a positive obligation on the part of those authorities (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Case-Law Reports* 1998-VIII, and *Scavuzzo-Hager and Others*, cited above, § 66).

2. Application to the present case

86. The Court first of all notes that the investigation conducted by the Belgian authorities established that Michael Tekin's death in custody at Jamioulx Prison was directly linked to the "armlock" manoeuvre implemented by R. with the help of L. and D. (see paragraph 35 above). That fact is undisputed by the parties.

87. The Court agrees with the Government that the investigation was carried out with the thoroughness and expedition required under Article 2 of the Convention. The investigation was instigated *ex officio* by the Public

Prosecutor on the day of Michael Tekin's death, and a whole series of investigative duties were carried out over the ensuing days. The criminal case file contains, in particular, the deceased's autopsy and medical reports, the minutes of the hearings of all the persons present at the material time and a report of the reconstruction of events. The investigation enabled the Charleroi Criminal Court to establish the facts and identify the prison officers primarily involved in restraining the detainee. This was not disputed by the applicants, who made no complaint under the procedural limb of Article 2 of the Convention.

88. On the other hand, the applicants alleged that in the instant case the use of force had not been absolutely necessary or proportionate to their son's attitude. The Court notes that the three officers who were involved in restraining Michael Tekin were prosecuted for grievous bodily harm having led to unintentional death. The proceedings on the merits had, however, led to the acquittal of the three prison officers, the Charleroi Criminal Court having found that they had acted in self-defence, which had ruled out any criminal responsibility on their part.

89. The Court reiterates that under Article 19 of the Convention it has the task of ensuring the observance of the engagements undertaken by the High Contracting Parties under the Convention. It is not the Court's task to substitute itself for the domestic courts as regards the assessment of the facts and their legal classification, provided that these are based on a reasonable assessment of the evidence (see *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 51, ECHR 2015). In particular, its function is not to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Lhermitte v. Belgium* [GC], no. 34238/09, § 83, ECHR 2016, and, for a case concerning Article 2 of the Convention, *Papapetrou and Others v. Greece*, no. 17380/09, § 63, 12 July 2011).

90. In the present case, therefore, the Court must confine itself to assessing whether the examination conducted by the Charleroi Criminal Court properly established that the intervention by the prison officers to restrain the applicants' son was absolutely necessary, whether the authorities exercised the proper vigilance to ensure that any danger to Michael Tekin's life was kept to a minimum, and whether the authorities had been negligent in their choice of measures to implement (see, *mutatis mutandis*, *Saoud v. France*, no. 9375/02, § 90, 9 October 2007).

91. The three prison officers in question explained that they had tried to restrain Michael Tekin for fear of being attacked by him and with a view to moving him to an isolation cell. The Court therefore accepts that their use of force in the instant case was covered by the aim mentioned in Article 2 § 2 (a) of the Convention, that is to say "in defence of any person from unlawful violence".

a) Relevant legal and administrative framework

92. As regards the domestic legal framework for the use of coercive force by prison officers against detainees ..., the Court observes that, pursuant to its case-law, it only authorises the use of force where there is no other means of attaining the same objective, with respect for the principle of proportionality. The Court takes the view, however, that such framework is very general and comprises insufficient details on which coercive measures are authorised and which prohibited. Furthermore, the Court notes that the Government did not seek to demonstrate that at the material time there were clear and adequate instructions on manual techniques for restraining prisoners (see, *mutatis mutandis*, *İzci v. Turkey*, no. 42606/05, §§ 64-65, 23 July 2013).

93. In particular, the Court emphasises that the CPT recommends the strict prohibition of recourse to strangulation techniques as a means of restraint and the issuing of directives prohibiting any use of physical force liable to obstruct the respiratory tract .... Accordingly, the Court can only deplore the fact that no precise instruction has been issued by the Belgian authorities concerning that type of immobilisation technique (see, *mutatis mutandis*, *Saoud*, cited above, § 103). The system in place at the material time did not provide prison officers with clear recommendations and criteria on the use of force.

94. The Court notes that Ministerial Circular No. 1810 contains more detailed information .... However, the latter text was only adopted after the death of the applicants' son. The Court also observes that that circular did not mention the immobilisation techniques at issue in the present case.

b) Prison staff training

95. Article 2 of the Convention also imposes on the State the positive obligation to train its law enforcement officials, including its prison staff, in such a manner as to ensure their high level of competence and to prevent any treatment that runs contrary to that provision (see, *mutatis mutandis*, *Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, § 268, 1 July 2010).

96. In that regard, the Court notes that several international observers have already expressed their concern about the gaps in the training provided for prison staff in Belgium at the material time .... It observes that according to the information provided by the Government ... the prison officers involved in the facts of the present case had received fairly summary training. R. had had only a fortnight's initial training, before attending a three-month course.

97. In particular, the three-day training programme on conflict management does not mention detainees with mental disorders or the possibility of adopting a different approach to such persons. R. himself admitted (see paragraph 31 above) that he had received no training on

persons suffering from psychiatric disorders. The Court has previously ruled that dealing with mentally disturbed individuals clearly requires special training (see *Shchiborshch and Kuzmina v. Russia*, no. 5269/08, § 233, 16 January 2014).

98. The Court takes note with interest of the changes in the training courses administered to prison officers since the death of Michael Tekin .... A special six-day course is now provided on dealing with detainees with psychiatric disorders. However, the Court can only note that such training courses did not exist prior to the death of the applicants' son.

c) Necessity and proportionality of the force used

99. The Court reiterates that when assessing cases in which State agents have deprived a person of his life, it takes into consideration not only the agents' actions but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, § 150).

100. The Court observes that in the present case Michael Tekin was detained, at the material time and since his return to prison on 7 August 2009, in an ordinary cell in Jamioulx Prison (see paragraph

12 above). He was just finishing his meal and at that particular moment had shown no sign of aggression or behaviour necessitating the intervention of the prison officers. The three officers had only come into the cell in order to notify Michael Tekin of the special security measures ordered by the Deputy Director of the Prison (see paragraphs 15 and 16 above).

101. The present case therefore did not concern an operation that was necessary in order to restrain a person posing a threat to the life or physical integrity of others (see, to converse effect, *Saoud*, cited above, § 93) or of himself (see, to converse effect, *Shchiborshch and Kuzmina*, cited above, § 208).

102. Michael Tekin was well-known to the prison staff since this was the fourth time he had been detained for several months in Jamioulx Prison (see paragraph 7 above). The authorities were also familiar with his mental condition, which was in fact the reason for the detention order against him (see paragraph 8 above). The Court can therefore only note that, first and foremost, the applicant should never have been placed in a cell in an ordinary wing of Jamioulx Prison. Short of being detained in an institution tailored to his mental condition (see, on the structural problem identified by the Court concerning this matter, *W.D. v. Belgium*, no. 73548/13, 6 September 2016), he should at the very least have been placed in a cell in the psychiatric wing of the prison which comprised, or should have comprised, the staff best trained in interacting with persons with psychiatric disorders.

103. In any event, Michael Tekin was particularly vulnerable owing to his mental issues and the fact of his detention (see *Renolde v. France*,

no. 5608/05, § 84, ECHR 2008 (extracts)). Under those circumstances, the Court can only conclude that the Criminal Court took no account of that fundamental aspect of the case in analysing the necessity and proportionality of the force used by the prison officers. Quite the contrary: the prison officers, the Deputy Director of the Prison and the Criminal Court would all appear to have treated Michael Tekin as an ordinary detainee in full possession of his mental faculties.

104. Indeed, when R., L. and D. arrived to notify the applicants' son of the special security measures that were to be implemented, there had apparently been no consideration of how they should broach him or respond to any possible negative or aggressive reaction on his part, even though it transpires from the case file that at the very least R. was acquainted with Michael Tekin and his psychiatric problems. The unforeseeability of human nature notwithstanding, the present case did not concern an operation conducted at random which could have led to unexpected developments to which the officers might have been called upon to react impromptu (see, to converse effect, *Soare and Others v. Romania*, no. 24329/02, § 134, 22 February 2011). Quite the reverse: the three officers and their superiors had envisaged no measure other than immobilisation and transfer to an isolation cell, even though alternatives had quite possibly been available (see, to similar effect, *mutatis mutandis*, *Guerdner and Others*, cited above, § 72). Accordingly, it does not transpire from the case file that the officers attempted, for instance, to parley with Michael Tekin. Nor does the case file explain why the officers had not simply exited the cell to avoid the threat of an attack.

105. The Court wonders not only about the relevance of any kind of action by the officers to restrain the applicants' son and to move him to an isolation cell, but also about the choice of the manoeuvre used to implement that action. Even though the training course attended by R. had not mentioned the lethal risk of a stranglehold, there can be no doubt that such a measure could have asphyxiated the person concerned and was therefore potentially lethal ....

106. Moreover, the Court notes that despite the fact that the applicants' son was immobilised on the floor in handcuffs and leg shackles, and therefore no longer presented any danger to others, the prison officers, of whom there were many in attendance (see paragraph 19 above), failed to conduct even a superficial examination of his state of health (see, to similar effect, *Saoud*, cited above, § 101).

107. That being the case, the Court is not persuaded that the force used to immobilise Michael Tekin with a view to his transfer to an isolation cell was "absolutely necessary" to ward off a potential attack by the latter. The Court considers that the lack of clear rules might also explain why R. took initiatives which jeopardised Michael Tekin's life, which might not have been the case if he had had proper training on how to react in a situation

such as the one in which he found himself (see, to similar effect, *mutatis mutandis*, *Makaratzis*, cited above, § 70, and *Leonidis v. Greece*, no. 43326/05, § 65, 8 January 2009).

108. Lastly, as regards the intervention of the medical teams (see paragraphs 22 to 27 above), the Court notes that it does not transpire from the case file that Michael Tekin's death could have been averted had he been provided with medical assistance more promptly (see, to converse effect, *Anguelova*, cited above, § 125).

d) Conclusion

109. Having regard to the foregoing considerations, the Court considers that under the circumstances of the present case, the use of force was not "absolutely necessary". It does not follow from that finding of responsibility on the part of the respondent State under the Convention that the Court intends to voice an opinion on the acquittal of the three prison officers as decided by the domestic court on the basis of considerations regarding their individual criminal responsibility.

110. Consequently, it finds a violation of Article 2 of the Convention.

...

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

...

2. *Holds* that there has been a violation of Article ... of the Convention;

...

Done in English, and notified in writing on 5 September, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	President