

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

SECOND SECTION

# CASE OF T.V. v. CROATIA

*(Application no. 47909/19)*

JUDGMENT

*This version was rectified on 2 July 2024*
*under Rule 81 of the Rules of Court*

Art 2 (substantive and procedural) • Use of force • Positive obligations • Failure to protect life of applicant's partner who had a history of mental health problems and died during a police intervention • Police failure to inform or request assistance from medical professionals as required under domestic guidelines for police interventions involving mentally disabled persons • Use of pepper spray despite its use being excluded under domestic law in cases of "passive resistance" such as the present one • Lack of requisite special care towards a person in mental distress • Use of prone position at the scene as well as in the ambulance for a prolonged period of time • Inadequate surveillance of applicant's state during transportation in the ambulance • Lack of adequate training and experience • In case-circumstances force used not "absolutely necessary" • Ineffective criminal investigation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

11 June 2024

**FINAL**

11/09/2024

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



**In the case of T.V. v. Croatia,**

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović,
Gediminas Sagatys*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 47909/19) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Ms T.V. ("the applicant"), on 5 September 2019;

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

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

the parties' observations;

the fact that the Slovenian Government did not express a wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

Having deliberated in private on 21 May 2024,

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

# INTRODUCTION

1. The case concerns the death of the applicant's partner in the course of a police intervention and the alleged ineffectiveness of the ensuing criminal investigation. The applicant relied on Articles 2, 3 and 13 of the Convention.

# THE FACTS

2. The applicant was born in 1980 and lives in Celje, Slovenia. She was represented by Ms L. Horvat, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

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

5. On 11 November 2017 the applicant's partner, Mr V.D., who suffered from schizophrenia, left a psychiatric institution in Slovenia where he was being treated and entered Croatia. V.D. had previously lodged two other applications with the Court concerning his ill-treatment by the authorities and the ineffectiveness of the ensuing investigation (see *V.D. v. Croatia*,

no. 15526/10, 8 November 2011, and *V.D. v. Croatia (no. 2)*, no. 19421/15, 15 November 2018).

## I. EVENTS OF 16 NOVEMBER 2017

6. On 16 November 2017 the Croatian border police in Varaždin were informed by the Slovenian border police that V.D. had left the institution in Slovenia where he had been undergoing psychiatric treatment and had allegedly travelled to the town of Opuzen in Croatia, and that he posed a threat to himself and others. That information had been provided by V.D.'s father, who wanted to make sure that his son was safe.

7. On the same day, V.D. got into a fight with another guest at a hotel in Opuzen. A hotel employee called the Metković Police to intervene, informing them that a man in mental distress had been causing problems and attacking guests at the hotel. According to the Government, the police officers who responded to the call had received the Varaždin Police's report prior to their departure and had been aware that the man in question could be V.D., a mentally disabled person who posed a danger to himself and others.

8. According to the official police report on the intervention, upon their arrival at the hotel carpark around 2.20 p.m. four police officers had approached V.D., who was sitting on his car; they noted that he was in a state of evident mental distress and mumbling incoherently. One of the police officers ordered him to empty his pockets, which he did, but he refused to follow the officer's subsequent order to turn around and spread his legs. Instead, he took out his telephone and shouted "Do not come any closer, [or] I will press a button on my phone, and you will all blow up", and continued to mumble incoherently. Soon after, V.D. sat down on the ground, still holding his phone and mumbling. Officer G. ordered him several times to drop his phone and warned him that he would use force, but to no avail. Officer G. then used pepper spray on V.D., who lay down on his side holding his face and started to bite his lips and tongue and to spit out blood. At that point three of the police officers used physical force to turn V.D. onto his stomach and to put his hands behind his back. V.D. resisted them by trying to get up, hitting his head against the pavement and biting his fingers – he bit off a part of his little finger before the police officers could handcuff him with his hands behind his back. Around 2.35 p.m. the police called an ambulance to assist them with their intervention. The four police officers, joined by a fifth one who happened to be passing by, continued to use force to hold V.D. in the same position until the ambulance arrived some ten minutes later, at around 2.47 p.m.

9. Once the ambulance arrived the doctor gave V.D. a sedative shot, noting that he was bleeding and blue in his face and that he had bitten off and swallowed a part of his little finger. A nurse bandaged the stump of his little finger. V.D. was then placed on the ambulance stretcher in the same position (face down) and restrained using three straps.

10. During the journey to the Dubrovnik General Hospital, which was about an hour and a half's drive away and reportedly the closest hospital able to admit a person in V.D.'s condition, the doctor and the nurse sat in the front, while three police officers sat in the back with V.D. Since he continued to be restless, the doctor stopped the ambulance, came to the back and gave him another sedative. After a while, she established that V.D. had died. The coroner noted that V.D. had died of natural causes and that his cause of death was cardiac arrest.

## II. INVESTIGATION INTO V.D.'S DEATH

11. Once it became known that V.D. had died, an inspection team was sent to the scene of the incident, the hotel carpark, which had been washed by the hotel staff in the meantime. Some blood traces were recorded.

12. Several hotel employees and a guest were interviewed, and security camera footage was reviewed by the police. The doctor and the nurse who had intervened at the scene were also interviewed.

13. On 16 November 2017 the Dubrovnik County State Attorney's Office opened a case file following receipt of the police report on V.D.'s death. The State Attorney ordered an autopsy.

14. On 20 November 2017 an autopsy was carried out on V.D.'s body. It found no evidence of a violent death. A few scratches were found on his body and piece of his little finger was found in his oesophagus. It was also established that five of his ribs had been broken, most likely as a result of a fall on a hard surface. On the whole, as confirmed in the detailed written autopsy report dated 27 December 2017, V.D. had died a natural death as a result of cardiac arrest. The injuries found on his body, which together amounted to a grave bodily injury, had had no causal link with his death.

15. On 20 November 2017, a police report established that the use of force on V.D. had been lawful and proportionate, and in line with sections 84 and 85 of the Police Duties and Powers Act.

16. On 21 November 2017 the Metković Police delivered a special report to the Dubrovnik County State Attorney's Office concerning the event.

17. On 18 December 2017 the applicant arranged for a second autopsy by the Ljubljana Medical Faculty, which stated that, in addition to the injuries recorded in the official autopsy, V.D. had suffered from inflammation of his mucus membrane, terminal swelling of his lungs, acute swelling in his brain, focal fibrosis of the myocardium and sudden acute cardiac arrest. Two of his front teeth had also been knocked out not long before.

18. On 13 November 2018 the applicant lodged a criminal complaint with the Dubrovnik County State Attorney's Office against the police officers who had responded at the scene for serious bodily injury resulting in death and against the doctor and the nurse from the ambulance for medical negligence.

19. On 25 February 2019 the State Attorney rejected the applicant's criminal complaints because the autopsy report had established that V.D. had died of natural causes, that is, of acute cardiac arrest, and that the injuries he had sustained had had no causal link with the fatal outcome.

20. Following a complaint by the applicant, on 11 July 2019 the State Attorney's Office of the Republic of Croatia ordered the Dubrovnik County State Attorney's Office to conscientiously and carefully, taking into account the Court's case-law, re-examine the case file, review the correctness of the decision rejecting the criminal complaint and, if necessary, take appropriate investigative measures.

21. On 30 June 2020 the Dubrovnik County State Attorney's Office issued a summons to the defendant police officers and medical staff for a first interview. They were questioned between 10 July and 17 September 2020.

22. On 2 October 2020 the Dubrovnik County State Attorney's Office took statements from witnesses who had been at the hotel.

23. On 12 October 2020 Dubrovnik County State Attorney's Office formally opened an investigation into the incident.

24. On 1 February 2021 the Dubrovnik County State Attorney's Office ordered a forensic medical expert opinion, which was ultimately delivered on 28 May 2021 by the Medical Faculty in Split. According to that report, V.D. had a violent death as a result of mental trauma. He had sustained a grave bodily injury by resisting the police while lying face down on the ground, by self-harming and by the police officers' pressing hard on his back while he was in such a position. His self-harming coupled with the actions of the police and medical staff had aggravated his already agitated mental state, bringing him to a state of shock and to cardiac arrest, which was the mechanism of dying but not the cause of his death. The report also concluded that no medical negligence had taken place in his treatment, but that in view of the therapy he had received the medical staff should have been sitting next to him during his transportation in the ambulance.

25. On 10 August 2021 the Dubrovnik County State Attorney's Office again rejected the applicant's criminal complaint, holding that the force used had been proportionate in view of V.D.'s behaviour, that the police officers had not caused him fatal bodily injuries and that the medical staff had not been negligent.

26. Following another complaint by the applicant, the State Attorney's Office of the Republic of Croatia upheld the conclusions of the Dubrovnik County State Attorney's Office, finding that the force used by the police had been lawful and proportionate in the circumstances and aimed at protecting the victim as well as others. As for certain documents which the applicant

complained had not been taken into account by the forensic medical expert opinion – such as the autopsy report from Ljubljana or the documents from V.D.'s previous psychiatric treatment in Slovenia – the State Attorney's Office reiterated that only an officially obtained autopsy report could be considered as evidence and that it had not been necessary to consider the deceased's psychiatric documentation.

27. Meanwhile, in 2021 the applicant lodged a constitutional complaint complaining of the ineffectiveness of the investigation as well as of her late partner's ill-treatment by the police, which had allegedly led to his death.

28. On 12 July 2023 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint, finding that the investigation had been independent and thorough. Although the investigation had been protracted and the Dubrovnik County State Attorney's Office had obtained a forensic medical expert report only three years after the incident, that fact had had no bearing on the quality of the investigation or the conclusion that V.D. had died from a serious mental trauma stemming from his extreme mental agitation and physical resistance towards the police officers, who had used lawful and proportionate coercive measures.

### III. SUBSEQUENT DEVELOPMENTS

29. On 23 February 2021 the applicant brought civil proceedings against the State seeking non-pecuniary damages for the death of her partner. Those proceedings are still pending before the first-instance court.

## RELEVANT LEGAL FRAMEWORK

### I. DOMESTIC LEGISLATION

30. The relevant provision of the Criminal Code (*Kazneni zakon*, Official Gazette no. 125/11, with subsequent amendments), as in force at the material time, reads as follows:

**Article 118**
**Serious bodily injury**

"(1) Whoever inflicts a serious bodily injury on another person, or severely impairs his or her health, shall be punished by imprisonment from six months to five years.

(2) Whoever commits the offence from paragraph 1 of this Article out of hate; towards a close person or a person particularly vulnerable on account of his or her age, severe physical or mental disorder or pregnancy; or as an official person in the performance of his or her official duty, or a responsible person in the exercise of a public authority, shall be punished by imprisonment from three to eight years."

**Article 120**
**Serious bodily injury resulting in death**

"If the criminal offence referred to in Article ... 118 ... results in the death of another person, the perpetrator shall be punished by imprisonment from three to fifteen years."

**Article 181**
**Medical negligence**

"A doctor of medicine, doctor of dental medicine or other health care worker who, in providing health care services, applies an obviously inadequate means or method of medical treatment or in some other way obviously fails to follow the rules of the health care profession or acts obviously negligently, thereby causing the deterioration of an illness or the impairment of the health of another person shall be punished by a term of imprisonment not exceeding one year."

31. The relevant provisions of the Police Duties and Powers Act (*Zakon o policijskim poslovima i ovlastima*, Official Gazette nos. 76/09 and 92/14), as in force at the material time, read as follows:

**Section 81**

"Within the meaning of this Act, means of coercion shall include:

1. physical force,

...

4. means of restraint ..."

**Section 84**

"(1) A police officers is authorised to use physical force for the purpose of:

1. overcoming the resistance of a person who disturbs public order and peace or who needs to be brought somewhere, apprehended, detained or arrested,

2. preventing a person from self-harming,

3. preventing attacks on oneself or another person or on the object or space [the police officer] secures,

4. preventing arbitrary removal of a person from a certain place.

(2) A police officer is authorized to use an irritant spray when the conditions for the use of physical force are met, except in cases of overcoming passive resistance."

**Section 85**

"A police officer is authorised to use means of restraint for the purpose of preventing:

1. resistance by a person or warding off an assault on a police officer,

2. a person's escape,

3. the infliction of self-injury or injury to another person."

32. The relevant provisions of the Code of Conduct for Police Officers (*Pravilnik o načinu postupanja policijskih službenika*, Official Gazette nos. 89/10 and 76/15), read as follow:

**The use of means of coercion**
**a) Use of physical force, irritant sprays and batons**
**Section 129**

"A police officer is authorised to use physical force in order to overcome resistance from a person disturbing public peace and order, or a person who needs to be brought somewhere, apprehended, detained, arrested or prevented from inflicting self-injury, in order to prevent an attack on himself or herself or on another person, object or secured premises, and in order to prevent a person from wilfully leaving a certain place.

The use of physical force includes: blows with body parts, manoeuvres and other defence or attack techniques used to force a person into obedience when the requirements prescribed by law have been met.

A police officer shall apply the form of physical force that enables him or her to achieve the desired aim with the least harmful consequences."

**Section 130**

"Within the meaning of this Code, resistance is considered to be any resistance to or failure to obey a warning or order of a police officer issued for the purpose of performing police duties or while exercising police powers.

Within the meaning of this Code, an attempt to escape is also considered resistance.

Resistance can be active or passive.

Active resistance exists when a person resists [a police officer] by using weapons, tools, other objects, or physical force and thus prevents a police officer from performing police work. Encouraging resistance is also considered active resistance.

Passive resistance exists when a person does not obey a warning or order by putting himself in such a position that he prevents the execution of police work (lying down, kneeling, holding onto a person or an object, and so on).

Physical force will be used with particular care and with prior consultation with a medical doctor against a pregnant woman in a visible stage of pregnancy, a person whose movement is significantly impaired, a child, or an obviously ill person when they offer passive resistance."

**Section 131**

"When the conditions for the use of physical force to overcome active resistance are met, the police officer can also use a[n irritant spray] if he judges that the use of this means would achieve the desired goal with the least harmful consequences.

A police officer shall not use an irritant spray on a person who is passively resisting."

**Section 133**

"Restraining equipment limits the mobility of a person's body by the person having his or her arms tied behind his or her back with the prescribed restraining equipment (handcuffs) or other appropriate equipment (belts, ropes, cable ties, and so on).

A police officer shall restrain the person he or she is apprehending or taking into custody or an arrested person if there is a risk that the person in question may escape, resist or assault the police officer, injure himself or herself or injure another person."

33. The relevant provisions of the Protection of Persons with Mental Disorders Act (*Zakon o zaštiti osoba s duševnim smetnjama*, Official Gazette no. 76/2014) provide:

**Section 7**

"(1) The dignity of a person with mental disorders must be protected and respected in all circumstances.

(2) A person with a mental disorder has the right to protection from all forms of exploitation, abuse and inhuman or degrading treatment."

**Forced detention and forced accommodation**
**Section 27**

"A person with severe mental disorders who, because of those disorders, poses a serious and direct danger to their own life, health or safety or to those of others, shall be placed in a psychiatric institution in accordance with the procedure for confinement and forced accommodation prescribed by this Act."

**Section 28**

"(4) When the police bring a person to a psychiatric institution [in response to an emergency] call or in the course of their duties in the cases referred to in subsection 3 of this section, they shall act with special care to protect the dignity of the person with mental disorders and shall follow the doctor's instructions. An instruction on police behaviour in bringing a person with mental disorders to a psychiatric institution shall be issued by the minister responsible for health affairs in cooperation with the minister responsible for internal affairs."

**Section 61**

"(1) Coercive measures against a person with severe mental disorders may be applied only exceptionally if they are the only means to remove an immediate danger arising from behavior that seriously and directly endangers his own or another person's life or health.

(2) Coercive measures will be applied only to the extent and degree absolutely necessary to remove the danger referred to in subsection 1 of this section.

(3) Coercive measures may continue only as long as necessary to eliminate the danger referred to in subsection 1 of this section.

(4) Coercive measures may be applied only after non-coercive measures have not eliminated the danger referred to in subsection 1 of this section."

34. The relevant parts of the Instruction on police procedure for bringing persons with mental disorders to a psychiatric institution (*Naputak o postupanju policije u dovođenju osobe s duševnim smetnjama u psihijatrijsku ustanovu*, Official Gazette no. 50/15) read as follows:

**Section 2**

"(1) When police officers, acting in the course of their duties or [in response to an emergency] call, determine that there is a danger that a person with mental disorders will pose a serious and direct danger to their own life or to the health or safety of others, they will request that medical personnel come to the scene of the incident so that they undertake the necessary action.

(2) In particularly urgent cases, when a person with a mental disorder poses a serious and direct danger to his own life or to the health or safety of others, and it is not possible to ensure the timely action of medical personnel as referred to in subsection 1 of this section, police officers will apply force, as carefully as possible and to the slightest degree necessary to eliminate the immediate danger with the least harmful consequences, while preserving the dignity of the person involved."

## II. INTERNATIONAL LAW

35. In the document CPT/Inf/E (2002) 1 – Rev. 2010, published on 8 March 2011, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted, in respect of the deportation of foreign nationals, that in cases where resistance was encountered, escort staff usually immobilised the detainee concerned 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 their knees on the back, immobilising the neck) after the person concerned has put up a struggle – entails a risk of positional asphyxia. According to the CPT, the use of force and/or methods of restraint capable of causing positional asphyxia should be avoided whenever possible and 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.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

36. The applicant complained, under Articles 2, 3 and 13 of the Convention, that her partner had died as a result of an excessive and disproportionate use of force by police officers and that the State had failed in its positive obligation to protect his life by providing him with adequate emergency medical assistance. She further submitted that the investigation into the relevant circumstances had not been effective.

37. As master of the characterisation to be given in law to the facts of the case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 124, 20 March 2018), the Court considers that the

case falls to be examined under both the substantive and the procedural limbs of Article 2 of the Convention, the relevant part of which reads as follows:

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

## A. Admissibility

38. The Government submitted that the application had been premature because, at the time of lodging of the application with the Court, the investigation by the domestic authorities into V.D.'s death had still been underway. They also argued that the applicant had failed to exhaust an effective domestic remedy in that she had failed to lodge a constitutional complaint before lodging her application with the Court.

39. The applicant disagreed. She pointed out that while the domestic investigation had ended in 2021 and that she had lodged a constitutional complaint in the same year, the latter had been decided upon only after a significant delay of two and a half years.

40. The Court has previously accepted that the last stage of a particular remedy may be reached after the application has been lodged but before its admissibility has been determined, as is the situation in the present case (see *Karoussiotis v. Portugal*, no. 23205/08, § 57, ECHR 2011 (extracts); *Şahin Alpay v. Turkey*, no. 16538/17, § 86, 20 March 2018; and *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 139, 18 November 2021).

41. In the present case the criminal investigation came to an end in 2021, when the applicant's criminal complaint was dismissed for the second time. Furthermore, the Court notes that the applicant raised her complaint under both the substantive and the procedural limbs of Article 2 of the Convention with the competent domestic authorities, including the Constitutional Court (see paragraph 27 above), thereby affording them the opportunity of putting right the alleged violation of the Convention. It follows that the Government's objections must be dismissed.

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

## B. Merits

### *1. Substantive limb of Article 2 of the Convention*

#### (a) The parties' arguments

##### *(i) The applicant*

43. The applicant maintained that the force used by the police against her late partner had been greater than necessary. Despite being aware of his mental disorder, five strong police officers had used disproportionate force

against him, beating him up and causing him serious bodily injuries resulting in death, thereby failing to protect the life of a vulnerable individual under their control.

44. V.D. had had no pre-existing heart or other health conditions; his death had been caused by the excessive use of force coupled with inadequate medical care. The applicant maintained that, despite having a very low systolic blood pressure, V.D. had been given inappropriate medicine that lowers blood pressure. Although they had been aware that V.D. had bitten off part of his finger and that his face was turning blue, the police and medical personnel had laid him on his stomach on the ambulance stretcher and he had not been observed by the doctor or the nurse, both of whom had sat in the front of the ambulance.

*(ii) The Government*

45. The Government maintained that V.D. had not been hit by the police officers, which they submitted had been confirmed by three eyewitnesses to the incident. They were unwilling to comment any further on the case because a criminal investigation was still underway at the time when their observations were lodged.

**(b) The Court's assessment**

*(i) General principles*

46. Together with Article 3, Article 2 of the Convention enshrines one of the basic values of the democratic societies making up the Council of Europe. of the Convention. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, among many other authorities, *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 174 and 177, ECHR 2011 (extracts); and *Boukrourou and Others v. France*, no. 30059/15, § 54, 16 November 2017).

47. 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 v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI; *Tekin and Arslan v. Belgium*, no. 37795/13, § 84, 5 September 2017; *Boukrourou and Others*, cited above, § 55; and *Machalikashvili and Others v. Georgia*, no. 32245/19, § 99, 19 January 2023).

48. 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, in addition to 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*, cited above, § 58, and *Tekın and Arslan*, cited above, § 84).

49. The Court further reiterates that the authorities have an obligation to protect the health of persons who are in detention or police custody or who, as was the case of V.D., have just been arrested and whose relationship with the State authorities is therefore one of dependence. That entails providing prompt medical care where the person's state of health so requires, in order to prevent a fatal outcome (see *Tekin and Arslan*, cited above, § 85). Any such positive obligation is to be interpreted in such a way as not to impose an impossible or disproportionate burden on the authorities. In other words, only the fact that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life can constitute a possible violation of a positive obligation on the part of those authorities (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII, and *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, § 66, 7 February 2006).

50. Finally, 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 *V v. the Czech Republic*, no. 26074/18, § 87, 7 December 2023, and, *mutatis mutandis*, *Tekin and Arslan*, cited above, § 95).

*(ii) Application in the present case*

51. The Court notes at the outset that V.D. 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, may also generally increase the risk of serious somatic health problems (compare *V v. the Czech Republic*, cited above, § 90). He was therefore undoubtedly in a vulnerable position (see *Boukrourou and Others*, cited above, § 58).

52. Moreover, it is undisputed that the police officers who responded to the incident at the hotel were well aware that the person involved was likely suffering from a mental disability and reportedly posed a threat to himself and to others (see paragraph 7 above). It further transpires from the official police report on the incident that, when the police officers arrived at the scene, V.D. had been "visibly distraught" and "mumbling" (see paragraph 8 above). The police could thus have been reasonably expected to foresee that he might become psychotic or violent.

53. Nevertheless, the police did not immediately inform or request assistance from medical professionals, who would have been better equipped to communicate with a person in such a state of mind, despite there being an unambiguous obligation to do so in domestic law (see paragraph 34 above). Nor has it been claimed by the Government that the police officers who intervened at the scene had had any specific training or experience in dealing with mentally disabled persons; in fact, two of the four police officers dispatched to the incident were still in training.

54. It is further undisputed that when the police officers arrived at the hotel carpark V.D. was not violent and was calmly sitting on his car waiting for the police to arrive (see paragraph 8 above). Instead of seeking to approach him in a manner adapted to his state of distress, the police officers immediately began ordering him to empty his pockets and to turn around with his hands up (*ibid*.). After V.D. refused to follow some of those orders, Officer G. used pepper spray on him. It was at that moment that V.D. was forced to lie down on the ground and he began harming himself. The Court finds Officer G.'s course of action problematic not only because under domestic law the use of pepper spray is explicitly excluded in cases of so-called "passive resistance" by the person concerned (see paragraph 32 above), but also it is not convinced that in doing so the police acted with special care towards a person in mental distress in a way capable of eliminating the immediate danger with the least harmful consequences, while preserving the dignity of that person, as they were obliged to do under the relevant domestic law (see paragraph 34 above).

55. Furthermore, the Court notes that once the police officers overpowered V.D. they kept him in a prone position, that is to say, with his chest down, until the arrival of the ambulance some ten minutes later. He was then strapped to the ambulance stretcher for the hour-and-a-half journey to the hospital in the same position, which does not appear to be subject to any guidelines in Croatia. Bearing in mind the recommendations of the CPT (see paragraph 35 above), the Court has already found that the prone position may be dangerous and life-threatening, since it can lead to positional asphyxia because of pressure exerted on the neck, and because it also makes it impossible to observe whether the person concerned is actually breathing (see *V v. the Czech Republic*, cited above, § 97; and *Saoud v. France*, no. 9375/02, §§ 88-90 and 102, 9 October 2007).

56. What is more, it appears from the facts of the case that during V.D.'s transportation to the hospital there were three police officers sitting next to him in the back of the ambulance, and no medical staff although they had noted that V.D. had been blue in the face as soon as the ambulance arrived to the scene (see paragraph 9 above). Namely, both the doctor and the nurse were sitting in the front of the ambulance (see paragraph 10 above), thereby depriving V.D. of the immediate medical assistance which would have been

requisite in the circumstances, as noted in the forensic medical report (see paragraph 24 above).

57. The Court further observes that, although the available domestic reports implied that the intervening police officers had acted in good faith, even assuming that the force used by the police might have been lawful, in the Court's view this did not automatically render such force proportionate. In particular, the Court notes that V.D. was pinned on the ground by five police officers who had exerted such force on his back that five of his ribs were broken. At the same time, and given the position that he was held in (see paragraph 55 above), the police officers were unable to stop him from hitting his head on the pavement while trying to get up, thereby knocking out two of his front teeth and hurting his head. Moreover, no attention seems to have been given to the fact that V.D. had bitten off and swallowed part of his finger, which was subsequently found in his oesophagus, although both the police and the medical team who subsequently arrived were aware of that fact (see paragraph 9 above).

58. The Court further notes that, given that V.D.'s death occurred shortly after the police officers had immobilised him and as he was being transported to a hospital, it is not excluded that the force inflicted on him caused the fatal outcome (see *Scavuzzo-Hager and Others*, cited above, §§ 58 and 60). However, in order to engage the international responsibility of the respondent State, it is also necessary that the State agents were reasonably able to realize that the victim was in a state of vulnerability requiring a high degree of precaution in the choice of "usual" arrest techniques (*ibid*.).

59. In that connection, the Court has already observed that the police were well aware of V.D.'s mental disorder and of his agitation at the moment of their intervention (see paragraph 52 above), and that they nonetheless failed to immediately request medical help, as was required under domestic guidelines for police interventions involving mentally disabled persons (see paragraph 53 above). Instead, the police engaged in a series of actions, such as the use of pepper spray and holding V.D. in the prone position for a prolonged period of time, which had been at odds with his already agitated mental state. The foregoing was followed by inadequate surveillance of his state during his transportation in the ambulance (see paragraph 56 above). At the same time, it has not been shown, nor did the Government argue, that V.D. had suffered from any sort of health condition which would have increased his risk of cardiac arrest owing to severe trauma (contrast the case of *Boukrourou and Others*, cited above, § 61). Consequently, the Court cannot but conclude that it was the combination of V.D.'s agitation and the subsequent actions by the authorities that led to the fatal outcome, which, with the adequate amount of training and experience, cannot be said to have been entirely unforeseeable for the intervening police officers and/or to the medical staff involved.

60. In conclusion, the Court is not persuaded that the force used to immobilise V.D. had been "absolutely necessary" in the circumstances (see paragraph 57 above). Moreover, once he had been overpowered, as a result of the combined actions of a number of people, the State failed in its positive obligation to protect V.D.'s life.

61. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 2 of the Convention under its substantive limb.

### *2. Procedural limb of Article 2 of the Convention*

#### (a) The parties' arguments

##### *(i) The applicant*

62. The applicant maintained that an investigation should have automatically been opened following V.D.'s death. However, the authorities had not undertaken the necessary actions even after she had lodged her criminal complaint.

63. The applicant complained that the investigation into her late partner's death had been neither independent nor efficient, having lasted for over three and a half years. Even though V.D.'s injuries could not have occurred in any other way than by the disproportionate use of force by the police officers, those responsible had never been punished, and the applicant's criminal complaint had initially been dismissed. Even after the belated re-opening of the investigation, no adequate actions had been taken and the investigation could not, therefore, be considered as having been conducted "with particular rigour".

##### *(ii) The Government*

64. The Government argued that there had been no breach of the procedural limb of Article 2 of the Convention in the present case. The Constitutional Court had examined the applicant's constitutional complaint and found no violation of Article 2, a decision which had been neither arbitrary nor manifestly unreasonable.

#### (b) The Court's assessment

65. 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, §§ 229-39, 30 March 2016).

66. 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 (see *Armani Da Silva*, cited above, § 233).

67. The Court notes at the outset that, following V.D.'s death, the police immediately carried out certain criminal inquiries, such as an on-site inspection, interviews with several witnesses and an autopsy of the deceased's body. However, important steps such as isolating and questioning of the police officers involved in the incident, thus failing to prevent possible collusion, was only done two and a half years after the incident (see paragraph 21 above, and compare *V v. the Czech Republic*, cited above, § 123).

68. Furthermore, no activity seems to have taken place between 21 November 2017, when the Metković police sent its special report to the Dubrovnik County State Attorney's Office, and the applicant's criminal complaint of 13 November 2018.

69. The Court further observes that the applicant's criminal complaint was firstly rejected on the basis of an incomplete and factually inaccurate autopsy report, which had concluded that V.D. had died of natural causes (see paragraph 14 above, and compare paragraph 24 above).

70. Following a complaint by the applicant, the State Attorney of the Republic of Croatia ordered the Dubrovnik County State Attorney's Office to re-examine the case file bearing in mind the Court's case-law (see paragraph 20 above), implying that the investigation performed by the Dubrovnik State Attorney's Office up until that time had been ineffective. Only after that instruction from the higher-level State Attorney's Office was an official criminal investigation formally opened on 12 October 2020, that is to say, almost three years after V.D.'s death (see paragraph 23 above).

71. The Court further observed that the forensic medical opinion obtained by the authorities some three and a half years after the V.D.'s death concluded that he had died a violent death as a result of mental trauma (see paragraph 24 above). The opinion stated that his agitated mental state had been aggravated by the actions of the police, actions which the Court has already found were problematic and disproportionate in the circumstances (see paragraphs 54-57 above). Coupled with his self-harming, such actions were found to have led V.D. to enter a state of shock which resulted in cardiac arrest. However, despite that medical conclusion, which contained an explicit statement that V.D. had sustained a grave bodily injury at the hands of the police, the prosecution of which is automatically warranted under domestic law, the investigation against the police officers was discontinued.

72. Finally, the Court cannot but observe that the Constitutional Court did not examine the applicant's complaint in a manner entirely in accordance with the Court's well-stablished standards on the matter, and essentially

limited itself to noting the delay in obtaining the forensic medical opinion (see paragraph 66 above).

73. The foregoing considerations are sufficient to enable the Court to conclude that the criminal investigation in the present case was not prompt, since it involved significant delays (see paragraphs 67 and 68 above), or thorough, because the authorities failed to pursue the criminal complaint of grave bodily injury caused to V.D. (see paragraph 71 above).

74. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant claimed 5,391.67 euros (EUR) in respect of pecuniary damage for the costs of the autopsy, transportation of the body and funeral of V.D., and EUR 100,000 in respect of non-pecuniary damage.[1]

77. The Government contested those claims,[2] submitting that the Court could not decide on any claim for damages in the present case before the domestic courts had done so in a civil action which the applicant was apparently planning to lodge.

78. Having regard to all the circumstances of the present case, the Court accepts that the applicant suffered[3] damage which cannot be compensated for solely by the finding of a violation. It thus awards her the amount of EUR 30,000 under all heads, plus any tax that may be chargeable.[4]

### B. Costs and expenses

79. The applicant also claimed EUR 8,650.50 in respect of the costs and expenses incurred before the domestic courts and the Court.

80. The Government contested that claim.

81. 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

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[1] Rectified on 2 July 2024: the text was: "The applicant claimed 100,000 Croatian kunas (approximately 13,300 euros (EUR)) in respect of non-pecuniary damage."

[2] Rectified on 2 July 2024: the text was: "The Government contested that claim,".

[3] Rectified on 2 July 2024: "non-pecuniary" has been deleted.

[4] Rectified on 2 July 2024: the text was: "It thus awards her the amount claimed in full, plus any tax that may be chargeable."

these were actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;[1]
      (ii) EUR 5,000 (five 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;

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

[1] Rectified on 2 July 2024: the text was: "EUR 13,300 (thirteen thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;".

Done in English, and notified in writing on 11 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Hasan Bakırcı<br>Registrar | Arnfinn Bårdsen<br>President |