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

FIFTH SECTION

CASE OF S.T. v. THE CZECH REPUBLIC

(Application no. 28273/23)

JUDGMENT

Art 2 (substantive) • Positive obligations • Life • Death of the applicant's brother after a police intervention during which he was held in the prone position for over eleven minutes, while handcuffed, intoxicated and injured and with an officer kneeling on him for over four minutes • Manner in which police intervention was conducted put the applicant's brother at an imminent risk of death or serious health impairment • Domestic authorities' failure to explain or investigate the non-activation of the body camera worn by one of the officers • Body cameras conceived to be used in situations of heightened tensions and action, to clarify the circumstances of an intervention and protect police officers against potentially inaccurate or false allegations • Relevant domestic framework at the material time did not provide clear and adequate instructions on placing individuals in a prone position, with or without kneeling on a person's body, with a view to reducing to a minimum the risks to his or her health and life • State authorities' failure to adequately discharge their obligation to train their law enforcement officers in such a manner as to ensure that they possessed the requisite high level of competence when employing the prone position • Failure to provide timely medical assistance
Art 3 (substantive) • Disproportionate use of force
Art 2 and 3 (procedural) • Ineffective investigation into the death of the applicant's brother • Investigation initially handled by bodies lacking independence • Investigation incomprehensive in scope and failed to explore contradictory evidence • Key forensic expert report did not engage at all with potential dangerousness of the prone position • Failure to ensure the applicant's effective participation in the investigation

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Art 14 (+ Art 2 and 3) • Discrimination • Authorities' failure to take all reasonable steps to uncover any racist motive behind the police intervention • Prima facie case of racial bias against the applicant's brother, of Roma ethnicity, requiring an effective investigation • No attempt to explore the possibility that institutional racism could have influenced the police officers' conduct • Manifest lack of diligence in investigating both the intervention as a whole and its potential racial dimension • Absence of a formal investigation • Overall response conveyed the impression that the matter was not taken sufficiently seriously

STRASBOURG

16 July 2026

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 S.T. v. the Czech Republic,

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

María Elósegui, *President*,
Kateřina Šimáčková,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy,
Sébastien Biancheri,
Nicholas Emiliou, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 28273/23) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech national, Ms S.T. ("the applicant"), on 4 July 2023;

the decision to give notice of the application to the Czech Government ("the Government");

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 9 June 2026,

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

INTRODUCTION

1. The present application concerns the State's alleged responsibility for the death and ill-treatment of the applicant's brother, of Roma ethnicity, as well as the alleged lack of an effective investigation by the domestic authorities. The applicant relied on Articles 2, 3, 13 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1977 and lives in Bílina. She was represented by Mr M. Matiaško, a lawyer practising in Prague, the Czech Republic; and the European Roma Rights Centre (ERRC) based in Brussels, Belgium.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. EVENTS PRECEDING THE POLICE INTERVENTION

5. The applicant is the sister of S.T., who died on 19 June 2021 following a police intervention against him. The applicant and her deceased brother

share the same initials. In the present judgment, the Court uses these initials for the applicant's deceased brother.

6. On 19 June 2021 at 2.51 p.m. someone called the police emergency line to report that S.T. and another person were fighting in the street, causing damage to surrounding vehicles. CCTV footage from the incident showed S.T. attacking another person, then rolling on the ground, flailing his arms. Then he ran towards a vehicle and struck it four times with his fist and twice with his head, after which he fell on the ground, visibly dazed. After he picked himself up, S.T. and the other person moved to the neighbouring street.

7. At 2.56 p.m. a police patrol comprising of Commander Z.V. and Officers M.Š. and D.V. arrived at the initial scene of the fight where those present told them that the men who had been fighting had moved to the adjacent street. They also informed them that the men seemed to be under the influence of drugs.

8. At approximately 2.59 p.m. the police patrol arrived on the adjacent street. S.T. was on the ground, thrashing about and shouting unclear words. Commander Z.V. and Officer M.Š. later reported while giving their statements that S.T. had clearly been under the influence of drugs, and had scratches on his body and blood coming out of his mouth (see paragraph 75 below).

9. Right after their arrival, Z.V. approached S.T. who immediately attacked him. The three police officers subsequently attempted to immobilise S.T., placing him on the ground on his back.

10. Z.V. was wearing a body camera, but he did not switch it on. While giving his statement the following day he stated that he had not had sufficient time to do so during the intervention (see paragraph 29 below)

11. A small crowd standing nearby were watching the incident. One of the people following the events from a first-floor window started a video-recording of the intervention on a mobile telephone at approximately 2.59 p.m.

II. THE POLICE INTERVENTION CAPTURED ON THE WITNESS'S VIDEO-RECORDING

12. While lying on the ground on his back, S.T. was resisting the police officers' attempts to roll him onto his stomach into a prone position. The police officers succeeded after several seconds of a struggle.

13. Right after the officers placed S.T. in a prone position, M.Š. placed his left knee on S.T.'s upper back or neck area (see paragraphs 16-17 and 185 below), and his right knee on the lower back area. Z.V. knelt on S.T.'s legs and secured them with a baton. S.T.'s face was directed away from the police officers and the witness who was making the video-recording.

14. After about 30 seconds, D.V. secured S.T.'s hands behind his back with handcuffs. Commander Z.V. and Officer M.Š. reported while giving

their statements the following day that at that moment, Z.V. had asked S.T. whether he needed any medical assistance. S.T. allegedly answered in the negative. That version of events was not corroborated by other evidence because Z.V., who had been wearing a body camera, had not switched it on (see paragraph 10 above).

15. The applicant and the Government do not agree on the exact description of how M.Š. knelt on S.T. as seen on the video-recording.

16. The applicant, relying on the description of the video-recording from the investigative report of the Deputy Public Defender of Rights (see paragraphs 87-89 below), submitted that M.Š.'s left knee had been pressing on S.T.'s neck or neck area. She also referred to the witness statements of M.B., F.K. and R.K. confirming that account (see paragraphs 28 and 46 below). In the applicant's view, supported by the Deputy Public Defender of Rights' report, S.T.'s last movement could be registered at around 4 minutes and 25 seconds into the video-recording (at approximately 3:03:25 p.m.). At around 5 minutes and 27 seconds into the video-recording (at approximately 3:04:27 p.m.), S.T. had already lost consciousness, while his hands had still been cuffed behind his back and M.Š. had been kneeling on him.

17. In the Government's view, M.Š. had not been kneeling on S.T.'s neck or neck area but rather on his upper back. They referred in that regard to the witness statements of J.S., F.K., M.B., D.H. and V.B., stating that M.Š. had been kneeling on S.T.'s shoulder blade or shoulder (see paragraphs 28 and 46 below). The Government asserted that M.Š. had attempted to alleviate the pressure from S.T.'s back as much as possible and had completely released it when S.T. had calmed down towards the end of the video-recording.

18. As seen in the video-recording, S.T. was knelt on while in the prone position, with his hands cuffed behind his back, for over four minutes. After releasing the pressure of his knee at around 5 minutes and 32 seconds into the video-recording (at approximately 3:04:32 p.m.), the footage shows M.Š. leaning towards S.T., shaking his left shoulder and attempting to make verbal contact. No response from S.T. is apparent from the video. M.Š. later reported in his statement that S.T. had responded to his verbal communication but that statement was not corroborated by other evidence (see paragraph 29 below).

19. Z.V. was in the meantime kneeling on S.T.'s legs while applying pressure on his Achilles tendons with a telescopic baton. After about three minutes, he released the pressure, stood up and asked the people standing around whether anyone had called for emergency medical assistance. He disinfected his hands and about a minute and a half later, he left the scene to call an ambulance. The emergency services registered his call at 3:03:06 p.m.

20. D.V. first participated in immobilising S.T. From about 30 seconds after S.T. had been handcuffed with his hands behind his back, he had been standing next to where S.T. was lying on the ground, observing his colleagues' actions with both his hands free. After Z.V. left the scene to call the emergency medical line, D.V. stepped in to restrain S.T.'s legs.

21. None of the intervening police officers checked S.T.’s vital signs before calling the ambulance or while waiting for its arrival.

III. ARRIVAL OF THE AMBULANCE

22. S.T., who was not moving anymore, was kept handcuffed in the prone position until the ambulance with paramedics L.H. and H.F. arrived at approximately 3.11 p.m.

23. In her witness statement from 24 June 2021, H.F. reported that after their arrival, she had approached S.T., who had been lying on his stomach not making any noise. She had immediately checked his carotid artery and had found that he had had no palpable pulse, meaning that he had already been in circulatory arrest and had not been breathing (see paragraph 40 below).

24. L.H. reported in his witness statement given on the same day (see paragraph 40 below) that he and the police officers had placed S.T. on the ambulance stretcher on his back. His hands had still been cuffed behind his back. At that point, he had seen S.T.’s face for the first time and noticed that his pupils had been dilated. That meant that he had not been showing signs of life. H.F. had then examined his pulse and eyes, finding no vital signs. In the ambulance, the paramedics had initiated attempts to resuscitate S.T. At H.F.’s request, one of the police officers had removed S.T.’s handcuffs.

25. At 3.14 p.m. a second ambulance arrived with Dr J.F., who confirmed H.F.’s finding that S.T. was showing no vital signs. He and the paramedics continued to try to resuscitate him.

26. At 3.28 p.m. the ambulance set off towards the hospital, while the resuscitation efforts continued. At 3.45 p.m. S.T. was pronounced dead by Dr J.F.

IV. INVESTIGATION

27. On 19 June 2021 the Criminal Police and Investigation Service of the Ústí nad Labem Regional Police Directorate (“the Criminal Police”) initiated criminal proceedings in connection with the suspected commission of the particularly serious crime of the illegal manufacture and trafficking of drugs pursuant to Article 283 §§ 1 and 4 (a) of the Criminal Code. On the same day an investigation was also initiated by the Internal Control Department of the Ústí nad Labem Regional Police Directorate. The Ústí nad Labem Regional Department of the General Inspection of Security Forces (“the GISF”) was also informed of the incident on the same day and entered the case into its case-management system.

A. Investigation by the Criminal Police

28. On 19 June 2021 the police interviewed J.S. and F.K., witnesses present at the scene, and V.B., with whom S.T. had been fighting prior to the arrival of the police. On 20 June, 22 June, 30 June and 8 July 2021, the police interviewed 17 other witnesses present at the scene. Some of those witnesses reported that M.Š. had had his knee placed on S.T.'s neck area, or between the neck and the upper back. Others reported that they had seen the officer's knee placed on the shoulder or shoulder blades. Several other witnesses were later interviewed concerning S.T.'s drug use.

29. On 20 June 2021 the police interviewed the three intervening officers, Z.V., M.Š. and D.V., who had also drawn up reports on the use of coercive measures. Z.V. reported that shortly after placing S.T. in the prone position, he had asked him whether he had any other injuries, and S.T. had responded that he did not want to see a doctor. After the ambulance had arrived, they had helped S.T. onto the ambulance stretcher. S.T. had attempted to stand on his own but had not been stable. M.Š. and D.V. confirmed their colleague's account.

30. On the same day, the Criminal Police commissioned an expert examination and autopsy of S.T.'s body. It engaged two experts in forensic medicine from Masaryk Hospital in Ústí nad Labem and one expert in toxicology. The experts in forensic medicine were to answer nine questions concerning the existence of injuries and pathological changes in S.T.'s body; their mechanism or source; the immediate cause of death and its exact time; and whether and under what conditions S.T.'s death could have been prevented. On 29 June 2021 an additional question was asked: whether factors such as the stress experienced by S.T. during the police intervention and the extreme temperature on that day could have contributed to his death.

31. On 21 June 2021 the applicant gave her statement to the Criminal Police.

32. On the same day, Romea TV published the video-recording from the police intervention described above (see paragraphs 12-21 above) in an article entitled "Roma George Floyd? A man died following a police intervention in Teplice. The police deny responsibility for the death". Other news items concerning the incident were subsequently published in the Czech Republic as well as in other countries, drawing comparisons between the death of S.T. and that of George Floyd, a Black man murdered by a police officer in Minneapolis in the United States in 2020. An officer had knelt on his neck for over nine minutes while he was being held in a prone position with his hands cuffed behind his back. His death sparked mass protests against historic racism and police brutality against Black people in the United States.

33. On the same day a preliminary autopsy report was published. It stated that S.T.'s body had no injuries or internal changes that would indicate any violence or pressure on S.T.'s neck or chest in the form of being knelt on or

pinned down. The report concluded that being knelt on therefore could not have contributed to S.T.'s death.

34. On that same day the Criminal Police issued a public statement concerning S.T.'s death on its website:

> "The autopsy of the deceased ruled out any connection with the intervention that preceded the arrest. According to the preliminary autopsy report, the man was found to have been under the influence of an amphetamine-type foreign substance, and pathological changes to the coronary arteries of the heart were found."

Its official Twitter account stated:

> "No 'Czech Floyd'. The intervention against a multiple repeat offender who, under the influence of drugs, had been vandalising cars in his neighbourhood and disregarding police orders, was conducted in accordance with the law and had no connection to the deceased's death. A forensic autopsy confirmed this."

35. On the same day the then Minister of the Interior, Mr Jan Hamáček, posted the following on his Twitter account:

> "The intervening officers have my full support. If someone under the influence of addictive substances is breaking the law, they must expect @PolicieCZ to intervene. We are one of the top ten safest countries in the world thanks largely to the work of our policemen and women."

36. On the same day nine civil members of the Czech Government Roma Council published their disagreement with the statements and urged the Minister of Interior to prioritise a thorough and impartial investigation into the incident. They expressed serious concern about the investigation's impartiality.

37. On 23 June 2021 the Prime Minister, Mr Andrej Babiš, posted the following statement on his official Facebook page:

> "If someone destroys cars, is aggressive and even bites a police officer, he or she can't expect to be treated with kid gloves. Besides, the forensic autopsy clearly proved that he did not die because of the police intervention. It is sad, but it is also unlikely that a normal decent person would get into a similar situation. I thank the Teplice police officers for their work, they did not have it easy."

38. Following the Prime Minister's statement, the members of the Czech Government Roma Council reiterated their disagreement with the statements which, in their view, undermined public trust in the impartiality of the investigation.

39. On 24 June 2021 the Criminal Police held a press conference for journalists, affirming that the police officers who had intervened against the applicant's brother had acted lawfully and proportionately.

40. On the same day the Criminal Police interviewed the paramedics – H.F. and L.H. – who had responded to the call.

41. On 8 July 2021 the applicant's legal representative consulted the Criminal Police case file and proposed further evidence, namely to repeat the

autopsy outside the Ústí nad Labem region to avoid potential bias and to ask 11 more questions to the appointed forensic medicine experts.

42. On the same day the police training department of the Regional Police Directorate of the Ústí nad Labem Region issued a statement for the purposes of the criminal investigation according to which the police intervention had been fully in line with the law and internal regulations, namely Police Guide no. 1/2017 on the use of coercive measures and weapons by officers of the Czech Republic's police force ("Police Guide no. 1/2017", see paragraph 100 below).

43. On 9 July 2021 the Department of Public Order Police of the Regional Police Directorate of the Ústí nad Labem Region also issued a statement for the purposes of the criminal investigation in which it concluded that the police intervention had complied with the applicable legislation, Police Guide no. 1/2017 and Internal Regulation no. 244/2016 on certain activities of officers of the Police of the Czech Republic in relation to the use of coercive measures and weapons. According to that statement, the police officers had used the least amount of force possible and had used the handcuffs for the shortest possible time.

44. On 12 July 2021 the Criminal Police rejected the applicant's request for a second autopsy. It considered that no new facts had been uncovered that would require it. It further noted that the applicant would be able to challenge the experts' conclusions after the publication of their report. On 21 July 2021 the Ústí nad Labem Regional Prosecutor's Office ("the Regional Prosecutor") upheld the police's decision.

45. On 12 July 2021 the Criminal Police asked the forensic medicine experts all 11 additional questions requested by the applicant in the wording proposed by her.

46. On 16 July 2021 the witnesses F.K., R.K. and J.S. were re-interviewed. F.K. reported that M.Š. had placed his knee on S.T.'s collar area, between the neck and the back. He also stated that when being transferred to the stretcher S.T had been limp and likely unconscious. J.S. reported that in his view, M.Š. had been kneeling on S.T.'s shoulder blades. The applicant's representative asked them whether they thought that the police intervention would have happened differently had S.T. not been Roma. They all answered in the negative.

47. On 10 October 2021 the toxicology expert opinion indicated that S.T. had been a long-term methamphetamine user.

48. On 19 October 2021 the forensic medical expert opinion ordered by the Criminal Police was published. The report stated that S.T. had sustained several injuries to the surface of his skin and had experienced several internal medical issues. It confirmed 3.45 p.m. as the time S.T. had been pronounced dead by Dr J.F. after the failed resuscitation efforts.

The report concluded that S.T.'s death had been caused by methamphetamine intoxication. It considered that S.T. had not been knelt on in the neck area, and that no causal link could be established between the police intervention and his death. The experts further considered that his death could only have been prevented if S.T. "had not indulged in methamphetamine". They could not indicate the timespan between the intervention of the police and S.T.'s death but concluded that the serious damage to his cardiac muscle cells, in the form of necrosis, had developed approximately one hour before the arrival of the police. In their view, that damage would have occurred even without any police intervention.

49. On 27 October 2021 the Regional Prosecutor acknowledged the content of the expert report and instructed the Criminal Police to maintain the focus of the investigation on identifying the person responsible for supplying methamphetamine to S.T.

50. On 3 November 2021 the applicant lodged her objections against the experts and their expert opinion. She considered that their findings had been too straightforward and narrow, without duly considering the possible or probable role of other factors on S.T.'s death. She also objected that the report did not contain any detailed explanation of its findings. In her view, the report casted further doubt on the experts' impartiality.

She pointed out that the experts should have been appointed by the GISF and not by the Criminal Police, which could not be considered independent and impartial to investigate the police officers' role in S.T.'s death. She thus proposed that a new expert examination be commissioned by the GISF using an expert from a different region, and that the examination address the risks of kneeling on the neck area of an agitated person in extreme heat.

51. On 4 November 2021 the police rejected the proposal to commission a new expert report. The applicant's objections against the experts and the expert report were interpreted as an application for review by the supervising prosecutor and were transmitted to the Regional Prosecutor.

52. On 19 November 2021 the Regional Prosecutor dismissed the applicant's objections against the experts and their expert opinion as unfounded. The Regional Prosecutor considered that the expert opinion had duly answered all the questions and even though its conclusion might appear strange to the applicant, they were clear and unequivocal in that the police intervention had not contributed to S.T.'s death. There were no grounds to question the experts' impartiality. The Regional Prosecutor further concluded that since the criminal proceedings concerned an alleged offence of supplying S.T. with a drug that had led to his death, rather than an alleged offence by the intervening police officers, the Criminal Police was competent to investigate the case.

53. On 31 December 2021 the Criminal Police discontinued the criminal proceedings on the suspicion of commission of the particularly serious crime of the illegal manufacture and trafficking of drugs pursuant to Article 283 §§ 1 and 4 (a) of the Criminal Code because it could not establish who had supplied S.T. with the drug. The police held that it had been beyond

reasonable doubt that S.T.'s death had been caused by heart failure owing to methamphetamine intoxication and that there had been no causal link between the police officers' intervention and S.T.'s death.

54. On 5 January 2022 the applicant lodged a complaint against that decision with the Regional Prosecutor. She complained that the investigation had been conducted improperly in terms of the investigative authority and legal characterisation, as well as the suspects. She argued that the use of force against S.T. had been disproportionate, and that the police officers had failed to adequately monitor his health and had not called the ambulance in a timely manner. She further submitted that the evidence had not been thoroughly assessed, as the Criminal Police had uncritically accepted the police officers' version of events and ignored the contradicting statements of the paramedics. She repeated her objection that the expert report and the investigative authority had not been impartial, insisting that the case should have been investigated by the GISF from the outset.

55. On 31 January 2022 the Regional Prosecutor dismissed the applicant's complaint. Since the investigation had refuted that the officer had knelt on S.T.'s neck, or that his death had occurred during the police intervention or in any causal link with it, it was futile to establish whether S.T. had been alive when the ambulance had arrived. His death would have occurred in any event.

Furthermore, the prosecutor stated that the police officers had not been trained to examine the vital signs of a person against whom they intervened and could have plausibly assumed that S.T. had still been alive before the ambulance arrived. As the aim of the investigation was to identify who had supplied S.T. with the drugs that had ultimately caused his death, the Criminal Police was competent to deal with it.

56. On 4 February 2022 the applicant lodged a request for review against the Regional Prosecutor's dismissal to the Prague High Prosecutor's Office ("the High Prosecutor"), repeating her objections. Furthermore, she reiterated that, even without expert medical knowledge, police officers had to be competent enough to monitor the vital signs and state of consciousness of a person against whom they intervened. As a result of failing to do that, the intervening officers had not provided S.T. with first aid after he had lost consciousness.

57. On 3 March 2022 the High Prosecutor dismissed the applicant's request, holding that no irregularities had been found in the Criminal Police investigation or the Regional Prosecutor's review. The High Prosecutor considered that all the applicant's objections had already been duly addressed and reaffirmed the Regional Prosecutor's conclusions.

B. Investigation by the GISF

58. On 19 June 2021, in the afternoon, a GISF officer arrived at the scene where the police officers had intervened against S.T. Following his visit, the

GISF decided not to initiate an official investigation and only conduct a preliminary inquiry.

59. On 20 June 2021 the GISF took over various material from the Criminal Police case file, including the notification of the institution of criminal proceedings; the order of an autopsy; and the records of interviews with witnesses and the intervening officers.

60. On 22 June 2021 the GISF requested the intervening police officers' reports on the use of coercive means which had been approved by their superiors. It also requested a record of the officers' breathalyser tests conducted at the Ústí nad Labem Regional Police Directorate.

61. On 24 June 2021 the applicant lodged a criminal complaint with the GISF in which she proposed that a new post-mortem examination be carried out on grounds of the alleged bias of the forensic medical experts who had conducted the first one.

62. On the same day, the GISF published a statement on its official Twitter account. It stated that the GISF had evaluated the documents provided by the Criminal Police, including images and the preliminary autopsy findings, and concluded that there had been no indication of wrongdoing by the police officers involved.

63. On 24 and 25 June 2021 the Regional Prosecutor referred other criminal complaints lodged by third parties to the GISF with the instruction to investigate. The Regional Prosecutor ordered the GISF to evaluate S.T.'s state of health prior to the arrival of the police, establish how any possible health issues had manifested externally and assess the intervening police officers' capacity to administer first aid.

64. On 6 July 2021 the applicant again requested a new autopsy.

65. On 19 July 2021 and 30 July 2021 the GISF interviewed Patrol Commander Z.V. and Officers M.Š. and D.V. All three police officers reiterated their earlier statements given before the Criminal Police (see paragraph 29 above).

66. On 20 July 2021 the GISF conducted an "open-source review" of the intervening officers' conduct and expressions for signs of racial intolerance, affiliation with or sympathy towards the public incitement of hatred against a group of persons. It found no such instances.

67. On 21 July 2021 the applicant gave her statement in the GISF proceedings as a person who had lodged a criminal complaint. She stated that she had perceived the police officers' actions as racially motivated because her brother was Roma, and the intervention had taken place in a street where only Roma lived. She asserted that her brother had been disoriented and in view of that, the police intervention had clearly been excessive.

68. On 23 July 2021 the GISF notified the applicant that it was continuing its investigation. Without sharing information about any specific investigative measures adopted or planned, the GISF informed her she would be notified of other measures taken in the case.

69. On the same day the GISF sent a request to the Police Academy of the Czech Republic (“the Police Academy”) seeking an evaluation of the police intervention, namely assessing its tactics, legality and proportionality.

70. On 3 August 2021 the GISF requested the Regional Prosecutor’s permission to retrieve documents containing evidence, including witness statements, from the Criminal Police’s file. On 4 August 2021 the Regional Prosecutor granted that permission.

71. On 1 September 2021 the Police Academy issued the evaluation of the police intervention requested by the GISF (see paragraph 69 above). It concluded that the intervention had been conducted in line with applicable rules and the use of coercive means had been justified. In relation to the action of M.Š. kneeling on S.T., which the Police Academy considered to have been applied correctly, it stated:

> “... The correct execution of kneeling as a form of restraint involves placing one quarter to one half of one’s weight on the knee, which stabilises the head. The intervening police officer distributes additional weight across the remaining limbs ...”

72. On 20 September 2021 the GISF assessed the audiovisual files contained in the Criminal Police case file; a mobile telephone video-recording showing the police intervention from a first-floor flat window view; and three CCTV recordings from the adjacent street.

73. On 25 October 2021 the GISF requested the Regional Prosecutor’s permission to consult the expert reports prepared at the request of the Criminal Police. Permission was granted the following day.

74. On 22 November 2021 the GISF asked the Criminal Police to share with it the reports evaluating the use of coercive means against S.T. by the Internal Control Department of the Ústí nad Labem Regional Police Directorate (see paragraph 86 below). Following the notification of the request, the Regional Prosecutor asked the GISF whether its investigation also concerned the potential criminal offence of failure to provide assistance under Article 150 of the Criminal Code by the intervening police officers. The GISF responded in the affirmative.

75. On 24 and 26 November 2021 the GISF again interviewed the intervening police officers in an attempt to clarify exactly when S.T. had lost consciousness and reconcile the inconsistency between their statements and the statements of the paramedics. For the most part, the officers reaffirmed their earlier statements. Z.V. repeated that he had called the ambulance as soon as he could because it had been clear from the outset of the intervention that S.T. had been injured and under the influence of drugs.

M.Š. further stated that he had attempted to communicate verbally with S.T. after he had released the pressure of his knee, and S.T. had been responsive. Considering that, he had seen no reason to start providing first aid although he had been trained in it. They had kept S.T. in handcuffs because they had perceived him as still conscious, and therefore potentially dangerous.

76. On 25 November 2021 the GISF requested information on the intervening police officers' first aid training and their employee evaluations.

77. On 23 December 2021, 3 January and 5 January 2022, the three intervening officers were again interviewed by the GISF about S.T.'s behaviour and his physical and mental state during the intervention.

78. On 3 January 2022 the Regional Prosecutor granted the GISF permission to obtain the Criminal Police's decision to discontinue the criminal proceedings (see paragraph 53 above).

79. On 11 February 2022 the GISF concluded its preliminary inquiry by finding that there had been no suspicion of a criminal offence or other unlawful conduct by the intervening officers. The file was closed without taking further action.

Referring to the witness statements taken by the Criminal Police on the day of S.T.'s death or shortly afterwards, the GISF concluded that the intervening police officers had treated S.T. gently and calmly. It further considered that the evidence collected by the Criminal Police had indicated that none of the police officers had knelt on S.T.'s neck or otherwise acted in such a way that would have obstructed his airway.

The GISF further relied on the three statements assessing the legality and proportionality of the police intervention (see paragraphs 42-43 and 71 above) and reiterated that the manner in which it had been conducted had been in line with the applicable law, internal regulations and police training.

It further considered that it was impossible to determine when S.T. had lost consciousness, as it had not managed to reconcile the inconsistencies between the police officers' statements and the statements of the paramedics. The GISF disagreed with the conclusions of the investigation conducted by the Deputy Public Defender of Rights (see paragraphs 87-89 below), namely that the ambulance had been called with a three-minute delay. It considered that Z.V. had called the ambulance immediately after he had finished immobilising S.T.'s legs.

The GISF concluded that in any event the intervening police officers had provided S.T. with the maximum possible assistance as soon as the circumstances had permitted and could not have done anything more. Furthermore, the investigation did not uncover any racist behaviour or tendencies of the intervening police officers.

80. On 9 March 2022 the applicant requested information on the status of the proceedings before GISF.

81. On 16 March 2022 the GISF informed the applicant about its decision to close the investigation without taking any further action. It summarised the reasoning contained in the document of 11 February 2022, which was not attached to the communication (see paragraph 79 above).

82. On 17 March 2022 the applicant lodged a request for review of the GISF's decision with the Regional Prosecutor. She firstly complained that by

closing the investigation without taking any further action, the GISF had effectively deprived her of a remedy against the decision.

Secondly, relying on the conclusions of the investigation of the Deputy Public Defender of Rights (see paragraphs 87-89 below), the applicant argued that the intervening officers had violated S.T.'s right to life by failing to adjust the intervention to his vulnerable situation, adequately monitor his health, call the ambulance in a timely manner and remove the handcuffs after he had lost consciousness. The paramedics' statements had not been given sufficient weight and the GISF had uncritically relied on the intervening officers' version of events. Furthermore, the applicant reiterated that the expert reports had not been impartial and complained that the GISF had not commissioned a new autopsy or forensic expert reports. Lastly, she submitted that it was not clear how the GISF had investigated the potential racial motive of the intervention.

83. On 2 June 2022 the Regional Prosecutor rejected the applicant's request as unfounded, holding that there was no reason to initiate a formal investigation given that the evidence did not suggest that there had been a suspicion of an offence by the intervening officers. While the GISF had partly relied on the evidence taken by the Criminal Police, it had also secured some evidence of its own. The Regional Prosecutor agreed that given the diverging witness statements, it was not possible to determine when exactly S.T. had lost consciousness. There was no proof that the police officers had lied, and they could not be held liable for the paramedics' statements. The Regional Prosecutor opined that at the moment of the intervention, the officers had not had any information that would have indicated the need to start giving S.T. first aid.

84. On 23 June 2022 the applicant lodged a request for supervision with the High Prosecutor, repeating her earlier arguments.

85. On 26 July 2022 the High Prosecutor rejected the applicant's request as ill-founded, finding no fault either in the procedure followed by the GISF or in the review conducted by the Regional Prosecutor. The High Prosecutor held that the forensic medicine expert opinion had unequivocally showed that S.T.'s death had not been linked to the police intervention.

The High Prosecutor agreed with the Regional Prosecutor's conclusions and also considered that the intervening officers could not have foreseen any serious health complications because the heart damage S.T. had suffered before the arrival of the intervening officers had not been revealed until the autopsy. Furthermore, the heart failure would have occurred in any event, even without the police intervention.

C. Investigation by the Internal Control Department of the Ústí nad Labem Regional Police Directorate

86. On 16 November 2021 the Internal Control Department found that the intervening officers had acted in accordance with the law and internal regulations and did not recommend that any corrective measures be taken.

D. Investigation by the Public Defender of Rights

87. On 28 June 2021 Deputy Public Defender of Rights initiated an investigation into S.T.'s death under section 9 (1)(d) of the Act on the Public Defender of Rights. She relied on the material from the Criminal Police case file and the paramedics' statements provided by the applicant's representative.

88. On 29 October 2021 the Deputy Public Defender of Rights published a preliminary report from the investigation. She identified several problems with the police intervention as well as the ensuing investigation.

Notably, she concluded that the police officers had called the ambulance three minutes after they reasonably could have, given the obvious signs that S.T. had needed medical help from the outset of the intervention (intoxication and bleeding from the mouth, both of which were the reasons reported by the intervening officers for calling the ambulance). None of the intervening officers had properly monitored S.T.'s state of health or his vital signs during the intervention, despite the highly risky nature of the prone position, especially for persons in an intoxicated state. They had further failed to identify when S.T. had lost consciousness and immediately begin attempts to resuscitate him. She observed that the police officers could not be held accountable for kneeling on S.T.'s neck because such action corresponded to their training and internal police guidelines. She noted that she would initiate discussions on that topic with the Police President.

The Deputy Public Defender of Rights also considered that the Criminal Police had not conducted a thorough investigation, as it had failed to clearly establish the facts, notably the time when S.T. had lost consciousness, and had unjustifiably disregarded the statements of paramedics L.H. and H.F.

89. On 5 January 2022, after receiving reactions from the police on her first report, the Deputy Public Defender of Rights reaffirmed her conclusions in the final report. She firstly summarised the risks associated with the use of the prone position, especially while kneeling on the person's back or neck. She recommended that Police Guide no. 1/2017 on the use of coercive measures applicable at the time (see paragraph 100 below) be updated to address the risks of positional asphyxia and the manner in which police officers should avoid those risks. She also proposed that all police officers who might need to resort to the use of that form of coercion be informed accordingly.

She considered that the delay in calling the emergency medical services had been evident from the video-recording made by the witness (see paragraphs 12-20 above). The investigation did not point to any reason why D.V., who had been monitoring the situation and not directly participating in the restraining of S.T., would have been prevented from calling the ambulance as early as one minute after the beginning of the intervention.

She further stated that while the intervening officers had used the highly risky method of keeping the clearly intoxicated S.T. in a prone position in temperatures exceeding 30^{o}C, kneeling on his upper back or neck area, they had been obliged to diligently monitor him. Despite that, the video-recording did not show any attempt by the police officers to verify whether S.T. had been breathing, whether his face had been changing colour, whether his eyes had been open, or whether he had been foaming at the mouth. All those signs would have enabled them to detect an impending loss of consciousness. The police officers had not attempted to check S.T.'s pulse or pupils even once he had calmed down. In her view, the absence of monitoring had led to the tragic result where a person showing no signs of life had received no first aid despite being surrounded by police officers.

In relation to the time at which S.T. had lost consciousness, the Deputy Public Defender of Rights stated the following:

> "I consider it extremely unlikely that S.T. lost consciousness at the same time as the arrival of the ambulance or perhaps even seconds before the paramedic checked his pulse. If the officers had actually checked his condition and knew that he was alive (breathing, communicating, moving, etc.), they would probably have been surprised by the paramedics' discovery of him being unconscious. This would then undoubtedly have been reflected in their official records of the incident, but there is no mention of this ...
>
> Supposing that the Regional Director wishes to defend the assertion that S.T. lost consciousness at the same time as the arrival of the ambulance or perhaps a pulse check by a paramedic, in that case, it is for him to substantiate his assertion credibly, but he has not done so. There is nothing in the statements of the witnesses or the police officers from which it could be inferred that the officers actually checked S.T.'s condition until he lost consciousness. There is no indication of how those checks were carried out, on the basis of what information the officers believed S.T. to be fine, etc. The officers could have supported their assertion with footage from their body cameras, but they did not use them. The Regional Directorate could have used better and more thorough witnesses in its investigation of the incident, but it did not do so either."

90. On 27 April 2021 the Deputy Public Defender of Rights sent the results of her investigation to the Police President and on 2 May 2021 she published a press release.

E. Constitutional appeal

91. On 9 May 2022 the applicant lodged a constitutional appeal against the Criminal Police and GISF decisions, and their subsequent reviews by the Regional and High Prosecutors.

She complained that the police had violated her brother’s right to life. She argued that the police intervention had been excessive considering S.T.’s vulnerable state owing to his intoxication and visible injuries, of which the police officers had demonstrably been aware; that the officers had failed to monitor his health, promptly call the ambulance and provide first aid; and that the continuous restraint of S.T. with handcuffs had clearly been excessive given his loss of consciousness and lack of resistance.

The applicant challenged the expert reports as biased and not thorough and complained that the investigation had not been effective. Namely she argued that the investigation had not been impartial and independent, as much of it had been conducted before the Criminal Police, which was hierarchically and institutionally connected with the police officers who had been the subject of investigation. She also complained that it had not been prompt and thorough, as the police had not clarified several crucial facts. She also complained that she had been denied an appeal against the GISF’s decision not to investigate the matter. Lastly, she stated that the manner in which the intervention had been conducted had been influenced by S.T. being Roma, and that that aspect had not been sufficiently investigated.

92. On 21 March 2023 the Constitutional Court dismissed the applicant’s constitutional appeal as manifestly ill-founded in decision no. IV. ÚS 1233/22.

The Constitutional Court held that given the expert reports’ findings, it was not possible to establish any link between the police intervention and S.T.’s death. It agreed with the prosecutors’ conclusions that there had been no grounds for finding the experts biased, no reason to repeat the autopsy and no reason to commission another expert report. Since all the evidence suggested that S.T. had died of drug use, the case was predictably investigated by the Criminal Police as a suspicion of the illegal manufacture and trafficking of drugs. The specific aspects of the police intervention had been correctly investigated by the GISF.

The Constitutional Court also held that it was indeed likely that S.T. had no longer been conscious when the ambulance had arrived. Nevertheless, the expert report concluded that the police officers could not have prevented S.T.’s death even if they had noticed that he had lost consciousness, called the ambulance earlier and immediately administered first aid. Their failure to timely notice S.T.’s loss of consciousness had thus had no impact. The Constitutional Court lastly concluded that the authorities had sufficiently investigated the police officers’ potential discriminatory motives.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure (Law no. 141/1961)

93. The relevant provisions of the Code of Criminal Procedure were summarised in *Sládková v. the Czech Republic* (no. 15741/15, §§ 34-36, 10 November 2022).

B. Police Act (Law no. 273/2008)

94. Section 11 of the Police Act states that a police officer must ensure that no one suffers unjustified harm as a result of his or her actions and that his or her inaction does not cause unjustified harm to persons whose safety is threatened. He or she is also obliged to act in such a way that any interference with the rights and freedoms of persons against whom the action is directed or of persons not involved does not exceed what is necessary to achieve the purpose pursued by the action.

Other relevant provisions of the Police Act have been summarised in *B.Ü. v. the Czech Republic* (no. 9264/15, §§ 54-57, 6 October 2022).

C. General Inspectorate of the Security Forces Act (Law no. 341/2011)

95. Sections 1 and 2 of the General Inspectorate of the Security Forces Act have been summarised in *B.Ü. v. the Czech Republic* (cited above, §§ 52-53).

Section 38 provides that, prior to the institution of criminal proceedings, the GISF, on its own initiative or that of another person or authority, will, in order to obtain knowledge of criminal activity, seek out, uncover and, if necessary, document facts indicating the commission of an offence, the investigation into which falls within the competence of the GISF or a prosecutor.

D. Constitutional Court case-law

96. In its judgment no. I. ÚS 1565/14 of 2 March 2015, the Constitutional Court found a violation of the appellant's right to an effective investigation because the police had refused her access to the investigative file on account of her not being an injured party in the criminal proceedings.

97. In its judgment no. I. ÚS 1042/15 of 24 May 2016, the Constitutional Court upheld the constitutional appeal of an appellant challenging the GISF's decision to close the investigation without any further measures being taken and ordered the GISF to resume the inquiry.

The Constitutional Court criticised the failure of the intervening officers to use the body cameras they had been equipped with, stating the following:

> "It is regrettable that the intervention against the appellant was not captured on camera, even though a police officer wearing a camera was present who filmed the initial contact with the appellant and there being no indication of any special circumstances that prevented the recording from continuing.
>
> This fact alone raises doubts about the appropriateness of the police intervention itself. By acting in this way, the police also inappropriately limit the State's ability to prove that the intervention was lawful and proportionate in the given situation. As mentioned above, in such situations it is the State that must prove that the appellant was not mistreated."

98. In its judgment no. I. ÚS 1496/18 of 2 July 2019 the Constitutional Court reiterated the conclusion from its judgment no. I. ÚS 1565/14. It emphasised that if an appellant has an arguable claim under Articles 2 or 3 of the Convention and correspondingly the right to an effective investigation, the right to consult the investigative case file could only be denied in specific circumstances and never for the whole duration of the proceedings.

99. In its judgment no. II. ÚS 470/25 of 4 August 2025 the Constitutional Court found that the GISF had violated the appellant's right to an effective investigation by refusing the victims access to the investigative case file because the GISF had not initiated a formal investigation. The supervising prosecutors had approved the refusal.

E. Internal regulations

100. The relevant parts of Police Guide no. 1/2017 on the use of coercive measures and weapons by officers of the Czech Republic's police force, which details the conditions governing the use of coercive measures, were summarised in *V v. the Czech Republic* (no. 26074/18, § 35, 7 December 2023).

101. On 7 June 2022, in relation to the implementation of the Court's judgment in *V v. the Czech Republic* (cited above), the Police Department of Education and Training issued an internal guideline ("the 2022 Guideline") warning that some forms of restraint might entail the risks of positional asphyxia. According to that guideline, asphyxia could occur when a police officer knelt on a person's back, or when a person was kept in a prone position with hands cuffed behind his or her back.

The 2022 Guideline recommended that if a person was immobilised by kneeling on their lower back or shoulder blade, it should be for as short a time as possible. Only in exceptional circumstances could the knee be placed on the person's upper back; in which case the officer had to consider that the person might put up a struggle not to resist arrest but in an attempt to breathe. It emphasised that persons who were under the influence of alcohol or drugs had a lower pain threshold and their body might not apply its usual defence mechanisms, which had to be taken into account. Correspondingly, police officers had to attempt to communicate with the person and monitor his or her health, for any signs of loss of consciousness, or for any signs of difficulties breathing.

The 2022 Guideline further emphasised that a person held in the prone position whose hands were cuffed behind his or her back was at a specific risk of positional asphyxia. He or she could not be kept lying on his or her stomach – except in very exceptional circumstances – and had to be turned on his or her side or sat up as quickly as possible. He or she could not be left unattended, and his or her state of health and consciousness had to be closely monitored.

102. On 23 September 2024 the Police Department of Education and Training updated the internal training guideline "Preparation for the use of coercive measures" to include the warning about the risks of positional asphyxia, and guidelines on preventing such risks.

F. Other material

103. On 8 June 2022 the Czech Government approved the 2021 yearly report on extremism and hate crime prepared by the Minister of the Interior. According to the report, Roma were the second most common target of hate crimes in the country. The 2022 report indicated the same outcome whereas the 2023 report stated that Roma were the most common group targeted by hate crimes.

II. INTERNATIONAL LAW AND PRACTICE

A. Council of Europe

104. On 1 February 2012 the Committee of Ministers of the Council of Europe adopted a Declaration on the rise of anti-Gypsyism and racist violence against Roma in Europe, in which it expressed the following concerns:

> "In many countries, Roma are subject to racist violence directed against their persons and property. These attacks have sometimes resulted in serious injuries and deaths. This violence is not a new phenomenon and has been prevalent in Europe for centuries. However, there has been a notable increase of serious incidents in a number of member States, including serious cases of racist violence, stigmatising anti-Roma rhetoric, and generalisations about criminal behaviour."

105. On 28 January 2014 the Parliamentary Assembly of the Council of Europe adopted Resolution 1968 (2014) "Tackling racism in the police" in which it stated that:

> "Racism does not spare any level of society, and no institution appears immune to racism. The police is no exception. Racism can be present in the attitudes or behaviour of police officers, in their interaction with the population or with other officers. It can also be found in rules and regulations applied by the police, which would in that case qualify as institutional racism."

106. On 29 June 2007 the Council of Europe's European Commission against Racism and Intolerance (ECRI) adopted its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing (CRI(2007)39). It recommended, among other things, the adoption of the following measures:

> "6. To train the police in human rights, including the right to be free of racism and racial discrimination, and in the legal provisions in force against racism and racial discrimination;
>
> 7. To take measures to make the police aware of the fact that acts of racial discrimination and racially-motivated misconduct by the police will not be tolerated;
>
> ...
>
> 9. To ensure effective investigations into alleged cases of racial discrimination or racially-motivated misconduct by the police and ensure as necessary that the perpetrators of these acts are adequately punished;
>
> ...
>
> 15. To place the police under a statutory obligation to promote equality and prevent racial discrimination in carrying out their functions;
>
> 16. To train the police in policing a diverse society;
>
> 17. To recruit members of under-represented minority groups in the police and ensure that they have equal opportunities for progression in their careers;
>
> 18. To establish frameworks for dialogue and co-operation between the police and members of minority groups;
>
> ..."

107. On 24 June 2011 ECRI adopted its General Policy Recommendation No. 13 on combating antigypsyism and discrimination against Roma (CRI(2011)37), amended on 1 December 2020. It defined antigypsyism as:

> "... a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination."

108. At its 82nd plenary meeting (30 June - 2 July 2020), ECRI adopted a statement on racist police abuse, including racial profiling and systemic racism. It stated, *inter alia*, that:

> "... (t)he perception by police officers of persons belonging to a particular community as 'criminals' and the ensuing practice of racial profiling can result in 'institutionalised racism' ... While overt racism is relatively easy to recognise, unconscious racial bias is widespread but hidden, often resulting in 'racism without racists'."

109. During its 1492nd meeting on 12-14 March 2024, the Committee of Ministers adopted a decision to continue its supervision of the execution of the Court's judgment in *D.H. and others v. the Czech Republic* ([GC], no. 57325/00, ECHR 2007-IV). Among others, it noted with concern that Roma children were still overrepresented in schools with reduced curricula and outside the mainstream and underrepresented in pre-school and secondary education.

110. In its Action Plan on the implementation of the Court's judgment in *V v. the Czech Republic* (cited above) from 5 September 2025, discussed at the 1537th meeting of the Committee of Ministers, the Czech Government reported that since June 2021, in accordance with the instruction of the Police President, police officers were obliged to activate their body cameras at the beginning of any intervention directed towards other persons.

The Action Plan further stated that in October 2024 the GISF issued an internal methodological guideline which describes, among others, the measures to apply at the place of the incident to prevent collusion of the intervening police officers before being questioned.

111. In its Action Report on the implementation of the Court's judgment in *B.Ü. v. the Czech Republic* (cited above) from 13 November 2025, discussed at the 1545th meeting of the Committee of Ministers, the Czech Government described several measures adopted to ensure the prompt start of an independent investigation by the GISF into allegations of ill-treatment by the police, and to secure effective victim participation in and the transparency of the GISF's investigation.

In May 2024 the GISF Director's Guidance no. 47 was updated to outline a proper assessment of an arguable complaint, specifying that the GISF made such an assessment on its own, rather than relying on the conclusions of the Criminal Police.

Furthermore, considering that while victim participation was not precluded by the existing legal framework, it was not yet sufficiently regulated, the Director's Guidance no. 47 was also updated to include specific information on victims' rights during the GISF's investigation. GISF officers were advised to inform victims of their rights, allow them to consult the case file – unless there were serious reasons to refuse – update them on the measures taken during the investigation when requested and inform them of the conclusion. Templates for informing the victims, as well as information available on the website, have been updated accordingly.

In February 2025 the Prosecutor General's Office issued its opinion no. 1 SL 742/2024 aiming to unify the practice of allowing access to the GISF's case files.

B. Organization for Security and Co-operation in Europe (OSCE)

112. On 28 May 2019 the OSCE Office for Democratic Institutions and Human Rights published a Practical Tool for the Police on Using Bias Indicators (see also *Balázs v. Hungary*, no. 15529/12, § 21, 20 October 2015). It defined bias indicators as:

> "... objective facts, circumstances, or patterns attending a criminal act(s), which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated, in whole or in part, by any form of bias."

The non-exhaustive list of indicators suggesting that a crime might have been bias-motivated include the following: victim and witness perceptions; comments, written statements, gestures or graffiti; ethnic, religious or cultural differences between the perpetrator and victim; a link with organised hate groups; location and timing; patterns or frequent previous crimes or incidents; the nature of the attack; and lack of other motives.

C. Reports of international monitoring bodies

1. European Committee for the Prevention of Torture (CPT)

113. Relevant reports of the CPT were summarised in *Kalkan v. Denmark* (no. 51781/22, §§ 57-62, 27 May 2025).

In particular, in the document CPT/Inf/E (2002) 1 – Rev. 2010, published on 8 March 2011, the CPT noted that keeping a detainee in a prone position – in particular in the event that escort staff put their weight on various parts of the body (for example, exerting pressure on the ribcage, placing knees on the back or immobilising the neck) after the person concerned had put up a struggle – entailed a risk of positional asphyxia. The CPT made it clear that the use of such methods should be avoided whenever possible and that any such use in exceptional circumstances had to be subject to guidelines designed to reduce to a minimum the risks to the health of the person concerned.

114. In its report of 31 March 2025 to the Czech Government on the visit to the Czech Republic conducted from 16 to 24 April 2024 (CPT/Inf (2025) 11), the CPT stated, *inter alia,* as follows (p. 13):

> “In this context, the CPT wishes to reiterate its position that the use of force and/or means of restraint entailing a risk of positional asphyxia should only be a last resort, in exceptional circumstances and for the briefest possible duration, and must be subject to precise guidelines in order to minimise the risks to the health of the person concerned.”

2. European Commission against Racism and Intolerance (ECRI)

115. In its 2020, 2021 and 2022 annual reports, ECRI expressed its concern about institutional racism against the Roma in the police force.

In its annual report of 2020, it warned:

> “Such racism is covert or overt, and resides in the policies, procedures, operations and cultures of public and private institutions ... there is a body of evidence suggesting that it is often ‘unwitting prejudice’ that leads to these discriminatory practices. Consequently, having a good grasp of the mechanisms of implicit racial bias in policing, and in the criminal justice system more broadly, is important for setting up better policies to create an inclusive institutional culture.”

The ECRI annual report of 2021 similarly summarised as follows:

> “11. Racism in police forces and racist behaviour in police interaction with members of the general public have been raised in a number of Council of Europe member states as an ongoing problem ...

> 15. In some cases, it was alleged that racism in policing was of a structural nature and therefore not limited to the behaviour of a few individual officers but representing widespread and deeply ingrained attitudes which underpin police action. The repeated occurrence of racist acts by members of police forces, as well as the use of racist language amongst individual officers, even if not directed at a specific victim (as could be found in social media chat groups), could be indicative of a more general problem. However, it could also be unfair, for the many police officers that do their challenging job in a correct manner, to draw a general conclusion."

Similar concerns were reiterated in the ECRI annual report of 2022:

> "In several member States of the Council of Europe, Roma have reportedly been the subject of racist police abuse. In a few instances, police action led to the death of Roma people, in particular youngsters, and the relevant authorities have failed to hold the police officers concerned accountable."

116. In its Sixth Report on the Czech Republic, adopted on 1 October 2020, ECRI expressed its concern about the negative stereotyping of Roma occurring at the highest political levels.

3. *Other Council of Europe bodies*

117. In its Fifth Opinion on the Czech Republic from 31 May 2021 the Council of Europe Advisory Committee on the implementation of the Framework Convention on National Minorities concluded:

> "93. The groups most affected by racist hate speech in the Czech Republic are religious Muslims and Roma ... Hate directed at Roma has notably increased in social media during the last years. Negative attitudes towards Roma prevailing in parts of society are also supported by statements by some politicians, including at the highest level, for example by referring to Roma as 'inadaptable' citizens."

In its Sixth Opinion from 2 July 2025 the Committee reiterated its concerns about anti-Roma hate speech.

118. On 23 June 2021 the Spokesperson of the Secretary General of the Council of Europe published a statement concerning the death of S.T. calling for an urgent, thorough and independent investigation into the incident. The Spokesperson described the video footage capturing the police intervention as alarming and raising numerous questions about its circumstances. The statement reiterated the Council of Europe's commitment in working with governments and the Roma community to protect Roma people from discrimination and to promote their integration and participation in society.

119. In her report from 5 September 2023 following her visit to the Czech Republic in February 2023 the (then) Council of Europe Commissioner on Human Rights Ms Dunja Mijatović emphasised:

> "Roma continue to face discrimination in virtually every area of life. A redoubling of efforts in key sectors where Roma face discrimination is necessary, including ... tackling discrimination and violence by the police. Hate speech and the spread of prejudice by public officials remains an urgent issue to tackle."

4. United Nations Committee on the Elimination of Racial Discrimination (UN CERD)

120. The UN CERD, the body of independent experts that monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, repeatedly expressed in its Concluding Observations to the Czech Republic a concern about the reports of racially motivated ill-treatment of the Roma by the police, and the lack of effective investigation thereof (UN doc. CERD/C/63/CO/4 of 10 December 2003, UN doc. CERD/C/CZE/CO/7 of 11 April 2007).

If further expressed deep concern for the prevailing negative sentiments and stereotypes concerning the Roma among the Czech population and the manifestations of hatred, hate crime, racist and xenophobic discourse concerning the Roma persons in the general population, politics and the media, including reports of statements by senior political figures (UN doc. CERD/C/CZE/CO/10-11 of 25 September 2015 and UN doc. CERD/C/CZE/CO/12-13 of 19 September 2019).

In its latest observations, the UN CERD expressed its concern about the prevalence of racially motivated crimes against the Roma, as well as the apparent reluctance of the victims to report the crimes. It criticised the Czech Republic for failing to produce disaggregated data related to racially motivated crimes (UN doc. CERD/C/CZE/CO/12-13 of 19 September 2019).

III. EUROPEAN UNION MATERIAL

121. On 10 November 2022 the European Parliament adopted a resolution on racial justice, non-discrimination and anti-racism in the EU (2022/2005(INI)) in which it expressed its concerns about police violence against racialised people in several member States and called on the member States to ensure that people have access to independent and well-functioning police complaints mechanisms capable of launching investigations into cases of police violence, misconduct and abuse and to safeguard the rights of people to document these cases.

122. According to the European Union Fundamental Rights Agency ("EU FRA") Roma survey 2021, 48% of Roma respondents felt discriminated against in the past 12 months because of being Roma. Furthermore, 34% of Czech Roma reported that they had been harassed and 1% had been physically assaulted because of being Roma.

123. In December 2023 the EU published a survey on discrimination in the EU. More than half of the Czech respondents stated that there was widespread discrimination in their country on the basis of being Roma (57%).

124. In 2024 the EU FRA published its report "Addressing racism in policing" in which it criticised member States for failing to reliably monitor and collect data on racist police incidents. The report referred to evidence of

institutional or structural racism in the police forces in the EU. It defined to institutionalised racism in the following manner:

> "... the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people."

IV. COMPARATIVE LAW AND PRACTICE

125. Comparative information regarding the use of the prone position in Europe were detailed in *Kalkan* (cited above, §§ 47-56).

126. In particular, in France following the judgment in *Saoud v. France* (no. 9375/02, 9 October 2007), in 2008 the authorities issued a guidance note to the police to emphasise that restraining a person face down was to be avoided wherever possible, particularly if the restrained person's hands were cuffed behind the back. Any pressure, particularly on the thorax or the abdomen, had to be as brief as possible and had to be relaxed as soon as the person was restrained by regulated and appropriate means.

127. In the United Kingdom, a 2005 Prison Service Order (no. 1600) on the use of force, stated:

> "The prone position (face down) should only be used if necessary. If it cannot be avoided the time spent in this position must be minimised. If the person has to be restrained in the prone position, avoid pressing down on the chest. Use the limb, as binding the wrists will be considerably safer than kneeling on the back of someone's chest. The amount of time that restraint is applied is as important as the form of restraint and the position of the detainee. Prolonged restraint and prolonged struggling will result in exhaustion, possibly without subjective awareness of this, which may result in sudden death ..."

128. In Norway, following the death of Mr Obiora (see *Obiora v. Norway* (dec.), no. 31151/08, 21 June 2011) after he had been held in the prone position, the Directorate of Police issued the following guidelines:

> "In situations where it appears absolutely necessary to gain control over a resisting individual, the prone position can be used. As soon as the arrested person is handcuffed or if control over the arrested person is established in another manner, the person must be removed from the prone position."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 UNDER THEIR PROCEDURAL LIMB

129. The applicant complained that the State had failed to conduct an effective investigation into her brother's death and alleged ill-treatment. Relying on Articles 2, 3 and 13 of the Convention, she argued in particular

that the investigation had not been independent and impartial, adequate or speedy, and had failed to ensure her effective participation, including a possibility to lodge a remedy against the final decision. The Court considers that the complaints fall to be examined under Articles 2 and 3 of the Convention whose relevant parts read as follows:

Article 2

> "1. Everyone's right to life shall be protected 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 ..."

Article 3

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

130. The Government submitted that the applicant had failed to raise before the competent domestic authorities or in her application before the Court several complaints concerning the allegedly ineffective investigation. Namely, her complaint concerning the lack of independence and impartiality on account of the online public statements by the Police of the Czech Republic, the GISF, the then Minister of the Interior and the then Prime Minister, was only raised in her reply to the Government's observations in the present case.

Furthermore, she had not alleged in the domestic proceedings that she had been denied access to the GISF case file or that her interview before the GISF had not constituted an appropriate means of participation. She had also failed to argue that the investigation had not been speedy because the GISF had only interviewed the intervening police officers over a month after the intervention in question.

The Government argued that those complaints should be dismissed either as being outside the four-month time-limit or on account of the failure to exhaust domestic remedies.

131. The applicant argued that she had raised the complaint concerning the GISF's delay in interviewing the police officers at least in substance before the Constitutional Court and in her application before the Court. She alleged before the Constitutional Court that the GISF's investigation had not been speedy because the GISF had not carried out the investigative steps within a reasonable time. In the application before the Court, she had also

complained of the lack of promptness and reasonable expedition of the investigation.

132. The Court observes that the applicant indeed only drew attention to the online statements by various highly placed public officials in her reply to the Government observations. Those statements, albeit raising serious concerns, were not referred to in any of the applicant's domestic submissions, either in the factual account nor in the legal argumentation. Correspondingly, the potential impact of those statements on the impartiality of the investigation was not examined by the domestic investigative authorities, nor by the Constitutional Court, who thus did not have the opportunity to prevent or put right the alleged violations of the Convention (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, 9 July 2015, §§ 84-89, with further references). The applicant did not allege that there were any grounds for excluding the application of Article 35 § 1 of the Convention in this respect. Accordingly, the Government's objection of failure to exhaust domestic remedies must be upheld. It follows that insofar as they concern the impugned online public statements by the Police of the Czech Republic, the GISF, the then Minister of the Interior and the then Prime Minister the complaints under Articles 2 and 3 must be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 *in fine* of the Convention.

133. In relation to the remaining complaints, the Court observes that the applicant consistently complained before the prosecutors and the Constitutional Court (see paragraph 91 above) that the case should have been investigated by the GISF as an institutionally independent body from the very outset, that the GISF had not conducted its subsequent investigation in a speedy manner, as well as that it had not ensured her effective participation. Although those complaints were raised in more general terms than before the Court, they relied on facts which were clearly known to the investigative authorities as well as the Constitutional Court. The Court previously held that where the applicant complains of the lack of an effective investigation under the procedural limb of Article 2 or 3 of the Convention, compliance with the non-exhaustion requirement is satisfied even if legal arguments are not explicitly raised at the domestic level, if the applicant has challenged the effectiveness of that investigation before the competent domestic court and, by describing the course and duration of the investigation in detail, referred to the relevant factual elements for that court to assess the investigation's effectiveness (see *Hanan v. Germany* [GC], no. 4871/16, 16 February 2021, §§ 149-51). The Court considers that the applicant's specific arguments were a logical elaboration of the facts and arguments that she had raised at the domestic level. The domestic authorities correspondingly had an opportunity to engage with the substance of the applicant's complaints. It follows that the Government's objection as to inadmissibility raised in this regard must be dismissed. The Court considers that these complaints are neither manifestly

ill-founded nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

134. The applicant complained that the investigation into her brother's death and alleged ill-treatment had not been independent and impartial. Most of the evidence had been collected by the Criminal Police, including the crucial evidence from the initial phase of the investigation. That authority could not be considered independent, because it was hierarchically and institutionally connected with the police officers whose intervention had been under investigation. The GISF, which could be considered institutionally independent, had unduly relied on the evidence collected by the Criminal Police as well as on its preliminary conclusions concerning S.T.'s cause of death.

135. Furthermore, a decisive value had been given to the forensic medicine expert reports that had been biased. In the applicant's view, the very fact that the Criminal Police and the experts had been from the same region indicated the experts' lack of impartiality because they had an economic interest in receiving further commissions from the Criminal Police. The bias could also be inferred from the experts' incomplete and dismissive answers to certain questions. The experts had failed to address the probability that the police intervention might have contributed or hastened S.T.'s death and their conclusion that S.T.'s death would have been preventable if he had not indulged in drugs had reflected a dismissive and unprofessional attitude.

136. The applicant also argued that the GISF's investigation had not pursued an essential line of inquiry, failing to address several key allegations, such as the police officers' failure to monitor S.T.'s vital signs during the intervention and to call the ambulance in a timely manner. The GISF had never secured key evidence in that regard, including the statements of the paramedics, or the witnesses present at the scene of the intervention, and gave excessive weight to the statements of the police officers who had been potential suspects. As a result, the GISF had failed to establish several key facts, such as the moment when S.T. had lost consciousness or when he had been uncuffed.

137. The applicant further submitted that the investigation had not been speedy because there had been delays in securing essential evidence and it had taken the GISF nine months to issue a decision.

138. Lastly, the applicant complained that she had not been ensured effective participation in the proceedings. Since the GISF had only conducted a preliminary inquiry and not a formal investigation, she had not been treated

as a victim. Correspondingly, she had not been informed of her rights, had received no meaningful information about the investigation, had not been able to consult the GISF's case file and had not been issued a duly reasoned decision informing her of the possibility to lodge a remedy.

139. The applicant concluded that the State had failed to conduct an effective investigation into her brother's death. She asserted that such a failure was alarming given the public concern surrounding the case, undermined public trust and perpetuated doubts about the accountability of law enforcement.

(b) The Government

140. The Government disagreed that there had been no independent and impartial investigation. They insisted that the Criminal Police had solely investigated the cause of S.T.'s death and the liability of the person who had supplied him with drugs. The circumstances of the police intervention had been investigated by the GISF, a hierarchically and institutionally independent body. The GISF's preliminary inquiry had been initiated on the day of the incident, but as preliminary evidence had indicated no suspicion of a crime by the police officers, there had been no reason to start a formal investigation. During the preliminary inquiry, the GISF had gathered various pieces of evidence and it had inspected the scene; interviewed the applicant and the intervening officers; requested records on the officers' first aid training and employee assessments; conducted an "open-source review" of the police officers' expressions and conduct for any signs of racist behaviour; and asked the Czech Police Academy to evaluate the legality and proportionality of the intervention.

141. The Government submitted that while the GISF had partly relied on the evidence gathered by the Criminal Police, including the forensic medical expert reports, that evidence had been obtained with the permission of the Regional Prosecutor, and had been critically assessed by the GISF. The GISF had also attempted to resolve the inconsistencies in the paramedics' and the police officers' statements concerning the time at which S.T. had lost consciousness by re-interviewing the police officers. Furthermore, the applicant had not submitted any specific reasons for the alleged bias of the forensic medical experts nor had any such reason been uncovered during the investigation. They argued that it had been standard practice for the autopsy to be conducted at the nearest forensic medical facility for economic reasons.

142. Regarding the applicant's participation in the GISF investigation, the Government argued that she had been involved in all the stages, including the review by the prosecutors and the constitutional appeal proceedings. She had failed to request a status report or access to the GISF case file, even though in accordance with the relevant Constitutional Court practice such access could be granted (see paragraphs 96-99 above). Furthermore, the applicant

had received a duly reasoned GISF decision to close the case (see paragraph 81 above).

143. Lastly, the Government argued that considering the complexity of the case, the speediness of the investigation had been reasonable.

144. The Government maintained that the evidence gathered had been sufficient to clarify the cause of S.T.'s death and the GISF had conducted a thorough, objective and impartial investigation whose results had been shared with the applicant in a reasoned decision.

2. *The Court's assessment*

(a) General principles

145. The Court will examine the applicant's complaints concerning the alleged lack of effectiveness of the domestic investigation jointly under Articles 2 and 3 of the Convention, in the light of the converging principles deriving from both those provisions (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 314, ECHR 2014 (extracts).

146. For an investigation to be effective, the institutions and persons responsible for carrying it out must be independent from those targeted by it. This means not only a lack of any hierarchical or institutional connection but also practical independence (see, for example, *B.Ü. v. the Czech Republic*, cited above, § 90, with further references). What is at stake is the public confidence in the State's monopoly on the use of force (see, for example, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II).

147. The investigation must also be thorough. That means that the authorities must always make a serious attempt to find out what happened. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 175, 14 April 2015, and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 234, 30 March 2016).

148. Furthermore, the investigation must be accessible to the victims to the extent necessary to safeguard their legitimate interests. Victims should be able to participate effectively in the investigation, in particular, by having access to its material. Following an investigation there should be a reasoned decision available to reassure a concerned public that the rule of law has been respected (see *V.D. v. Croatia (no. 2)*, no. 19421/15, §§ 66, 15 November 2018, and *B.Ü. v. the Czech Republic*, cited above, § 93). There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts (see, *inter alia*,

Oleksiy Mykhaylovych Zakharkin v. Ukraine, no. 1727/04, § 67, 24 June 2010).

(b) Application of those principles to the present case

149. The Court firstly notes that the crux of the applicant's argument concerning the lack of independence and impartiality of the investigation was that most of the key investigative measures, including those from the initial stage of the investigation, had been conducted by the Criminal Police which could not be considered institutionally independent. She argued that even though that evidence was subsequently taken over by the GISF, an independent body which had conducted its own investigation, the reliability of that evidence had been tainted. The applicant specifically complained that the expert report which constituted a key piece of evidence had not been impartial because it had been commissioned by the Criminal Police.

150. The Court observes that the police officers who intervened against the applicant's brother were members of the Teplice Police Department. That authority was hierarchically directly linked to the Criminal Police of the Ústí nad Labem Regional Police Directorate that subsequently initiated an investigation into the incident. The Criminal Police therefore did not meet the requirements of hierarchical and institutional independence under Articles 2 and 3 of the Convention (compare with *B.Ü. v. the Czech Republic*, cited above, § 95, and *Eremiášová and Pechová v. the Czech Republic*, no. 23944/04, § 154, 20 June 2013). As regards the GISF, the Court has previously held that it generally complies with the requirements of independence, being both hierarchically and institutionally independent of the police (see *B.Ü. v. the Czech Republic*, cited above, § 96).

151. The Court further observes that even though a GISF officer was present at the scene on the day of the incident, all early investigative measures, which were of crucial importance, were conducted by the Criminal Police, which lacked independence (compare with *B.Ü. v. the Czech Republic*, cited above, § 95, and *Rehbock v. Slovenia*, no. 29462/95, § 74, ECHR 2000-XII). The evidence was only subsequently taken over by the GISF. This included the preliminary autopsy report, the forensic medical expert reports, the witness statements of persons present at the scene, the witness statements of the paramedics who responded to the call, as well as the initial statements of the three intervening police officers (see paragraphs 70 and 72-74 above).

152. The Court also observes that the GISF relied on that evidence, which it had not collected itself, both in its decision not to initiate a formal investigation (see paragraph 62 above) as well as in the final decision to close the case after its preliminary inquiry (see paragraph 79 above). The reasoning of both decisions, moreover, indicated that the GISF had not engaged in a formal investigation because the evidence collected by the Criminal Police and the early results of its investigation had not suggested that an offence had

been committed by a police officer. As the Court held in *B.Ü. v. the Czech Republic* (cited above, §§ 97 and 99), the practice of relying on another body's conclusions to justify refusal to initiate formal investigation, where that body lacked the requisite hierarchical and institutional independence, cannot satisfy the requirement of genuine and independent investigation.

153. The Court considers the foregoing notably problematic when it comes to the GISF's reliance on the forensic expert report which constituted a key piece of evidence in the case. With reference to that report, both the Criminal Police and the GISF concluded that there had been no link whatsoever between the manner in which the police officers had used force against S.T., and his death. Based on that report, they also concluded that the officer had not knelt on S.T.'s neck or neck area (see paragraph 48 above). Consequently, they refused to consider the potential impact that the prone position, being knelt on and being handcuffed could have had on S.T.'s health. Furthermore, the initial statements of the public officials, including the then Prime Minister or Minister of the Interior, also relied on the preliminary expert reports' conclusions to deny any potential responsibility of the police officers for S.T.'s death (see paragraphs 35-37 above). The reports were thus a crucial element of the whole investigation and the eventual decision to close the investigation.

154. However, the Court has doubts about the objectivity and reliability of that key piece of evidence. In the Court's view, the very fact that the expert report was commissioned by an investigative body which lacked independence is susceptible of raising doubts about the report's impartiality. The Government admitted that it had been standard practice to engage experts from the closest forensic medical facility in cases investigated by the Criminal Police. The Court therefore considers it likely that there had been regular and established professional and economic ties between the investigative body and the experts.

155. Furthermore, without attempting to replace the domestic authorities' assessment in this regard, the Court cannot ignore that that expert report did not at all engage with the potential dangerousness of the prone position, despite the well-documented threat to life it may pose, especially if combined with being knelt on and handcuffed, and used against an intoxicated person (see paragraphs 113-114 and 125-128 above). While that was apparently so in view of the finding that the officer had not knelt on S.T.'s neck or neck area, the thought process by which the experts excluded any potential impact of the prone position on S.T.'s demise lacked any explanation as to how this finding was to be reconciled with the video material of the incident (contrast with *Magherini and Others v. Italy*, no. 32707/19, §§ 22-27, 15 January 2026). Given the well-known risks associated with using similar force in the context of interventions against individuals in an intoxicated state or experiencing a mental health crisis, the Court considers such an omission striking. Furthermore, the Court must agree with the applicant that some of

the statements included in the report indicated a lack of a respectful and professional attitude towards the victim (compare paragraphs 48 and 135 above).

156. The Court further notes that several pieces of evidence were collected by the GISF alone (see the list in paragraph 140 above). However, that evidence did not include statements of the paramedics or the witnesses present at the scene. The police officers were interviewed on 19 July and 30 July 2021, about a month after the incident (see paragraph 65 above), but the Court did not receive any information about the measures adopted to prevent potential collusion between them (see *mutatis mutandis*, *V v. the Czech Republic*, cited above, § 123). In their first interview with the GISF, the police officers recounted the intervention in their own words, mostly repeating their earlier statements given before the Criminal Police (see paragraph 29 above), and it appears that they were not asked specific questions concerning the key aspects of the intervention (see, *mutatis mutandis*, *V v. the Czech Republic*, cited above, § 123). During their additional interviews on 24 and 26 November 2021, the GISF attempted to resolve the inconsistency between the intervening officers' and the paramedics' statements as to when S.T. had lost consciousness (see paragraph 75 above) but those interviews did not clarify the events either.

157. Despite the gaps in the police officers' statements concerning the key questions in the investigation, the Court observes that the GISF relied on their statements rather uncritically. For example, the police officers' version of events was relied on in the GISF's conclusion that it had not been possible to establish when S.T. had lost consciousness. The GISF accepted their version of facts despite the contradicting statements of the paramedics indicating he must have lost consciousness while under police restraint, and even though, as opposed to the paramedics, the police officers were potential suspects in the case. The Regional Prosecutor who later reviewed the GISF's decision even asserted that the police officers could not be "held liable for the paramedics' statements" (see paragraph 83 above), an assertion which appears to be at odds with the logic of assessing conflicting evidence in criminal investigation.

158. In addition, the GISF did not critically assess the reasons why Z.V.'s body camera had not been switched on, even though he had a clear legal obligation to do so, or account for how the police officers had monitored S.T.'s health and how S.T. had responded to their alleged communication attempts.

159. In the Court's view, as a result of the insufficient confrontation of the existing evidence, significant reliance on the statements of the police officers and the failure to take into consideration other pieces of evidence, the GISF could not provide sufficient and convincing answers to the key questions raised during the investigation. In the light of the foregoing the Court cannot conclude that the GISF conducted an investigation which

genuinely attempted to clarify the circumstances of S.T.'s death (see, *mutatis mutandis*, *B.Ü. v. the Czech Republic*, cited above, § 99).

160. Furthermore, the Court agrees with the applicant that she was not ensured effective participation in the GISF investigation. It notes in this regard that the Government did not dispute the applicant's argument that since she could not be formally recognised as a victim in the proceedings, she had not been properly informed of her rights (see paragraph 142 above). Furthermore, the Court observes that after the applicant lodged her criminal complaint on 24 June 2021 (see paragraph 61 above), the only communication between the GISF and her appears to be her interview (see paragraph 67 above) and the notification she received on 23 July 2021 in which the GISF informed her that she would be notified of other measures adopted in the investigation (see paragraph 68 above). Following that, the applicant did not obtain any information about the investigative measures taken. It would appear that she did not receive a response to her proposal for evidence (see paragraph 64 above) nor was the GISF's decision of 11 February 2022 communicated to her (see paragraph 79 above). She only received a notification of that decision on 16 March 2022 as a reply to her request of 9 March 2022 for a status report on the investigation (see paragraph 81 above). In that notification, the GISF did not list the investigative measures taken or the evidence collected, and it did not clearly explain how that evidence had been assessed to reach the factual conclusions.

161. The Court notes the Government's argument that if the applicant wished to receive more information about the investigation, she could have requested access to the GISF's case file which might have been granted in the light of the Constitutional Court case-law in force at the time (see paragraphs 96 and 98 above). However, in the present case the GISF itself informed the applicant on 23 July 2021 that it would notify her of further investigative measures taken (see paragraph 68 above). In the light of the above, the Court considers that the applicant cannot be faulted for relying on the information received from the GISF and not pursuing the uncertain possibility of accessing the investigative case file. While the Court welcomes the measures adopted in May 2024 to unify the practice of allowing victims access to the investigative case file (see paragraph 111 above), those changes could not have had impact on the uncertainty of the applicant's situation.

162. It follows that the GISF did not, in the present case, fulfil its duty to keep the applicant informed so as to allow her to safeguard her legitimate procedural interests (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 243, 26 April 2011) and to prevent any appearance of collusion in or tolerance of unlawful acts. The Court finds that failure particularly serious considering the gravity of the case under investigation. Keeping the victim informed and engaged in the investigation was essential both to uphold her rights as a next of kin and also to encourage public trust in the independence, thoroughness and transparency of the investigation.

163. In the light of the foregoing, the Court concludes that the investigation into S.T.'s death and his alleged ill-treatment did not comply with the Convention requirements of effectiveness in that it was initially handled by bodies lacking independence, was thereafter incomprehensive in scope, relied heavily on the initial findings of those bodies and failed to explore contradictory evidence, and in that it failed to secure the victim's access to the relevant material. There has accordingly been a violation of the procedural aspects of Articles 2 and 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION UNDER ITS SUBSTANTIVE LIMB

164. The applicant complained that her brother had died in connection with the allegedly disproportionate police intervention against him and that the police officers, aware of his vulnerable situation, had failed to provide him the requisite medical assistance. She relied on Article 2 of the Convention, the relevant part of which is cited in paragraph 129 above.

A. Admissibility

165. The Court notes that the complaint 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' arguments*

(a) The applicant

166. The applicant submitted that her brother S.T. had died either during the police intervention or immediately after it. He had not shown any vital signs since about 3.11 p.m. at the latest, when he had been moved out of the prone position and the paramedics had begun attempts to resuscitate him. In the applicant's view, the combination of the prone position, and being knelt on and handcuffed had clearly been disproportionate considering S.T.'s vulnerable state. While the use of force could have been justifiable at the beginning, the intervention had not been properly planned and executed in a manner that would minimise the risk of death. She maintained that the medical expert reports finding no causal link between the police intervention and S.T.'s death could not be considered as impartial and reliable evidence.

167. The applicant further complained that the State had violated its positive obligation to protect S.T.'s life and health during the intervention. Despite opting for the risky prone position while kneeling on the already handcuffed S.T., none of the police officers had properly monitored his vital signs even though they had demonstrably been aware of his intoxication and

injuries. In that regard, she submitted that Z.V.'s attempt to communicate with S.T. after approximately four minutes of being knelt on could not be regarded as a sufficient form of monitoring. Consequently, the police officers had failed to identify when S.T. had lost consciousness and provide him with first aid in a timely manner. Furthermore, D.V., who had been observing the intervention, could have reasonably called the ambulance at least three minutes earlier than the ambulance had been called by Z.V. The applicant maintained that the officers had been obliged to call that ambulance promptly, without speculating whether that call could have prevented S.T.'s death.

(b) The Government

168. The Government submitted that there had been no causal link between the police intervention and S.T.'s death. S.T. had not died or even lost consciousness while under police control. The forensic medical expert report unequivocally concluded that he had died of heart failure owing to methamphetamine intoxication, which would have occurred even without the police intervention. The report ruled out any impact or contribution of the police intervention to S.T.'s death which therefore could not be attributable to the authorities.

169. The Government further argued that the police intervention had been necessary, and the use of force proportionate. The police officers had responded to S.T.'s sudden aggression and had had to adapt their actions to the rapidly evolving situation. Still, it had been confirmed by the Czech Police Academy that the use of force had been lawful and proportionate in the light of the information available to the police officers at the time. The Government maintained that the officer had not knelt on S.T.'s neck or neck area but on his upper back or shoulder blades, and the pressure had been released as soon as possible.

170. In the Government's view, the police officers had not been aware of S.T.'s vulnerable state. They had known that he had been intoxicated and had had minor injuries but could not have known that he had been in imminent danger of death. Based on the information they had had at the time, the police officers had taken all reasonable measures to prevent the risk to his life and health. Z.V. had called the ambulance immediately after his involvement in the intervention had ended, no more than four minutes after the officers' arrival at the scene. D.V., not directly involved in the intervention, had been securing the perimeter, ready to use other means of coercion, and therefore could not have called the ambulance earlier. The ambulance had arrived at the latest eight minutes after the call.

171. The Government further maintained that to the officers' knowledge, S.T. had still been conscious when they had tried to communicate with him about five minutes after the beginning of the intervention. They had had no indication that he had lost consciousness and therefore had seen no reason to start administering first aid. While the precise moment that S.T. had lost

consciousness could not be determined, even if it had happened as asserted by the applicant, he would have received medical assistance no later than six minutes after that. In any event, the forensic medical experts had found that even if the ambulance had been called earlier, it could not have prevented S.T.'s death.

2. *The Court's assessment*

(a) General principles

172. Article 2 of the Convention enshrines one of the basic values of the democratic societies making up the Council of Europe. Its protection extends to situations where the domestic authorities are permitted to "use force" which may result, as an unintended outcome, in the deprivation of life (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 148, Series A no. 324).

173. In the light of the importance of the protection afforded by Article 2, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances – including such matters as the relevant legal or regulatory framework in place and the planning and control of the actions under examination (see *Boukrourou and Others v. France*, no. 30059/15, § 55, 16 November 2017; *Magherini and Others*, cited above, § 110; and *V v. the Czech Republic,* cited above, § 87). Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident (see *Makaratzis v. Greece* [GC], no. 50385/99, § 58, ECHR 2004-XI, and *V v. the Czech Republic*, cited above, § 83).

174. Furthermore, the authorities have a positive obligation to protect the health of persons who have just been arrested and whose relationship with the State authorities is therefore one of dependence (see *Boukrourou and Others*, cited above, § 63). That entails providing prompt medical care where the person's state of health so requires in order to prevent a fatal outcome (see *Saoud*, cited above, § 98). Such a positive obligation also encompasses the duty to train law-enforcement officials in such a manner as to ensure that they have a high level of competence and to prevent any treatment that runs contrary to that provision (see *Kalkan*, § 96; *Magherini and Others*, § 112; and *V v. the Czech Republic*, § 87, all cited above).

175. However, any such positive 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 *Eremiášová and Pechová*, cited above, § 110). A positive obligation may be violated where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to life and failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII). To engage responsibility under Article 2 of the Convention, the Court does not require it to be shown that "but for" the failing or omission of the authorities the killing would not have occurred (see *Opuz v. Turkey*, no. 33401/02, § 136, ECHR 2009, and *Bljakaj and Others v. Croatia*, no. 74448/12, § 124, 18 September 2014).

176. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of unrebutted presumptions of fact (see *Boukrourou and Others*, cited above, § 57, and Centre *for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 131, ECHR 2014). The level of persuasion required to reach a given conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made, and the Convention right at stake (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 181, ECHR 2011 (extracts); and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 151, ECHR 2012).

177. The Court adopts the conclusions supported by the free evaluation of all evidence – including such inferences as may flow from the facts and the parties' submissions. It is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it. The Court is not bound by the domestic courts' findings in this regard (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 119, 20 April 2021) and its reliance on evidence obtained as a result of the domestic investigation and on the facts established within the domestic proceedings will largely depend on the quality of the domestic investigative process, its thoroughness and consistency (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017, with further references).

178. In this respect, the Court is also sensitive to any potential evidentiary difficulties encountered by a party (see *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, § 328, 11 December 2025). It is in the nature of things that in relation to policing operations, the respondent State has far superior, or even exclusive, access to information and evidence capable of shedding light on why certain policing steps were taken and why the relevant law-enforcement authorities opted for a certain degree of force and for

running the policing operation in the way that they did (see *Tsaava and Others*, cited above, § 330).

179. Furthermore, when there have been criminal proceedings before the domestic authorities concerning allegations of a violation of Articles 2 or 3 of the Convention, it must be borne in mind that criminal-law liability is distinct from the State's responsibility under the Convention. The Court's competence is confined to the latter. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 182, ECHR 2011 (extracts), and *Magherini and Others*, cited above, § 113).

(b) Application of those principles to the present case

180. The Court firstly notes that following his immobilisation in the prone position and the placement of the handcuffs on his wrists, S.T. was under the police officers' control (see *Boukrourou and Others*, cited above, § 58). It also finds that the intervening police officers had demonstrably been aware that S.T. had been severely intoxicated and injured, and therefore in a vulnerable situation (see paragraphs 7-8 above, and, *mutatis mutandis*, *V v. the Czech Republic,* cited above, § 90). In that context, S.T. was placed in the prone position for over 11 minutes and for almost all of that time he was handcuffed with his hands placed behind his back. For over four minutes, officer M.Š. was simultaneously putting pressure on his chest area (see paragraphs 13-18 above).

181. It remained disputed by the parties whether officer M.Š. knelt only on S.T.'s upper back or also on his neck area, as argued by the applicant. Different domestic authorities remained divided on the question. The GISF's investigation concluded that the police officer had not knelt on S.T.'s neck, relying mostly on the forensic medical expert report and the police officers' statements (see paragraphs 48 and 79 above). The Deputy Public Defender of Rights, on the other hand, drew mainly on the witness's video-recording and concluded that M.Š. had moved between S.T.'s neck area, upper back and shoulder blades (see paragraphs 88-89 above). Statements of witnesses present at the scene were diverging in this respect as well, some of them confirming that the officer had also knelt on S.T.'s neck area and some asserting they saw the officer kneeling on S.T.'s shoulder blades or upper back (see paragraphs 28 above).

182. The Court refers to its earlier conclusion that the law enforcement authorities failed to conduct an effective investigation in the case and establish the circumstances surrounding S.T.'s death in an objective and comprehensive manner (see paragraph 163 above). Particularly, it reiterates its doubts about the reliability of the evidence relied on by the GISF as well as the quality of its assessment (see paragraphs 153-155 above). Consequently, the Court considers that it cannot uncritically rely on the conclusions reached by the GISF as to those facts.

183. The Court further notes that the precise area where officer M.Š placed his knee on S.T. could have been clarified had Z.V. fulfilled his legal duty to switch on the body camera he had been wearing following the instruction issued by the Police President (see paragraph 110 above) and the case-law of the Constitutional Court (see paragraph 97 above). Z.V. had failed to do that, stating without further explanation that he had not had enough time to do so during the intervention (see paragraph 10 above). However, according to the Police President's instruction, Z.V. had been obliged to check the functioning of the body camera prior to the intervention and switch it on at the beginning, not during it (see paragraph 110 above). The police officers were called to the initial scene of the incident having received information about the situation. On their way to the incident, in the police car, they had therefore already been aware that they would likely be obliged to intervene against other persons. There is nothing to suggest that Z.V. had been prevented from switching on the body camera in the police car on his way to the incident. Furthermore, the Court notes that after S.T. had been handcuffed and placed on his stomach, Z.V. had been restraining his legs, occasionally relaxing the pressure. After some time, he left to disinfect his hands and call the ambulance (see paragraph 19 above). The domestic authorities did not explain nor investigate in any way why he could not have switched the body camera on during any of those moments. In the Court's view, the reasons Z.V. had put forth to justify the failure to uphold his duty to switch on his body camera are unconvincing.

184. The Court shares the Czech Constitutional Court's position that an unjustified failure to switch on the body camera to capture the intervention raises doubts about the legality and proportionality of the intervention itself, as it unduly limits the State's ability to challenge the applicant's allegations and prove the opposite (see paragraph 97 above). Without underplaying the stress and tension the police officers could have been experiencing during the intervention, the Court considers that body cameras are conceived to be used precisely in situations of heightened tensions and action, as in the present case. Their role is to clarify the circumstances of the intervention, and to protect the police officers against potentially inaccurate or false accusations. If the Court were to accept that Z.V. did not have time to switch on the body camera simply because the intervention happened quickly, the use of body cameras in similar types of interventions would be a generally futile measure.

185. The Court reiterates that where it is unable to establish basic factual circumstances for reasons objectively attributable to the State authorities, also because the law enforcement authorities had failed to conduct an effective investigation, and different domestic authorities reached diverging conclusions as to those facts (see paragraph 181 above), it may draw inferences which may be unfavourable for the Government. In particular, those who use force in the course of a law-enforcement intervention cannot be allowed to benefit from failing to document it in line with the applicable

law and their professional duties. In the light of the foregoing, the Court is prepared to accept that M.Š. knelt also on S.T.'s neck area.

186. The Court further observes that the domestic expert reports found no causal link between S.T.'s death and the police intervention (compare with *V v. the Czech Republic*, § 93, and *Kalkan*, §§ 13-15, both cited above; and contrast with *Magherini and Others*, cited above, §§ 22-27). For the reasons outlined above (see paragraphs 153-155 above), the Court has certain doubts about the reliability of that conclusion. Nevertheless, irrespective of that conclusion, the Court reiterates that the very use of the prone position, even without pressure applied on the chest by kneeling on the upper back or neck area, may be dangerous and life-threatening, especially when used against vulnerable persons in an agitated state (see, for example, *V v. the Czech Republic*, cited above, § 97; *Saoud*, cited above, § 102; *T.V. v. Croatia*, no. 47909/19, § 55, 11 June 2024; and *Magherini and Others*, cited above, § 124). Taking into account the information from different jurisdictions (see paragraphs 125-128 above) and from the CPT (see paragraphs 113-114 above), the Court considers that the manner in which the police intervention was conducted at the very least put the applicant's brother at an imminent risk of death or serious health impairment, which in itself engages the State's responsibility under Article 2 (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 140, 25 June 2019).

187. In these circumstances, having regard to the approach adopted in previous cases involving non-intentional infringements of the right to life, the Court will examine whether the State authorities violated their positive obligations under Article 2 of the Convention to protect S.T.'s life. Such obligations include the duty to put in place an effective regulatory framework defining the limited circumstances in which law-enforcement officials may use force (see paragraph 173 above) as well as the duty to provide prompt medical care to persons under the State agents' control (see paragraph 174 above).

(i) The legal framework and practice concerning the use of the prone position at the material time

188. There appears to be no dispute between the parties that the initial use of force and placement of S.T. in the prone position could be considered justifiable (see paragraph 166 above). The dispute between the parties concerns the question as to whether prolonging his placement in that position, while kneeling on him and exerting pressure on his chest was proportionate after he had been handcuffed and under the control of the three police officers.

189. The Court notes in this context that three evaluations of the police intervention in terms of its compliance with domestic law and internal regulations were carried out during the investigation (see paragraphs 42-43 and 71 above). All of those evaluations concluded that the use of force by the police officers was fully in line with the law and the internal regulations,

namely Police Guide no. 1/2017 and the Internal Regulation no. 244/2016 on some activities of the officers of the Police of the Czech Republic in relation to the use of coercive measures and weapons (see paragraph 100 above). The Court therefore has no reason to doubt that the three police officers acted in line with the law applicable at the time and with the training they had received.

190. The Court further observes that the police authorities adopted a new guideline in 2022 which deals with risks associated with positional asphyxia during a prone position and outlines the ways to prevent those risks (see paragraph 101 above). That guideline states that persons whose hands are cuffed behind their back cannot be held in the prone position, except for very exceptional circumstances. It further warns that kneeling on the upper back of a person can only be done in exceptional circumstances. If such exceptional circumstances occur, the guideline emphasises that persons placed in such a position must be closely monitored, and their state of health and reactions followed specifically for any signs of the loss of consciousness or difficulties breathing. In 2024 the police training manual was updated accordingly (see paragraphs 101-102 above).

191. However, it follows from the various police authorities' reliance on Police Guide no. 1/2017, which appears to contain no observations nor recommendations on the use of the prone position, as well as from the documents from the Deputy Public Defender of Rights (see paragraphs 88-89 above) who criticised the lack of relevant guidance for and training of the police officers on the use of the prone position, that no similar guidance or training was applicable at the time of the intervention in question. The Court received no information from the Government about any other regulation or relevant training concerning the use of the prone position and kneeling on a person in an intoxicated state available to the police officers prior to the intervention in question (contrast with *Magherini and Others*, cited above, §§ 131-32).

192. Furthermore, the Court notes with concern that the potential risks associated with the position S.T. had been placed in were not at all reflected in the domestic investigation. They were not acknowledged in the forensic medical expert report (see paragraph 48 above), in the statements of three police departments assessing the lawfulness and proportionality of the intervention (see paragraphs 42-43 and 71 above), any of the police or prosecutors' communications, or the decision of the Constitutional Court (see paragraph 92 above). The authorities' failure to consider the seriousness of such risks is alarming, given the Court's existing case-law on the subject (see paragraph 186 above), and considering the developments in other European countries which had reflected the risks in their internal regulations as early as 2011 (see *Kalkan,* cited above, §§ 105-09).

193. In the light of the foregoing, the Court must conclude that the relevant domestic framework in place at the material time did not provide

clear and adequate instructions on placing individuals in a prone position, with or without kneeling on a person's body, with a view to reducing to a minimum the risks to his or her health and life (see *Kalkan*, § 96; *Magherini and Others*, § 112; and *V v. the Czech Republic*, § 87, all cited above). The Court is consequently also not satisfied that, at the material time, the State authorities adequately discharged their obligation to train their law-enforcement officers in such a manner as to ensure that they possessed the requisite high level of competence when employing the prone position.

(ii) Failure to provide timely medical assistance

194. The Court reiterates that the obligation to provide medical assistance to persons under their control must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see paragraph 175 above). In the present case, the Court must assess whether the police officers could have known, at the time of the intervention, of a real and immediate risk to S.T.'s life, and whether they took measures within their powers which, judged reasonably, might have been expected to avoid that risk. In this context, the Court notes the Government's argument that even if S.T. had lost consciousness while under restraint, the ambulance arrived no later than six minutes after that, and earlier medical assistance could not have saved S.T.'s life. However, in the Court's view, the police officers' conduct cannot be judged in the light of the knowledge attained after the incident but rather in the light of what the police officers could have been expected to know at the time (see *Kurt*, cited above, § 160). There is no doubt that during the arrest operation the police officers could not have acted on the presumption that medical assistance to S.T. would be futile.

195. The Court accepts, taking into consideration its findings above (see paragraphs 191-193 above), that the police officers might not have been fully aware of the seriousness of the risk entailed in the use of the prone position at the material time and may not therefore have understood that S.T.'s life was indeed at a risk owing solely to the position in which he had been placed (see paragraph 186 above). In any event, however, the police officers were clearly aware from the outset of their intervention that S.T. was highly intoxicated, injured and bleeding from his mouth, which are of themselves strong indications that he had been in need of medical help. Z.V.'s statement confirmed that the police officers themselves had considered S.T.'s state of health as needing medical help from the very beginning because the ambulance was called for the same reasons (see paragraph 75 above). The Court already concluded above that S.T. had been in a vulnerable situation, of which the intervening officers had been aware (see paragraph 180 above).

196. In view of the police officers' awareness of the vulnerable situation S.T. found himself in, the Court disagrees with the Government's position that they did all they reasonably could to monitor his health and consciousness to be able to provide timely help. The Court observes that the

video-recording clearly shows S.T. being placed on his stomach in such a way that the kneeling police officer could not see and monitor his face. Relying on the police officers' statements, taken a day after the incident on 20 June 2021 and then in July and November 2021 (see paragraphs 29, 65 and 75 above), the authorities concluded that it was not possible to determine when S.T. had lost consciousness. However, the paramedics' statements (see paragraphs 23-24 above) indicate that he must have lost consciousness before their arrival, and the conclusions of the Public Defender of Rights (see paragraphs 87-89 above) suggest that it must have happened at around 5 minutes and 27 seconds into the video-recording, shortly before the pressure of M.Š.'s knee was released. Indeed, the video-recording shows that S.T. did not move after around that time (see paragraph 16 above). Yet the police officers do not appear to have reacted to that fact.

197. The Court observes that M.Š. attempted to communicate with S.T. after releasing the pressure of his knee. While giving his statement, he reported that S.T. had replied, and he had therefore been under the impression that S.T. had been conscious at that time. The Court notes, however, that M.Š. did not in any way specify how the verbal communication proceeded or how S.T. had responded (see paragraph 14 above). His statement in this regard is not corroborated by any other evidence and the authorities failed to investigate and clarify this aspect (see paragraphs 157-159 above). His version could have been supported by video evidence if Z.V. had switched on his body camera as he had been obliged to do but failed, without a convincing reason (see paragraphs 183-184 above). Yet the domestic authorities relied on that statement rather uncritically when concluding that the police officers had objective reasons to believe that S.T. had still been conscious at time and, in view of that, provided him the maximum possible assistance (see paragraphs 79 and 83 above).

198. The Court does not find that conclusion convincing. In any event, it does not stem from the case file nor the Government's arguments that at any point M.Š. or any of the two other police officers attempted to verify S.T.'s vital signs or verify his state of consciousness in a more reliable manner expected from a police professional. In this regard, the Court draws attention to the prosecutor's statement that the police officers had not been trained to examine the vital signs of a person against whom they intervened, or to provide first aid (see paragraph 55 above). The Court considers such a statement striking and concerning. Police officers are expected to intervene in situations where individuals' lives may be at risk and must be able to provide first aid to those who need it in a timely manner. Furthermore, the GISF's investigation in the present case indicated that the three police officers had indeed undergone first aid training (see paragraph 76 above).

199. Moreover, the Court notes the Deputy Public Defender of Rights' conclusion that the ambulance was called three minutes late. D.V., while observing the situation, could reasonably have called the ambulance sooner

than it was called by Z.V. (see paragraph 89 above). The Court sees no reason to depart from that conclusion. It reiterates in this regard that the test under Article 2 of the Convention does not require it to be shown that “but for” the failing or omission of the authorities the death would not have occurred (see paragraph 175 above). It follows that whether calling the ambulance earlier would have saved S.T.’s life in the end does not play any role in the Court’s assessment of whether the state upheld its positive obligations under that provision. Rather, the Court assesses whether the officers took measures that might have been expected to prevent such a risk given the knowledge that they had at the time.

200. In the Court’s view, the circumstances of the case indicate that the police officers kept a person in a vulnerable situation in a potentially lethal position without monitoring his health sufficiently to realise he had lost consciousness while under their control. Consequently, they failed to promptly react to that situation by at least changing the position or attempting to administer first aid. The foregoing is sufficient to enable the Court to conclude that the State failed to uphold its positive obligation to provide adequate medical assistance to a person under its agents’ control.

(iii) Conclusion

201. In view of the above, the Court concludes that there has been a violation of Article 2 of the Convention in its substantive limb on account of the failure to put in place an appropriate legal framework concerning the use of the prone position, and to ensure adequate training of the police officers in this regard, as well as on account of the intervening officers’ failure to monitor the vital signs and general state of S.T., who was under their control and in a vulnerable situation.

202. The Court also reiterates that it does not follow from its finding of a violation on the above grounds that it intends to voice an opinion on any criminal responsibility on the part of the police officers involved (see, *mutatis mutandis*, *Tekın and Arslan*, § 109, and *Giuliani and Gaggio*, § 175, both cited above).

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION UNDER ITS SUBSTANTIVE LIMB

203. The applicant complained that restraining her brother by kneeling on him and handcuffing him amounted to ill-treatment prohibited by Article 3 of the Convention, the relevant part of which is cited in paragraph 129 above.

A. Admissibility

204. The Court notes that this complaint 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' arguments

(a) The applicant

205. The applicant argued that the manner in which the police intervention was carried out caused her brother considerable suffering. The action of holding him in a prone position and kneeling on his upper back and neck area had been unnecessary and disproportionate at least from the moment he had been handcuffed, which had occurred approximately 30 seconds after the beginning of the intervention. From that moment, S.T. could have been removed from the prone position and restrained in a less painful and dangerous manner. The applicant also submitted that the use of handcuffs had clearly been unnecessary after her brother had lost consciousness, which had been before the arrival of the ambulance.

(b) The Government

206. The Government submitted that the force used to restrain S.T. had been lawful, necessary and proportionate. The police officer had not knelt on him any longer than necessary: no more than four minutes. The police officers had tried to minimise the pain by relieving the pressure as much as possible. In relation to handcuffing S.T., the Government argued that even though the officers had briefly calmed him, the reasonable concern that had prompted the restraint remained. Since the precise moment that S.T. had lost consciousness could not be determined, there was no indication that it had been possible to remove the handcuffs earlier.

2. The Court's assessment

207. The relevant principles governing the prohibition of torture and inhuman or degrading treatment or punishment in the context of the alleged victim's confrontation with law-enforcement officers have been summarised in *Shmorgunov and Others v. Ukraine* (nos. 15367/14 and 13 others, §§ 359-63, 21 January 2021). In general, any recourse to physical force against a person which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100-01, ECHR 2015). The use of force is permissible in certain well-defined

circumstances, but it must only be used if indispensable and must not be excessive (see *Shmorgunov and Others*, cited above, § 359).

208. The Court observes that according to the available information, a person being placed in a prone position while his or her arms are handcuffed behind his or her back is itself likely to cause shortness of breath and a risk of asphyxiation (see paragraphs 113-114 and 125-128 above). That position alone, combined with the pressure on S.T.'s chest exerted by the police officer's kneeling on his upper back and neck area must have caused him pain as well as anguish and fear. The Court's task in the present case is to examine whether holding S.T. in that position for over four minutes can be considered strictly necessary in the circumstances of the case.

209. In this regard, the Court observes that the recommendations on the use of the prone position agree that once a person is under the police officer's control and his or her hands are cuffed behind his or her back, that person should immediately be turned from his or her stomach onto his or her back, or placed in a sitting position (see paragraphs 125-128 above). It further notes that the domestic internal regulations and training have been put in line with those recommendations in 2022 and 2024 (see paragraphs 101-102 above).

210. Nevertheless, in the present case, all of these forms of force – handcuffing, prone position and kneeling on the upper back, shoulder blades and neck area – were simultaneously used against S.T. for over four minutes, even after he had demonstrably calmed down (see paragraphs 17-18 above). The Court reiterates, moreover, that such force was used against an injured person in an intoxicated state. In the Court's view, the combination of the above factors must lead to the conclusion that the police officers used disproportionate force against S.T.

211. There has accordingly been a violation of Article 3 of the Convention under its substantive limb.

IV. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLES 2 AND 3

212. The applicant complained that the domestic authorities had failed to adequately investigate her allegations of a discriminatory motive behind the police intervention. She relied on Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

213. The Court notes that this complaint 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. Parties' arguments

(a) The applicant

214. The applicant submitted that the manner in which the police intervention against her brother had been carried out had been influenced by institutional discrimination against Roma within law-enforcement authorities. The intervention had taken place in a predominantly Roma area, targeted a Romani victim and occurred against the backdrop of well-documented systemic discrimination against Roma in the Czech Republic. In her view, those indicators were sufficient to trigger the authorities' duty to investigate whether racial bias had played a role in the use of force. However, the authorities' inquiry into that aspect had been manifestly inadequate and had failed to consider the broader context of institutional discriminatory attitudes. The applicant further referred to two recent cases from 2021-2023 in which police officers had knelt on individuals placed in the prone position, resulting in the individuals' deaths. In both cases, the victims had been heavily intoxicated but non-Roma, and in both cases formal prosecutions had been initiated, with one resulting in a conviction. She argued that the different treatment of her brother's case suggested discriminatory bias.

(b) The Government

215. The Government contended that no bias indicators were present in the case. They maintained that the police officers had been called to intervene after a witness had reported destruction of property by S.T., and that their intervention had therefore not been arbitrary or motivated by an intention to over-police a Roma neighbourhood. No allegations had been made that the officers had expressed racist or inappropriate remarks. The Government further argued that, notwithstanding the absence of any indications of bias, the investigation had nevertheless attempted to ascertain whether a racist motive had influenced the use of force. Several witnesses, who themselves were Roma, had stated in their interviews that the intervention would have proceeded in the same manner if S.T. had not been Roma (see paragraph 46 above). The GISF's open-source review of the police officers revealed no signs of racial intolerance (see paragraph 66 above). In the Government's view, the investigation was sufficiently thorough, and the evidence gathered

did not in any way suggest that racial bias had influenced the intervention (contrast *Wa Baile v. Switzerland*, nos. 43868/18 and 25883/21, 20 February 2024).

2. *The Court's assessment*

(a) General principles

216. The Court has previously held that racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment (see *Stoica v. Romania*, no. 42722/02, § 117, 4 March 2008, and *Nachova and Others*, cited above, § 145). The Court has also repeatedly stressed that, as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 182, ECHR 2007-IV).

217. When investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events (see *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, §§ 156-59, 27 January 2015). Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see *Stoica*, cited above, § 119).

218. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute; the authorities must do what is reasonable in the circumstances of the case (see *Nachova and Others*, cited above, § 160). However, where there is evidence of patterns of violence and intolerance against an ethnic minority, the positive obligations incumbent on member States require a higher standard of response to alleged bias-motivated incidents (see *R.B. v. Hungary*, no. 64602/12, § 84, 12 April 2016).

219. When deciding whether there had been a prima facie case of racial bias in the incident that would impose on the Government the additional duty to investigate the allegations of bias, the Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (see

Ciorcan and Others, cited above, § 157). Mindful of the fact that proving racial bias will often be extremely difficult in practice, the Court may accept various types of evidence in this regard, including reliable national or international reports (see *Memedova and Others v. North Macedonia*, nos. 42429/16 and 2 others, §§ 91-94, 24 October 2023; *Talpis v. Italy*, no. 41237/14, §§ 56-60, 2 March 2017; and *Opuz v. Turkey*, no. 33401/02, §§ 192-96, ECHR 2009).

220. The Court previously accepted that a prima facie case of discriminatory treatment could be inferred from the actions of the authorities leading to impunity for a racially motivated murder and appearing to praise that act (see *Makuchyan and Minasyan*, cited above, §§ 213-17). The Court has also previously drawn inferences of a prima facie case of discriminatory treatment from the absence of sufficient legal and administrative safeguards that had enabled the allegedly discriminatory treatment to take place (*see Wa Baile*, cited above, § 130, and, *mutatis mutandis*, *A.E. v. Bulgaria*, no. 53891/20, §§ 119-20, 23 May 2023).

(b) Application of those principles in the present case

(i) Whether the authorities had a duty to investigate the potential racist motive in the present case

221. The Court first observes that the applicant did not allege that the decision to use force against S.T. had been explicitly motivated by anti-Roma prejudice. Rather, she argued that the authorities had failed to examine whether institutional racism had influenced the manner in which the intervention had been conducted overall. It is undisputed that S.T. was Roma, and that the intervention occurred in a street inhabited predominantly by Roma residents. Indeed, the Government itself submitted that the interviewed witnesses to the intervention were Roma inhabitants of the neighbourhood.

222. The Court further notes that the video-recording of the police intervention in the present case was widely circulated and raised serious concerns about the proportionality of the force used. Four days after the incident at issue in this case, the Spokesperson of the Secretary General of the Council of Europe described the footage as alarming and emphasised the Council's commitment to protecting Roma people from discrimination (see paragraph 118 above). Nonetheless, already at that early stage, and relying solely on a preliminary autopsy report, several Czech high-ranking officials issued statements denying any police responsibility for S.T.'s death. Those statements, made before any independent investigation had commenced, heightened concerns of the civil society and the Roma community not only about the incident but also about the impartiality and thoroughness of the ensuing inquiry (see paragraphs 34-39 above).

223. The Court acknowledges the Government's submission that no evidence had been presented suggesting that the police officers had expressed

racist or stereotypical views about Roma people which could indicate a prejudiced motive engaging the State's duty to investigate. However, it considers that racially motivated violence need not stem from openly articulated hostility towards a group. In its view, it may arise from a broader culture of institutional racism (see also *Lingurar v. Romania* [Committee], no. 48474/14, § 80, 16 April 2019), which manifests in an organisation's failure to provide appropriate and professional services to individuals because of their race, shaped by unwitting prejudice, ignorance, thoughtlessness or stereotyping (see paragraphs 105, 115 and 124 above). The Court cannot overlook the many international reports (see paragraphs 115-120 above) or its own extensive case-law documenting persistent police violence against Roma people (see, among others, *Sládková v. the Czech Republic*, no. 15741/15, 10 November 2022; *M.B. and Others v. Slovakia*, no. 45322/17, 1 April 2021; *M.B. and Others v. Slovakia (no. 2)*, no. 63962/19, 7 February 2023; *R.R. and R.D. v. Slovakia*, no. 20649/18, 1 September 2020; *Mižigárová v. Slovakia*, no. 74832/01, 14 December 2010; *P.H. v. Slovakia*, no. 37574/19, 8 September 2022; *Boacă and Others v. Romania*, no. 40355/11, 12 January 2016; *Nachova and Others*, cited above; *Velikova v. Bulgaria*, no. 41488/98, ECHR 2000-VI; *Stoica*, cited above; *Ciorcan and Others*, cited above; and *Lingurar*, cited above).

224. While the existence of institutional racism does not imply that all police officers act with racial bias, requiring proof of explicit expressions of prejudice may fail to reveal forms of unconscious bias, which can nonetheless have a harmful impact on policing in Roma communities (compare, for example, *M.B. and Others (no. 2)*, §§ 88-89; *Mižigárová*, § 117; and *Stoica*, § 128, all cited above).

225. The Court considers that a combination of contextual elements and reasonable inferences from the parties' submissions may suffice to raise a prima facie case of racial bias requiring an effective investigation. In this regard, the Court reiterates that the Convention should be as far as possible interpreted in harmony with other rules of international law (see, among many others, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI; *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 136, ECHR 2012 (extracts); and *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, § 278, 9 July 2025). In this context, the Court may also draw inspiration from various interpretative and soft-law materials of international bodies (see, *mutatis mutandis*, *Balázs v. Hungary*, no. 15529/12, § 75, 20 October 2015, and *Krpelík v. the Czech Republic*, no. 23963/21, § 87, 12 June 2025).

226. In the present case, the Court finds it useful to draw inspiration from the bias indicators developed by the OSCE Office for Democratic Institutions and Human Rights for identifying discriminatory motives in crimes (see paragraph 112 above and, *mutatis mutandis*, *Balázs*, cited above, § 75). Three

key factors are particularly relevant in assessing whether racial bias may have played a role in the present case:

(i) the ethnicity of the victim in contrast to that of the alleged perpetrators, and the location of the incident;

(ii) the nature and intensity of the alleged violence (see, *mutatis mutandis*, *Ciorcan and Others*, cited above, §§ 162-64); and

(iii) international reports, statistics and contextual information (see, *mutatis mutandis*, *Memedova and Others*, cited above, §§ 91-94).

227. As to the first factor, the Court notes that the police officers knowingly intervened in a Roma neighbourhood against a Roma individual. It has never been disputed that they were aware of his ethnicity.

228. Regarding the second factor, the Court has already found above that the use of force against S.T., namely maintaining him in a prone position even after having handcuffed him, was disproportionate (see paragraph 210 above). S.T. was visibly injured, under the influence of drugs and bleeding from his mouth before force was used. Despite those signs of vulnerability, officer M.Š. knelt on S.T.'s upper back or neck area for approximately four minutes while S.T. lay handcuffed on the ground. The officer was unable to see S.T.'s face, did not monitor his condition and made no attempt to verify his vital signs once S.T. ceased moving (see paragraph 198 above). In the Court's view, those actions showed a striking disregard for S.T.'s life and the suffering he had endured.

229. Regarding the third factor, the foregoing must be viewed against the backdrop of international reports expressing concern about systemic discrimination and antigypsyism in the Czech Republic (see paragraphs 117-118, 120-121 and 123-124 above). The Court reiterates the findings of the Council of Europe Commissioner for Human Rights, who, following her 2023 visit, concluded that Czech Roma continued to face discrimination in nearly every sphere of life, including through police violence and discriminatory public statements (see paragraph 119 above). According to official police statistics, Roma consistently rank among the groups most affected by hate crimes (see paragraph 103 above). The European Union Agency for Fundamental Rights' 2021 Roma survey similarly ranked the Czech Republic among the three EU member States where Roma reported the highest levels of discrimination (see paragraph 122 above).

230. The Court also notes that the Grand Chamber's judgment in *D.H. and Others* (cited above), which found widespread discrimination against Roma children in education, is still pending implementation (see paragraph 109 above), suggesting that the Czech Republic has not made adequate progress in combating systemic discrimination. Although the Government did not provide statistics on police interventions involving Roma (despite criticism from the EU FRA for failing to collect such data, see paragraph 124 above), further inferences may be drawn from numerous international reports highlighting institutional racism in policing across

Europe (see paragraphs 105, 108, 115, 121 and 124 above). The Court itself has adjudicated multiple cases involving police violence against Roma, even though a racial motive was not always alleged or proven beyond reasonable doubt (see paragraph 223 above).

231. The Court accordingly finds that these combined indicators were sufficient to alert the authorities to the possibility that racial bias may have played a role in the intervention. Consequently, the State was under a duty to take all reasonable steps to investigate any potential racist motive.

(ii) Whether they took all reasonable steps to unmask any racist motive

232. The Court notes the Government's argument that the authorities did examine a possible racist motive, in that several witnesses had been asked whether they perceived the intervention as motivated by S.T.'s ethnicity, and the GISF had conducted an "open-source review" of the police officers to identify any signs of racial intolerance or sympathy with extremist content. According to the Government, neither course of action had suggested the presence of racist or extremist views, and no further investigative steps had been required.

233. However, the Court observes that the questions put to the Roma witnesses originated from the applicant's representative during their examination by the Criminal Police, a body lacking institutional independence (see paragraph 46 above). The Criminal Police did not pursue the issue further. The GISF, for its part, did not interview the Roma witnesses at all and therefore lacked an independent understanding of the racial dynamics present or perceived during the incident. Its only investigative step was the "open-source review", but the Government failed to provide any meaningful information about its methodology, the sources examined, the criteria applied or the conclusions drawn. Moreover, the domestic decisions contain no indication that the authorities engaged with the presence of the bias indicators identified above.

234. The Court further notes that even if the two pieces of evidence relied on by the authorities suggested an absence of openly racist or extremist views among the three police officers, such evidence would not necessarily be sufficient to reveal unconscious bias on their part. Unconscious bias may manifest not in openly expressed hostility, but in disregard for the lives or needs of Roma individuals (see paragraphs 108 and 124 above). The authorities made no attempt to explore the possibility that institutional racism could have influenced the police officers' conduct. It is not for the Court to tell the domestic authorities what types of evidence they should have collected in this connection or how that evidence should have been assessed. While the Court does not prescribe specific investigative measures, it notes that the influence of institutional racism may be analysed, for example, through reliable disaggregated data showing that police use of force does not disproportionately affect Roma (see paragraph 106 or 124 above); through

evidence of effective training on racism and discrimination; through clear policies signalling zero tolerance for racially motivated misconduct (as recommended by the ECRI, see paragraph 106 above); or through assessments of the presence of racial bias within the police force.

235. Taking into account the strong racial connotations of the case, the Court finds that the authorities demonstrated a manifest lack of diligence in investigating both the intervention as a whole (see paragraph 163 above) and its potential racial dimension in particular. No formal investigation was ever opened into the officers' actions. The GISF only conducted a preliminary inquiry, relying heavily on the early investigative steps taken by the Criminal Police, which lacked institutional independence (see, *mutatis mutandis*, *Sládková v. the Czech Republic,* no. 15741/15, § 76, 10 November 2022). Moreover, the GISF's inquiry failed to clarify several key aspects of the case, despite public demands for a thorough and independent investigation. Overall, the authorities' response conveyed the impression that the matter was not taken sufficiently seriously.

236. In the light of the above, the Court concludes that the authorities failed to demonstrate that they took all reasonable steps to uncover any racist motive behind the police intervention against S.T. It follows that Article 14 of the Convention, read in conjunction with Articles 2 and 3, has been violated.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

237. 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

238. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

239. The Government argued that the amount was excessive because, among other things, the applicant and her deceased brother had not had regular contact prior to his death, and considering the Court's awards in similar cases.

240. The Court does not doubt that her brother's death caused the applicant considerable suffering. Ruling on an equitable basis, as it must, it awards her EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

241. The applicant also claimed EUR 10,660 in respect of costs and expenses incurred before the Court and before the domestic courts, to be paid directly to her counsels, in the amount of EUR 4,260 to be paid to Mr Matiaško and EUR 6,400 to be paid to the European Roma Rights Centre ("ERRC"). She submitted invoices and proof of payment to Mr Matiaško by a non-profit organisation, and an itemised bill listing the costs incurred by the ERRC for the legal services provided to her.

242. The Government argued that the submitted documents do not show that any of those costs were actually incurred by the applicant who had been provided the legal services *pro bono* as results from the contract between her and the non-profit organisation that had contracted her counsel. Furthermore, it considered the requested amounts not sufficiently justified in terms of their necessity and reasonableness, especially because the items claimed by both sets of counsel overlapped.

243. 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 (see, for example, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

244. The Court observes that in the present case, the applicant requested the reimbursements of sums for legal costs incurred on her behalf by non-profit organisations with whom she had concluded contracts for the provision of legal services. The Court notes that it had previously awarded costs and expenses shown to have been incurred not directly by the applicants but by non-profit organisations on their behalf, as long as those costs had been adequately documented (see, for example, *Cobzaru v. Romania*, no. 48254/99, § 111, 26 July 2007; *V.I. v. the Republic of Moldova*, no. 38963/18, §§ 188-92, 26 March 2024; and *I.C. v. the Republic of Moldova*, no. 36436/22, §§ 230-33, 27 February 2025).

245. In the present case, deciding on an equitable basis and having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,660 in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be paid in the respective sums of EUR 4,260 to Mr Matiaško and EUR 6,400 to the ERRC, into the bank accounts indicated by the applicant's representatives.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Articles 2, 3 (substantive limb and procedural limb except regarding the impugned online statements by State

officials) and 14 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 2 of the Convention in its substantive aspect in respect of S.T.'s death;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the disproportionate use of force during the intervention;

4. *Holds* that there has been a violation of Articles 2 and 3 of the Convention in respect of the authorities' failure to effectively investigate the incident;

5. *Holds* that there has been a violation of Article 14 in conjunction with Articles 2 and 3 of the Convention on account of the authorities' failure to take all reasonable steps to unmask any potential racist motive;

6. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

      (ii) EUR 10,660 (then thousand six hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid in the respective sums of EUR 4,260 to Mr Matiaško and EUR 6,400 to the ERRC, into the bank accounts indicated by the applicant's representatives;

   (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;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	María Elósegui President

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

CONCURRING OPINION OF JUDGE ELÓSEGUI

1. I have voted with all my colleagues in finding all the violations indicated in the operative part of the judgment. The goal of my concurring opinion is to concentrate on the matter of Article 14, which is formulated in point 5 of the operative part of the judgment as “there has been a violation of Article 14 in conjunction with Articles 2 and 3 of the Convention on account of the authorities’ failure to take all reasonable steps to unmask any potential racist motive”. I agree with that finding, but I would like to emphasise that I do not totally share the views expressed in some points of the reasoning (namely paragraphs 221-36 of the judgment) or that I have some caveats in their respect.

2. For me, the most important issue is the matter of the burden of proof. We have to respect the criteria set out in the previous case-law of the Court in relation to Articles 2 and 3. The Court has insisted in those criteria that it is firstly for the applicant to provide prima facie evidence, and then the burden of proof will shift to the Government. There is a long and clear line of case-law on this issue that it is not necessary to repeat here. The approach does not change when we are talking about Article 14 (see, for instance, *R.R. and R.D. v. Slovakia*, no. 20649/18, 1 September 2020, in which I was part of the composition).

3. The applicant has to provide some initial proof, whether facts or evidence. The Court has held many times that international reports, NGO reports and statistics are not enough in terms of proof; neither are general reports of the Council of Europe (CoE) Commissioner for Human Rights, or general reports of monitoring bodies of the CoE or other international institutions. Statistics are not in themselves proof in court. Much of this information could be useful for establishing legislation and effecting change in the States. But this is a court and we are judges. We have to adjudicate on concrete facts which are placed in front of us by concrete applicants and have been proved. Our Court accepts neither *actio popularis*, nor strategic litigation when it has no factual basis.

4. A comprehensive recapitulation of the Court’s approach to matters of evidence can be found in the Grand Chamber decision in *Ukraine and the Netherlands v. Russia* ((dec.) [GC], nos. 8019/16 and 2 others, §§ 438-48, 30 November 2022). The level of persuasion necessary for reaching a particular conclusion and the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegations made and the Convention rights at stake.

5. There are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment: the Court has complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it. The Court adopts those conclusions of fact which are, in its view, supported by the free evaluation of all material

before it irrespective of its origin, including such inferences as may flow from the facts and parties' submissions and conduct. Proof may follow from the "coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact" (see *Ukraine and the Netherlands v. Russia*, cited above, §§ 440-41). In conclusion, it is essential to ascertain whether the applicant has furnished prima facie evidence in support of his or her version of the events. If that is the case, the burden of proof should shift to the respondent Government.

6. Another very important element in criminal law is that persons – in the present case, police officers – have to be accused on account of their actual behaviour and not because of a broader culture of institutional racism (see paragraph 223). Whereas I subscribe to the first part of the following paragraph, I do not agree with the second part (see paragraph 224):

> "While the existence of institutional racism does not imply that all police officers act with racial bias, requiring proof of explicit expressions of prejudice may fail to reveal forms of unconscious bias, which can nonetheless have a harmful impact on policing in Roma communities (compare, for example, *M.B. and Others (no. 2)*, §§ 88-89; *Mižigárová*, § 117; and *Stoica*, § 128, all cited above)."

Allow me to explain this. Accepting that in many countries, and specifically in the Czech Republic, there may exist a general form of racism against Roma, these matters have to be addressed in general policy, even if they can provide some information to judges when a racism issue arises on account of the behaviour of the authorities, including the police. But when we are applying criminal law or disciplinary sanctions, we have to individualise concrete faults and responsibilities.

7. As judges, when we are called upon to evaluate concrete violations and concrete responsibilities, we still have to prove the racial motive beyond reasonable doubt or the prima facie threshold and not to draw inferences from international reports highlighting institutional racism in policing across Europe (see paragraph 230). Behind institutions there are individual people with personal liability. Racism is not something that is found in the air, or in an abstract way behind institutions; rather, it is in each individual person, who has to confront his or her personal responsibility for that. A deterministic approach, according to which someone is necessarily racist because he or she belongs to an institution, is difficult to reconcile with the idea of personal liberties that underlies the Convention on Human Rights.

8. The introduction to the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 13 on combating antigypsyism and discrimination against Roma states, in so far as relevant:

> "Recalling that antigypsyism is a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination;

> Stressing that antigypsyism is an especially persistent, violent, recurrent and commonplace form of racism, and convinced of the need to combat this phenomenon at every level and by every means;
>
> Recalling that discrimination against Roma is chiefly founded on their ethnic origin and lifestyle;
>
> Deeply concerned by the increasing acts of violence inflicted on a large number of Roma, and by the too-frequent impunity that the culprits enjoy ...”[1]

9. Having said that, in the present case there is enough of a factual basis to see the concrete responsibility of these three police officers, and even the prejudices and stereotypes which led them to make disproportionate use of force (see the operative part of the judgment, point 3); this has prompted the Court to find a violation of Article 2 in its substantive limb (see the operative part, point 2).

10. Moreover, we have found a procedural violation of Articles 2 and 3 of the Convention in respect to the authorities’ failure to effectively investigate the incident (see the operative part, point 4), which is why in my eyes there has also been a violation of Article 14 of the Convention in conjunction with Article 2 and Article 3 of the Convention on account of the authorities’ failure to take all reasonable steps to unmask any potential racist motive.

11. In order to arrive at this conclusion, with which I agree, we do not need to rely on international reports, or on institutional racism or unconscious bias, or on the test of the Organization for Security and Co-operation in Europe (OSCE), which I do not consider appropriate to use in a judgment at all. On the contrary, I find it highly dangerous for us to use this test as judges. As to the first factor used to assess racial bias, namely “the ethnicity of the victim in contrast to that of the alleged perpetrators, and the location of the incidents” (see paragraph 226), the Court has noted that “the police officers knowingly intervened in a Roma neighbourhood against a Roma individual [and that it] has never been disputed that they were aware of his ethnicity” (see paragraph 227). However, in my opinion, if someone is aware of ethnicity, it does not necessarily mean that this person has to be racist. Regarding the second point, “the nature and intensity of the alleged violence” (see paragraph 226), we have enough facts at hand, such as the video-recording of the police intervention, which forms part of the case file[2]. Even if the Court cannot deliver a direct judgment and cannot act as a first-instance court, we have enough evidence in front of us to share the applicant’s view “that the authorities ... failed to examine whether institutional racism

[1] ECRI General Policy Recommendation No. 13 on combating antigypsyism and discrimination against Roma, adopted on 24 June 2011 and amended on 1 December 2020, pp. 3-4: https://rm.coe.int/ecri-general-policy-recommendation-no-13-on-combating-anti-gypsyism-an/16808b5aee

[2] https://romea.cz/cz/domaci/romsky-george-floyd-mlady-muz-zemrel-po-zasahu-policie-v-teplicich-ta-odmita-ze-za-smrt-muze-policejni-zakrok-pricinou-pry

had influenced the manner in which the intervention had been conducted overall" (see paragraph 221). As regards the third factor, "international reports, statistics and contextual information" (see paragraph 226), as I have said above, such materials can be used only after the applicant has shown prima facie that the racial discrimination took place, and not as proof independently of evidence and facts.

12. I would like to conclude this concurring opinion with the following advice given by ECRI in its General Policy Recommendation No. 13 on combating antigypsyism and discrimination against Roma[3], which relates precisely to combating manifestations of antigypsyism likely to come from the police:

> "[C]ombat manifestations of antigypsyism likely to come from the police, and accordingly:
>
> a. pay particular attention to the implementation of ECRI's Recommendation No. 11 on combating racism and racial discrimination in policing;
>
> b. encourage Roma who are victims of misconduct by the police to lodge complaints, offering them the necessary support;
>
> c. ensure that investigations are conducted where there are allegations of police misconduct towards Roma, and that the perpetrators are prosecuted and punished;
>
> d. train the police in human rights and relevant legislation, particularly in order to improve their relations with Roma communities;
>
> e. raise police awareness of the problems Roma face and give them training about the problems that affect Roma, particularly violence and racist crimes, in order to better prevent and combat these phenomena;
>
> f. take measures to promote Roma recruitment to the police force by conducting, to that end, information campaigns in Roma communities;
>
> g. ensure that Roma enjoy equal opportunities for career development within the police;
>
> h. recruit and train adequate numbers of mediators, in particular from the Roma population in order to ensure a liaison between Roma and the police;
>
> i. ensure, in accordance with paragraph 10 of ECRI's General Policy Recommendation No. 11, the creation of an independent body for investigating complaints made against the police, particularly by Roma ..."[4]

[3] Cited above, recommendation 9, p. 8.

[4] Ibid. See also ECRI General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies, adopted on 6 March 1998, and ECRI General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, adopted on 15 December 2006.