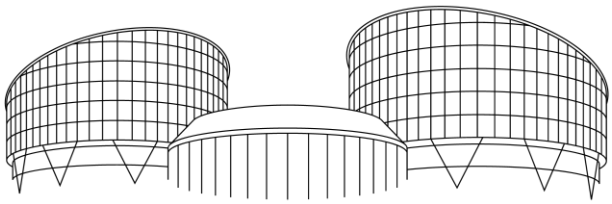

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF EREMIÁŠOVÁ AND PECHOVÁ
v. THE CZECH REPUBLIC

(Application no. 23944/04)

JUDGMENT

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 20 June 2013

STRASBOURG

16 February 2012

FINAL

16/05/2012

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

In the case of Eremiášová and Pechová v. the Czech Republic**,**

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

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Mark Villiger,
Ann Power-Forde,
Ganna Yudkivska,
André Potocki, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 23944/04) 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 Mrs Petra Eremiášová and Ms Katarína Pechová ("the applicants"), on 22 June 2004.

2. The applicants were represented by Mr Z. Stavinoha, a lawyer practising in Brno, and Mr J. Kopal, of the League of Human Rights. The Czech Government ("the Government") were represented by their Agent, Mr Schorm, of the Ministry of Justice.

3. The applicants alleged a violation of Articles 2 and 13 of the Convention.

4. On 16 January 2008 the President of the Fifth Section decided to communicate the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Czech nationals who were born in 1978 and 1938 respectively, and live in Brno.

6. According to police records, on 18 June 2002 V.P., partner of the first

applicant who gave birth to his child in February 2003 and son of the second, of Roma origin, was arrested by the police on suspicion of having committed a burglary and transported to the Brno-Královo Pole District Police Department (the "District Police Department"). Having been questioned between 2 p.m. and 3.05 p.m., he was charged with illegal entry into a dwelling and theft at 6.20 p.m.

7. According to the statement made by the police officers, at approximately 4 p.m., V.P. had been situated in the separate waiting-room on the ground-floor. Between 5 p.m. and 6 p.m., finger-prints were taken. After that, V.P. had been taken into the office situated on the second floor of the police station, in order to be informed about the charges.

8. According to the official report, at 6.30 p.m., after signing the notice of charges, V. P. asked to use the toilet claiming that it was urgent. It was decided that two police officers would accompany him to the ground floor of the police building due to the fact that there were no bars at the toilet located on the second floor. On the ground floor, V. P. was not allowed to close the door of the toilet for security reasons. On the way back, police officer P. walked in front of V. P. and officer K. was on the latter's right holding his wrist. There are discrepancies between different statements of officers K. and P. as to whether officer K. held V.P.'s left or right wrist with his left hand. Handcuffs were not used and the grasp was not very firm due to V. P.'s calm behaviour. The group went without any problems through the mezzanine floor between the ground and the first floor where windows were provided with bars. When officer P. had already crossed the mezzanine floor between the first and the second floor and when V.P. and officer K. were just arriving to the mezzanine floor, V. P. suddenly turned, struck with his open palm the left shoulder of the officer who held him by the wrist, broke away and jumped, head first, through a closed window into the yard. After having reeled, officer K. unsuccessfully attempted to catch him by the legs as they disappeared through the broken window. The police officers started to shout in order to have an ambulance called, ran out to the yard and provided, together with other officers, first aid to V. P. He was taken to the hospital by ambulance and died the next morning at 7.15 a.m.

9. On the very same day, the Brno Complaints and Monitoring Unit (the "Complaints and Monitoring Unit") started an investigation. They inspected the scene of incident, sketched and photographed it. All participants were invited to draw an official record *(úřední záznam)* where they would comment on the incident.

10. The District Police Department opened an investigation on suspicion of the commission of the crime of participation in a suicide and conducted a number of investigative acts. Between 7.30 and 8.20 p.m. the Technical Criminal Unit surveyed the scene of incident, sketched it and drew a report.

An officer from the Supervision Department of the Minister of the Interior ("the Supervision Department") inspected the scene of incident,

took explanations from the Head of the District Police Department, police officer P., and police officer W. However, she did not speak to police officer K. as he was being provided with necessary medical aid resulting from the assault by V.P. Basing her conclusion on the preliminary findings of the control and monitoring bodies, she concluded that there were no grounds for suspecting the police officers of having committed a crime. Accordingly, the investigations were further led by the Complaints and Monitoring Unit.

11. Still on 18 June 2002, the police officers who had had contact with V.P. prior to his death (police officers P. and K., and the police officers who had been investigating V.P.'s criminal activity) drew separate official records *(úřední záznam)* where they commented on the incident. In his official record, officer K. stated he had held V.P.'s right wrist during the escort. Officer P. did not mention which wrist it had been.

12. On 19 June 2002 the medical report issued upon request of the Head of the District Police Department by the hospital to which V.P. had been brought, stated that death probably resulted from serious cerebral injury.

13. At 0.30 the Head of the District Police Department described the incident to the first applicant and V.P.'s sister. A few hours later the Head of the District Police Department ordered an autopsy on the body, which was performed by two experts on the same day.

14. A preliminary autopsy report was issued on 21 June 2002. It concluded that "The death of [V.P.] unequivocally resulted from violent causes as a consequence of massive blunt violence to the head area. This mechanism entirely corresponds with injuries following a fall from a height. During the autopsy no indications were found which would unequivocally suggest third party active intervention in the death of [V.P.]". The autopsy findings were described in a report of 16 July 2002 which *inter alia* stated that "During the autopsy no indications were found which would unequivocally suggest third party active intervention in the death of [V.P.]. Therefore, the autopsy findings are not in contradiction with the police statement that the injuries had been caused by the fall from a height upon jumping through a closed window from the second floor of a building." It was noted that V.P. was 170 cm tall, weighed 58 kg and had been brought to the Institute of Judicial Medicine without clothes.

15. On 19 June 2002 the Head of the District Police Department ordered expert toxicological examination of V.P.'s body. On 19 July 2002 the expert concluded that no such substances had been found.

16. On 19 June 2002 the Technical Criminal Unit ordered an expert analysis of the biological material retained on the day of the incident from the frame of the window V.P. had jumped through. An expert report was established on 31 July 2002 by the South-Moravia Region Department of Criminalist Technique and Expertise of the Police. It specified that the hair secured on the window morphologically corresponded to V.P.'s hair.

17. On 19 June 2002 the brother of V.P. and the first applicant filed a criminal complaint with the Supervision Department against the police officers on duty at the station. According to the protocol, V.P.'s brother alleged that V.P. had obviously been thrown out of the window.

18. On 20 June 2002 the Director of the Brno Municipal Police Directorate, having seen the results of the internal police enquiry conducted by the Complaints and Monitoring Unit into the escort, found that the provisions of the internal police regulations had not been breached by the respective police officers. Given that the incident was being investigated by the Supervision Department, the Brno Police Directorate discontinued the investigation.

19. On 24 June 2002 the Supervision Department initiated an inquiry into the allegations of V.P.'s brother and the first applicant on suspicion of abuse of power by the police officer.

20. On 25 June 2002 the Head of the District Police Department and the police officers K. and P. were questioned. The unit which took their statements is not identified in the protocol. It would however seem that the statements were taken by an officer of the Supervision Department. Police officers K. and P. stated *inter alia* that V.P.'s behaviour had been calm during the whole escort and that nothing indicated that he would do anything unexpected. Officer K. stated that after V.P. had been picked up by an ambulance, he had gone to the doctor because he had felt pain in his shoulder. He also stated that after several days he could still only move his shoulder in a limited way. Officer K. stated that he had held V.P. by his left wrist during the escort, while officer P. stated it had been V.P.'s right wrist.

21. On 27 June 2002 the officers of the District Police Department questioned officers K. and P. Officer K. stated again that he had held V.P.'s left wrist, while officer P. did not mention which wrist it had been.

22. On 26 July 2002 the Supervision Department denied access to the investigation file to the first applicant's representative as the officer in charge of the investigation was absent.

23. On 29 July 2002 the Supervision Department informed the first applicant's representative that the applicants could study the file after 5 August 2002.

24. On 30 July 2002 the first applicant's representative unsuccessfully complained about the denial of access to the case-file to the Brno-venkov District Prosecutor. He also raised other complaints about the inquiry. In a letter of 1 August 2002 the District Prosecutor informed him that the denial was due to his failure to present a power of attorney. The applicants state that their representative had a duly signed power of attorney when he requested access to the file at the Supervision Department and that the officer reasoned her denial of access to the file because the officer investigating the case was on vacation. Thus, the representative was only enabled to study the file on 5 August 2002.

25. On 8 and 9 August 2002 the sister and the brother of V.P., respectively, were questioned. They both pointed out that V.P. had been in a good mental and physical condition and had never thought of suicide.

26. On 15 August 2002 the Supervision Department decided not to proceed with the first applicant's criminal complaint against the police officers. It found no reasonable suspicion of any offence on the part of the police officers. Except for the additional evidence described above, the Supervision Department based its investigation and conclusions on the official records made by the District Police Department and the Complaints and Monitoring Unit, which contained the description of the scene of incident, the photographic evidence, the autopsy report, toxicological reports, and the official records.

27. On 22 August 2002 the first applicant filed a complaint against this decision, stating that the investigation was not objective and impartial. She pointed to a number of deficiencies in the inquiry.

28. On 3 September 2002 the district prosecutor quashed the decision of 15 August 2002 as premature and remitted the case to the Supervision Department for further investigation.

29. On 4 September 2002 the district prosecutor requested the Supervision Department to procure the following evidence: (i) witness statements from the officer of the Supervision Department who visited the scene of event on the day of incident; (ii) witness statements from rescuers, doctors, and experts who carried out the autopsy to provide *inter alia* information about V.P.'s injuries and clothes; (iii) information about all officers present at the police station at the time of the incident and their activity; (iv) written evidence on V.P.'s personality (for example any previous attempts to commit suicide); (v) forensic expert report regarding the physical mechanics of breaking windows and the subsequent fall; (vi) a reconstruction of the incident at which the district prosecutor and an expert would attend.

30. On 1 October 2002 the officer of the Supervision Department who had inspected the scene of incident on the day of incident was heard.

31. In a letter of 8 October 2002 the district prosecutor informed the applicant's representative that there were no shortcomings in the conduct of the investigation by the police and that the issue that the initial investigation had been led by the Complaints and Monitoring Unit complied with Instruction of the Police President No. 130 of 30 November 2001. An officer of the Supervision Department had immediately arrived to the scene of incident but had not found any signs of commission of a crime by the police officers.

32. On 24 October 2002 the doctors who had carried out the autopsy and established the autopsy report made an official statement before the Supervision Department. They reiterated that no indications of active

intervention of a third party had been found but clarified that this could not be unequivocally determined due to the extensive and interrelated injuries.

33. On 20 February 2003 the Supervision Department concluded that due to the expert report in the field of forensic biomechanics that had been ordered on 21 January 2003, there was no need to conduct a reconstruction of the incident.

34. On 21 February 2003 the Supervision Department again decided not to proceed with the first applicant's criminal complaint against the police officers, finding that there was no reasonable suspicion of an offence. The Supervision Department relied on the forensic biomechanics report of 6 February 2003 which had stated that the incident was caused by the own active jump of the victim with the primary impact on his vertex and which had explicitly excluded any use of force by third persons. In response to the request of the district prosecutor and apart from the evidence described above, 53 official records were procured which described the activities of the policemen during the presence of V.P. at the police station. The rescuers were heard and written evidence was analysed as to the personality of V.P.

35. On 28 February 2003 the District Police Department discontinued the investigation into the participation in suicide, the inquiry having not shown that the crime of participation in suicide or any other crime had been committed.

36. On 14 March 2003 the first applicant's representative was again denied access to the case file.

37. On 21 March 2003 the first applicant filed a criminal complaint suggesting that the police officers had assisted in the applicant's suicide. She requested the Brno Regional Prosecutor to supervise the criminal investigation into the allegations. She pointed to various deficiencies in the inquiry, stating that it lacked objectivity and was perfunctory. On 26 March 2003 the second applicant joined these proceedings.

38. On 29 May 2003 the applicants complained to the regional prosecutor that they received no information concerning the outcome of the investigation into their new allegations.

39. On 25 June 2003 the regional prosecutor informed them that he had found no evidence supporting the allegation that a crime had been committed. He concluded that V.P. had not intended to commit suicide but had unsuccessfully attempted to escape, being unable to control his dive from the height of 8.1 metres. He rejected other allegations of breach of the procedure, but admitted the following procedural shortcomings: (i) a failure of the Municipal Prosecution Office to defer the case to the Brno-venkov District Prosecution Office as specialized authority for criminal activity of police officers, (ii) that original investigation by the Supervision Department had been "entirely insufficient", (iii) that the applicants' representative had been wrongly denied access to the file, (iv) a failure to seize V.P.'s clothes and to examine them by the way of criminal expert

report, (v) contradictory information in the case-file regarding the issue whether the officer K. could have been at the scene of incident at 6.30 pm which was however due to an administrative error. The prosecutor concluded that these procedural shortcomings had no impact on the exactitude of the established facts, but he requested that the evidence be completed.

40. On 12 August 2003 the district prosecutor requested the Supervision Department to supplement the evidence following the regional prosecutor's decision.

41. On 9 October 2003 the Supervision Department once again decided not to proceed with the applicants' criminal complaint against the police officers, finding that there had been no reasonable suspicion of an alleged offence. It was noted, *inter alia*, that V.P.'s clothes had been given to the latter's family at the hospital.

42. On 16 October 2003 the applicants appealed against this decision, challenging a number of factual inconsistencies and errors in the case-file.

43. On 12 November 2003, the expert who established the forensic biomechanics expert report was heard by the District Prosecutor. He apologized for several formal mistakes in his report but maintained that the substantial conclusions were correct. He explained that the errors in the name of the deceased and in the location of the incident were due to the fact that he had copy-pasted parts of the report from a previous report. He also apologized for the error under point three of the report where it was stated that V.P. fell first on his legs. The expert explained that that was his error and referred to the autopsy report which unequivocally showed that V.P. fell first on his head.

44. On 13 November 2003 the district prosecutor dismissed the applicants' appeal as ill-founded. In respect of the challenged report of 6 February 2003, the district prosecutor noted that the expert had admitted that it contained errors but further noted that these had been classified as formal. The prosecutor agreed with the opinion of the regional prosecutor that V.P. had most probably attempted to escape. Given that the windows were partly shaded, he could not see the concrete surface below nor could he exactly estimate the height. Thus he might have thought that it would be possible to escape. The prosecutor concluded by stating that this had only been the prosecutor's personal view and that the victim's intentions would never be known.

II. RELEVANT DOMESTIC LAW

A. Constitutional Court Act (Act no. 182/1993)

45. Section 72(1)(a) stipulates that a constitutional appeal may be submitted: a) pursuant to Article 87 § 1d) of the Constitution, by a natural or legal person, if he or she alleges that his or her fundamental rights and basic freedoms guaranteed in the constitutional order have been infringed as a result of the final decision in proceedings to which he or she was a party, of a measure, or of some other encroachment by a public authority.

46. By virtue of Section 82(3) if the Constitutional Court grants the constitutional appeal of a natural or legal person under Article 87 § 1d) of the Constitution, it shall: a) quash the contested decision of the public authority, or b) if a constitutionally guaranteed fundamental right or basic freedom was infringed as the result of an encroachment by a public authority other than a decision, enjoin the authority not to continue to infringe this right or freedom and order it, to the extent possible, to restore the situation that existed prior to the infringement.

B. Civil Code (Act no. 40/1964)

47. Article 13 § 1 grants the right to just satisfaction in cases of impairment of a right guaranteed by Article 11 among which figure especially protection of life and health, civic honour and human dignity, privacy, name, and personal expression.

48. Pursuant to Article 13 § 2, an individual has the right to pecuniary compensation for non-pecuniary damage if the just satisfaction within the meaning of Article 13 § 1 is insufficient.

C. State Liability Act (Act no. 82/1998, as amended)

49. The State is by virtue of Section 3 liable for damages inflicted by, *inter alia*, its authorities.

50. Section 13(1) as in force until 26 April 2006 provided that the State was liable for damage caused by an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or give a decision within the statutory time-limit. Under section 13(2) a person who had suffered loss on account of such an irregularity was entitled to damages.

51. On 27 April 2006 Act no. 160/2006 entered into force amending, *inter alia*, section 13(1) which newly provides that the State is liable for damage caused by an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or give a decision

within the statutory time-limit. Act no. 160/2006 also introduced a new section 31a which provides for a reasonable satisfaction for non-pecuniary damage caused by an irregularity in the conduct of proceedings including non-compliance with the obligation to perform an act or to adopt a decision within a reasonable time.

D. Code of Criminal Procedure (Act no. 141/1961 as in force at the relevant time)

52. Pursuant to Article 161 § 2, investigation is led by the units of Criminal Police and Investigation Service, unless provided otherwise. The Minister of the Interior can entrust with investigation also other entities of the Police of the Czech Republic.

53. Pursuant to Article 161 § 3 an investigation *(vyšetřování)* into crimes committed by police officers is carried out by a prosecutor.

54. Under Article 174 § 1 a prosecutor supervises criminal proceedings to ensure their lawfulness.

E. Czech Police Act (Act no. 283/1991 as in force at the relevant time)

55. Section 2(4) provided that criminal offences committed by police officers were investigated by the Supervision Department of the Minister of the Interior, an internal unit of the Ministry directly managed by the Minister.

56. Section 3 provided that the Police was subordinated to the Ministry of the Interior. The actions of the Police were directed by the Police Presidium, unless provided otherwise by the law, headed by the Police President. The Police President was appointed and revoked by the Minister with the approval of the Government. The Police President accounted for the acts of the Police before the Minister.

57. Section 49 provided, *inter alia*, for State liability for bodily harm, death or damage caused to individuals by the police.

F. Czech Police Act (Act no. 273/2008) that entered into force on 1 January 2009

58. Pursuant to section 103, signs indicating possible commission of a crime by police officers are to be examined *(prověřit)* by the Police Inspectorate headed by a director accounting to the Government. The Police Inspectorate is part of the Ministry. Its Director is appointed and revoked by the Government. The Police Inspectorate is composed of police officers assigned to the Ministry.

G. Police President Instruction no. 130/2001

59. According to this internal rule applicable within the police units subject to the Police President, suspected crimes punishable by up to three years of imprisonment were to be examined *(prověřit)* by the police monitoring authorities (*kontrolní útvary Policie*) in case of (i) suicide or self-harm of persons occurring in connection with the active duty interventions or other acts of police officers, and of (ii) signs of incidents discovered by themselves until it appears that there is suspicion that a crime has been committed by an officer or an employee of the Police in connection with the execution of their tasks.

H. Rules of Organization of the Brno Police Municipal Directorate

60. According to these internal rules, the Directorate encompasses different services and units which are all directly or indirectly subordinated to the Director. These units comprise also the Complaints and Monitoring Unit, the District Police Department, and the Technical Criminal Unit, which are however distinct units not hierarchically dependent of each other.

The Director decides, *inter alia*, on service and employment issues of the officers and employees. All police officers of the Directorate are subordinated to him. He is the direct superior of the Director of the Complaints and Monitoring Unit.

III. RELEVANT DOMESTIC PRACTICE

A. Constitutional Court's practice

1. Constitutional Court's decision no. III. ÚS 8/03

61. In this decision the court rejected a victim's claim under Article 3 of the Convention contesting a prosecutor's decision confirming suspension of an investigation of alleged police ill-treatment by the Supervision Department. It held that due to the constitutional principle of separation of powers, courts, including the Constitutional Court, could not interfere with the power of the prosecutor to bring charges or not. It could only review a prosecutor's decision to the extent that it was arbitrary. It found that the decision of the prosecutor had been sufficiently reasoned and that the prosecutor had proceeded in accordance with the Code of Criminal procedure.

2. Constitutional Court's decision no. IV. ÚS 264/06

62. In this decision the Constitutional Court rejected a victim's complaint under Articles 3 and 13 of the Convention contesting the suspension of an investigation into alleged police ill-treatment. The appellant complained that the investigation had not been independent and impartial because it had been carried out by the Supervision Department of the Minister of the Interior and only formally supervised by a prosecutor. The court held:

> "The possibility of interference by the Constitutional Court with the investigation phase of criminal proceedings must be interpreted restrictively. The Constitutional Court can correct only the most extreme excesses. ...
>
> In the past, the Constitutional Court occasionally stepped out of its now well-established case-law. It did so in instances when the prosecutor had failed to sufficiently reason its decision to reject the complaint against a decision of the police to bring charges (see nos. III. ÚS 511/02 and III. ÚS 554/03).
>
> Even after the delivery of these judgments the Constitutional Court does not consider that it has the power to review conduct of prosecutorial authorities regarding the substantive reasons and justification for bringing charges. It follows that only complaints claiming insufficient reasons for a decision that would suggest arbitrariness by the prosecutorial authorities can be subject to a review by the Constitutional Court."

The Constitutional Court added that, having reviewed the administrative case file, the investigation by the police authorities had been compatible with the law and that the appellant's procedural rights had been protected. It did not give any opinion on his complaint that the investigation had not been independent and impartial.

3. Constitutional Court's judgment no. III. ÚS 511/02

63. By that judgment, the court, on appeal of the accused, quashed a prosecutor's decision approving the decision of the police to charge the applicant because the prosecutor had failed to examine the appellant's complaints efficiently and to explain the reasons for the decision. As a general principle, the court held that a decision of a prosecutor must be reasoned and he or she must properly examine the complaints. It added that it did not have the power to review the substance of a decision by a prosecutor to bring charges against an individual or to comment whether a particular criminal investigation was justified; these were questions that fell exclusively within the power of prosecutorial authorities.

B. Domestic practice of lower courts

1. Supreme Court's decision no. 30 Cdo 3126/2007

64. In this decision the Supreme Court found that a failure by the State to carry out an effective investigation, within the meaning of Article 3 of the Convention, into an alleged ill-treatment by the police, was not part of personality rights protected by Article 11 of the Civil Code. Thus, civil courts could not review the issue as part of a civil action for the protection of personality rights.

2. Prague Municipal Court's judgment no. 34 C 103/2002-80 of 16 October 2003

65. By this judgment three individuals were awarded CZK 500,000 (EUR 19,592) each pursuant to Articles 11 and 13 of the Civil Code in compensation of the death of their spouse and mother respectively caused by a wrongful act of a police officer. The police officer responsible had been previously convicted for the crime of physical injury by the Mělník District Court. The Municipal Court based its factual finding on the case-file of the Mělník District Court in the criminal proceedings and the defendant, the Czech Republic represented by the Ministry of the Interior, acknowledged its responsibility for the damages caused by the act of the police officer.

3. Prague 7 District Court's judgment no. 5 C 85/2000 of 4 October 2004

66. By this judgment two individuals were awarded damages pursuant to the Act 58/1969 replaced by the State Liability Act in compensation of the death of their son caused by the police. The police officer concerned had been convicted of the crime of physical injury by the Prague West District Court and the Prague Regional Court. The Prague 7 District Court based its findings *inter alia* on the Prague West District Court's case-file in the criminal proceedings.

C. Compensation awarded by the Ministry of the Interior

67. On 27 January 2000, the Ministry concluded a settlement agreement pursuant to the Czech Police Act in the case mentioned above (see paragraph 66). The conclusion of the agreement was preceded by a conviction of the police officer. The Ministry acknowledged its responsibility.

On 13 September 2001, 5 October 2001, and 30 October 2001, the Ministry concluded three settlement agreements pursuant to the Czech

Police Act in the case mentioned above (see paragraph 65). These settlement agreements had been concluded before the officer was convicted. The Ministry acknowledged that the death resulted from an act of a police officer.

Three of the above mentioned settlement agreements provided compensation for expenses connected to the burial. One of them granted the deceased husband a monthly pension.

68. On 7 February 2008, the Ministry awarded damages pursuant to the State Liability Act to a person who had suffered serious physical injuries as a consequence of being shot by a police officer. The damages were awarded after a prosecution had been brought against the police officer. The Ministry had acknowledged liability.

IV. OBSERVATIONS BY INTERNATIONAL BODIES

A. Concluding observations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) of the Council of Europe on the Czech Republic of 14 May 2001

69. The Committee recommended that the Czech Republic take appropriate measures to ensure the independence of investigations of offences committed by law-enforcement officials by introducing a mechanism of external control.

B. Concluding observations of the Human Rights Committee of the United Nations (HRC) on the Czech Republic dated 27 May 2001

70. The Committee expressed its concerns that complaints against the police are handled by an internal police inspectorate, while criminal investigations are handled by the Ministry of the Interior, which has overall responsibility for the police. That system lacked, in the Committee's view, objectivity and credibility and would seem to facilitate impunity for police officers involved in human rights violations.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

71. The applicants complained that the State authorities had not undertaken reasonable and adequate steps to protect the life and health of V.P. and that the State had not provided sufficient explanation of V.P.'s death. Alleging that the investigation into the latter's death had been carried out by an internal department of the Ministry of the Interior and by the police units implicated in his death or stationed in the area, the applicants also complained that no effective and independent investigation had been carried out on the authorities' own initiative. According to them, the State authorities had not started investigations of their own motion. Indeed, the officer who had arrived at the scene of incident had stopped the investigation too quickly and with no plausible reason. The Supervision Department had only started to act upon filing of a criminal complaint by the applicants. The applicants further complained of various shortcomings during the investigations which had been led with insufficient diligence and promptness. Furthermore, the applicants had been repeatedly denied access to the investigation file and had had no adequate remedy in respect of the breaches of their rights under the Convention. The applicants relied on Article 2 of the Convention which reads as follows:

> "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 ..."

A. Admissibility

1. The parties' submissions

(a) The Government

72. The Government maintained that the applicants had failed to exhaust domestic remedies. They pointed out that Czech law provided for a set of remedies in respect of Article 2 of the Convention, consisting of a constitutional appeal, an action for damages under the Police Act, an action for damages under the State Liability Act and an action for protection of the personal rights under the Civil Code.

73. In respect of the constitutional appeal, the Government contended that the Constitutional Court had the capacity to remedy serious shortcomings in the investigation, lack of independence of the investigators, or ill-founded outcome of the criminal proceedings, as all those situations

would amount to arbitrariness within the meaning of the decisions of the Constitutional Court nos. III. ÚS 8/03, IV. ÚS 264/06, and III. ÚS 511/02 (see paragraphs 61-63 above). Had the applicants lodged a constitutional appeal, the Constitutional Court could have quashed the decisions adopted in the course of the investigation and remitted the case to the investigating authorities which would have been bound by its opinion. A constitutional appeal thus could have paved the way not only to compensation for a breach of fundamental rights by means of civil law but also to an adequate investigation. The Constitutional Court was aware of the case-law of the Court and took it into consideration, as evidenced by its decision no. IV. ÚS 264/06 (paragraph 62 above). While it was not empowered to award just satisfaction for breaches of fundamental rights, such compensation could have been obtained under the Civil Code, the State Liability Act or the Police Act (*mutatis mutandis*, no. 77617/01, § 140, 26 January 2006).

74. Those three compensatory remedies could have been used independently of a constitutional appeal. The procedural situation of the applicants would have however been much better if they had succeeded before the Constitutional Court in advance. According to the Government, the applicants were not required to have the last decision adopted in the course of the investigation set aside, as that was not a prerequisite for granting those remedies. In civil proceedings a valid decision of a State authority has the effect of presumption of lawfulness. However, that presumption may be rebutted by a litigant. The fact that the burden of proof rests with such a party did not make that remedy ineffective for the purposes of Article 35 § 1 of the Convention.

75. Moreover, although it might seem difficult to prove the responsibility of the State's organs for V.P.'s death given that the investigating authorities concluded to the contrary, the situation was different regarding the alleged procedural shortcomings, namely the alleged lack of independence and of adequacy of the investigation. Nonetheless, the Government accepted that it would be generally difficult for the applicants to prove by their own means the opposite of the conclusions of the investigating authorities i.e. that the death was caused by a breach of an officer's duty. Actions for damages would thus be successful only after a successful constitutional appeal.

76. As regards a civil action under Article 11 et seq. of the Civil Code, the Government stated that it could have provided the applicants with full compensation for damage and prejudice suffered as a consequence of the death of V.P. (see paragraphe 65 above).

77. The Government further asserted that the applicants could have claimed damages under the State Liability Act (see paragraphs 66 and 68 above). This legal avenue could have been opened either by quashing of the last decision which suspended the investigation by the Constitutional Court, if the applicants complained that the decision had been unlawful, or by

asserting misadministration consisting of a wrongful act by the police. Such claims would have had to be raised before the Ministry of the Interior before being brought to a court.

78. Finally, the applicants could have claimed damages under the Police Act (see paragraph 67 above).

79. The Government concluded that applicants were obliged to exhaust a remedy which did not lack any reasonable prospect of success, even if they had doubts as to its effectiveness. The applicants in the case at hand should have thus contested the prosecutor's decision to suspend the investigation before the Constitutional Court, which could have ordered the prosecuting authorities to investigate the events in conformity with the Convention, had that court found that that had not been the case. Moreover, the Government recalled that if a single remedy did not by itself entirely satisfy the requirements of Article 13 of the Convention, the aggregate of remedies provided for under domestic law may do so (*Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I). Thus, the remedies available under civil law, the Police Act, and the State Liability made up for the lack of jurisdiction of the Constitutional Court to award compensation for violations of rights guaranteed by the Convention.

(b) The applicants

80. The applicants asserted that none of the remedies mentioned by the Government presented an effective means of redress for the lack of effective investigation. According to them, there was a legal limbo in the Czech Republic with respect to the protection of rights guaranteed by Article 2 and 3 of the Convention; situation which equates to a denial of justice in such serious cases.

81. They underlined that the Constitutional Court had ruled on many occasions that it could not interfere with the outcome of the executive power's verification of a criminal complaint. The Constitutional Court's review was thus limited to examining whether such decision was not arbitrary. This review did not cover the issue of lack of independence and impartiality, issues on which the Constitutional Court had never ruled. Further, the review did not take into account the Court's requirements of adequacy and independence of investigation. The applicants referred in this regard to the case of *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports* 1998-VI, and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV, in which the Court dismissed the objection of non-exhaustion on the ground that no examples of persons having brought such an action in similar situations had been provided.

82. Contrary to the Government's assertion, the applicants were of the view that the Constitutional Court's decision no. IV. ÚS 264/06 (paragraph 62 above) supported their contention that that court intervened

into the preparatory stage of criminal prosecution only to a very limited extent. Moreover, even if they had filed a constitutional appeal, the Constitutional Court was only empowered to quash the impugned decision which would not have in any way remedied the lack of effective investigation. Nor was the Constitutional Court entitled to award compensation.

83. The applicants further asserted that they had not been obliged under the Court's case-law to exhaust civil remedies. Indeed, a Contracting State's obligation under Articles 2 and 3 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible would be rendered illusory if an applicant were required to exhaust an action leading only to an award of damages.

84. Referring to the Court's judgments *Kaya v. Turkey* (19 February 1998, § 108, *Reports* 1998-I) and *İlhan v. Turkey* ([GC], no. 22277/93, § 103, ECHR 2000-VII) the applicants asserted that it would have been almost impossible for them to succeed with their claims before civil courts without the prior conviction of the offending policemen in criminal proceedings. The presumption of truth of State authorities' decisions was, despite the wording of the relevant law, in reality irrefutable.

85. According to the applicants, the cases referred to by the Government were not relevant for the present case (see paragraphs 65-66 above). Indeed, the victims or their relatives were compensated only after the offenders had been convicted. Similarly, in cases where the compensation had been awarded under the Police Act, the police had acknowledged misconduct (see paragraphs 67-68 above).

86. Moreover, referring to the Supreme Court's decision no. 30 Cdo 3126/2007 (paragraph 64 above), the applicants alleged that the relevant parts of the Civil Code did not cover protection in cases of ineffective investigation. As for the State Liability Act, they contended that it did not provide for redressing non-pecuniary damage at the relevant time. There was therefore no efficient compensatory remedy in respect of the breaches of their rights under Article 2 of the Convention.

2. The Court's assessment

(a) General principles

87. The Court reiterates that Article 35 § 1 of the Convention requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (*Aksoy v. Turkey*, no. 21987/93, §§ 51-52, ECHR 1996-VI, and *Akdivar and Others v. Turkey,* no. 21893/93, §§ 65-67, ECHR 1996-IV). It has further recognised that for assessing whether that Article has been

observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (*Akdivar and Others v. Turkey,* cited above, § 69 and *Aksoy v. Turkey,* cited above, §§ 53 and 54). The applicants may be dispensed from exhausting domestic remedies should they show that they had a negligible prospect of success in pursuing them (*Akdivar and Others v. Turkey*, cited above, § 73). The Court has held, particularly in respect of the procedural limb of Article 2 of the Convention, that applicants are not obliged to use a recourse unable to bring about any independent investigation and incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings as to the perpetrators of fatal assaults, still less of establishing their responsibility (*Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 119-121, 24 February 2005). Furthermore, the Court has found in respect of Article 13 of the Convention that, as a general rule, if a single remedy does not by itself entirely satisfy the requirements of effectiveness, the aggregate of remedies provided for under domestic law may do so (*Kudła v. Poland,* cited above, and *Čonka v. Poland,* cited above). The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and practice at the relevant time, namely, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (*Mižigárová v. Slovakia* (dec.), no. 74832/01, 3 November 2009; *T. v. the United Kingdom* [GC], no. 24724/94, § 55, 16 December 1999)

(b) Application of the principles to the present case

88. The Court observes that in the present case the existence under Czech law of four legal remedies, namely, a constitutional appeal, a claim for damages under the Police Act, a claim for damages under the State Liability Act and under the Civil Code, was not contested by the parties. What was disputed is their effectiveness, the principal disagreement being on the role of the Constitutional Court, before which the applicants did not pursue their case. The effectiveness of these remedies must be analysed both under the substantive and procedural limb of Article 2 of the Convention.

89. It further observes that in their written observations, the Government stressed the necessity for the applicants to have brought both a constitutional appeal and actions for damages before domestic courts. Thus, the question arises whether these legal avenues taken separately and

together might have presented effective remedies which should have been exhausted by the applicants at the national level.

90. The Court notes that the Government conceded that it was generally difficult under domestic law to obtain compensation by means of an action for damages brought before civil courts when the investigating authorities did not find any responsibility on the part of police officers in the death of V.P. Applicants would generally find themselves in a difficult situation in proving by their own means that such death was caused by a breach of an officer's duties. Accordingly, an action for damages, under the substantive limb of Article 2 of the Convention, would in principle be effective only upon a successful constitutional appeal which would lead to further investigation. The situation was however different regarding the procedural shortcomings namely the alleged lack of independence and of adequacy of the investigation.

91. The Court reiterates that where an individual is taken into police custody in good health but is later found dead it is of the utmost importance that the circumstances of such death be sufficiently elucidated. The investigations which the Contracting States are obliged by Articles 2 and 13 of the Convention to conduct in cases like the one at hand must be able to lead to the identification and punishment of those responsible. This obligation cannot be satisfied merely by awarding damages, otherwise the State's obligation to seek those guilty of fatal assault might disappear and the guarantees of the right to life under Article 2 of the Convention would become theoretical and illusory (*Mižigárová v. Slovakia* (dec.), cited above; *Kaya v. Turkey*, cited above, §§ 105, 107; *Yaşa v. Turkey*, cited above, § 74; *Kelly and Others v. the United Kingdom*, no. 30054/96, § 105, 4 May 2001; *Khashiyev and Akayeva v. Russia*, cited above, § 153; *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006).

92. These principles apply primarily to the procedural limb of Article 2 of the Convention. Indeed, where the efficiency of an investigation into a death possibly caused by police officers is questioned, any award of compensation cannot be regarded, on its own, as a sufficient remedy. Otherwise the High Contracting Parties would be incited to tolerate interferences with the right to life by their agents and to cover up such interferences by way of ineffective investigation. As a result, the protection afforded by Article 2 of the Convention under its procedural limb would become completely illusory and no authors of such crimes would be brought to justice.

93. In the past, the Court has accepted that civil redress may be a sufficient remedy only in the specific sphere of medical negligence (*Calvelli and Ciglio v. Italy* [GC], no. 32967/96, §§ 51-55, ECHR 2002-I;, *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V; *Vo v. France* [GC], no. 53924/00, §§ 90-94, ECHR 2004-VIII; *G.N. and Others v. Italy*, no. 43134/05, § 82, 1 December 2009).

94. The Court also reiterates that since often, in practice, the true circumstances of a death in cases like the instant one are largely confined within the knowledge of State officials or authorities, the bringing of appropriate domestic proceedings, such as a criminal prosecution, disciplinary proceedings and proceedings for the exercise of remedies available to victims and their families, will be conditioned by an adequate official investigation, which must be independent and impartial (*mutatis mutandis Makaratzis v. Greece* [GC], no. 50385/99, § 73, ECHR 2004-XI).

95. In the light of the above, the Court is of the view that effectiveness of the constitutional appeal in the present case was of crucial significance in order to secure both an effective investigation into the causes of the suspect death, a possible punishment of anybody responsible, and a compensation of the applicants for the prejudice incurred.

96. It appears from its practice that the Constitutional Court refuses, in the name of the principle of balance of powers, to interfere with the discretionary power of the public prosecution regarding the issue whether to bring prosecution or not (see paragraphs 61 and 62 above), its review being limited to the examination of sufficiency and adequacy of the reasoning of the prosecutor's decision to discontinue the proceedings. Moreover, the Constitutional Court only intervenes in cases where the prosecutor's decision is arbitrary (see paragraphs 61-63 above). Thus, not only the substance of the prosecutor's decision cannot be examined (see paragraph 63 above), but the Constitutional Court authorises itself to intervene only in the most extreme cases (see paragraph 62 above).

97. The Court cannot speculate as to what would have been the outcome, had the applicants brought a constitutional appeal. Moreover, even if the fact that the Constitutional Court does not intervene is not in itself problematic from the Convention point of view, in the view of the above, it esteems that it was highly improbable, if not wholly excluded, that the Constitutional Court would have quashed the prosecutor's decisions.

98. The applicants raised serious issues regarding the lack of independence, impartiality, and inadequacy of the investigation into the suspect death of V.P. The Court is not convinced by the Government's assertion that these alleged shortcomings would amount to the degree of "arbitrariness" within the meaning of the Constitutional Court's case-law. Indeed, the arguments similar to those raised by the applicants in the instant case were submitted to the Constitutional Court only on one occasion (see paragraph 62 above). In that case, the Constitutional Court, despite the applicant's exhaustive complaint as to the independence of the Supervision Department, omitted to discuss that issue in its reasoning and rejected the complaint as manifestly ill-founded. The Government, for their part, did not put forward any submissions that would contest this conclusion. Thus, the Court is not persuaded that the Constitutional Court was likely to reach a different opinion on those issues in any proceedings which might have been

initiated by the applicants. Moreover, even if the Government's assertions were correct, the Court cannot see how the intervention of the Constitutional Court could have had any impact on the outcome of the investigations. Indeed, the alleged lack of independence and impartiality of the investigation is of a structural nature. Thus, even if the Constitutional Court had adopted a different approach in the instant case and had found that the decisions to discontinue the investigation were arbitrary, as the Government suggest, it would not have been capable to remedy the applicants' situation.

99. In fact, the Constitutional Court was only empowered to quash the final decisions of 28 February 2003 and of 13 November 2003 and remit the case to the investigating authorities, not being entitled to remit the case to another investigator. As a result, the Constitutional Court's decision would have been purely declaratory and could not have had any effect on the independence of the investigation into V.P.'s death.

100. Therefore, the Court is not convinced that the applicants had a reasonable prospect of success before the Constitutional Court (see *a contrario Mansfeldova v. Czech Republic* (dec.), no. 14549/05, 4 October 2011). On the contrary, in the circumstances of the instant case, the constitutional appeal cannot be regarded as an effective remedy for the alleged shortcomings in the investigation. As a result, it was not a suitable avenue which could have secured an effective and objective investigation into the case and thus shed light on the circumstances of V.P.'s death and enable the punishment of those responsible.

101. In the light of these considerations, the Court finds that it is not necessary to examine the effectiveness of any of the three proceedings for damages mentioned by the Government since any proceedings for damages cannot be regarded on its own, in the circumstances of the case at hand, as a sufficient remedy to the alleged violations of Article 2 of the Convention both under its substantive and procedural limb. In consequence, the Court concludes that the applicants have exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention and declares the complaints admissible.

B. Merits

1. *Alleged violation of Article 2 of the Convention in its substantive limb*

(a) The parties' submissions

(i) The Government

102. The Government asserted that all the evidence established the cause of V.P.'s death and that nothing suggested a third party intervention. They relied especially on the forensic expert report, the autopsy report and the absence of contradictory indications in the statements of the officers.

103. The Government further contended that the police officers had not had any reasons to suspect that V.P. could attempt to commit suicide. Indeed, V.P. had been calm and nothing suggested that a tragic incident could occur. The police officers had complied with internal regulations and with fundamental rights and autonomy of V.P. stemming from articles 5 and 8 of the Convention. Any requirement of further protection going beyond the measures that had been adopted would impose an excessive burden on the State.

(ii) The applicants

104. The applicants asserted that where an individual is taken into custody in good health but later dies, it is incumbent on the State to provide a plausible explanation of the events leading to his death (*Anguelova v. Bulgaria*, no. 38361/97, § 110, ECHR 2002-IV, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). They contended that the explanation provided by the State authorities in the case at hand could not be regarded as plausible. Indeed, it was highly improbable that V.P. who weighed 58 kg was capable of overwhelming the resistance of the escorting police officers and jump through a closed window, even less given that the officer holding him was tall and brawny. The actual possibility of the incident having occurred as described was unclear given that no reconstruction of the events had been made. The explanation was even less plausible due to the many procedural shortcomings.

105. The applicants stressed that there had been discrepancies between the statements by officers K. and P.as to whether the officer K. had held the applicant by his right or left wrist, which had never been clarified. Further, V.P.'s clothes had never been examined and tested for fingerprints. The position of V.P.'s body after the fall had not been analysed. No reconstruction of the incident had ever been organised. They argued that the work of the expert who had established the forensic biomechanics report

had been extremely careless. Last but not least, the applicants had been repeatedly denied access to the case-file. The State thus failed to provide a convincing explanation that its agents were not responsible for the death of V.P.

106. The applicants further complained under the substantive limb of Article 2 of the Convention that the authorities had not taken reasonable and adequate steps to protect the life and health of V.P. It appeared from the investigation that V.P. had been escorted to the ground floor because the toilet located on the second floor had not been provided with bars. Thus, the police officers must have had grounded suspicions that V.P. would either attempt to escape or to commit suicide. Under such circumstances the police officers should have taken adequate measures during the escort to avoid any incident. The police officers acted with gross negligence if they had let V.P. run and reach such speed as to jump through the window. The applicants also expressed the view that there should have been bars on the windows on the mezzanine and the second floor in order to prevent such events.

(b) The Court's assessment

(i) General principles

107. Having regard to the fundamental importance of the right to life, the Court must subject any possible interferences with Article 2 of the Convention to the most careful and thorough scrutiny, taking into account not only the actions of State agents but also all the surrounding circumstances (*McCann and Others v. the United Kingdom*, 27 September 1995, § 150, Series A no. 324).

108. The Court reiterates that where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how these injuries were caused. The authorities' obligation to account for an individual in custody is particularly stringent where that individual dies (*Mižigárová v. Slovakia*, no. 74832/01, § 84, 14 December 2010). Indeed, in such cases strong presumptions of fact arise in respect of the suspect death against the State authorities and the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation, beyond reasonable doubt (*Velikova v. Bulgaria*, no. 41488/98, § 70, ECHR 2000-VI; *Kelly and Others v. the United Kingdom*, cited above, § 92; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; *Orhan v. Turkey*, no. 25656/94, § 327, 18 June 2002).

109. The Court also reiterates that the first sentence of Article 2 § 1 of the Convention enjoins the States not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives within its jurisdiction (*Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII). It may also imply in certain well-defined

circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual or even where such a risk derives from self-harm (*Mižigárová v. Slovakia*, cited above, § 89; *Keenan v. the United Kingdom*, no. 27229/95, § 90 et seq., ECHR 2001-III; *Osman v. the United Kingdom*, cited above, § 115).

110. That does not mean, however, that a positive obligation to prevent every possibility of violence can be derived from this provision. Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. A positive obligation will arise, the Court has held, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (*Keenan v. the United Kingdom*, cited above, § 90; *Osman v. the United Kingdom*, cited above, § 116; *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-III). However, even where it is not established that the authorities knew or ought to have known about any such risk, there are certain basic precautions which police officers and prison officers should be expected to take in all cases in order to minimise any potential risk to protect the health and well-being of the arrested person (*Mižigárová v. Slovakia*, cited above, §89).

(ii) Application of the principles to the present case

111. The Court observes that two different questions arise under the substantive limb of Article 2 of the Convention: (i) whether the State authorities have given a plausible explanation concerning the cause of the suspect death and (ii) whether the State authorities sufficiently protected V.P.

112. The Court cannot disregard the applicants' argument that it has not been sufficiently explained why the officers decided not to let V.P. use the toilet located on the second floor and to escort him to the ground floor where there were bars on the windows. Nor has it been explained why the escorting officers refused to let V.P. close the door of the toilet located on the ground-floor, allegedly for security reasons, although there were bars on the window. As the applicants suggest, these circumstances raise the suspicion that the police officers had reasons to suspect that V.P. might attempt to escape *inter alia* by jumping from a window.

113. Further, it does not appear from the case-file that the credibility of the allegation that the officer's shoulder injury resulted from V.P. striking him in his left shoulder with his palm has ever been tested. Nor has the discrepancy between the officers K. and P., and the officer K.'s first and subsequent testimonies as to whether the officer K. held the applicant by his right or left wrist ever been clarified.

114. As in the recent case *Mižigárová v. Slovakia* (cited above), the Court is not satisfied that the circumstances surrounding V.P.'s death have been fully explained. However, the Court does not consider that it is necessary to rule definitely on this point.

115. Even if the Court were to accept that V.P. killed himself in an attempt to escape, the obligation to protect the health and well-being of persons in detention clearly encompasses an obligation to take reasonable measures to protect them from harming themselves (see *Mižigárová v. Slovakia*, cited above, § 89; *Keenan v. the United Kingdom*, cited above, § 97). Although there is insufficient evidence to show that the authorities knew or ought to have known that there was a risk that V.P. might attempt to escape by a dive through a second floor window, there are certain precautions which police officers should be expected to take in order to minimise any potential risk.

116. In the instant case, it results from the evidence submitted to the Court that there were no bars on the windows of the mezzanine floor between the first and the second floor. It is also common ground that V.P. was given no handcuffs and that officer K. held him with a loose grasp allegedly due to the fact that V.P. was calm. Moreover, one of the escorting officers was quite far away at the time when V.P. allegedly struck officer K.

117. The Court is of the view that it would be excessive to request the States to put bars on any window at a police station in order to prevent tragic events like the one in the instant case. However, this does not relieve the States of their duty under Article 2 of the Convention to protect life of arrested and detained persons from a foreseeable danger occurring. Notwithstanding the allegation that V.P.'s behaviour was calm, it remains the case that the authorities appear to have known that there was some risk that V.P. would try to abscond. In fact they did not let him use the toilet on the second floor where there were no bars. They escorted him to the one located on the ground floor provided with bars and did not let him close the door of the toilet located on the ground floor for security reasons. Given that windows had no bars not only on the second floor but also on the mezzanine floor between the first and the second floor, the officers should have acted with more care to prevent V.P. from jumping under the alleged circumstances.

118. It follows that, on the assumption that V.P's death was the result of an attempt to escape, the State authorities failed to provide V.P. with sufficient and reasonable protection as required by Article 2 of the

Convention. There has accordingly been a violation of Article 2 under its substantive limb.

2. Alleged violation of Article 2 of the Convention in its procedural limb

(a) The parties' submissions

(i) The Government

119. The Government stated that investigating steps had been undertaken immediately after the incident. They asserted that eyewitnesses of the incident had been subsequently duly questioned as well as many other persons. No reconstruction of the incident had been carried out due to the fact that Czech law does not require one if other evidence does not make it necessary. This was the case here since the biomechanics forensic report expressly stated that it was not necessary to organize a reconstruction of the incident. The Government added that the clothes had been given to V.P.'s family and that the applicants had never pointed to any indications of violence on the clothes during the investigation. The Government contended that although the applicants had been, on some occasions, denied access to the case-file, this had been subsequently remedied in the course of the investigation. In consequence, the applicants' rights had not been infringed.

120. The Government maintained that the investigation had been carried out simultaneously and mutually independently by three police units. The main investigation had been executed by the Supervision Department of the Ministry of the Interior, whilst the role of the District Police Department and the Complaints and Monitoring Unit in the investigation had been marginal. The Supervision Department was directly responsible to the Minister of the Interior. It did not form a part of the Police and neither the Police President nor any other police officer was empowered to interfere with its investigations. The officers of the Supervision Department, having jurisdiction over the entire Region of South Moravia, not only the police district in question, were not colleagues of the staff of the District Police Department. The Government further emphasised that the investigation carried out by the Technical Criminal Unit and the Complaints and Monitoring Unit had not been relevant for the outcome of the proceedings, and that those units had not had any hierarchical relationship with the District Police Department, their first common superior within the police structure being the Director of the Brno Police Municipal Directorate. They added that there had been no signs of partiality in the expert opinion drawn up in the case.

121. As the Government further stated, the fact remained, that the initial acts of the investigation had been made by the District Police Department,

the Technical Criminal Unit, and the Complaints and Monitoring Unit. Nevertheless, the Government considered the investigation independent as it had not to be said that the Supervision Department's conclusions had depended only on proves being settled by these three units.

(ii) The applicants

122. The applicants alleged that the investigation into V.P.'s death had been neither adequate nor carried out by independent and impartial authorities. First of all, they complained that the authorities had not acted of their own motion. In fact, the officer from the Supervision Department left the scene of incident very quickly and without providing any convincing reasons for her conclusion that no suspicion of criminal offence had arisen. In consequence, investigation into the offence by the Supervision Department was initiated only after the applicants had filed a criminal complaint. Even then, however, the investigation lacked promptness and due diligence.

123. Indeed, some important pieces of evidence were never secured or only after the applicants requests' and complaints, i.e. half a year after the incident. Some evidence requested by the applicants had nonetheless never been taken into consideration. The applicants complained in particular that the police officers had not been properly interrogated and that the time spent by V.P. at the police station had not been properly described. The authorities had not even attempted to hear all people present at the police station at the time of the incident immediately after the incident. Steps to gather information from these persons were taken only upon the quashing of the decision to discontinue investigation. The applicants refer to the case *Assenov and Others v. Bulgaria* (28 October 1998, § 103, *Reports* 1998-VIII) where the Court declared the investigation ineffective *inter alia* on the ground that the competent bodies had not tried to ascertain the truth by contacting and questioning the witnesses in the immediate aftermath of the incident, when memories would have been fresh.

124. Moreover, no reconstruction of the incident had ever been made. There had been serious inconsistencies in the findings which had been dealt with only upon the applicant's intervention. The police had omitted to request the doctors to verify during the autopsy whether there had been any signs of violence on V.P.'s body. V.P.'s clothes had not been secured. These shortcomings were crucial because this could not have been remedied later on. Indeed, promptness of investigation was crucial in cases like the instant one. The applicants further complained that their representative had been twice refused access to the criminal files without due cause. Thus, the applicants' right to be involved in the course of the procedure had been hindered by the investigating authorities. In the second case the prosecutor had reviewed their complaint only two months later.

125. Referring to *Juozaitienė and Bikulčius v. Lithuania* (nos. 70659/01 and 74371/01, § 91, 24 April 2008), the applicants expressed the view that the lack of effectiveness of the investigation also stemmed from the fact that the incident had been from the start investigated only as a suicide, whilst no other alternatives had been duly and thoroughly considered in the first and most important part of the investigation.

126. They pointed out that both the Complaints and Monitoring Unit and the Supervision Department of the Ministry of the Interior formed part of security forces controlled by the same ministry, the former unit being moreover an integral part of the police force stationed in the Brno area, subjected to the command of the police municipal director, and under the control of the Police President. Except for the fact that the Supervision Department and the Police had reported to the ministry, the applicants also pointed out that a close professional link had existed between both entities. In fact, members of the Supervision Department were police officers as were members of Police. They were recruited exclusively among members of the Police and maintained the rank assigned to them within the Police.

127. While the initial and most important part of investigation had been carried out by the Complaints and Monitoring Unit, the Supervision Department subsequently heavily relied on its findings given that their own officer had left the scene of the incident quickly and without sufficient explanation. Furthermore, certain stages of investigation were carried out directly by the District Police Department, where V.P. had been detained and had died, and its director. They asserted that the units in charge of the investigation, especially the Complaints and Monitoring Unit, had been staffed with policemen serving in the same units as the officers under investigation. Thus, the investigation could not be regarded as impartial.

128. They added that the supervision of the investigation by the prosecutor had been purely formal. They also contested the objectivity of the forensic biomechanics expert report stating that the expert was an instructor at the Police Academy, and pointed to manifest inconsistencies in the report (error in the name of the deceased on one page; conclusion that the body fell first on legs on page 9, and that it fell first on vertex on page 11).

129. The applicants further referred to various findings of the CPT, and the European Commission on Racism and Intolerance which all deplored the lack of independent and external control of the police and urged the Czech Republic to introduce such a mechanism for investigation of offences by law-enforcement officials especially in cases with a background of possible discrimination against Roma.

(b) The Court's assessment

130. The Court reiterates that where a State or its agents potentially bear responsibility for a loss of a life, the events in question should be subject to

an effective investigation or scrutiny which enables the facts to become known to the public and in particular to the relatives of any victims (*McCann and Others v. the United Kingdom*, cited above, § 161; *Sieminska v. Poland* (dec.), no.37602/97, 29 March 2001; *Kaya v. Turkey*, cited above, § 86; *Ergi v. Turkey*, 28 July 1998, §§ 82, *Reports* 1998-IV, *Yaşa v. Turkey*, cited above, §§98-100).

131. The Court has ruled that a prompt and effective response by the authorities in investigating the use of lethal force is essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (*Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 118, ECHR 2005-VII). Where the attack is racially motivated, as implied by the applicants in § 129, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence (*Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

132. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. Where death results, the investigation assumes even greater importance, having regard to the fact that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (*Menson v. the United Kingdom*, cited above, *Paul and Audrey Edwards v. the United Kingdom*, cited above, § 55). The Court has also held in the past that the authorities must take any and all reasonable steps available to them to secure evidence concerning the incident, including, inter alia, eye-witness testimony and forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. (*Nachova and Others v. Bulgaria*, cited above, § 113; *Anguelova v. Bulgaria*, cited above, § 139; *Kelly and Others v. the United Kingdom*, cited above, § 96). Unexplained failure to undertake indispensable and obvious investigative steps is to be treated with particular vigilance. In such case, failing a plausible explanation by the Government as to the reasons why indispensable acts of investigation have not been performed, the State's responsibility is engaged for a particularly serious violation of its obligation under Article 2 of the Convention (*Velikova v. Bulgaria*, cited above, § 82).

133. In the past, the Court has found a violation where officers were not kept separated after the incident and were not questioned until nearly three days later, notwithstanding the fact that no evidence indicated any collusion among them or with their colleagues. It was found that the mere fact that appropriate steps were not taken to reduce the risk of such collusion

amounts to a significant shortcoming in the adequacy of the investigation (*Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-VI).

134. Such investigation must be initiated promptly and conducted with reasonable expedition (e.g. *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 108, ECHR 2001-III (extracts)). There must be a sufficient element of public scrutiny, although it may vary from case to case, and the relatives of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (*Hugh Jordan v. the United Kingdom*, cited above, §109; *Kelly and Others v. the United Kingdom*, cited above, §98)

135. The Court reiterates that for an investigation into a death in custody to be effective, it may generally be regarded as necessary for the persons responsible for carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (*Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports* 1998-IV; *Ergi v. Turkey*, cited above, §§ 83-84; *Nachova v. Bulgaria*, cited above, § 112; *Hugh Jordan v. the United Kingdom*, cited above, § 106, *Ramsahai and Others v. the Netherlands*, cited above, § 325).

136. In the case of *Güleç v. Turkey* (cited above, § 76 and 80), the Court found a lack of independence due to the nature of the body deciding whether to bring prosecution or not. This body was chaired by the Provincial Governor, who appointed the investigating officers and was at the same time in charge of the gendarmes whose actions were under scrutiny. All members of the body were local representatives of the executive under the order of the governor. It also results from the Commission's observations that the investigating officers were gendarmes too and hierarchical superiors of the gendarmes whose conduct they had to investigate.

137. The Court has held in the past that independent investigation cannot be provided by officers of the station where a suspect death occurred (*Aktaş v. Turkey*, no. 24351/94, § 301, ECHR 2003-V (extracts)). It also results from the Court's case-law that where police officers investigating the incident are colleagues of the officers implicated in the incident, supervision or joint investigation by an independent body cannot remove the taint of the force's lack of independence (*Ramsahai and Others v. the Netherlands*, cited above; *Hugh Jordan v. the United Kingdom*, cited above; *Kelly and Others v. the United Kingdom*, cited above). In the case of *Kelly and Others v. the United Kingdom* the Court was not satisfied that the investigation had been conducted jointly with police officers connected with the operation under investigation. Although the investigation was supervised by an independent police monitoring authority, the Court found that this could not provide sufficient safeguards where the investigation itself was for all

practical purposes conducted by police officers connected, albeit indirectly, with the operation under investigation. It took into account the CPT's recommendation that a fully independent investigation agency would help to overcome the lack of confidence in the system which exists in England and Wales.

138. In the past the Court also found a lack of independence where the investigation was for some time headed by the officer who commanded the gendarme stations where the victims had allegedly been detained (*Orhan v. Turkey*, cited above, § 342).

139. In the case of *Ergi v. Turkey* (cited above, § 83) the Court found a lack of independence and effectiveness, *inter alia*, on the ground that the public prosecutor heavily relied on the conclusions of the gendarmes implicated in the death at stake. Nonetheless, in a later case, the Grand Chamber ruled that the fact that a public prosecutor relies on the information provided by the police is inevitable and does not in itself suffice to conclude that they lack independence *vis-à-vis* the police. Problems may arise, however, if a public prosecutor has a close working relationship with a particular police force (*Ramsahai and Others v. the Netherlands*, cited above).

(i) Adequacy of the investigation

140. The Court observes that immediately after the incident, the authorities started investigations of their own motion. Four different bodies, namely the Complaints and Monitoring Unit, the District Police Department, the Technical Criminal Unit, and the Supervision Department inspected the scene of incident. Police officers having had contact with V.P. prior to his death drew official records and police officer P., police officer W., and the Head of the District Police Department gave explanations. On the day of V.P.'s death the authorities requested an autopsy report, an expert toxicological examination, an expert analysis of biological material retained from the frame of the window V.P. had allegedly jumped through on the day of the incident, and comments from the hospital.

141. Nonetheless, the Court observes that the District Police Department investigated the incident as a possible participation in a suicide. The Complaints and Monitoring Unit merely supervised the observance of the legal and internal measures applied during the escort to the toilet. The Government have not provided any explanation as to why other possible explanations of the cause of the suspect death had not been envisaged during the initial phase of the investigation.

142. Thus, although the authorities started investigations of their own motion, the District Police Department and the Complaints Monitoring Unit limited their investigation in a way which prejudiced the result of the investigations. The intervention of the officer of the Supervision Department on the day of the incident was of no avail since she concluded

that there were no grounds for suspecting the police officers of committing a crime while she had not made any attempt to interview officer K., one of the key eye-witnesses. Further, she did not order a reconstruction of the incident, or attempt to secure other important pieces of evidence such as separate statements of other eye-witnesses or forensic evidence. It results from the decision of the Supervision Department of 21 February 2003 that she based her conclusion that there were no grounds for suspecting the police officers of having committed a crime on the preliminary findings of the control and monitoring bodies. Thus, the Supervision Department started to investigate again only upon the first applicant's complaint.

143. Moreover, it appears that important items of evidence were secured only after the applicants filed a criminal complaint with the Supervision Department and especially after they successfully complained before the district prosecutor and the regional prosecutor. Indeed, both prosecutors noted multiple procedural shortcomings in the investigation led by the Supervision Department which point to the fact that the initial investigation had been very weak. In fact, the regional prosecutor described the initial investigation led by the Supervision Department as "entirely insufficient". It appears from the case-file that the inspector of the Supervision Department terminated the investigation without questioning officer K. on the ground that he was being provided with medical care following V.P.'s assault. In fact, on the day of the incident, officer K. provided his description of the facts merely by way of an official record drawn up by himself, and was questioned for the first time on 25 June 2002, one week after the incident. In the decision of 15 August 2002, subsequently quashed, the Supervision Department based its conclusions almost only on the reports submitted and the inquiry made by the other above-mentioned police units. This decision to discontinue the proceedings was taken before important evidence, such as the forensic biomechanics report, was obtained.

144. The Court observes that neither of the abovementioned pieces of evidence was conclusive. Notably, both the preliminary autopsy report of 21 June 2002 and the final report of 16 July 2002 stated that no findings unequivocally suggested third party active intervention in the death. On 24 October 2002, the doctors who carried out the autopsy and established the autopsy report explained that a third party intervention could not be unequivocally determined due to ample and interrelated injuries.

145. Although the cause of V.P.'s death had not been sufficiently elucidated, a reconstruction of the incident and a forensic expert report on the physical mechanism of breaking windows and the subsequent fall were first requested by the district prosecutor on 4 September 2002, almost two months after the incident. However, no reconstruction of the incident has ever been organized. The same applies to V.P.'s clothes which were neither secured nor analyzed. The reasons why no reconstruction should be organized were explained by the Supervision Department as late as on

20 February 2003, seven months after the incident. Indeed, the Supervision Department relied on the opinion of the expert who had established the biomechanics forensic expert report and who esteemed that no reconstruction was necessary. However, this report was established as on 6 February 2003, almost seven months after the incident, and contained several significant errors as became apparent before the District Prosecutor on 12 November 2003. As regards V.P.'s clothes, the reasons for which they had not been secured and analyzed were explained only on 9 October 2003. Thus important pieces of evidence were never secured or only upon the applicants' criminal complaints, long time after the incident.

146. The Court is of the view that in a case like the instant one, where the true circumstances of a death are known only by a limited number of police officers, a separate questioning of the officers and a reconstruction of the incident promptly after the event may well be an essential element in determining the course of the fatal events (see mutatis mutandis *Ramsahai and Others v. the Netherlands* [GC], cited above, §§ 329, 330). Indeed, where other means of evidence remain inconclusive, it is of particular importance to subject the testimonies of eye-witnesses who might have been actively involved in the incident to the most careful scrutiny and to test their credibility. A biomechanics forensic report may replace a reconstruction only to a limited extent. Thus it cannot be said that the domestic authorities took promptly any and all reasonable steps available to them to secure evidence which would have enabled them to bring light on the circumstances of the suspect death.

147. Apart from these procedural shortcomings, the Court is not satisfied that adequate steps were taken by the investigating authorities to establish the exact reasons which led the police officers to escort V.P. downstairs and to refuse him to close the door of the toilet located on the ground-floor. Nor does it appear from the case-file that the issue of credibility of the allegation that the officer's shoulder injury resulted from the 58kg V.P. striking him in his left shoulder with his palm has ever been analyzed. Similarly, discrepancies between the officers K. and P., and officer K.'s first and subsequent, testimonies as to whether the officer K. held the applicant by his right or left wrist did not attract the investigating authorities' attention.

148. In the light of the above, the Court is of the view that the investigating authorities relied almost automatically on the records and statements of the police officers from the station where the incident occurred without conducting, of their own motion, further relevant inquiries. Moreover, no attempt was ever made to avoid collusion between police officers drawing up such records, and the statements of many eye-witness were secured only long after the incident.

149. Further, notwithstanding the fact that its impact on the course of the investigation seems to have been limited and that the applicants ultimately succeeded to be associated in the investigation, the Court is not satisfied that

the applicants were repeatedly and for no valid reason denied access to the case-file.

150. Consequently, it cannot be said that the requirements of adequacy, diligence and promptness were observed by investigation at the national level. There has therefore been a violation of Article 2 in its procedural limb.

(ii) Independence and impartiality of the investigation

151. The Court observes that four different entities were involved in the investigation: the District Police Department, the Technical Criminal Unit, the Complaints and Monitoring Unit, and the Supervision Department.

152. The Court notes that while these four entities formed four distinct bodies, hierarchically independent of each other, the District Police Department, the Technical Criminal Unit, and the Complaints and Monitoring Unit formed all an integral part of the Brno Municipal Police Directorate. They were all subordinated to the Director of the Municipal Directorate.

153. The Court further notes that pursuant to the Czech Police Act, the Police was headed by the Police President accounting to the Minister of the Interior. Pursuant to the rules applicable at the relevant time, criminal offences committed by police officers were to be examined by the Supervision Department, which was an internal unit of the Ministry directly managed by the Minister.

154. It results from the above that like the Police, all entities which conducted the investigation into V.P.'s death, depended directly or indirectly on the Minister of the Interior. The Court takes into account the observations of the CPT and the HRC and notes the subsequent reform of the Czech Police Act which strengthened the independence of the Supervision Department (now called the Police Inspectorate) *vis à vis* the Minister of the Interior. However, as regards the provisions applicable at the relevant time, and notwithstanding the fact that the case-file does not contain any indications of actual collusion or bias on the part of the investigating entities, the Court is of the view that neither of the investigating entities presented an appearance of independence or sufficient guarantees against pressure of hierarchical superiors.

155. The Court further observes that in the case at hand the District Department and its director played a crucial role in the investigations carried out into the suspect death. Indeed, essential parts of the investigation were carried out by the very unit which had been implicated in the incident and other units operating in the same district.

156. Furthermore, it was the Head of the District Police Department who requested a medical report from the hospital to which V.P. had been brought, an autopsy report, and a toxicological examination.

157. Notwithstanding the Government's assertion that the investigation by the District Police Department and the Complaints and Monitoring Unit were marginal, the Supervision Department in its decisions relied heavily on the findings made by the District Department. Indeed, the Supervision Department carried out hardly any separate investigation at all.

158. As the Court has already explained, the initial investigation led by the officer of the Supervision Department dispatched at the scene of the incident was very limited. It is clearly stated in the decision of the Supervision Department of 21 February 2003 that the officer based its conclusion that there were no suspicions of a commission of a crime by police officers on the preliminary findings of the complaints and monitoring bodies. The investigation was then continued by the Complaints and Monitoring Unit and the District Police Department until the first applicant filed a criminal complaint.

159. In the decision of 15 August 2002, subsequently quashed, the Supervision Department based its conclusions almost exclusively on the evidence secured by the other above-mentioned police units. Although the subsequent decisions relied also on further evidence such as the biomechanics forensic expert report, they also heavily relied on evidence secured during the initial phases of investigation by the other above-mentioned police units.

160. It ensues that the investigation into V.P.'s death did not comply with the Convention requirement of independence either institutionally or practically. There has therefore been a violation of Article 2 in its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

161. Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

162. The parties repeated their arguments in respect of the complaints under the procedural limb of Article 2 of the Convention.

163. In view of its findings above, the Court considers that the issue is linked with the complaints under Article 2 of the Convention and is admissible. However, no separate issue arises under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

164. 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

165. The applicants did not raise any claim for pecuniary damage.

166. As for non-pecuniary damage the applicants claimed EUR 20,000 (equal to CZK 504,400) for the loss of life of their relative and for the ineffective investigation that followed. They considered that sum to be close to the bottom of the range within which the Court grants awards in similar cases.

167. The Government contended that the amount of EUR 10,000 for each applicant was acceptable for a substantive violation of Article 2 of the Convention. However, should the Court conclude that there was only a violation of the procedural limb, the Court should grant to each applicant up to EUR 4,000 (CZK 100,880).

168. The Court has found a violation of the substantive limb of Article 2, and also that the subsequent investigation was neither adequate nor independent. The applicants must have suffered gravely as a result of the serious violations found in the present case of the most fundamental human rights enshrined in the Convention. The Court notes that the case concerns the death of the first applicant's partner, the father of her child, and the second applicant's son. Having regard to its judgments in similar cases (*Mižigárová v. Slovakia*, cited above, § 125-130), the Court grants, ruling on an equitable basis, EUR 10,000 to each of the applicants in respect of non-pecuniary damage.

B. Costs and expenses

169. The applicants claimed costs of legal representation amounting to EUR 2,000 (CZK 50,440). They asserted that the legal representation in each case consisted of thirty-four chargeable hours needed for the preparation of the application and fourteen hours necessary to reply to the Government's observations. They relied on the relevant law, namely on the Attorney's Tariff, under which their attorney charged EUR 39.65 (CZK 1,000) per hour.

170. The Government asserted that it appeared that the applicants had not provided any documents proving the payment of those costs at the

amount sought. They contended that the Court should reject the claim as insufficiently grounded.

171. The Court reiterates that an applicant may recover his costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (*Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V). Having regard to the material before it, particularly the complexity of the case, the number of charged hours, the calculation of the legal fees on the basis of the tariff guaranteed by law, and the aforementioned criteria, the Court finds it proportionate to award EUR 2,000 to the applicants jointly for their costs and expenses under this head, plus any tax that may be chargeable to the applicants on this amount.

C. Default interest

172. The Court considers it appropriate to base the default interest on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 on account of the authorities failure to safeguard the right to life of V.P.;

3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities failure to conduct an effective investigation into the circumstances surrounding V.P.'s death;

4. *Holds* that no separate issue arises under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
      (i) EUR 10,000 (ten thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage and
      (ii) EUR 2,000 (two thousand euros) to the applicants jointly in respect of costs and expenses, plus any tax that may be chargeable to the applicants on this amount,

to be converted into Czech korunas at the rate set by the Czech National Bank and applicable at the date of settlement;

(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 16 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Dean Spielmann
Registrar	President