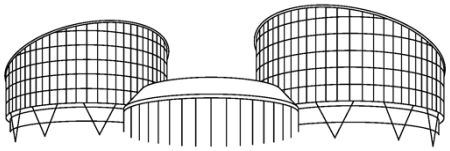

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF V v. THE CZECH REPUBLIC

(Application no. 26074/18)

JUDGMENT

Art 2 (substantive) • Life • Positive obligations • Use of force • Patient admitted for acute care in psychiatric hospital, unsuccessfully restrained in prone position by police, dead following repeated tasing and nurse's administration of tranquiliser • Absence of strategy and measures to prevent and limit use of means of restraint • State's failure to put in place appropriate legal and administrative framework
Art 2 (procedural) • Inadequate investigation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 December 2023

FINAL

07/03/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of V v. the Czech Republic,

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

Georges Ravarani*, President*,
Lado Chanturia,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 26074/18) 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 ("the applicant"), on 30 May 2018;

the decision to give notice to the Czech Government ("the Government") of the complaints concerning Articles 2 and 3 of the Convention and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Czech Public Defender of Rights, who was granted leave to intervene by the President of the Section;

the decision to grant anonymity to the applicant ;

Having deliberated in private on 19 September and 7 November 2023,

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

INTRODUCTION

1. The application concerns the death of the applicant's brother, hospitalised in a psychiatric hospital following the use of a taser by the police and administration of a tranquiliser by a hospital nurse, as well as the ensuing criminal investigation into the circumstances of his death (Articles 2 and 3 of the Convention).

THE FACTS

2. The applicant was born in 1974 and lives in Brno. She was represented by Mr M. Matiaško, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

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

5. The applicant's brother P.Z., suffering from paranoid schizophrenia, was a long-term outpatient of the Psychiatric Clinic of Olomouc University Hospital ("the clinic").

I. EVENTS AT THE CLINIC

6. On the evening of 5 November 2015, a member of P.Z.'s family called an emergency line, stating that P.Z., who was 30 years old at the time, had become aggressive and had been threatening members of his family. At 9.30 p.m. he was taken by ambulance – accompanied by a police patrol – to the clinic and was then admitted to its acute care unit. The staff on duty that night comprised one female doctor, two female nurses and one medical orderly. After the doctor examined him and established his medical history – noting, *inter alia*, that he had been treated for paranoid schizophrenia since 2005 and for hypertension since 2015 and that he had taken an unspecified drug – P.Z., who had already calmed down by that time, agreed to be administered anti-psychotic medication (Haloperidol and Apaurin) and was placed in an ordinary room. The Government submitted in their observations that all the intensive care rooms had been fully occupied at the time.

7. Early the next morning, at around 4 a.m., P.Z. (who was 1.88 m tall and weighed 127 kg) began to grow restless, so the nurses started preparing an intensive care room for him (equipped with a solid metal door and a bed with magnetic straps to restrain aggressive patients) by moving another patient out. Following a verbal altercation with the staff, P.Z. began to destroy fixtures and furnishings, breaking a washbasin and several doors (including the doors to other patients' rooms). When the orderly tried to prevent him from grabbing a fire hose, P.Z. knocked him to the ground and started beating him severely, shoving a doctor out of the way.

According to subsequent accounts of the incident given to the police by the staff on duty that day, P.Z. had tried to strangle the orderly with the fire hose; he had clearly been highly agitated and capable of killing when he had attacked the orderly, causing him to fear for his life. He had then started ripping out ceiling tiles and pulling out electrical wires and spraying water onto them. After two security guards (not armed) called by the staff had tried and failed to subdue P.Z., at 4.53 a.m. a nurse had called a police emergency line; four police officers – P., S., Š. and T. – had subsequently arrived at the hospital at around 5 a.m.

According to the applicant, who cited the below-mentioned report issued by the Public Defender of Rights (see paragraph 26 below), P.Z.'s behaviour had, in principle, been defensive and had indicated an increased level of restlessness, given that he had been acting calmly until he had realised that the nurses were preparing a seclusion room for him (upon which he had engaged in a verbal confrontation with the medical orderly). Indeed, his posture at the time in question would have indicated his wish to maintain a

clear space around himself rather than a desire to launch an attack; moreover, he had not *a priori* attacked the orderly – rather, he had simply not wanted to allow the orderly to take the fire hose away from him, which was why a fight over it had begun. He had only started damaging the ceiling and the wiring at a later point, when he had seen the police officers approaching. The police officers had acted very quickly and had only briefly first consulted one of the nurses, who had not witnessed the attack and who had told them only that P.Z. had been aggressive and presented a "severe psychosocial disability"; his health status, in terms of medication or hypertension, had not been discussed, and nor had there been any attempt to communicate with P.Z. or to turn off the water or electricity supply.

The Public Defender of Rights (see paragraph 26 below) acknowledged that P.Z. had posed a serious threat to the paramedics and the doctor, but considered that the latter had already been out of danger by the time the police officers had arrived. According to her report, there had been no imminent threat to others at that point because he had not been "moving in" on them. P.Z. had nevertheless posed a threat to the property of the clinic and, given that he had been spraying water on exposed cables, had created a risk of short circuit.

8. The subsequent police intervention took place in a 2.25-metre-wide corridor right outside the patients' rooms. According to the police officers, they had had to intervene without delay (after only briefly conferring with each other), since P.Z.'s spraying water on electrical wires had threatened the lives of all those present. Using a mattress as a shield, two of them had approached P.Z. (who had ignored their warnings to desist in his behaviour), and had forced him to the ground. Owing to his physical strength and the intensity of his resistance, they had been able neither to restrain him nor to force his hands behind his back; the two other police officers – P. and T. – had been unable to help them owing to the fact that there had been only restricted space in which to manoeuvre. Deeming that all the conditions for using a taser had been met, and given that other means of coercion (tear gas, stun grenade, firearms) could not be used or would have been ineffective, T. had decided to fire his taser (but only after first warning P.Z. to desist in his behaviour), aiming at the lower back area from a range of about 1.5 meters. Although the two taser darts had connected with P.Z.'s body and should have delivered a shock, P.Z. – who had still been lying down and holding the fire hose – had continued to put up active resistance, which had prevented officers S. and Š. from securing his hands and getting him under control. Accordingly, at S.'s request, T. had fired the taser again several times until S. had managed to partially immobilise P.Z.'s arm; this had enabled a nurse to administer two injections (Apaurin and Tisercin) to P.Z. (as instructed by the doctor).

9. The police officers' description of the events tallies with the accounts given by the hospital security guards and by the doctor and the nurses on duty. They confirmed that (i) P.Z.'s attack on the medical orderly had been very

serious, leaving the latter in pain and in a state of shock (according to a subsequent forensic medical opinion, the orderly's life had been in imminent danger – in particular because of the strangulation to which he had been subjected), (ii) the police officers had been unsuccessful in subduing P.Z. and (iii) P.Z. had still been screaming and trying to shake them off when the nurse had administered the medication to him at 5.05 a.m. According to the nurse, when P.Z. had been turned over onto his back after the injection had been administered, he had been slightly "cyanotic" in the face and had had no palpable pulse; the medical staff (assisted by the police officers) had therefore immediately embarked upon efforts to resuscitate him, using, among other things, an automated external defibrillator and adrenaline. A specialised team had arrived a few minutes later and had pursued the standard resuscitation procedure for forty-five minutes, but to no avail. At 6.08 a.m. the resuscitation efforts had been terminated and P.Z. pronounced dead – presumably as the result of a cardiac arrest.

10. On the very day of the intervention the four police officers drew up an official record regarding the coercive measures employed against P.Z. – namely, various types of grips and holds, together with blows, kicks and the use of a taser. Concerning the latter measure, on 21 November 2015 T. added to the record the fact that he had used his taser in order to overcome P.Z.'s resistance, because P.Z. had posed an imminent threat to the life and health of all the persons present (including other patients), and also to prevent him from further damaging medical facilities and equipment. In T.'s view, under the circumstances, it had been clear and beyond doubt that, given P.Z.'s physical stature, less severe means would not have been effective.

11. The incident was recorded on several video cameras in the clinic building; the footage showed, *inter alia*, P.Z. attacking the orderly and the doctor, handling the fire hose and spraying water onto live electrical wires, and being approached by police officers holding a mattress in front of themselves. The video camera whose footage directly captured the police officers' intervention against P.Z. stopped working at 5.02 a.m. on the day of the intervention; according to a subsequent expert opinion, the outage had been caused by P.Z. spraying water.

12. According to the software record of the taser used in the incident, it was fired three times: the first discharge lasted for eight seconds, the second for eleven seconds, and the third for ten seconds.

II. ENSUING INVESTIGATION

A. General Inspectorate of the Security Forces and the prosecution authorities

13. P.Z.'s death was directly reported to the General Inspectorate of the Security Forces (hereinafter "the GISF"), which immediately initiated criminal proceedings for negligent homicide (*usmrcení z nedbalosti*).

14. On 6 November 2015 the GISF examined the scene of the incident and secured evidence (including the above-mentioned taser record and video recordings) and requested an expert opinion regarding the time and cause of the damage to the video camera that had been recording the police intervention (see paragraph 11 *in fine* above). The intervening police officers were instructed to draw up official reports on the use of coercive measures (see paragraphs 8 and 10 above), which they did on the very same day; an autopsy of P.Z.'s body was performed at 10 a.m., and experts in forensic medicine and toxicology were commissioned to produce an expert report (see paragraph 18 below).

15. Between 20 and 24 November 2015 the GISF asked the Olomouc Regional Police Directorate to produce documents relating, *inter alia*, to the training undergone by the intervening police officers, to the taser used and to the supplier thereof; it also asked the Directorate to provide it with the audio recording of the call made to the police on 6 November 2015 by the clinic staff to report P.Z.'s aggressive behaviour.

16. Between 25 November and 8 December 2015 the GISF interviewed the nurses, the doctor and the hospital security guards who had been on duty on the day of the incident, and the police instructor who had trained officer T. in the use of tasers.

Officers T., S. and Š. were heard on 26 November 2015, and officer P. on 2 December 2015. After they had provided their account of events, questions were posed to them by the investigator regarding (i) whether they had received training in the use of tasers and been instructed as to the circumstances in which tasers should not be used, (ii) whether and when the water valve had been shut off, and (iii) their assessment of P.Z.'s frame of mind and behaviour before the intervention.

17. Subsequently the GISF requested information and material pertaining to: taser testing on humans; the training programme and the content of the training provided to Czech police officers in the use of tasers; the technical information registered on the memory chip of the taser used in the present case; the audio recording of the phone call made by P.Z.'s brother on 5 November 2015; a full copy of P.Z.'s medical records; and a copy of the above-mentioned expert opinion regarding the injuries suffered by the medical orderly.

18. On 2 March 2016 an expert report was drawn up by three medical experts, according to which the immediate cause of P.Z.'s death had been cardiac arrhythmia, which had disrupted the supply of blood to all organs, so that it had not been possible to restore a regular heartbeat by means of resuscitation. The experts deemed that, in this particular case, the absence of pertinent data rendered it impossible to establish unequivocally whether and to what extent the death had been due to natural causes. On the other hand, cardiac arrhythmia could have many causes, ranging from hormonal disorders, stress and strain (which could be generated by a psychotic episode), to side-effects of certain drugs – including those used by and administered to P.Z. Furthermore, P.Z.'s autopsy had revealed anomalies in the course of the blood vessels supplying the heart muscle with blood (*anomálie v průběhu tzv. věnčitých tepen srdečních, tj. cév, zásobujících srdeční sval krví*), but the experts were unable to establish the relevance of that anomaly to P.Z.s sudden death. Lastly, the experts noted that the fact that P.Z. had been repeatedly tasered (even though the electrical discharges had not been directly aimed at the chest and heart area) might be viewed as a possible contributory cause of his uncontrollable arrhythmia disorder.

The experts were not asked to comment on any possible interaction between the medication that had been administered to P.Z. and the use of the taser.

19. On 6 April 2016, the GISF issued a decision setting aside the case of suspected negligent homicide by T., holding that the investigation had led to the unequivocal conclusion that the police intervention against P.Z. had been in accordance with applicable law and internal police regulations. The GISF noted that T. had been authorised to use a taser and properly trained in that respect, and that his choice to use it had been fully in line with the rules on the use of coercive measures. In their view, P.Z.'s behaviour had posed a direct threat to the lives of the intervening police officers and other persons in the vicinity, and there had been no other way of eliminating that risk. Moreover, because P.Z. had continued to actively resist even after the initial tasering, T. had continued to fire the taser repeatedly (in compliance with all safety precautions and rules), aiming at points away from the heart and other vital organs. In the light of the above, the GISF concluded that no blame for P.Z.'s death could be attributed to any particular person or action.

20. P.Z.'s family lodged a request for review of that decision, which the Ostrava Regional Prosecutor's Office rejected as ill-founded on 2 May 2016. The Office found no wrongdoing (either on the part of the police officers or the hospital), deeming that the use of a taser had been justified in view of the fact that the scene of the intervention had been too confined for all the police officers present to participate in subduing P.Z.; it further found that the repeated firing of the taser had been necessary because of P.Z.'s continuing resistance. Furthermore, given the circumstances of the present case, neither

the police officers nor the doctor on duty could have foreseen P.Z.'s cardiac anomaly.

21. The applicant challenged that decision by means of lodging a request for supervision with the Olomouc High Prosecutor's Office. She was informed on 13 October 2016 that no shortcomings had been determined in the procedure followed by the police and the Ostrava Regional Prosecutor's Office, whose conclusions could thus be upheld.

22. On 21 November 2017, the Constitutional Court (by decision no. IV. ÚS 4150/16) dismissed as manifestly ill-founded a constitutional appeal lodged by the applicant. It held that the investigation authorities had not breached their statutory obligations and had based their decisions on sufficient and comprehensive reasoning.

B. Other authorities

23. On 6 March 2017, the applicant lodged a complaint with the Olomouc Regional Authority regarding the poor standard of the healthcare services afforded to P.Z. during his hospitalisation at the clinic.

24. In an expert psychiatric opinion, an independent medical expert found that the procedure followed by the medical staff in this case had been entirely *lege artis* and that there had been no direct link between P.Z.'s death and his medical treatment, which had included an injection of standard anxiolytic medication.

25. On 26 October 2017, referring to that opinion, the regional authority dismissed the applicant's complaint as ill-founded.

26. The circumstances of P.Z.'s death were also examined, on her own initiative, by the Public Defender of Rights. In her report of 26 May 2017, which was based on the written material available and the investigation file, she stated (emphasis removed):

> "A. Object and outcome of the examination
>
> - Regarding the issue of the nature of a taser as a means of coercion in the legal system of the Czech Republic:
>
> A taser should be perceived as a law-enforcement device [carrying] a lower risk of causing death (less lethal) [but] a high risk of causing unnecessary pain – not as an inherently non-lethal device, as it is currently perceived by Czech law and the common practice of the Czech Republic's police force.
>
> Czech legislation should therefore reflect the real risks associated with the use of tasers as a means of law enforcement and with its actual nature as a less lethal weapon, but [one which is nevertheless] unequivocally lethal. In my opinion, it is completely inappropriate for tasers to be legally classified [as being] among the ordinary law enforcement devices provided by the Police Act, as its nature and level of dangerousness are more akin to [those of] weapons. This should also be reflected in the legal requirements and conditions [governing] its use in practice – including, of course, the corresponding training and education of police officers who are equipped with tasers, as well as [that of] their colleagues and their supervisors.

The training of police officers itself is currently burdened by three basic deficiencies. Firstly, officers are not given full and realistic information about the dangers of tasers, which they consequently regard as a non-lethal means of law enforcement, without being aware of the actual and real risks associated with its use. The training of police officers in this respect also lacks emphasis on [the need for] special caution when dealing with persons [who pose] risk factors.

Furthermore, I consider that it is not sufficient to train only those police officers who are physically in possession of [a taser]. I consider it essential that training should also be extended to [those] colleagues of these officers and [those of] their supervisors who may come into contact with tasers in practice or who have a duty to monitor the use of a taser by a subordinate officer.

Last but not least, I believe that ... police officers who are to be in possession of a taser and be authorised to use it should be [selected] according to predetermined criteria – including a high level of resistance to stress.

- As regards the investigated intervention [undertaken by] the Czech Republic's police force and the subsequent [investigation into] the use of a taser:

...

In the case under investigation, the supervisors of the intervening officers did not in fact carry out [any investigation into] the use of coercive measures –or [if they did, they] did so in only a formalistic manner, as they had in fact no objective information at their disposal. The official records [drawn up by] the intervening officers regarding the use of coercive measures lacked a detailed description of the events, on the basis of which it would have been possible to assess the appropriateness of their use.

Oversight mechanisms within the police therefore need to be improved in respect of the use of tasers. Records of their use should be sufficiently detailed and informative (and include a record of the time and duration of each discharge and a description of the situation and the person's behaviour throughout the intervention in question). Supervisors must not take a formalistic approach to assessment and should be adequately trained for this purpose ...

- In respect of preventive and methodological activities in the field of the protection of persons suffering from mental disorders:

From the case under investigation, it is clear from a strategic and methodological point of view that it would be very useful in future to coordinate the practices of police officers and medical staff in hospitals in the event of an intervention. This means ensuring [that there are] both sufficient methodological guidance and functioning oversight mechanisms within the Czech Republic's police force and medical institutions through the Ministry of Health, as well as establishing cooperation and coordination between those two segments, whose members shall then deal with the situations that arise in practice.

In the Czech Republic, increased attention should be paid to protecting persons with mental disorders. Among other things, regular training should be provided to persons who may come into contact with persons suffering from mental disorders during their work, and appropriate methodological guidance [should be provided] by the relevant public authorities ...

C. Evaluation of the matter

...

For the above-noted reasons I am inclined to the view of the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment] and Amnesty International that a taser is to be seen as a means of coercion [carrying] a lower risk of causing death (being less lethal) [but carrying] a high risk of causing unnecessary pain, but not [as a means of coercion that is] inherently non-lethal, as it is currently perceived by Czech law and the [common] practice of the Czech Republic's police force ...

- Legitimacy and proportionality of the police intervention in the case under examination

In the case under examination – in which the police intervention was aimed at protecting lives and health of persons in the hospital – the police officers used against the victim a degree of force that was from the very beginning capable of amounting to ill-treatment and, under certain circumstances, also [causing] death ... However, as described above, police officers are not trained in the use of tasers in such a manner as to be made aware of the above-mentioned health risks ...

Firstly, I would like to point out that I generally consider that the use of a taser in situations where the person concerned is on the ground, and two police officers are kneeling on top of him, as unreasonable and unacceptable. In my view, a taser cannot be used to facilitate the physical restraint of a person and as a substitute for the force [used in] other means of coercion. It can only be justified by the existence of a realistic and imminent threat to life or a danger of serious injury.

In the case under review, such a reason appears to me to have [applied by reason of] the danger [posed by] the damaged power lines. Although I have paid great attention to reconstructing the course of events, I cannot say with certainty, in hindsight, whether this danger was in point of fact real or why the officers should not have considered it to be real and imminent. [P.Z.] posed a serious threat to the paramedics and the doctor, but when the officers entered the ward, they were already out of danger. A threat to others was not imminent because the patient was not 'moving in' on them. He [posed] a threat to the property of the clinic and the peace of the ward – given that he was shouting and spraying water – but this could have been dealt with by the police by turning off the water mains ... and perhaps – with a shield in the form of a mattress – they could have entered through the door and started negotiating. [P.Z.], however, at the sight of the officers, began to tear down the ceilings and spray water into the electrical wiring, and the officers unanimously stated that they had taken this into consideration [in reaching] their decision to act very quickly. This constitutes a very specific circumstance ...

When it came to the use of force, the police officers at first chose a means of restraint other than a taser. A subsequent examination of the victim did not show that he had been subject to significant ill-treatment (that is, beating). The taser was used three times. All the police officers stated that the taser had been used while [P.Z.] had been putting up active resistance ... I believe that the intervening police officer acted according to how he had been trained ...

I can only assume that the death of P.Z. was the result of an unfortunate combination of circumstances ...

I also note that the experts gave their opinion on the [use of a] taser but not on the issue of positional asphyxia, which should have been examined in the instant case ...

Therefore my conclusion is that in general terms, I consider it to be disproportionate to use a taser against a person who is lying on the ground and whom two or more police officers are trying to secure unless the situation is marked by exceptional, special

circumstances that justify the need to secure the person [in question] and to end the situation in the shortest possible time. Such circumstances may include, for example, a risk of electric shock posed to officers, the secured person or other persons by exposed cables in a wet environment.

- Preventive and methodological activities in the field of police interventions in healthcare facilities aimed at protecting persons suffering from mental disorders

...

The above-noted [evaluation] shows that the Czech Republic lacks sufficient analytical and strategic measures to protect persons with mental disorders, including regular training and methodological guidance [provided] by the relevant administrative authorities. The aim of such [measures] should be to prevent situations in which it is necessary to request the intervention of the Czech Republic's police force. However, if police intervention is necessary, this activity should be aimed at minimising the use of force and [at developing,] through the use of appropriate tactics, alternatives to the use of force ... by the Czech Republic's police force, the proper coordination of paramedics and police officers, etc. The legal expression of this objective is the above-mentioned positive obligations of the State arising from the right to life and the prohibition of ill-treatment."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. POLICE ACT (LAW NO. 273/2008)

27. Under section 51, a police officer is authorised, during an intervention, to use coercive measures and weapons that he or she has been trained to use.

28. Section 52 provides a list of coercive measures that a police officer is entitled to use; these include discharging a device with temporarily incapacitating effects that has the characteristics of a "firearm", as defined by the Firearms Act.

According to a commentary (Vangeli, B., 2nd edition, 2014, C. H. Beck) cited by the Government, these devices are classified, in terms of their effects, as *non-lethal devices*, and include "flash-balls" (hollow rubber balls fired against the body of the perpetrator), and "tasers" (two dart projectiles – electrical contacts carrying a conductive wire, which, after contact with the perpetrator's body, create an electrical circuit and deliver an incapacitating electrical discharge to the body). All these devices are used principally to subdue perpetrators of violent crimes or perpetrators who are intoxicated or armed with a weapon [that is not a firearm]. They are therefore particularly useful in dangerous situations that would otherwise require the use of a firearm to maintain a safe distance from the perpetrator".

29. Under section 53(1) and (3), police officers are entitled to use coercive measures to protect public order or their own or another person's safety or property and to choose the coercive measure which will enable them to achieve the objective of the intervention in question and which is necessary

to overcome the resistance of or an attack by the person concerned. Section 53(2) requires a police officer, before using a coercive measure, to call on the person concerned to desist from acting unlawfully, failing which coercive measures will be used; such a warning may be omitted if an individual's life or health is in danger and the intervention cannot be delayed. Under section 53(4), police officers have the right to use an electrical coercive device only if the use of a different coercive measure would obviously not be sufficient to achieve the aim pursued by the intervention. Under section 53(5), when using coercive measures police officers must be sure not to cause such harm to the person concerned as would be disproportionate to the nature and level of dangerousness presented by that person's unlawful conduct.

30. Section 56(1) defines situations in which a police officer is authorised to use a weapon. These include (a) for the purpose of self-defence or through necessity, (b) situations in which a dangerous perpetrator refuses to surrender when called upon to do so by a police officer, and (c) preventing the escape of a dangerous perpetrator whom the police officer in question would otherwise be unable to apprehend.

31. Under section 58(1), devices which have a temporarily incapacitating effect and which have the "characteristics of a firearm" cannot be discharged against evidently pregnant women, elderly persons, persons with an evident physical impairment or disease, or persons who are evidently under 15 years of age, unless there is an imminent threat to the life or health of a police officer or another person or there is a risk of substantial property damage that cannot be otherwise averted.

II. INTERNAL POLICE REGULATIONS

32. According to a document entitled "Specific Police Training Programme P2/0232 – Training in the use of a taser as a coercive measure", which was issued by the training division of the Police Presidium of the Czech Republic and which has been applicable since 1 September 2013, the aim of that training is to ensure that police officers use tasers in a safe and proficient manner. Point 3 of the document stipulates that the course's target group is officers in the position of instructor responsible for the in-house training of a unit that has been assigned a taser for the exercise of duties. The criteria according to which the competence of participants in the training (once they have completed the course) is assessed include: the ability (i) to recall and apply in practice the safety rules governing the use of a taser, (ii) to describe the components of a taser and to handle it safely in practice, (iii) to describe the different types of taser darts and their use and to explain their distribution with respect to their effectiveness, and (iv) to explain the health risks associated with the use of a taser, and to use a taser correctly in practice. At the end of the training, the participants take an examination comprising a

written test and a practical test of their ability to safely handle a taser in a simulated test situation.

33. The requirements and content of the training in the form that it has taken since 1 May 2018 are described in a document entitled "Police Training Programme P2/0232 – The taser as a coercive measure", issued by the police force's education and in-house training unit. According to that document, the training should cover the health risks of using a taser and the safe handling of a taser; focus should also be placed on individuals who present risk factors in respect of the health-related risks of using a taser.

34. The system of organising and providing training to police officers on the use of tasers is governed by instruction no. 3/2015 of 29 October 2015 issued by the head of the Czech police's education and in-house training unit. Under its Article 3, police officers are authorised to use a taser if they have completed a training course delivered by a properly certified instructor or lecturer under the police's "TASER Training" programme. They are required to attend such training every two years and to take part in practical taser training at least twice a year.

35. Police Guide no. 1/2017 on the use of coercive measures and weapons by officers of the Czech Republic's police force (updated on 1 July 2018), issued by the head of the Riot Police Service Directorate of the Police Presidium of the Czech Republic, details the conditions governing the use of coercive measures. It includes (in Part II) a description of a special procedure applicable to vulnerable persons. Part III of the guide deals, *inter alia*, with the use of electrical means of temporarily incapacitating a person (including tasers). According to the guide, police officers use electrical devices primarily against armed or aggressive individuals who have disobeyed a police officer's command or instruction. The guide notes that the principle of subsidiarity applies also to the use of tasers: that is, in the event of an intervention in which other coercive measures have failed to overcome active resistance, the use of a taser constitutes a measure of last resort before a weapon is used. Moreover, when used from a distance, a taser should not be aimed at the facial area of the head, and medical treatment should be administered to an individual on whom a taser is used.

III. LAW NO. 349/1999 ON THE PUBLIC DEFENDER OF RIGHTS

36. Section 1(3) provides that the Public Defender of Rights carries out systematic visits to places where persons are deprived of their liberty, with a view to strengthening the protection of such persons from ill-treatment. Such places include healthcare facilities, facilities providing institutional care or protective treatment and social services facilities.

37. Under section 9, the Public Defender of Rights can act upon an individual complaint, at the instigation of one of the chambers of the Czech Parliament and of their members, or at his or her own initiative.

IV. CASE-LAW OF THE CZECH CONSTITUTIONAL COURT

38. In its judgment no. I. ÚS 1974/14 of 23 March 2015, concerning a judicial review of the involuntary hospitalisation of a mentally disabled person, the Constitutional Court observed that, in the past, the rights of mentally disabled persons had often been overlooked and that such persons had been the object of stigmatisation, ostracisation, prejudice and serious human-rights violations; however, such marginalisation was no longer acceptable. The Constitutional Court was of the view that the fact that, historically, mentally disabled persons had constituted a vulnerable group should be reflected by adopting a particularly cautious interpretation of legal provisions concerning them, and that that interpretation should be fully compliant with their fundamental rights. Mentally disabled persons enjoyed all human rights; that fact ensured that they enjoyed the protection of and respect for their natural human dignity.

39. In its judgment no. I. ÚS 860/15 of 27 October 2015, which concerned the execution by the police of an order for the administrative expulsion of an alien, the Constitutional Court noted that such an act had to be conducted in a humane and respectful fashion. Like any other State security forces, the police were obliged to carry out interventions not only with respect for the dignity and rights of the persons concerned but also in a manner that enabled them to calm possible conflict-laden situations rather than escalating tensions or generating conflict.

RELEVANT INTERNATIONAL DOCUMENTS

I. RECOMMENDATION REC(2004)10 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE PROTECTION OF HUMAN RIGHTS AND THE DIGNITY OF PERSONS WITH MENTAL DISORDERS (ADOPTED ON 22 SEPTEMBER 2004)

40. The relevant parts of this Recommendation read as follows:

Article 11 – Professional standards

"1. Professional staff involved in mental health services should have appropriate qualifications and training to enable them to perform their role within the services according to professional obligations and standards.

2. In particular, staff should receive appropriate training on:

i. protecting the dignity, human rights and fundamental freedoms of persons with mental disorder;

ii. understanding, prevention and control of violence;

iii. measures to avoid restraint or seclusion;

iv. the limited circumstances in which different methods of restraint or seclusion may be justified, taking into account the benefits and risks entailed, and the correct application of such measures."

Article 32 – Involvement of the police

"1. In the fulfilment of their legal duties, the police should coordinate their interventions with those of medical and social services, if possible with the consent of the person concerned, if the behaviour of that person is strongly suggestive of mental disorder and represents a significant risk of harm to him or herself or to others.

2. ...

3. Members of the police should respect the dignity and human rights of persons with mental disorder. The importance of this duty should be emphasised during training.

4. Members of the police should receive appropriate training in the assessment and management of situations involving persons with mental disorder, which draws attention to the vulnerability of such persons in situations involving the police."

41. An explanatory memorandum in respect of Article 11 of the Recommendation emphasises that training designed to ensure the protection of dignity and human rights is important for all staff who have contact with persons with a mental disorder. The memorandum also emphasises the importance of training in respect of how to handle violent (or potentially violent) situations; the memorandum states that staff should receive such training if it is appropriate to their work. The central principle is that staff should aim to prevent situations escalating into violence – both by understanding factors that may lead to such escalation (so that staff can as far as possible minimise such factors) and by the use of techniques (such as verbal de-escalation) that can reduce the risk of violence and in particular reduce the need to use either restraint or seclusion.

42. An explanatory memorandum in respect of Article 32 of the Recommendation states that members of the police force have a duty to respect the dignity and fundamental rights of persons suffering from a mental disorder from the time that they commence their duties. This duty should be emphasised during the training of police staff. However, not having undertaken such specific training does not absolve a member of the police of the need to respect the principle.

II. REPORTS ISSUED BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("THE CPT")

A. Twentieth General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

43. This report, published in 2010, states:

"65. It is becoming increasingly common in countries visited by the CPT for police officers and other law enforcement officials to be issued with electrical-discharge weapons (EDW), and the presence of such devices in places of detention (in particular prisons) has also been observed by the Committee in certain countries. There are various types of EDW, ranging from electric shock batons and other handheld weapons requiring direct contact with the person who is the intended target to weapons capable of delivering dart-like projectiles which administer an electric shock to a person located at some distance ...

66. The use of EDW by law enforcement and other public officials is a controversial subject. There are conflicting views as regards both the specific circumstances in which resort to such weapons can be justified and the potential negative effects on health that the weapons can cause. It is also a fact that by their very nature, EDW lend themselves to misuse.

...

68. The CPT understands the wish of national authorities to provide their law enforcement officials with means enabling them to give a more graduated response to dangerous situations with which they are confronted. There is no doubt that the possession of less lethal weapons such as EDW may in some cases make it possible to avoid recourse to firearms.

...

70. In the CPT's view, the use of EDW should be limited to situations where there is a real and immediate threat to life or risk of serious injury. Recourse to such weapons for the sole purpose of securing compliance with an order is inadmissible. Furthermore, recourse to such weapons should only be authorised when other less coercive methods (negotiation and persuasion, manual control techniques, etc.) have failed or are impracticable and where it is the [last] possible alternative to the use of a method presenting a greater risk of injury or death.

...

78. Electrical discharge weapons issued to law enforcement officials commonly offer different modes of use, in particular a 'firing' and a 'contact' (drive-stun) mode. In the former, the weapon fires projectiles which attach to the person targeted at a short distance from each other, and an electrical discharge is generated. In the great majority of cases, this discharge provokes generalised muscular contraction which induces temporary paralysis and causes the person concerned to fall to the ground. In contrast, when the 'contact' mode is used, electrodes on the end of the weapon produce an electrical arc and when they are brought into contact with the person targeted the electrodes cause very intense, localised pain, with the possibility of burns to the skin. The CPT has strong reservations concerning this latter mode of use. Indeed, properly trained law enforcement officials will have many other control techniques available to them when they are in touching distance of a person who has to be brought under control.

79. The potential effects of EDW on the physical and mental health of persons against whom they are used is the subject of much argument ... In the absence of detailed research on the potential effects of EDW on particularly vulnerable persons (e.g. the elderly, pregnant women, young children, persons with a pre-existing heart condition), the CPT believes that their use *vis-à-vis* such persons should in any event be avoided. The use of EDW on persons who are delirious or intoxicated is another sensitive issue; persons in this state of mind may well not understand the significance of an advance warning that the weapon will be used and could instead become ever more agitated in such a situation. Deaths during arrest have been attributed to these medical conditions,

in particular when EDW have been deployed. Therefore, particular caution is warranted and the use of EDW should be avoided in such a case and, in general, in situations where EDW might increase the risk of death or injury.

...

82. Following each use of an EDW, there should be a debriefing of the law enforcement official who had recourse to the weapon. Further, the incident should be the subject of a detailed report to a higher authority. This report should indicate the precise circumstances considered to justify resort to the weapon, the mode of use, as well as all other relevant information (presence of witnesses, whether other weapons were available, medical care given to the person targeted, etc). The technical information registered on the memory chip and the video recording of the use of the EDW should be included in the report ..."

B. CPT's comments concerning the prone position

44. In the document CPT/Inf/E (2002) 1 – Rev. 2010, published on 8 March 2011, the CPT noted, in respect of the deportation of foreign nationals, that in cases where resistance was encountered, escort staff usually immobilised the detainee completely on the ground, face down, in order to place him or her in handcuffs. Keeping a detainee in such a 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, immobilising the neck) after the person concerned has put up a struggle – entails a risk of positional asphyxia. The CPT has made it clear that the use of force and/or methods of restraint capable of causing positional asphyxia should be avoided whenever possible and that any such use in exceptional circumstances must be subject to guidelines designed to reduce to a minimum the risks to the health of the person concerned.

45. In its report on the visit to the Netherlands carried out in October 2011 (CPT/Inf (2012) 21), published on 9 August 2012, the CPT stressed the risks inherent in the use of certain restraint techniques (in particular, the use of the neck hold) in order to control agitated patients in mental health institutions, as well as the need to avoid immobilisation techniques that might quickly lead to positional asphyxia (paragraph 106).

46. In its report on the visit to the United Kingdom carried out in June 2021 (CPT/Inf (2022/13), published on 7 July 2022, the CPT noted that the MHA Code of Practice stated that patients must not be restrained in the prone position unless "there are cogent reasons" for doing so, and NICE Guidelines recommended the supine position if patients have to be forced to the floor. It considered positive that at Priory Hospital Enfield, the prone position was no longer applied following a clear commitment by the management to phase out its use (paragraph 165).

C. Means of restraint in psychiatric establishments for adults (CPT/Inf(2017)6)

47. In this document, published on 21 March 2017, the CPT consolidated its revised standards regarding the use of means of restraint *vis-à-vis* psychiatric patients. It stressed that the ultimate goal should always be to prevent the use of means of restraint by limiting as far as possible their frequency and duration. To this end, it considered it to be of paramount importance that the relevant health authorities and the management of psychiatric establishments develop a strategy and take a panoply of proactive steps, which should *inter alia* include the provision of a safe and secure material environment (including in the open air), the employment of a sufficient number of healthcare staff, adequate initial and ongoing training of the staff involved in the restraint of patients, and the promotion of the development of alternative measures (including de-escalation techniques).

It was noted that in most countries visited by the CPT, one or more of the following types of restraint may be used:

(a) physical restraint (staff holding or immobilising a patient by using physical force – "manual control");

(b) mechanical restraint (applying instruments of restraint, such as straps, to immobilise a patient);

(c) chemical restraint (forcible administration of medication for the purpose of controlling a patient's behaviour); and

(d) seclusion (involuntary placement of a patient alone in a locked room).

D. Report of 31 March 2015 (CPT/Inf (2015) 18)

48. On 31 March 2015 the CPT's report on a periodic visit to the Czech Republic from 1 until 10 April 2014 was published. The report stated (emphasis removed):

> "168. It became clear during the visit that uniformed police officers were frequently called upon to assist in restraining agitated patients whenever health-care staff at Kosmonosy Psychiatric Hospital were not able to control the situation themselves. This state of affairs is not acceptable and cannot be justified by the lack of male nurses.
>
> The CPT recommends that the Czech authorities take the necessary steps to put an end to the practice of involving police officers in restraint of agitated patients at Kosmonosy Psychiatric Hospital. Further, all nursing staff should be trained in the appropriate use of means of restraint and refresher courses should be organised at regular intervals. Such training should not only focus on instructing staff how to apply means of restraint but, equally importantly, should ensure that they understand the impact the use of restraint may have on a patient and that they know how to care for a restrained patient."

E. Report of 1 June 2017 (CPT/Inf (2017) 13)

49. In its report on a visit to Germany conducted from 25 November until 7 December 2015, published on 1 June 2017, the CPT acknowledged that, in exceptional situations (that is, when weapons or hostage taking were involved), the assistance of the police might be unavoidable. However, in the Committee's view, hospital staff should generally be sufficient in number and able to handle violent situations without recourse to the police, including at night (paragraph 127).

III. UNITED NATIONS PUBLICATION ENTITLED "GUIDANCE ON LESS-LETHAL WEAPONS IN LAW ENFORCEMENT"

50. This publication, issued in 2020 by the Office of the United Nations High Commissioner for Human Rights, observes the following in its section 7.4 on conducted electrical weapons ("tasers"):

> "7.4 CONDUCTED ELECTRICAL WEAPONS ("TASERS")
>
> UTILITY AND DESIGN
>
> 7.4.1 Conducted electrical weapons are typically used to deliver pulses of electrical charge that cause the subject's muscles to contract in an uncoordinated way, thereby preventing purposeful movement. This effect has been termed "neuromuscular incapacitation". The charge is delivered through metal probes that are fired towards the subject but which remain electrically connected to the device by fine wires. During the period of uncoordinated muscle activity, law enforcement officials are able to intervene to restrain the subject using conventional methods, such as handcuffs. Many models use compressed nitrogen to fire two darts that trail electric cable back to the weapon's handset. When the darts strike the human body, pulses of high-voltage charge pass down the cable.
>
> 7.4.2 Many conducted electrical weapons can also deliver an electric shock when pressed directly against an individual (a use sometimes referred to as "drive-stun mode"), though the effect relies on pain compliance and does not result in neuro-muscular incapacitation.
>
> CIRCUMSTANCES OF POTENTIALLY LAWFUL USE
>
> 7.4.3 Among other uses, conducted electrical weapons are used by law enforcement officials to incapacitate individuals at a distance posing an imminent threat of injury (to others or to themselves).
>
> 7.4.4 To prevent a prolonged charge from being applied to a suspect, every conducted electrical weapon should have an automatic cut-off of the electrical charge. This is often set at no more than five seconds. Currently, not all weapons have an automatic cut-off feature.
>
> SPECIFIC RISKS
>
> 7.4.5 The risks caused by the discharge of a conducted electrical weapon include primary injury from the electrical charge or the barbs imbedded in the skin. Elderly people may be more prone than others to musculoskeletal injury from the muscle contractions produced by the weapon. Conducted electrical weapons should not be used

against persons in elevated positions owing to the risk of a secondary injury, especially to the head; such injuries can be sustained in particular as a result of falling to the ground from a height or onto a hard surface, as individuals who have received an electrical charge will typically be physically incapable of using their hands to break a fall.

7.4.6 The risk of significant injury or even death is increased in certain conditions, including where the individuals who have been electrically shocked have heart disease; have taken certain prescription or recreational drugs, or alcohol, or both; or are for other reasons more susceptible to adverse cardiac effects. TASER™ guidance recommends that, when possible, users should avoid targeting the frontal chest area near the heart, in order to reduce the risk of potentially serious injury or death. Children and slender adults may be at greater risk of internal injury from tissue-penetrating barbs, as their body wall is generally less thick. The discharge of a conducted electrical weapon may trigger seizures in those affected by epilepsy, irrespective of barb location. Law enforcement officials should also avoid using conducted electrical weapons against genitals or other sensitive body areas.

7.4.7 Certain types of aggressive behaviour that may lead law enforcement officers to use conducted energy devices can be caused by mental health issues, language barriers, hearing disorders, visual impairment, neurodevelopmental or neurobehavioural disorders or learning difficulties. Law enforcement agencies should ensure that those working in situations where they are likely to encounter persons with pre-existing vulnerabilities have had detailed guidance and training in identifying such risks, and that they possess the knowledge, ability and tools necessary to understand, and if possible de-escalate, violent situations that could trigger the use of conducted energy weapons.

7.4.8 The use of conducted electrical weapons in the presence of flammable liquid or explosive vapour may result in fire or deflagration, or even an explosion. Some irritant spray solvents may be flammable, and the solvent may be ignited by the arc discharge from a conducted electrical weapon.

7.4.9 The use of conducted electrical weapons against an individual to prevent or limit self-harming behaviour must be justifiable in the circumstances.

7.4.10 Even when drive-stun use of conducted electrical weapons is lawful, it may not be effective on persons with serious mental health issues or on others who may not respond to pain, for example owing to a mind-body disconnect. In such instances, there is a heightened risk of serious injury.

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

7.4.11 Conducted electrical weapons should not be used with a view to overcoming purely passive resistance to an official's instructions through the infliction of pain. Repeated, prolonged or continuous discharge should be avoided whenever possible.

7.4.12 The risk of inflicting pain or suffering so severe that it may amount to an element of torture or cruel, inhuman or degrading treatment or punishment is especially high when a weapon is used in drive-stun mode to apply electricity directly to an individual without incapacitating them. Such applications may also raise the individual's level of aggression, as a result of the pain inflicted."

IV. AMNESTY INTERNATIONAL STUDY ENTITLED "PROJECTILE ELECTRIC-SHOCK WEAPONS: AN AMNESTY INTERNATIONAL POSITION PAPER"

51. This study, published in February 2019, observes:

"2.3.1 Dart-firing mode – operational gap: the need to incapacitate a person?

The key feature of PESWs [projectile electric-shock weapon] is their ability to instantly incapacitate through directly impacting a person from a certain distance (several meters, the precise distance depending on the type of PESW to be used): this mode causes neuromuscular incapacitation through which the person instantly loses control of his/her muscles and is unable to act. Other weapons able to respond to any threat at such a distance would be either a lethal option, such as a firearm, or – as a less-lethal option – a gun that fires kinetic impact projectiles (commonly referred to as rubber bullets). All other options require a much closer range: open hand techniques, the baton, pepper spray. The rubber bullet firing weapon relies principally on causing pain and surprise to the person. It is not designed to have an instantaneously incapacitating effect; the targeted person keeps control over their body functions and remains able to act. It is therefore not reliable as a means to instantaneously stop a person who shows the clear determination to cause serious harm. Thus, the introduction of PESWs may be an appropriate response to fill an operational gap when seeking an effective means to stop a serious threat from a distance without resorting to the use of lethal force.

2.3.2 Drive-stun mode – operational gap: the need to achieve compliance through pain?

In drive-stun mode, the PESW is applied directly on the body of the person over whom control is sought, which means it will be applied in a close contact situation, often during wrestling with officers trying to control a violent and/or resistant person. Because the two points of contact of the weapon that are releasing the electric current are too close to each other to complete an electric circuit, this mode will not cause neuro-muscular contraction and the concomitant incapacitation. It relies on obtaining the individual's compliance through the extreme pain it causes.

This means that this mode is useless in response to the situations frequently cited to justify the introduction of PESWs: their use against persons who are resistant to pain, such as due to the effects of alcohol or drugs, which makes other means and methods of use of force ineffective – the PESW used in drive-stun mode will be equally ineffective in these cases. Furthermore, in a close contact setting, in which drive-stun mode can be applied, there are a range of other means available: Empty hand techniques, pure body weight from the officers, the baton. In addition, pepper spray might be used just before any wrestling starts (in a wrestling situation, pepper spray would present too high a risk for the officer him/herself). As such, and in clear contrast to the obvious advantage when used as an incapacitating weapon at a distance (i.e. in dart-firing mode), PESWs used in drive-stun mode might widen the available use-of-force-options in close-contact situations, but do not fill a relevant or significant operational gap.

Furthermore, compared to other techniques that not only inflict pain, but can also immobilize a person, such as certain empty hand techniques [i.e. techniques to control a person without the use of any device or weapon], the infliction of immense pain can have the contrary effect and make a person even more violent and angry, thus being ineffective in terms of the desired result."

52. The also report indicates that a taser may fail in a sizeable proportion of cases – particularly when used in dart-firing mode:

> "[T]here is a risk of the weapon not being effective – as also explicitly stated in the manufacturer's 'Taser' user manual. Some reports cite failure rates of up to 30% in dart-firing mode. Depending on the mode used, there are many reasons why the weapon can fail to be effective: the darts can hit too close to each other resulting in no electric circuit; one or both darts may not stick to the target or can be impeded by thick clothing; or technical failure or physical conditions of the person targeted can reduce the effect of the weapon ...
>
> A study in Austria found that out of 111 discharges in dart-firing mode, 19 were only effective after several discharges, 17 had no effect at all (which amounts to a definite failure of more than 15% or one failure within every 6 discharges!) ... [A British study] even mentions reports of 30% of failure to subdue a subject in probe-mode (= dart-firing mode)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

53. The applicant complained that the police officers who had intervened against her brother in a psychiatric hospital had used a taser, which had led (on its own or in combination with the medication administered on admission and following the tasering) to the death of her brother. She asserted that the intervention had not been planned, that the medical staff had not been consulted about it, that there had been no regulatory framework laying down rules for the use of force against persons with mental disorders and that the police officers had not been trained in how to use a taser against such persons. The applicant further complained that the authorities had failed to carry out an adequate investigation into the incident.

She argued that there had been a breach of Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided 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; ..."

A. Admissibility

54. 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

55. The applicant's complaint relating to the State's obligations under Article 2 of the Convention has two limbs: substantive and procedural. The Court will address them in turn.

1. The substantive aspect

(a) The applicant

56. The applicant argued that: the intervention of the police officers in the hospital had not been necessary; the use of force against her brother had not been proportionate, in the light of both the general situation and the specific vulnerability of her brother; and the intervention had not been properly planned and managed, owing to the insufficient preparation and training of the police officers involved.

57. Regarding this latter issue, the applicant noted that the Government had failed to answer a specific question raised by the Court concerning the training of law-enforcement officers (and in particular those who had intervened in the present case) in communicating and dealing with persons with psychosocial disabilities and with individuals who were in a highly agitated state or otherwise vulnerable. In the applicant's view, the absence of an answer to the Court's question indicated that no such training existed and that the police officers involved in the incident had thus not received any. This would correspond to the findings of the Public Defender of Rights, according to whom training in the use of a taser had been insufficient at the time of the incident since it had paid little attention to the health risks posed by a taser.

58. In this connection, the applicant cited Recommendation No. Rec(2004)10 of the Committee of Ministers of the Council of Europe concerning the protection of the human rights and dignity of persons with a psychosocial disability (see paragraph 40 above), according to which members of the police should receive training which draws attention to the vulnerability of persons with a mental disorder in situations involving the police and which teaches officers how to assess and manage situations involving such persons. The Court itself has repeatedly emphasised the importance of training and equipment in cases raising questions similar to those raised in the present one (the applicant relied on *Tekın and Arslan v. Belgium*, no. 37795/13, §§ 96-98, 5 September 2017, and *Boukrourou and Others v. France*, no. 30059/15, § 87, 16 November 2017).

59. Contrary to the Government's submissions, the applicant submitted that her brother's death could be attributed to actions undertaken by the State. In her view, medical evidence showed that the use of a taser could cause irregular heart rhythm, cardiac arrhythmia being a plausible – though unproven – consequence. This meant that when used against persons with

underlying heart disease or existing hypertension, a taser increased the risk of a severe reaction or possible death. Although electrical-discharge weapons might in general be less lethal than firearms, the situation and circumstances in which a taser had been used against P.Z. meant that that particular taser had been a lethal weapon. While the expert report stated that it had not been possible to establish unequivocally whether and to what extent P.Z.'s death was attributable to natural causes, it explicitly listed other possible contributing factors – including the taser, the medication that he had been taking and the stress that he had been under at the time in question (see paragraph 18 above). The applicant submitted that the combined effect of two rounds of medication that had been administered to P.Z. prior to and after the police intervention (see paragraphs 6 and 8 above *in fine*) – together with the three taser darts that had been fired at him and the risky prone position in which he had remained after being immobilised – had contributed to the ultimate death of her brother and that such an effect had been undeniably foreseeable, if not certain. Indeed, had there been no police intervention of this kind, P.Z. would not have died.

60. The applicant was further convinced that the Government had failed to demonstrate that all possible steps had been taken to prevent the use of a taser in the present case. She emphasised that her brother had been in a highly vulnerable situation and had been tasered multiple times, while he had been kneeling with his face down in water and heavily and repeatedly medicated. Those circumstances alone had placed the level of violence that intervention had entailed outside the requirements of necessity and proportionality. Moreover, although the intense and fast-evolving situation had required a prompt and immediate response on the part of the police, there had been no exceptional circumstances justifying the use of a taser, which could be sufficiently explained neither by P.Z.'s resistance nor by the police officers' difficulties in subduing him by less invasive means. Even assuming that P.Z. had initially posed a threat (especially during the fight with the orderly), the applicant was convinced that this had no longer been the case at the moment of the police intervention; at that point in the events in question her brother had been isolated in the corridor, unarmed, outnumbered by the police officers and security guards, and he had moreover been within their reach (so they could have used other means to restrain him other than using a taser). Any potential danger to hospital property (stemming from the fact that P.Z. had been spraying water around the corridor and possibly exposing electrical cabling) could have been avoided by switching off the electrical circuit and/or water.

61. The applicant further observed that, even though the hospital staff and police officers had been aware of P.Z.'s vulnerable condition, they had not made use of any methods of calming him down and de-escalating the situation. She also criticised the defects in the equipment at the clinic and the police officers' failure to coordinate the intervention, to consult medical staff

and to seek more detailed information regarding P.Z.'s state of health, medication and behaviour (see paragraph 7 *in fine* above).

62. Lastly, the applicant pointed to the absence of an appropriate regulatory framework, which the Government had not commented upon. She observed that Czech law expressly limited the use of coercive measures, including tasers, against certain vulnerable groups, such as children, pregnant women and elderly persons (see paragraph 31 above). However, she added, the law failed to apply such limitations to persons with psychosocial disabilities (especially those detained in psychiatric hospitals) – despite the fact that such persons were often in a highly vulnerable situation, deprived of their liberty and subjected to coercive measures; the applicant asserted that the use of a taser could not be regarded as constituting standard operating procedure in respect of such persons. Thus, the law should regulate in a very precise manner the use of tasers against persons with a psychosocial disability who were detained in psychiatric hospitals, and specific instructions should be adopted and appropriately conveyed to police officers. According to the applicant, the lack of such a framework could be linked to the pervasive general prejudice against persons suffering from psychosocial disabilities and the overall unpreparedness of the police to understand and consider their specific kind of vulnerability.

(b) The Government

63. The Government submitted, firstly, that the State was not liable for the death of the applicant's brother. In their view, the existence of a causal link between the use of force by the police officers and P.Z.'s death was at least questionable, it not being clear whether a taser was an intrinsically lethal weapon, even when used from a distance. Referring to the expert report according to which it was impossible to determine what had caused the cardiac arrhythmia that had put an end to P.Z.'s life (see paragraph 18 above), the Government maintained that the use of a taser had, at most, been one of multiple factors that had contributed to P.Z.'s death (which had *followed* – but not necessarily *resulted from* – the police intervention). In this connection, the Government found irrelevant the considerations concerning the prone position in which P.Z had been maintained by the police officers, and the so-called positional asphyxia commented upon by the Public Defender of Rights (see paragraph 81 below), emphasising that according to the expert report, P.Z.'s death had not been due to asphyxiation but to cardiac arrhythmia.

64. Even assuming that there had been such a causal link, the Government submitted that – as in the case of *Boukrourou and Others* (cited above) – it had not been foreseeable under the circumstances of the present case that the use of force would be fatal to the applicant's brother. They emphasised in this connection that: the police officers had had to react extremely quickly in order to avert an imminent threat to the lives and health of the persons present; they had had to take action in cramped conditions (namely in a corridor only

2.25 metres wide); and neither they nor the clinic's staff had had any knowledge of P.Z.'s heart condition (which had only been uncovered by the autopsy) – only P.Z.'s treatment for hypertension had been known. In the Government's opinion, the use of force had essentially been a spontaneous reaction to the events, since the police officers had not had time to plan their operation in detail (in this respect the Government cited *Leonidis v. Greece*, no. 43326/05, § 58, 8 January 2009). Nevertheless, P.Z. had immediately received professional first aid when his vital functions had started to fail.

65. In any event, the Government maintained that the police intervention in question had pursued the legitimate aim of defending others against unlawful violence perpetrated by P.Z. The latter had, in particular, violently attacked an orderly, pulled off doors to other patients' rooms and sprayed water from a fire hose onto exposed electrical wiring, thus provoking a risk of electrocution. The Government disputed the applicant's assertion that P.Z.'s behaviour had been "in principle ... defensive" (see paragraph 7 above), submitting that his conduct had posed an imminent threat to the lives and the health of the intervening officers, the clinic staff, other patients and himself.

66. The Government were also convinced that the force used against P.Z. had not exceeded the limits of necessity and proportionality. They emphasised the fact that the police officers had first ordered him to refrain from engaging in violent behaviour; then – using a mattress as a shield – they had applied moderate coercive measures which had, however, succeeded in only enabling them to secure P.Z.'s left arm. During the intervention, the police officers had been severely hindered both by the patient's robust physique and the active resistance that he had presented and by the lack of space, which had rendered it impossible for them to take full advantage of their superior numbers.

67. The Government further submitted that, after unsuccessfully deploying more moderate coercive measures, the Police Act had left the police officers with only two options: using a taser or using a weapon. Had none of the intervening police officers been in possession of a taser, there would have been lawful grounds for them to use a weapon. In this connection the Government referred to the case of *Bouras v. France* (no. 31754/18, § 61, 19 May 2022), which they interpreted as confirming the Court's acceptance of the fact that a taser was a non-lethal weapon (or less likely to be a lethal weapon) and was therefore in general preferrable to a firearm.

68. As to the fact that P.Z. had been tasered three times, the Government pointed to studies that had found a high incidence of failure in taser use (see paragraph 52 above). It was thus not unprecedented, as stated by the police officers and nurses present at the incident in question, that several electrical discharges had had no appreciable effect on the degree and intensity of P.Z.'s resistance. Hence the repeated discharge of the taser had been strictly necessary to achieve the purpose of the intervention.

69. As to the defects in the equipment at the clinic alleged by the applicant, the Government contended that the hydrant – a fire-protection device – had to be freely accessible for prompt use in the event of a fire. The fact that P.Z. had used the fire hose as a weapon and removed the ceiling panels to gain access to the wiring had been an unfortunate coincidence but one that had been difficult to avoid. Furthermore, the staff had not been able to shut off the water mains since it was located outside the clinic building. Nor had they had access to electricity switchboards – not to mention the fact that if the power had been disconnected, the entire police intervention would have had to be conducted in the dark.

70. The Government further maintained that there had been no violation of the State's positive obligation to protect the life of the applicant's brother, given that the police intervention had been motivated by the effort to protect him from harming himself and from a foreseeable danger and that P.Z. had been swiftly administered first aid by qualified medical staff.

71. The Government further argued that the facts of the case clearly indicated that the persons involved had been aware of the vulnerable state of the applicant's brother and had sufficiently adjusted the manner in which they had dealt with him. P.Z. had first been given sedatives; then the medical staff had attempted to placate him verbally. He had nevertheless become highly aggressive, at which point the administration of further medication or the undertaking of measures of restraint by the medical staff had no longer been possible. The police officers had then unsuccessfully attempted to subdue P.Z. without resorting to any other instruments, devices or weapons; it had only been in the final stage of the incident – after all previous attempts to overpower P.Z. had failed and after warnings had been issued – that the taser had been used as a non-lethal weapon (or at least a weapon less likely to be lethal). In other words, the less invasive solutions and the methods of calming P.Z. down and de-escalating the situation cited by the applicant (see paragraph 61 above) had either been used and proved ineffective, or had not been practicable under the circumstances.

72. Reiterating the assertion that the intervening police officers had acted under significant time constraints, stress and the risk of electrocution, the Government were convinced that the intervention had been coordinated with the medical personnel as far as practicable, time and other considerations having only allowed for the most essential information to be conveyed.

73. As regards the regulatory framework concerning the use of tasers by law-enforcement officers, the Government observed that recourse to a taser as a coercive measure was – and still is – regulated primarily by the Police Act. In the present case, all the statutory requirements for its use had been met, including: the issuance of a prior warning; and the observance of the principle of proportionality and the necessity of resorting to coercive measures, the principle of subsidiarity in respect of resorting to an electrical coercive device, the obligation to administer first aid and medical treatment,

and the obligation to draw up an official record on the use of coercive measures. Since the intervention had not been prepared in advance (and nor could it have been delayed), and given that the police officers had only been able to confer among themselves briefly, it had not been an intervention conducted under a unified command.

74. The Government noted that, in addition to the Police Act, the use of tasers was also governed by internal police regulations – in particular Guideline no. 1/2017 of the Director of the Riot Police Service Directorate of the Police Presidium of the Czech Republic on the use of coercive measures and weapons by officers of the Czech Republic's police force (see paragraph 35 above).

75. As to the instruction and training given to law-enforcement officers in the use of tasers, the Government referred to section 51 of the Police Act and to Law no. 361/2003 on the service of members of the security forces (according to which the officer in charge was required to ensure that officers were properly trained to exercise their duties) and to internal police regulations (some of which related specifically to the use of tasers – see paragraphs 32-34 above). They further submitted a letter from the Public Defender of Rights to the Minister of the Interior, dated 20 August 2018, in which the Public Defender of Rights acknowledged that since 2017 police officers had been systematically instructed to use the taser only as the last alternative to a weapon. The letter also stated that the training programme in question had been updated in such a manner that it had focused more on the health risks involved. The above-mentioned authorities had in 2018 also discussed the issue of training police officers to deal with persons suffering from psychosocial disabilities; moreover, according to information provided by the Government in September 2022, the Ministry of Health was implementing a project entitled "Mental Healthcare Reform", which encompassed methodological guidelines concerning, *inter alia*, police interventions against persons with psychosocial disabilities, and coordination between police officers and health professionals during interventions carried out in hospitals.

76. Lastly, the Government noted that officer T., who had tasered the applicant's brother, had received the relevant training in the use of a taser in February 2015. He had shot the taser darts into points recommended by the instructions that he had received during his training in order that the electric current could pass through the path of least resistance – that is, through muscles situated away from the heart or other vital organs; that had been confirmed by the report issued by the Public Defender of Rights. In her 2018 letter to the Minister of the Interior (see paragraph 75 above) the latter had, moreover, indicated that in her report on the present case, she had not criticised the use of the taser itself, given the very specific circumstances in which it had been deployed.

(c) The Czech Public Defender of Rights, third-party intervener

77. Noting that it performs also the tasks of a "national preventive mechanism" under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the office of the Public Defender of Rights observed that it had been following issues raised by the present case for a long time but that systemic recommendations that it had made for the protection of persons with psychosocial disabilities subjected to use of force had been received with reticence by the authorities.

78. The Public Defender of Rights emphasised that a patient had a right to healthcare and a right not to be "pacified" by the police, and that communication with him or her should be managed by a healthcare professional. During visits made to psychiatric institutions in the Czech Republic, Public Defender of Rights staff had observed that the presence of police officers in such facilities was not exceptional and that sometimes officers were called on by medical staff to help to manage aggressive patients. Accordingly, the Public Defender of Rights had in 2017 recommended to the Police Presidium that it create a special training programme for police officers that would address the specific challenges of dealing with persons with psychosocial disabilities; however, the relevant authorities had refused to implement that recommendation. As a matter of fact, when intervening in healthcare facilities, police officers were bound only by the general statutory principle of proportionality, and by no more specific guidelines. Thus, in 2018, the Public Defender of Rights had concluded that police officers were not trained to tackle the specific challenges of interacting with a person suffering from a mental disorder.

79. Furthermore the office of the Public Defender of Rights told the Ministry of Health that there was a need to strengthen the protection of the rights of persons with psychosocial disabilities through the provision of methodological guidance; it referred to a CPT recommendation (see paragraph 48 above) that care provided by health professionals not be substituted by police interventions. Thus, in 2019, the Public Defender of Rights had recommended that a protocol be developed for such situations, with the aim of ensuring coordination between health professionals and the police; that recommendation had been accepted but had not yet been implemented, so that there are currently no rules governing the above-mentioned kind of coordination.

80. As regards the use of tasers, the Public Defender of Rights indicated that, following the applicant's brother's death, its staff had discussed with the police authorities and the Ministry of the Interior the issue of whether the rules set by the Police Act were correct. Of greater relevance was whether police officers were aware of the danger posed by users of tasers to health and life. Although tasers were not in principle dangerous for healthy persons, special caution was necessary when it was used against patients in hospitals. Since, at the time of the applicant's brother's death, little attention had been

paid to that issue during police training, the Public Defender of Rights recommended that that issue be reinforced, which had happened in 2017, with more emphasis being given to the consideration of health risks and unpredictable reactions.

81. Lastly, the office of the Public Defender of Rights referred to the risks of the prone position, which was often used by the police to immobilise restless patients despite the fact that it could cause positional asphyxia. It noted that a methodological guideline had been issued in this respect by the Police Presidium in 2021, but it was not clear whether it had been incorporated into police officers' training.

(d) The Court's assessment

(i) General principles

82. The Court has held that Article 2 enshrines one of the basic values of the democratic societies making up the Council of Europe (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324). The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, for example, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 48, ECHR 2002-I; *Kotilainen and Others v. Finland*, no. 62439/12, § 66, 17 September 2020; and *Kurt v. Austria* [GC], no. 62903/15, § 157, 15 June 2021). Such a positive obligation under the substantive limb of Article 2 has been found to arise in a range of different contexts in which the right to life may be at stake (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII), and encompasses the duty to adopt a legislative and administrative framework designed to protect the right to life and to ensure the effective functioning of that regulatory framework (see *Cavit Tınarlıoğlu v. Turkey*, no. 3648/04, § 86, 2 February 2016, and *Kotilainen and Others*, cited above, § 66).

83. As regards, in particular, the use of lethal force by police officers, the Court has held that 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 *Tekın and Arslan*, cited above, § 84).

84. In the context of healthcare, the States' substantive positive obligations may include a duty to make adequate provision for securing high professional standards among health professionals and to put in place an effective regulatory framework compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives (see,

for example, *Calvelli and Ciglio*, cited above, § 49; *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 108, ECHR 2012 (extracts)); and *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 186, 19 December 2017).

85. In certain circumstances, positive obligations may even attach to a State to protect individuals from risk to their lives resulting from their own action or behaviour (see *Ciechońska v. Poland*, no. 19776/04, § 62, 14 June 2011, and *Fatih Çakır and Merve Nisa Çakır v. Turkey*, no. 54558/11, § 41, 5 June 2018). In the case of mentally ill persons, regard must be had to their particular vulnerability (see, among other authorities, *Rivière v. France*, no. 33834/03, § 63, 11 July 2006, and *Renolde v. France*, no. 5608/05, § 84, ECHR 2008 (extracts)).

86. The Court has, however, also emphasised that the positive obligation is to be interpreted in such a way as not to impose an impossible or disproportionate burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Öneryıldız*, § 107, and *Ciechońska*, §§ 63 and 64, both cited above). In other words, only the fact that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life can constitute a possible violation of a positive obligation on the part of those authorities (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII, and *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, § 66, 7 February 2006).

87. 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 *Makaratzis*, cited above, §§ 57-59; *Tekın and Arslan*, cited above, §§ 83 and 99; *Boukrourou and Others*, cited above, § 55; and *Machalikashvili and Others v. Georgia*, no. 32245/19, § 99, 19 January 2023). Article 2 of the Convention also imposes on the State the positive obligation to train its 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, *mutatis mutandis*, *Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, § 268, 1 July 2010, and *Tekın and Arslan*, cited above, § 95).

(ii) Application to the present case

88. The Court notes that the applicant complained particularly about the fact that the police officers had used a taser against her brother, P.Z., during an intervention in a psychiatric hospital. In her view, the repeated tasering – combined with P.Z.'s placement for a lengthy period in the risky prone

position and with the medication administered to him before and after the tasering – had contributed to P.Z.'s death.

89. Having regard to the approach adopted in previous cases involving non-intentional infringements of the right to life, the Court must examine, in the present case, whether the State authorities violated their positive obligations under Article 2 of the Convention to protect the life of P.Z. It reiterates that such obligations include the duty to adopt appropriate measures for the protection of patients' lives and to put in place an effective regulatory framework which will define the limited circumstances in which law-enforcement officials may use force and firearms (see the case-law cited in paragraphs 83-84 above).

(α) Failure to protect P.Z's life

90. The Court notes at the outset that P.Z. had a history of mental health problems and a psychiatric diagnosis of paranoid schizophrenia, a serious chronic illness, which, in addition to causing severe mental suffering, also generally increases the risk of serious somatic health problems and so therefore the medication used to treat it. Moreover, he was also diagnosed with hypertension. He was therefore undoubtedly in a vulnerable position (see *Boukrourou and Others*, cited above, § 58).

91. The Court also observes that, having been a long-term outpatient (see paragraph 5 above), P.Z. was known to the clinic to which he was admitted on the eve of the events leading to his death. The reason why he was taken there that particular day, accompanied by a police patrol, was that he had been aggressive towards his relatives. He was admitted to the acute care unit of the clinic, administered anti-psychotic medication and placed in an ordinary room (see paragraph 6 above). Nobody claimed that the clinic did not have the requisite skills and facilities to deal with P.Z.'s condition or provide him appropriate medical care and support.

92. Moreover, the fact that early the next morning, at around 4 a.m., the medical staff decided to transfer P.Z. – who had begun to grow restless – to an intensive care room equipped to physically restrain aggressive patients (see paragraph 7 above) shows that they had reason to believe that he could represent a danger to himself or those around him and that special precautions were necessary. This was all the more the case as the situation deteriorated after a verbal conflict, following which P.Z. became hyperaggressive and highly agitated, started to destroy equipment and grabbed a fire hose. When a medical orderly tried to stop him, P.Z. allegedly tried to strangle him with the hose, causing him to fear for his life. He then started ripping out ceiling tiles and pulling out electrical wires and spraying water onto them. Since none of the medical staff or hospital security guards were able to control him, police officers were called to the clinic to intervene at around 5 a.m. According to the officers' accounts (see paragraphs 8 and 10 above), when they arrived, P.Z. still posed a serious threat to the paramedics and the doctor,

whereas according to the Public Defender of Rights – who is required by law to carry out checks in healthcare facilities (see paragraph 36 above) – they had already been out of danger (see paragraph 26 above). It further appears from the various versions of events that two police officers managed to force P.Z. to the ground and put him in a prone position (that is to say chest down, potentially preventing him from breathing and being able to control his movements). However, owing to his physical strength and the intensity of his resistance, they were unable to restrain him or secure his hands behind his back, which was why officer T., who considered that P.Z. posed an imminent threat to the life and health of everyone present (see paragraph 10 above), decided to use a taser. He tasered him three times, following which a nurse administered further medication to him at 5.05 a.m. It appeared afterwards that he had no palpable pulse; however, the immediate resuscitation efforts by the medical staff were unsuccessful and he was pronounced dead at 6.08 a.m., presumably as a result of a cardiac arrest (see paragraphs 8 and 9 above).

93. Neither the autopsy carried out on the day of the incident (see paragraph 14 above) nor the forensic report of 2 March 2016 (see paragraph 18 above) were conclusive as to a possible causal link between the use of a taser against the applicant's brother and his death. Indeed, according to the autopsy and forensic report, the immediate cause of P.Z.'s death was cardiac arrhythmia, which could have had many potential causes – one of them being the electrical discharge emitted by the taser. The subsequent investigation into the incident concluded that: (i) the taser had been used in a manner that had been fully in line with the rules on the use of coercive measures, (ii) P.Z.'s cardiac anomaly could not have been foreseeable and (iii) his death could not have been attributed to any particular person or act (see paragraph 19 above).

94. In the Court's view, the situation as described above reveals a number of shortcomings as to the manner in which the hospital and the police dealt with the situation in question.

95. Firstly, the Court considers that it could have been reasonably foreseen when P.Z. was taken to the psychiatric clinic that he could become psychotic or violent (see paragraphs 90-91 above). He was admitted to the acute care unit of a psychiatric clinic which obviously must be adequately equipped to deal with mentally disturbed, agitated and even violent persons and secure their safety and well-being. The Court notes in this regard that in the document called "Means of restraint in psychiatric establishments for adults" (see paragraph 47 above), the CPT recommended that in order to prevent and limit the use of means of restraint (involving physical restraint, mechanical restraint, chemical restraint and seclusion), the relevant health authorities and the management of psychiatric establishments should provide a safe and secure material environment, employ a sufficient number of healthcare staff, which should be adequately trained in the restraint of

patients, and promote alternative measures, including de-escalation techniques. In the present case, however, no information was submitted regarding such a strategy and preventive measures at the Psychiatric Clinic of Olomouc University Hospital, nor regarding the use of de-escalation techniques *vis-à-vis* the applicant's brother. As regards the possibilities of restraint, it seems that P.Z.'s placement in an intensive care room could not be achieved, first because of a lack of space and later because of a lack of time, and that no attempt to physically restrain him had been made by the clinic staff until he grabbed the fire hose.

96. Secondly, the Court notes that although the medical staff decided to call on the police for help, they did not appear to have informed the police officers of P.Z.'s condition and of the health risks associated with it, or of his state of agitation.

97. Thirdly, the Court notes that when the police officers intervened at the request of the medical staff, they forced P.Z. to the ground and put him in a prone position, that is to say with his chest down. In this connection, and also referring to the CPT's findings (see paragraphs 44-46 above), the Court draws attention to the risks of that position, which may lead to positional asphyxia because of pressure exerted on the neck, and which also makes it impossible to observe whether the person concerned is actually breathing.

98. Fourthly, the Court is of the view that putting P.Z. in that position lowered the risk of him escaping or posing a further direct threat to the lives of those present. This raises a question as to whether the use of a taser by one of the police officers was absolutely necessary. The Court notes in this regard that tasers as electrical-discharge weapons are categorised by the CPT as "less-lethal weapons" (see paragraph 43 above) – a view that seems to be shared by the Public Defender of Rights (see paragraph 26 above) – and that they are also commonly referred to as "intermediate weapons". The Court has previously found that subjecting a person to electric shocks is a particularly serious form of ill-treatment capable of provoking severe pain and cruel suffering (see *Grigoryev v. Ukraine*, no. 51671/07, § 64, 15 May 2012; *Anzhelo Georgiev and Others v. Bulgaria*, no. 51284/09, §§ 75-76, 30 September 2014; *Kanciał v. Poland*, no. 37023/13, § 78, 23 May 2019; and *Znakovas v. Lithuania* [Committee], no. 32715/17, § 46, 19 November 2019).

99. Indeed, even if it is conceded that the use of a taser against P.Z. did not amount to intrinsically lethal force, the Court considers that it was nonetheless likely to cause, or at least hasten, his death. In the Court's view, although the police officers could not have known that P.Z. was suffering from a cardiac anomaly that made the use of a taser even more risky, the mere fact that he was a psychiatric patient should have prompted them to realise that not only was he in a vulnerable position (owing to his hospitalisation and the psychiatric episode from which he was suffering) but that he was a person with mental health issues and that it was very likely that he had received

medication. The Court considers that in so far as P.Z. died while the police officers were attempting to immobilise him, it cannot be ruled out that the electrical shocks produced by the taser did indeed cause the cardiac arrhythmia that led to his death (see *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, §§ 58 and 60, 7 February 2006, and *Boukrourou and Others*, cited above, § 60). In this context, the Court is struck by the fact that P.Z. was tasered three times in a very short lapse of time and that anxiolytic medication was administered to him afterwards, before he had been turned over onto his back (see paragraph 9 above).

100. The Court considers that there is nothing unusual about persons hospitalised in the acute care unit of a psychiatric clinic being agitated or violent. Therefore psychiatric institutions must, in principle, be appropriately staffed and equipped to handle such patients by their own means (see paragraph 95 above), so as to have recourse to the assistance of the police only as a means of last resort and in due coordination with them. This, however, was not the case here.

101. The Court thus concludes that the above-mentioned incidents, taken cumulatively, demonstrate that as a result of the combined actions of a number of people, the State failed in its positive obligation to provide P.Z. with adequate care and preserve his life.

(β) Relevant legal and administrative framework

102. Against this background, the Court will further assess whether the State complied with its regulatory duties under Article 2 of the Convention (see paragraph 83 above). It reiterates, in particular, that the use of a taser entails a certain level of inherent risks to the right to life, and that the risk of such an intermediate weapon being used against persons with mental disorders is even more serious. Accordingly, the use of a taser must engage the State's positive obligation to adopt regulations for the protection of life and ensure the effective implementation and functioning of that regulatory framework.

103. As regards the domestic legal framework, the Court notes, firstly, that a taser is considered in the Czech Republic to be a non-lethal device (see paragraph 28 above). In this connection, it also takes note of the fact that it is categorised as a less-lethal weapon by the CPT (see paragraph 43 above), the United Nations High Commissioner for Human Rights (see paragraph 50 above), as well as by the Czech Public Defender of Rights (see paragraph 26 above).

At the time of the events in question the relevant rules on the use of tasers were provided, in particular, by the Police Act (see paragraphs 27-31) and an internal police guide (see paragraph 35 above). Under section 53 of the Police Act, police officers have the right (after first issuing a warning) to use a taser only if the use of a different coercive measure would obviously not be sufficient to achieve the aim pursued by the intervention in question (such as

the protection of their own or another person's safety, property or public order) and if the use of a taser is necessary to overcome the resistance or attack of the person concerned. Under section 58(1), a taser cannot be used against evidently pregnant women, elderly persons, persons with an evident physical impairment or disease, or persons who are evidently under 15 years of age – unless there is an imminent threat to the life or health of a police officer or another person or a risk of substantial property damage that cannot otherwise be averted. This latter provision is developed in Part II of the internal Police Guide no. 1/2017 (in the wording thereof that stood as at 1 July 2018 – that is, after the events that are the crux of the present case). Part III of this guide emphasises in respect of the use of tasers the application of the principle of subsidiarity within the meaning of section 53 § 4 of the Police Act. It accordingly specifies that, in a situation where other coercive measures (the use of grips, holds, blows, truncheons or tear-producing agents) did not succeed in overcoming active resistance, a taser is the last alternative to a weapon.

104. The Court observes that, under the above-noted rules, police officers are authorised to use a taser where there is no other coercive measure capable of attaining the aim of the intervention, bearing in mind the principle of proportionality. It takes the view, however, that the above-noted framework is very general (see, *mutatis mutandis*, *Tekin and Arslan*, cited above, § 92) and does not reflect the particular nature of that device as an "intermediate weapon" (see paragraph 98 above) and the health risks associated with its use. In particular, there are no specific provisions concerning the use of a taser against persons with mental disorders or, more generally, against persons who have been hospitalised and who are likely to have been medicated, but who are not included among vulnerable persons specifically mentioned in section 58(1) of the Police Act. Nor does it appear that any internal regulation aimed at tackling this issue has been adopted by the Czech police authorities. Thus, according to the Public Defender of Rights, when intervening on the premises of healthcare facilities, police officers are bound only by the general statutory principle of proportionality, and not by any more specific guidelines (see paragraph 78 above).

105. In this connection, the Court observes that, in the absence of detailed research into the potential effects of electrical-discharge weapons on particularly vulnerable persons, the CPT recommends that their use *vis-à-vis* such persons – as well as *vis-à-vis* persons who are delirious or intoxicated – should be avoided (see paragraph 43 above). According to the UN High Commissioner for Human Rights, the risk of significant injury or even death is increased notably where the individuals who have been electrically shocked have taken certain prescription or recreational drugs or are for other reasons more susceptible to adverse cardiac effects. Those working in situations where they are likely to encounter persons with pre-existing vulnerabilities should thus have detailed guidance and training in identifying such risks (see

paragraph 50 above). Lastly, the Czech Constitutional Court is of the view that mentally disabled persons constitute a vulnerable group and that legal provisions concerning them require a particularly cautious interpretation which should be fully compliant with their fundamental rights (see paragraph 38 above).

106. As regards police officers' training in the use of a taser, the Court observes that the Government has referred to general provisions of section 51 of the Police Act (see paragraph 27 above) and of Law no. 361/2003 on the service of members of the security forces (see paragraph 75 above), as well as to internal police regulations (some of which relate specifically to the use of tasers – see paragraphs 32-34 above). According to the first of those documents, entitled "Specific Police Training Programme P2/0232 – Training in the use of a taser as a coercive measure" (which has been applicable since 1 September 2013), the training encompasses mainly theoretical information concerning technical aspects and the safe and correct handling of a taser; police officers are also expected to be able to explain the health risks associated with its use (see paragraph 32 above).

107. The Court takes note with interest of the recent developments in the training courses administered to police officers. It observes, however, that these developments only arose after the death of the applicant's brother. Moreover, the Court can only deplore the fact that, as stated by the Public Defender of Rights, the relevant authorities refused to implement the latter's recommendation that a special training programme be created for police officers that would address the specific challenges of dealing with persons suffering from psychosocial disabilities (see paragraph 78 above). In this connection, the Court refers to the view that it has expressed in previous cases, according to which dealing with mentally disturbed individuals clearly requires special training (see *Shchiborshch and Kuzmina v. Russia*, no. 5269/08, § 233, 16 January 2014, and *Tekin and Arslan*, cited above, § 97).

108. Lastly, there is nothing in the material before the Court to suggest that at the time in question there existed any instruction or methodological guidance requiring that cooperation and coordination be established between (on the one hand) police officers intervening at hospitals and (on the other hand) health professionals. The Court notes that a recommendation was made to this effect by the Public Defender of Rights in 2019 (that is, after the death of the applicant's brother) and is currently being implemented (see paragraphs 75 and 79 above). In this connection, the Court considers that, where the intervention of the police in psychiatric institutions cannot be avoided, the intervening police officers should be informed about the risks associated with the use of taser and about the need for special caution when dealing with persons who pose risk factors; in any event, they should carry out their duties in such a way as to calm and de-escalate conflictual situations (see also the Czech Constitutional Court's judgment no. I. ÚS 860/15, noted

in paragraph 39 above). Nevertheless, the Court also draws attention to the recommendation of the CPT (although it concerns one particular psychiatric hospital in the Czech Republic), that an end be put to the practice of involving police officers in the restraint of agitated patients (see paragraph 48 above). As already noted by the Court above, psychiatric institutions must, in principle, be appropriately staffed and equipped to handle such patients by their own means (see paragraph 95 above), so as to have recourse to the help of the police only as a means of last resort and in due coordination with them (see paragraph 100 above).

109. The foregoing considerations are sufficient to enable the Court to conclude that the State failed to observe its primary duty to secure the right to life by putting in place an appropriate legal and administrative framework concerning, on the one hand, coordination between health professionals and the police when the latter's intervention in medical establishments is unavoidable and, on the other hand, the possible health risks associated with use by the police of tasers in general and, in particular, against persons with mental disorders – notably in situations where it has not been established whether those persons have been medicated (and if so, how). In particular, the Court considers that the system in place did not afford to police officers clear guidelines on how to proceed when intervening against psychiatric patients such as P.Z., which may explain why the police officers in the instant case proceeded quite spontaneously, without first consulting the medical staff.

(iii) Conclusion

110. The Court therefore concludes that there has been a violation of Article 2 of the Convention under its substantive limb.

2. *The procedural aspect*

(a) The applicant

111. The applicant submitted that the investigation had not been thorough since there had been deficiencies in the collection of evidence. In particular, the four police officers had only been heard by the GISF twenty days after the incident (see paragraph 16 above), which had given them time in which to collude – as evidenced by the fact that their accounts of the events had been almost identical. In this respect, she contested the Government's argument that the incident had caused the police officers a level of distress that had prevented them from testifying for almost three weeks.

112. The applicant also noted that the Government had not commented on her assertions that the police officers had not been questioned regarding: whether or not the intervention had been planned in such a way as to assess and mitigate the risks to the victim's life; the extent to which they had been informed of P.Z.'s condition and the potential health risks connected with the

intervention; whether or not any less coercive or dangerous measures had been considered (and if not, why not); who had been in charge of the planning of the intervention and who had decided on the use of a taser; and whether they had informed the hospital staff (before the nurse had forcibly administered the medication to P.Z.) that a taser would be used.

113. The applicant further maintained that the scope of the investigation had been unjustifiably narrow; specifically, it had not explored all possible causes of P.Z.'s death and all possible permutations thereof – with a particular emphasis on the effects that the (repeated) tasering and heavy medication could have had on a particularly vulnerable person like P.Z., who had been in the acute phase of paranoid schizophrenia. Most importantly, since the investigation had not succeeded in establishing the reasons for P.Z.'s death, other investigative avenues should have been explored.

114. Lastly, the applicant argued that the investigation had not covered the whole range of relevant suspects such as the medical staff, whose possible liability for the forcible application of a heavy dose of medication (following the police intervention) had not been examined.

(b) The Government

115. The Government argued that all the requirements of an effective investigation had been satisfied – including that of thoroughness. They submitted that a substantial range of evidence had been adduced and that extensive documentation had been compiled by the GISF; this had been sufficient to clarify the situation and to establish the cause of P.Z.'s death and any possible criminal liability on the part of officer T. for that death. In their view, the fact that – despite all the effort expended and the expert opinion produced by three medical experts – it had not been possible to determine the precise cause of the cardiac arrhythmia that had led to P.Z.'s death did not amount to a violation of the obligation to conduct an effective investigation. The latter being a procedural obligation, not an obligation of result, the Government submitted that decisive in the instant case was the fact that that an autopsy had been ordered immediately after P.Z.'s death and that an expert medical opinion had been drawn up. The Government further pointed out that, as could be seen from the decisions issued by both the GISF and the prosecution authorities, the issue of the repeated administration of electric shocks to the applicant's brother had also been addressed.

116. As to the applicant's argument that the GISF had not interviewed the intervening police officers until several weeks after the incident, the Government maintained that, immediately after the intervention, all four police officers had drawn up official records on their use of coercive measures – including their use of a taser; in those respective records they had each commented individually – albeit briefly – on the incident, rendering an immediate interview unnecessary. Moreover, the delay in taking their statements had been caused by their state of mind (which had been affected

by the distress that they were feeling), and had not had any significant impact on their ability to remember the above-described events. Moreover, the police officers had not been the only eyewitnesses to the incident, since other individuals had also been present at the scene – in particular, two nurses and two security guards, who had been interviewed shortly afterwards. Thus, the testimony of the intervening police officers had not constituted the only basis for the investigation (the Government pointed, *a contrario*, to *Virabyan v. Armenia*, no. 40094/05, § 165, 2 October 2012).

(c) The Court's assessment

117. The Court will examine the matter in the light of the relevant general principles, as summarised notably in *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 229-239, 30 March 2016).

118. For the purposes of the present case, the Court observes that compliance of an official investigation with the procedural requirement of Article 2 is assessed on the basis of several essential parameters: the adequacy of the investigative measures; the promptness of the investigation; the involvement of the deceased person's family; and the independence of the investigation. In order to be "effective," an investigation must be capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (*Armani Da Silva*, cited above, § 233).

119. The Court finds that an investigation capable of establishing the circumstances and of identifying and punishing those responsible has been carried out in the instant case.

120. It firstly observes that the investigative steps were taken by the GISF itself, which has been found to be an independent body (see *B.Ü. v. the Czech Republic*, no. 9264/15, § 96, 6 October 2022); this point is not contested by the applicant and the Court sees no other reason to conclude that the investigation did not meet the requirement of independence.

121. The Court also acknowledges that the GISF reacted immediately and on their own initiative: an investigation aimed at establishing the cause of P.Z.'s death was opened on the day on which that death occurred (namely, 6 November 2015) (see paragraph 13 above). Items of evidence, including the taser, were secured, the intervening police officers were instructed to draw up official records on the use of coercive measures, an autopsy of P.Z.'s body was performed, and an expert report was ordered (see paragraphs 14 and 18 above). Between 25 November and 8 December 2015 the GISF interviewed several eyewitnesses, including the four police officers, who were heard on 26 November and 7 December 2015 and asked specific questions by the investigator. The case was closed on 6 April 2016 – that is, five months after it had been opened; thus, the investigation was sufficiently prompt.

122. However, the Court cannot overlook a number of omissions and shortcomings capable of undermining the thoroughness and reliability of the investigation.

123. The Court firstly points out that the investigating authority did not immediately isolate and question the police officers involved in the incident, thus failing to prevent possible collusion. Indeed, the police officers were only heard after twenty days and one month, respectively (see paragraph 16 above). It appears from the case file that in their account of events provided during those interviews, they more or less reiterated the content of the official records that they had drawn up on the day of the incident (see paragraph 14 above). In this respect, the Court notes the criticism voiced by the Public Defender of Rights, according to whom those official records lacked a detailed description of the events, on the basis of which it would have been possible to assess the appropriateness of the coercive measures used (see paragraph 26 above).

The Court also observes that the interviews in question were conducted in a rather non-inquisitive manner, the police officers having simply been asked to provide their account of events and posed a very few questions, which did not relate to the coercive measures used during the intervention (see, *mutatis mutandis*, *Virabyan*, cited above, § 175). It notes in this respect that according to the Public Defender of Rights, the investigation into the use of coercive measures had been carried out in only a formalistic manner, since no objective information had been available.

124. Furthermore, while the Court acknowledges that although (i) quite extensive evidential material was collected (including video recordings, the backup memory of the taser, and a full copy of P.Z.'s medical records), and (ii) a forensic medical examination and a toxicology examination were ordered for the purpose of producing an expert report, it finds that the scope of the investigation was still somewhat narrow. In particular, as alleged by the applicant (see paragraphs 112-113 above), the investigation did not focus on the information exchanged between the police officers and the medical staff, and the experts were not asked to comment regarding any possible interaction between the medication administered to P.Z. (before and after the police intervention) and the use of the taser (see paragraph 18 *in fine*). The Court reiterates in this respect that 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 (*Mustafa Tunç and Fecire Tunç*, cited above, § 175; and *Armani Da Silva*, cited above, § 234).

125. Thus, although the police officers may have honestly believed that the impugned coercive measures (including the use of a taser) could legitimately be used to subdue P.Z.'s resistance – a belief that may have stemmed mainly from the lack of a proper training in dealing with persons with psychosocial disabilities (see paragraphs 106-109 above) – the above-

noted deficiencies in the investigation did not enable it to be properly established whether the liability of the State was engaged on the grounds of cumulative shortcomings on the part of the authorities.

126. In the light of the foregoing, the Court finds that the investigation carried out into the death of P.Z. was inadequate and therefore in breach of the State's procedural obligations to protect the right to life. There has accordingly been a violation of Article 2 of the Convention on this account also.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

127. The applicant further complained that her brother had been subjected to inhuman or degrading treatment by the hospital and by the police, and that the authorities had failed to discharge their obligation to conduct an effective investigation in that regard.

She relied on Article 3 of the Convention, which reads as follows:

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

128. The Court notes that the complaints under Article 3 are linked to those examined above under Article 2 of the Convention and must therefore be declared admissible.

129. Furthermore, the Court is of the view that the substance of the applicant's complaints has already been examined under Article 2 of the Convention. Having regard to its findings and conclusion under that provision, it considers that no separate issue arises concerning the alleged breaches of Article 3.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

131. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage on account of the psychological suffering caused to her and her whole family by the loss of their relative.

132. The Government were of the view that any award by the Court should be made on equitable basis, reflecting both the scope of any particular violations found and the relevant case-law of the Court.

133. 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 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

134. Submitting an invoice, the applicant also claimed EUR 4,000 for the fees charged by her attorney for forty hours of legal work in respect of proceedings before the Court.

135. The Government observed that the applicant had failed to submit any contract concluded between her and her lawyer, or any confirmation that she had in fact paid the sum sought.

136. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above-noted criteria, the Court considers it reasonable to award the sum of EUR 4,000 for the costs and expenses incurred in respect of proceedings for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 2 of the Convention in its substantive aspect;

3. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention in its procedural aspect;

4. *Holds*, unanimously, that there is no need to examine separately the complaints under the substantive and procedural aspects of Article 3 of the Convention;

5. *Holds*, by six votes to one,
   (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 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

Done in English, and notified in writing on 7 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Gnatovskyy;
(b) partly concurring and partly dissenting opinion of Judge Elósegui;
(c) statement of dissent of Judge Mourou-Vikström.

G.R.
V.S.

CONCURRING OPINION OF JUDGE GNATOVSKYY

INTRODUCTION

1. I fully support and welcome the findings of the Court in this important judgment, which deals with the death of the applicant's brother, Mr P.Z., at a psychiatric hospital, to which he had been admitted the previous night on account of a deterioration in his mental health. Mr P.Z. died amidst the attempts of two police officers, who had been called by the medical staff, to restrain him in the prone position (that is, lying face down on the floor) using an electrical discharge weapon, commonly referred to as a "taser". The Chamber found that Article 2 of the Convention had been violated, both in its substantive and procedural aspects.

2. In reaching these correct conclusions, the Court has chosen a careful, if not somewhat conservative, line of argumentation. The purpose of this concurring opinion is to set out additional elements on several key aspects of the case. This concerns such issues as (A) the Court's general approach to the protection of human rights in closed psychiatric institutions, including the standard of scrutiny in cases involving death or alleged ill-treatment; (B) the question of an alleged violation of negative obligations under Article 2 of the Convention; and (C) issues related to the intervention of police forces to assist medical staff in a therapeutic environment, including the use of electrical discharge weapons ("tasers").

C. PROTECTION OF HUMAN RIGHTS IN A PSYCHIATRIC SETTING

3. Psychiatric establishments present considerable and multiple challenges in terms of protection of the human rights of the persons placed in them. These challenges are exacerbated by a lack of attention from society to these establishments, the paucity of their resources, often-inadequate levels of remuneration and the poor working conditions offered to staff in such hospitals, despite their inherently difficult but crucially important function. As evidenced by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"), which regularly visits psychiatric hospitals in all States Parties to the Convention, there remains a substantial risk of ill-treatment of patients in psychiatric hospitals.

4. One of the factors that the Court must always take into consideration when assessing allegations related to the infliction of death or ill-treatment on patients in psychiatric hospitals is the closed nature of such institutions. In my view, the appropriate standard of scrutiny should, as a rule, be the same as that developed by the Court for similar allegations with regard to places of

deprivation of liberty, such as prisons or police detention facilities, taking into additional account the patients' vulnerability.

5. Individuals placed in a psychiatric hospital without a practical (as opposed to a theoretical) possibility to leave it of their own volition find themselves, in reality, under the complete control of the personnel. Although the degree of such control will vary depending on the legal status of the patient concerned, it remains a weighty factor. This is all the more so given that that in many European countries, including the Czech Republic, a significant number of persons in psychiatric hospitals belong to the category of so-called "*de facto* involuntary patients", to use the CPT's terminology.[1] Therefore, the decisive criterion in the Court's choice of its standard of scrutiny when examining alleged violations of Articles 2 and 3 of the Convention should be the factual situation of the patients, even if they were formally deemed to have consented to their admission to hospital.

6. In certain respects, the degree of control that may be exercised over their patients by staff in psychiatric hospitals may even exceed that existing in prisons and other places of deprivation of liberty. This control is even more substantial with regard to interference in patients' personal autonomy in the form of restraint, be it manual, mechanical or, even more so, chemical (see the description of various means of restraint in paragraph 47 of the judgment). When the application of a means of restraint, such as, typically, placement in seclusion rooms or tying down on beds ("mechanical restraint"), is deemed necessary in respect of a voluntary patient and he or she disagrees, such a patient can no longer be considered to be voluntary and, according to the CPT's standards on the means of restraint, his or her legal status should be reviewed.[2] This is yet another argument for the Court to apply stricter scrutiny to the treatment of patients in closed psychiatric hospitals.

7. It is also not accidental that psychiatric hospitals are part of the mandate of the international and domestic monitoring bodies created to prevent ill-treatment of persons deprived of their liberty, namely: the CPT, created by the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as a non-judicial preventive body

[1] The situation typical for many European countries was described by the CPT, for example, in relation to a psychiatric hospital in the Czech Republic in 2010 in the following terms: "The CPT must express its concern about the legal situation of a number of patients at Horní Beřkovice Psychiatric Hospital. Despite the fact that they had signed a form upon arrival giving their consent to hospitalisation, these patients were being accommodated in closed wards and were not free to leave; in other words, they were *de facto* involuntary patients, being deprived of the benefit of any of the safeguards which accompany the initial involuntary placement procedure." Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 16 September 2010, § 105. See CPT/Inf (2014) 3. https://hudoc.cpt.coe.int/eng?i=p-cze-20100907-en-27

[2] Means of restraint in psychiatric establishments for adults (CPT/Inf(2017)6), p. 10. https://rm.coe.int/16807001c3

subsidiary to the machinery created by the European Convention on Human Rights; and the organs established by virtue of the 2002 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, specifically the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture and the national preventive mechanisms (NPMs). In the Czech Republic, the tasks of the National Preventive Mechanism are exercised by the Public Defender of Rights (see paragraph 77 of the judgment).

8. These monitoring bodies are entitled to carry out monitoring visits to psychiatric hospitals, and their factual findings and any recommendations based on such findings carry particular weight in the Court's assessment of allegations of ill-treatment of patients. The reliance of the present judgment on such findings and recommendations is therefore very welcome. In my view, its use is twofold. On the one hand, reports by monitoring bodies help the Court to define the scope of the State's obligations *vis-à-vis* psychiatric patients in closed institutions. Such reports, in so far as they address general deficiencies and potential risks of ill-treatment of patients, taken together with the responses provided by the authorities to the relevant findings and recommendations, allow the Court to be better informed in its examination of specific allegations of violations of the rights guaranteed by the Convention, against the background of these general issues as identified by the monitoring bodies. On the other hand, concrete assessment of important individual cases such as the present one, by national human-rights institutions (such as the Czech Public Defender of Rights), should also be taken into account by the Court, especially in a situation where, as in the present case, the authorities have failed to discharge their obligations under the procedural limb of Article 2. This approach is also applicable, *mutatis mutandis*, to alleged violations of Article 3.

9. As regards the link between Articles 2 and 3 of the Convention, in the present case the Court concluded that it was not necessary to examine complaints under the latter provision, given that it had examined and found violations in both the substantive and procedural aspects of the right to life. In my view, the Court's analysis of the violations under Article 2 of the Convention in the present case would, in principle, allow it to conclude that there has also been a breach of the prohibition on ill-treatment. While it was not necessary to state this explicitly in the judgment, this consideration should be kept in mind when applying the Court's conclusions in the present case to future situations where Article 3 is primarily at stake.

D. ALLEGED FAILURE TO COMPLY WITH NEGATIVE OBLIGATIONS UNDER ARTICLE 2 OF THE CONVENTION

10. In the present case, the medical experts were unable to establish with certainty the exact cause of P.Z.'s death. Among the potential causes of the fatal outcome, some pertain to direct actions by the police and hospital staff, whereas others are linked to the patient's underlying medical conditions. The actions by the hospital staff and police include repeated electric shocks with a "taser", an attempt to restraint the patient in a potentially life-threatening prone position (see paragraphs 44–46 of the judgment), and injecting him with tranquilising and antipsychotic medication, all within a very short lapse of time. These actions were undertaken against the background of the patient's hypertension (with which he had been diagnosed prior to the tragic events in question, and of which the medical staff ought to have been aware), an anomaly of his blood vessels (established only post-mortem) and the effects of stress and strain caused by the psychotic episode (see paragraph 18 of the judgment).

11. In my view, the circumstances of the case made it perfectly possible for the Court not only to find a violation of Article 2 in its substantive aspect due to the authorities' failure to comply with their positive obligations, but also a violation on account of the direct failure to comply with their negative obligations, as a result of the disproportionate degree of force used against P.Z. by the police officers and hospital staff. Although the Court was one step away from reaching this conclusion in paragraph 99 of the judgment, it preferred not to express itself at all on the issue of negative obligations within the substantive aspect of Article 2.

E. POLICE INTERVENTION AND THE USE OF ELECTRICAL DISCHARGE WEAPONS IN PSYCHIATRY

12. In the present case the medical staff of the Psychiatric Clinic of Olomouc University Hospital resorted to seeking police assistance in order to subdue P.Z., following their failure to place him under observation in a secure (seclusion) room the previous night, purportedly due to the unavailability of such vacant rooms within the hospital, the inability to move him safely into such a room once it became available in the very early morning of 6 November 2015, and the failure on the part of the hospital's medical and auxiliary staff, including its own security guards, to restrain this patient.

13. In this respect, the key comment is made by the Court in paragraph 100 of the present judgment, which states that "there is nothing unusual about persons hospitalised in the acute care unit of a psychiatric clinic being agitated or violent" and that "psychiatric institutions must, in principle, be appropriately staffed and equipped to handle such patients by their own means..., so as to have recourse to the assistance of the police only as a means

of last resort and in due coordination with them...". While this approach is correct, the main difficulty would lie in the demand of "due coordination" of medical staff and the police, as well as in the almost inevitable lack of training of police officers in managing such situations. Therefore, in line with the approach to this matter consistently taken by the CPT (see paragraph 48 of the judgment), an end should be put to the practice of involving police officers in the restraint of agitated patients in psychiatric hospitals. That said, the inclusion of the words "in principle" in the above quotation is justified, as there would still be situations where hospitals could simply not avoid calling police for help. What is important is that such situations do not develop into a frequent pattern, and that they are surrounded by all sorts of safeguards.

14. This logic is also important for the assessment of the question of whether electrical discharge weapons ("tasers") may in principle be used in psychiatric hospitals. While duly quoting the views of the CPT, the UN High Commissioner for Human Rights, and the Czech Constitutional Court (see paragraphs 98 and 105 of the judgment), the Court avoids a clear general statement to the effect that electrical discharge weapons should not be used against patients in psychiatric clinics. Instead, the Court concentrates on the lack of the relevant legal and administrative framework regulating such use. While this is an entirely legitimate approach, I believe that the crux of the matter lies precisely in the fact that "tasers" should never be used against vulnerable persons, such as psychiatric patients, save for situations where there are no other means to save life or limb, either of that patient or of other persons. In other words, the threshold for their application should be the same as for more lethal weapons, such as firearms.

15. Be that as it may, electroshock devices must never be perceived as yet another admissible form of means of restraint in a psychiatric hospital. Nor should manual restraint in the prone position, potentially causing asphyxia, be allowed. As illustrated by the present case, such measures may easily result in a violation of the most fundamental human rights.

CONCLUSION

This case provides rich material and addresses key shortcomings in the treatment of psychiatric patients, already identified by the CPT and other bodies active in the field of human rights in such establishments. I would like to hope that the conclusions of this judgment, as well as certain parts of the Court's reasoning, will be taken up by the domestic authorities, not only in the respondent State but also elsewhere in Europe, in order to support the work of staff in psychiatric hospitals and to strengthen the protection of their patients' human rights.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE ELÓSEGUI

1. I have voted with all my colleagues in favour of finding a procedural violation of Article 2 of the Convention; however I have not joined the majority in finding a substantive violation of Article 2 of the Convention. In this separate opinion I should like to develop the reasons for my vote on this latter point.

2. It may be noted that when the applicant's brother was taken to the psychiatric clinic at his relatives' request, he was no longer displaying any signs of agitation or threatening behaviour (see paragraph 6 of the present judgment). In my view, it could not have been foreseen at that point that the situation would unfold as quickly and exceptionally as it did. It appears that police officers were called to intervene at the clinic because P.Z. had suddenly grown restless and started behaving in an aggressive manner, and the medical staff were unable to control him. Having violently attacked an orderly and sprayed water from a fire hose onto exposed electrical wiring, giving rise to a danger of electrocution, P.Z. undoubtedly posed a serious risk to himself and others. He died while the police officers were attempting to immobilise him using, among other methods, a taser.

3. The decisive question is whether the police officers' unplanned intervention was appropriate in the circumstances, having regard to the concrete facts and practical realities of the present case, or whether less serious means would have been sufficient to avoid the risk posed by P.Z.'s behaviour.

4. It is possible to note from the Government's observations (see paragraphs 67 and 68 of the present judgment) that the police officers had attempted several other measures before resorting to the taser. They initially instructed P.Z. to refrain from engaging in violent behaviour, and then used a mattress as a shield and forced him to the ground, managing to secure his left arm. However, their attempts to subdue him were hindered by a lack of space, given that these events took place in a 2.25-metre-wide corridor, while P.Z. continued to put up active and vigorous resistance. In such a situation, officer T. decided to fire his taser, aiming at points away from P.Z.'s heart and other vital organs (see paragraphs 8, 10 and 19 of the present judgment).

5. It could be further observed that neither the autopsy carried out on the day of the incident (see paragraph 14 of the judgment), nor the forensic report of 2 March 2016 (see paragraph 18 of the judgment) ruled out the possibility of a causal link between the use of a taser against the applicant's brother and his death. According to those reports, the immediate cause of P.Z.'s death was cardiac arrhythmia, which could have had many potential causes – one being the electrical discharge emitted by the taser. The subsequent investigation into the incident concluded that: (i) the taser had been used in a manner that had been fully in line with the rules on the use of coercive

measures; (ii) P.Z.'s cardiac anomaly was not foreseeable; and (iii) his death could not be attributed to any particular person or act (see paragraphs 19 and 93 of the present judgment). Accordingly, the Government maintained that the use of a taser had, at most, been one of multiple factors that had contributed to P.Z.'s death (see paragraphs 63 and 99 of the judgment).

6. In my opinion, this is not a sound basis on which to assess the situation in which the police officers, who were required to react in the heat of the moment, found themselves, or on which to assert that P.Z. could have been subdued by other means. The Court has repeatedly stated that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 182, 14 April 2015). Moreover, errors of judgment or mistaken assessments, unfortunate in retrospect, will not *per se* entail responsibility under Article 2 of the Convention (see, among other authorities, *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 609, 13 April 2017, and *Machalikashvili and Others v. Georgia*, no. 32245/19, § 105, 19 January 2023).

7. With regard to the foreseeability of the consequences of using coercive measures, namely the taser in the present case, even accepting that the struggle between P.Z. and the police officers may have exacerbated his health problems, the Court has reiterated on other occasions that in order for the respondent State's international responsibility to be engaged, the officers must also have been reasonably expected to know that the victim was in a vulnerable state requiring a high degree of care in the choice of "normal" arrest techniques (see *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, §§ 58 and 60, 7 February 2006). In the instant case, the judgment considers that, while the police officers could have presumed that P.Z. (as a patient of a psychiatric clinic) was receiving psychiatric treatment, they could not have known that he was suffering from a cardiac anomaly, which was only detected during the autopsy performed after his death. Accordingly, they could not have known that the electrical discharges generated by the taser (either in themselves or in view of his heart disease and the medication administered to him) would pose a risk to his life (see, *mutatis mutandis*, *Boukrourou and Others v. France*, no. 30059/15, § 61, 16 November 2017).

8. As to the applicant's criticism regarding the police officers' failure to coordinate with the medical staff (see paragraph 61 of the judgment), I can agree that there was room for improvement in this area (see paragraphs 100-109 of the judgment); however, the manner and means of coordination between police officers intervening at hospitals and health professionals is a matter which falls within the State's margin of appreciation in respect of the internal regulations of health establishments.

9. In view of the foregoing and in contrast to the majority, I consider that there are insufficient grounds for calling into question the conclusions

reached in the instant case by the medical experts and domestic authorities which reviewed the police officers' actions and found them adequate (see, in particular, paragraphs 19 and 20 of the judgment). The Court has found a substantive violation on account of the State's failure to meet its positive obligations to protect the life of the applicant's brother. The judgment finds the State to be liable, although it is very careful not to blame the police officers (see paragraphs 109 and 125 of the judgment). The majority finds itself unable to conclude beyond all reasonable doubt that the use by police officers of coercive means, including a taser, was excessive in the present case, and that the death of the applicant's brother was caused by the police officers or was foreseeable by them. However, it emphasises that this inability results at least in part from the shortcomings of the investigations conducted by the domestic authorities (see paragraph 125 of the judgment). Having agreed with all of this in general, in my opinion it is not possible in this concrete case to reach the conclusion that there has been a substantive violation, but only a procedural one. Although I acknowledge that in other cases, the lack of investigation went hand-in-hand with a substantive violation of Article 2 and Article 3, especially when the victims died while under the control of the State, when performing military service or in prison, through the action of other prisoners, I do not see the same situation here.

10. As to the medication administered to P.Z. by the medical staff, which the applicant also questioned before the Court (see paragraphs 53 and 59 of the judgment), it should be noted that following the applicant's complaint regarding the poor level of healthcare services provided to P.Z., an independent psychiatric expert found that the procedure followed by the medical staff in the present case had been entirely *lege artis* and that there had been no direct link between P.Z.'s death and his medical treatment (see paragraph 24 of the judgment). In this regard, given that the applicant did not claim that the State had failed to make adequate provision for securing high professional standards among health professionals, in my opinion (and contrary to what is stated in paragraph 101 of the judgment), there has been no failure for which the State should be required to give account from the standpoint of its positive obligations to protect life under Article 2 of the Convention (see, *mutatis mutandis, Byrzykowski v. Poland*, no. 11562/05, § 104, 27 June 2006, and *Belenko v. Russia*, no. 25435/06, § 73, 18 December 2014).

11. Lastly, if we acknowledge that the use of a taser must engage the State's positive obligation to adopt regulations for the protection of life and to ensure the effective implementation and functioning of that regulatory framework, this does not automatically mean that there exists a substantive violation of Article 2 when the quality of the law somehow falls short. Even if I share all the recommendations set out in paragraphs 102 to 109 of the judgment, these should largely be taken as *obiter dicta*, but not used as the foundation of a substantive violation of Article 2 in the present case. In fact,

the analysis in these paragraphs is a criticism of the quality of the law, but without stating this directly.

12. As regards the domestic legal framework, the judgment notes, firstly, that a taser is considered to be a non-lethal device in the Czech Republic (see paragraph 103 of the present judgment) and that at the time of the events in question the use of tasers was governed by the relevant rules as set out in the Police Act (see paragraphs 27-31) and an internal police guide (see paragraph 35 of the judgment). Under those rules, police officers have the right (after first issuing a warning) to use a taser only if the use of a different coercive measure would obviously not be sufficient to achieve the aim pursued by the intervention in question (such as the protection of their own or another person's safety, property or public order) and if the use of a taser is necessary to overcome resistance or an attack by the person concerned. The taser may be used only as the last alternative to a weapon, with due regard to the principle of proportionality, and cannot in principle be used against certain categories of vulnerable persons specifically mentioned in section 58(1) of the Police Act (see paragraph 31 of the judgment).

13. The judgment also indicates that training on taser use is available to police officers in the Czech Republic. It is not disputed that officer T., who tasered P.Z., had received such training, as designed at that time (see paragraphs 26, 76 and 106 of the judgment). Although the relevant training encompasses mainly theoretical information concerning technical aspects and the safe and correct handling of a taser, police officers are also expected to be able to explain the health risks associated with its use (see paragraph 32). While the statements of the Public Defender of Rights, to the effect that at the time of the events in question and until 2017 the police training had paid little attention to the actual and real risks associated with the use of tasers and the need to exercise special caution when dealing with persons who present risk factors (see paragraphs 26, 75 and 80), cannot be ignored, I do not have enough elements to conclude that those lacuna were decisive in the present case.

14. Indeed, in my opinion the mere fact that the regulatory framework may be deficient in some respects is not sufficient to raise an issue with regard to a substantive violation of Article 2 of the Convention. It must be shown to have operated to the person's detriment (*see Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 107, 31 January 2019). In my view, there is no reason to consider, in the present case, that deficiencies in police training or the rather general nature of the regulatory framework as described above (see paragraph 12 of this opinion) could have contributed to the death of the applicant's brother. In this connection, the facts indicate that the immediate cause of P.Z.'s death was cardiac arrhythmia (see paragraphs 14 and 18 of the judgment), that his cardiac anomaly was detected only during the autopsy performed after his death and that, in consequence, the police officers could

not have known that the electrical discharges generated by the taser would pose a risk to his life (see paragraph 125 of the judgment).

15. In view of the above considerations, I do not believe that flaws can be detected in the case at hand which would allow the Court to conclude that the defendant State failed in its substantive positive obligation to safeguard the applicant's brother's right to life. That is why I did not vote for the operative provision related to the existence of a substantive violation of Article 2 of the Convention, whereas I clearly supported the finding of a procedural violation of Article 2.

STATEMENT OF DISSENT OF JUDGE MOUROU-VIKSTRÖM

I do not agree with the majority's view that there has been a violation of Article 2 in its substantive aspect.