



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

FOURTH SECTION

CASE OF FRANČIŠKA ŠTEFANČIČ v. SLOVENIA

(Application no. 58349/09)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 9 October 2018*

STRASBOURG

24 October 2017

FINAL

24/01/2018

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

In the case of Frančiška Štefančič v. Slovenia,

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

Ganna Yudkivska, *President*,

Paulo Pinto de Albuquerque,

Egidijus Kūris,

Iulia Motoc,

Carlo Ranzoni,

Marko Bošnjak,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 3 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 58349/09) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Ms Frančiška Štefančič (“the applicant”), on 23 October 2009.

2. The applicant was represented by Ms V. Mali Lemut, a lawyer practising in Ajdovščina. The Slovenian Government (“the Government”) were represented by their Agent, Mrs V. Klemenc, State Attorney.

3. The applicant alleged, in particular, that her son’s death had occurred as a result of the police’s use of excessive force, and that the ensuing preliminary inquiry had only attempted to conceal the truth and relieve the police officers involved of any liability.

4. On 22 November 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1933 and lives in Ajdovščina. She is the mother of Branko Štefančič, born in 1961. Mr Štefančič suffered from paranoid schizophrenia and depression and had been admitted to the Idrija Psychiatric Hospital on several occasions. In 2007 he lodged an extensive

criminal complaint, alleging that he had suffered various injustices at the hands of his work colleagues, acquaintances, the police and other organisations. Upon examining the complaint, the Nova Gorica State Prosecutor's Office decided not to pursue it. In June 2008 Mr Štefančič started to telephone the Prosecutor's Office and go there in person on an almost daily basis. He made various delusional accusations regarding murders that had gone unpunished "since the age of Christ".

A. Circumstances of Mr Štefančič's death

6. On 19 June 2008 Mr Štefančič appeared at the Nova Gorica State Prosecutor's Office, and was told by the receptionist that the office was closed that day. He replied that he would come back the next day, armed, and that nobody would be able to hide from him. Having been told about Mr Štefančič's threats, the Head of the Nova Gorica State Prosecutor's Office, B.O., telephoned the Idrija Psychiatric Hospital and told the staff what had happened. She was told that Mr Štefančič was mentally ill and had already been treated in the hospital several times. She was further advised to contact the Ajdovščina Community Health Centre and suggest that a referral be made for Mr Štefančič's involuntary confinement. In addition, B.O. was warned by Mr Štefančič's consulting psychiatrist that over the past few weeks his patient had threatened to kill several people, including his doctor, mother and sisters. In view of this, the psychiatrist had assessed that Mr Štefančič was dangerous and in need of treatment, and added that he should be taken seriously due to his physical strength. B.O. also called the Nova Gorica police and told them about Mr Štefančič's visits to the Prosecutor's Office.

7. At 5.30 p.m. a doctor from the health centre telephoned the Ajdovščina police station to request police assistance with Mr Štefančič's involuntary confinement on the grounds that he could become aggressive. She later took the request for his police-assisted transport and the order for his confinement to the police station in person.

8. At 5.55 p.m. the duty officer submitted the request to the commander of the police station, who granted it immediately.

9. At 6 p.m. officer J.T. from the Ajdovščina police station set off to the applicant's house and found her son, who was living there, at home. He informed officers at the Nova Gorica police communications centre, and they informed the health centre staff that they could proceed with the involuntary confinement. Police officer J.T. remained at the scene until health centre medical staff consisting of B.A., the doctor on duty, and S.M. and I.P., medical technicians, arrived. Also sent to the scene were D.K., a second officer from the Ajdovščina police station, police officer dog handler J.K., and two traffic officers of the Nova Gorica traffic police.

10. According to the police report of 31 July 2008 based on the statements made by the police officers and medical staff, upon their arrival at around 8 p.m. the police officers and medical technicians first talked to the applicant, who was sitting on a bench at the back of her house. They asked her whether her son was in the house and whether he was armed. She replied that her son was indeed in the house and was on the telephone. She further explained that she was not aware of him possessing any firearms. The medical team informed the applicant why they were there and then entered the house, while the police officers remained at the front door.

11. Dr B.A. informed Mr Štefančič that they were going to take him to a psychiatric hospital, but he refused to go with them. The medical team attempted to persuade him, but he became agitated and verbally aggressive. The police officers warned him that he would be taken to the hospital by force if he refused to go of his own free will.

12. The medical technicians attempted to take hold of Mr Štefančič's arms, but he pushed them off and started to scream. Dr B.A. then instructed the police officers to handcuff him, but when J.T. and D.K. attempted to restrain him, he resisted forcefully and pushed them off. In response, the police officers used physical force in order to push him to the ground, and J.K. ordered a muzzled dog on a leash to jump at him. As Mr Štefančič did not seem to react to the dog jumping at his chest, J.K. took it back to the police car. J.T. and D.K. meanwhile continued to use physical force and managed to wrestle Mr Štefančič to the ground onto his back.

13. The two police officers were then joined by dog handler J.K., who used the "rear chokehold" technique on Mr Štefančič. Together they managed to put him into the recovery position and medical technician S.M. injected Haldol (an antipsychotic drug with tranquilising effects) into his buttocks. As Mr Štefančič continued to resist, they could not administer the full dose of medication to him. The police officers then turned him onto his stomach, and J.T. handcuffed his hands behind his back. Medical technician I.P. injected him with Akineton, medication used on psychiatric patients to reduce the tremors caused by antipsychotic drugs.

14. Mr Štefančič calmed down as soon as he received the second dose of medication. A few moments later, the police officers and medical technicians noticed that there was a brown palm-sized pool of liquid under his head. They alerted Dr B.A., who established that Mr Štefančič had vomited and assessed that it could have been attributed to exertion. However, when one of the medical technicians checked Mr Štefančič again, he detected an irregular heartbeat, and again called out to the doctor. The medical team began to resuscitate him at 8.10 p.m. The police officers attempted to unlock his handcuffs, but only managed to free one of his hands, before the key broke.

15. The applicant, who was waiting outside during the intervention, was heading to the front of the house when she heard loud noises and a dog

barking. When she approached the front door, she saw Dr B.A. massaging her son's chest. She asked the police officers what was going on, to which one of them replied that they were resuscitating her son. Another ambulance arrived at the scene at 8.42 p.m., and an electrocardiogram was performed on Mr Štefančič, but to no avail. At 8.45 p.m. Dr B.A. pronounced him dead. He attributed the death to a heart attack or stroke.

B. Preliminary inquiry into the death of Mr Štefančič

16. Immediately after Mr Štefančič's death, the officers from the Ajdovščina police station notified the Nova Gorica police communications centre of the incident and secured the area. The duty State prosecutor and the duty investigating judge of the Nova Gorica District Court were also notified of the death. The investigating judge attended the scene and ordered a forensic examination of the body. The medical file and equipment used in his resuscitation were also seized.

17. On 20 June 2008 police officers D.K., J.T. and J.K. made records of the methods of restraint they had used on Mr Štefančič (physical force, handcuffs and the police dog), which were confirmed by their superior officers to have been lawful.

1. Statements of the applicant and the intervention team

18. In the days after the incident, an officer of the Nova Gorica police took statements from the police officers and medical staff involved in the incident, as well as from the applicant.

19. The applicant stated that on the evening of 19 June 2008 several police cars and an ambulance drove to the house and an officer asked her whether her son was keeping firearms. She replied that he was not, as far as she was aware. The applicant remained outside during the intervention and could not remember exactly how the events unfolded. She heard screaming, but was afraid to go inside. Sometime later she looked into the hallway and saw her son lying on the floor, surrounded by Dr B.A. and the medical technicians. She asked them what was going on, and they replied that they were resuscitating her son. She noticed that he had vomited.

20. D.K. and J.T., police officers, stated that upon entering the house, Mr Štefančič, who appeared to be talking on the telephone, told the medical technicians that he would not go with them, and D.K. and J.T. then warned him that they would use force if necessary. Dr B.A. also tried to convince him to go with them without success and he then instructed the officers to handcuff him. D.K. and J.T. took him by the arms to lead him to the ambulance but he resisted strongly. Dog handler J.K. attempted to calm him down by ordering the police dog to jump at him but Mr Štefančič did not react to the dog's attack. The officers struggled to wrestle him to the ground and eventually succeeded in pushing him to the ground on his back; they

then turned him onto his stomach, but he continued to resist forcefully. Dog handler J.K. then used the so-called “rear chokehold” technique on him, and together they managed to turn him onto his side. One of the medical technicians then administered the first dose of medication to him, whereupon he was again turned onto his stomach and handcuffed with his hands behind his back. The second dose of medication was then administered to him and he calmed down.

21. After Mr Štefančič received the second dose of medication, D.K. noticed a brown palm-sized pool of liquid under his head. Somebody mentioned that it was vomit and D.K. then asked if that was right. Dr B.A. was on the telephone arranging for Mr Štefančič’s transport to the psychiatric hospital but upon hearing D.K.’s question checked Mr Štefančič and said that the vomiting was due to exertion. J.T. confirmed that Dr B.A. initially said that Mr Štefančič was okay and vomited from exertion but added that the doctor did not check Mr Štefančič’s pupils or pulse. Then one of the medical technicians looked at Mr Štefančič again and checked his pulse. He called out to the doctor, saying that something was not right as he was breathing irregularly. Officer J.T. then attempted to unlock the handcuffs, and managed to get the one on his right hand off before the key broke. The medical staff started to resuscitate him. The whole incident, from the beginning of the police intervention until the beginning of the resuscitation procedure, only lasted a few minutes, five at the most.

22. J.K., a police dog handler, confirmed that he had first joined the intervention by ordering the police dog, which was muzzled, to jump at Mr Štefančič, who, however, made no attempt to shake the dog off or to withdraw from the attack. Therefore J.K. took the dog back to his car and then returned to the house, where officers D.K. and J.T. were not able to turn Mr Štefančič onto his stomach. J.K. helped them by holding him in a rear chokehold and together they managed to turn him onto his stomach and handcuff him. As this was going on, one of the medical technicians injected medication into his buttocks. J.K. also confirmed his colleagues’ accounts as to how the resuscitation of Mr Štefančič proceeded after it was discovered that he had vomited.

23. I.P., a medical technician, stated that on his arrival, he first asked the applicant a few questions and then entered her house with his colleague S.M. According to both medical technicians, Mr Štefančič pretended to be speaking on the telephone. I.P. explained to him that he was being taken to the psychiatric hospital to see a psychiatrist. Mr Štefančič refused to go and Dr B.A. ordered him to be handcuffed. As regards the events that ensued concerning the use of force by the police officers, I.P.’s statement matched the statements of police officers D.K., J.T. and J.K. (see paragraphs 20-22 above), while S.M. did not pay much attention to the police operation, as he was preparing a syringe of Haldol.

24. As soon as the police officers managed to wrestle Mr Štefančič to the ground and turn him onto his side, S.M. injected him with Haldol. S.M. added that because Mr Štefančič forcefully resisted, he could not administer the full dose of medication to him. He then left the house. While the police officers turned Mr Štefančič onto his stomach, I.P. administered the second injection into his buttocks and he calmed down. I.P. then noticed that he was not breathing or was struggling to breathe. As far as he could remember, he called out that Mr Štefančič was not breathing. Dr B.A. approached him and saw him take a breath, concluding that he was breathing. S.M., standing outside, stated that he had not seen when and how Mr Štefančič had started to vomit, but heard the exchange between his colleague and Dr B.A. The doctor then left the house and started to arrange Mr Štefančič's transport to the hospital. I.P. checked Mr Štefančič again and exclaimed that he was not breathing. Together with the police officers they turned Mr Štefančič onto his back and I.P. noticed that he was cyanotic. He also noticed traces of vomit on Mr Štefančič's face, so he first protected his airways. The police officers had by then removed the handcuffs from him. His colleague S.M., who confirmed that Mr Štefančič looked grey and had traces of vomit on his face, fetched the resuscitation kit from the ambulance. Together with Dr B.A. they had intubated him; however, even at the beginning of resuscitation, his pupils were dilated, which was also a bad sign. I.P. also stated that the whole incident, from the use of physical force on Mr Štefančič until the beginning of the resuscitation procedure, only lasted a few minutes, five at the most. I.P.'s account was confirmed in substance by traffic officer M.D., who together with his colleague A.K. guarded the back entrance to the applicant's house and thus only heard part of the incident.

25. Medical technician S.M. expressed the view that the police officers might have used excessive force in dealing with Mr Štefančič. He added that though Mr Štefančič had refused to go to the psychiatric hospital, he had not been particularly aggressive, and above all, had not physically attacked anyone.

26. Dr B.A., a general practitioner, stated that Mr Štefančič's psychiatrist expected that he might behave aggressively so he received instructions to give him an injection of two ampoules of Haldol and one ampoule of Akineton. Although in the beginning of the intervention Mr Štefančič appeared agitated, but not aggressive, he started to resist forcefully when the police officers attempted to handcuff him.

27. According to Dr B.A., after Mr Štefančič was handcuffed and calmed down, he came out of the applicant's house and started to arrange his transport. One of the police officers then called out to him that something was not right, that Mr Štefančič had vomited and was having trouble breathing. He was immediately turned onto his back. Dr B.A. noticed that Mr Štefančič had turned blue in the face and that he was

wheezing. The medical team then started the resuscitation procedure, massaging his heart and intubating him, as well as administering 1 mg of adrenaline and 3 mg of atropine to him. However, as they did not have an electrocardiogram monitor or a defibrillator, another ambulance was called. By the time the second ambulance arrived at 8.42 p.m., they could only establish that Mr Štefančič had died.

2. Police report

28. On 21 July 2008 a criminal investigations officer of the Nova Gorica police obtained an oral preliminary report from the forensic pathologist who had performed the autopsy of Mr Štefančič. According to him, the deceased had most likely died of asphyxiation from inhaling gastric contents (choking on his own vomit). With regard to the question of potential liability for Mr Štefančič's death, he took the view that the asphyxiation occurred during the police intervention, and that the presence of a doctor could not have altered the course of events. He added that the doctor could only be accused of negligence if the death had occurred during the resuscitation, which in his opinion had not been the case.

29. On 31 July 2008 the head of the Nova Gorica police criminal investigations unit submitted a report of the incident to the Nova Gorica State Prosecutor's Office. Based on a statement provided by the forensic pathologist who conducted the forensic examination, the report stated asphyxiation from inhaling gastric contents as the cause of Mr Štefančič's death. As to the events leading to the death, the police report summarised the statements given by the intervention team and stated that Mr Štefančič had resisted the police officers who had tried to take him to the psychiatric hospital, whereupon physical force had been used on him. After Mr Štefančič had been restrained and had calmed down, the police officers and medical technicians had noticed that he had vomited. After Dr B.A. had initially assessed that this could be attributed to exertion, he had been found to have an irregular heartbeat and the medical team had tried to resuscitate him, but to no avail. As regards the question of potential liability for Mr Štefančič's death, the police report followed the forensic pathologist's opinion that he had died during the police intervention and that his death could not have been prevented by any medical assistance. The report concluded by saying that no facts had been established giving rise to a suspicion that a criminal offence had been committed in connection with the death of Mr Štefančič which warranted criminal prosecution.

3. Forensic report

30. On 10 September 2008 the completed forensic report was submitted to the investigating judge of the District Court, confirming asphyxiation from inhaling gastric contents as the immediate cause of Mr Štefančič's

death. In addition to the trauma consistent with the cause of death, the examination revealed a number of blunt injuries to various parts of his body.

31. These included contusions on the outer edge of the shoulder blade, the left of the back and the back of the right thigh, swelling on the right of the hairline and the squamous part of the temporal bone, contusions on the inside of the upper right arm and left forearm and on the front of the left thigh. Several haematomas were recorded around the left shoulder blade, on the outer edge of the right shoulder blade, on the right of the thorax and on the scalp, as well as a pulmonary oedema, an oblique fracture of the fifth rib, bruising around the lumbar spine, and brain swelling.

32. According to the report, these injuries had either been caused by Mr Štefančič's body being struck by an object, by part of his body being pressed against something, by him falling, or by his body being pressed between two hard surfaces. As regards the injuries to the back of his body, hairline and front left thigh, the forensic pathologist concluded that they had most likely occurred by him falling or falling after being struck, and that the bruises were caused by the body being pulled to the ground.

33. The toxicology report revealed a low concentration of haloperidol (an antipsychotic drug with strong calming effects) in Mr Štefančič's blood. The forensic report concluded that the substance had been consumed either as a prescription medicine or administered during the intervention in order to calm him down, but could not be linked to his death or identified as the cause of his vomiting.

34. No particularities or disease-related changes had been found in Mr Štefančič's system which could have directly contributed to his death.

35. With regard to enquiries made by the investigating judge as to whether Mr Štefančič's death could have been prevented by prompt and adequate medical assistance, the forensic report stated:

“Disregarding the particular circumstances surrounding the incident, this question could be answered in the affirmative; however, one cannot neglect the exceptional circumstances in which the incident occurred.

Prompt and adequate medical assistance could have saved the life of [Mr Štefančič], even in the event that no ambulance with resuscitation equipment was immediately available.

It is likely that [Mr Štefančič] was thrown or pushed to the ground where, prior to being handcuffed, his body was pushed down by applying body weight or some other pressure. [Being struck or pushed in] the stomach most likely induced the vomiting. In so far as the medical staff or the officers assisting them in the involuntary confinement had noticed in due course that [Mr Štefančič] began to vomit, they could have prevented him from inhaling gastric contents either by lifting his body into a vertical position or by turning him onto his side and mechanically clearing his oral cavity by using their fingers or an aspirator (if an aspirator was at the disposal of the medical staff). However, it was not possible to apply any of these measures to an aggressive patient resisting hospitalisation; it is only possible to apply such measures after the patient has calmed down or lost consciousness as a result of disruption in the exchange of gases following the aspiration of gastric contents. Having regard to the

agitation and aggressiveness of the patient, as well as the circumstances of the incident, such measures almost certainly could not have been applied.

The deceased only lost consciousness when his breathing was disrupted by inhaling massive amounts of gastric contents. Only then was it possible to apply more aggressive medical intervention (mechanical clearing of the oral cavity, suction of gastric contents from the oral cavity and respiratory tract, removal of potentially larger foreign objects and insertion of a tube with a balloon to prevent continuing aspiration of gastric contents, ventilation of the patient), which could not be performed on a conscious person, in particular on an aggressive person, due to the unpleasant feelings such an intervention induces. In the present case, the aspiration of gastric contents was particularly massive and aggressive, which is indicated by the pieces of food found by the histological analysis to be present even in the alveoli, the final branching of the respiratory system.

In the present case it was not possible, once the deceased lost consciousness, to apply those methods and to suck the gastric contents from the respiratory passages and alveoli; considering the quantity and force of the aspiration of gastric contents, medical assistance probably would not have saved the life of [Mr Štefančič].”

4. Conclusion of the preliminary inquiry

36. On 18 September 2008 the investigating judge of the Nova Gorica District Court sent the statements of the persons involved in the incident, a record of the examination of the scene, the order for a forensic examination of Mr Štefančič’s body and the forensic report to the State Prosecutor’s Office.

37. On 23 September 2008 the Head of the Nova Gorica State Prosecutor’s Office, B.O., informed the District Court that the conditions had not been met for the institution of criminal proceedings, and that the case file had been archived.

C. Criminal complaint against the police officers involved in the incident

38. On 20 January 2009 the applicant, through her representative, lodged a criminal complaint against police officers J.T., D.K. and J.K., whereby she stated that her son had been strangled and had died as a result of an unnecessary and unprofessional police intervention. The applicant also stated that the forensic report was misleading and there were doubts as to its accuracy. In addition, an anonymous criminal complaint was lodged against E.G., the head of the Nova Gorica uniformed police unit. The complainant alleged that E.G. had abused his position by giving a statement at a press conference in which he had covered up the actual cause of Mr Štefančič’s death in order to prevent criminal prosecution of Dr B.A.

39. After having reviewed the Nova Gorica State Prosecutor’s Office’s case file, on 2 June 2009 a State prosecutor from the Group of State Prosecutors for Special Matters (*Skupina državnih tožilcev za posebne zadeve* – hereinafter “the Special Matters Group”), which had exclusive

jurisdiction over the prosecution of criminal offences committed by police officers, rejected both criminal complaints on the basis of the police and forensic reports and the media reports from the press conference on Mr Štefančič's death.

40. The decision to reject the criminal complaints summarised the information included in the police and forensic reports, as well as the statements given to the police by Dr B.A. and medical technicians S.M. and I.P.

41. The State prosecutor, relying on the forensic report, concluded that Mr Štefančič's death could have been prevented if someone had been noticed in time that he had started to vomit. However, in the case in question Mr Štefančič had been aggressive and resisted hospitalisation, and no assistance could be provided until he had calmed down. Therefore, in the State prosecutor's opinion there was no reasonable suspicion that the actions of J.T., D.K. and J.K., the three police officers who had restrained Mr Štefančič, constituted a criminal offence. Moreover, as regards the anonymous criminal complaint, the State prosecutor established that, according to the reports in the media, the head of the Nova Gorica uniformed police unit had stated neither that Mr Štefančič had died as a result of being administered sedatives, nor that the medical team had immediately begun resuscitation after his condition had deteriorated. Therefore, no reasonable suspicion existed that E.G. had committed a criminal offence liable to prosecution *ex officio*.

42. No appeal was available to the applicant against the decision to reject her criminal complaint. However, she could take over the conduct of criminal proceedings as a "subsidiary prosecutor".

II. RELEVANT DOMESTIC LAW

A. Health Services Act (as in force at the material time)

43. Under section 49 of the Health Services Act, a person with a mental illness who poses a danger to his or her own life or the lives of others, or is causing grave harm to himself or herself or to others, can be referred and admitted for treatment to a psychiatric hospital without his or her consent. The physician making such a referral may request assistance from the competent authorities in case the patient's behaviour poses a direct risk to people's safety.

B. Police Act

44. Section 23 of the Police Act empowers the police to provide assistance to the State and other public authorities and organisations in the

performance of their tasks and duties in case they encounter, or expect to encounter, opposition or threats. As regards the use of methods of restraint, section 50 authorises officers to use a variety of instruments to exert control over individuals, such as mechanical restraints, gas sprays, physical force, batons, water cannons, police dogs, special motor vehicles and firearms. However, only instruments that would inflict the least amount of harm and injury on an individual may be used, while still enabling the officers to carry out their duties.

C. Criminal Procedure Act (as in force at the material time)

45. Under the provisions of the Criminal Procedure Act, public prosecution is mandatory where there is reasonable suspicion (*utemeljen sum*) that a criminal offence subject to prosecution has been committed. Public prosecutions are conducted by the Slovenian State Prosecutor's Office, an autonomous body within the justice system. In 2007 the Act was amended to cover the independent investigation of criminal offences allegedly committed by police officers and other officials vested with police powers.

46. To this end, the Special Matters Group was set up to deal with the prosecution of criminal offences allegedly committed by people vested with police powers, while the tasks of detection and investigation of these offences were conferred upon a specialist team of police officers attached to the Special Matters Group, which began the inquiry once the "grounds for suspicion" (*razlogi za sum*) were found to exist. If the circumstances of the incident in question were found not to give rise to any grounds for suspicion that a criminal offence had been committed by a police officer, the case was not referred to the specialist police team.

47. The relevant parts of section 158a of the Criminal Procedure Act, as in force at the material time, which concerns the powers of the police officers attached to the Special Matters Group, read as follows:

"(1) If there are grounds for suspicion that a criminal offence subject to automatic prosecution has been committed by an officer working for the police, or an official working for the internal affairs agencies or for a statutory body within the Ministry responsible for defence that has police powers in pre-trial proceedings, or an official seconded to a mission abroad, a team of police officers attached to the [Special Matters Group] (hereinafter ["Special Matters police officers"]) shall be vested with the police powers laid down in this Act.

(2) [Special Matters police officers] shall be bound to inform the competent State prosecutor from the [Special Matters Group] without delay of the grounds for suspicion that a criminal offence referred to in the preceding paragraph has been committed and to keep him informed about the planning and course of the pre-trial procedure.

(3) The State prosecutor referred to in the preceding paragraph shall direct and supervise the pre-trial procedure referred to in the preceding paragraphs and decide on

its course and termination. He shall have the right to inspect files, participate in the collection of evidence and directly carry out specific measures in the procedure. The assigned police officers shall be obliged to act as directed by the State prosecutor ...”

48. Anyone can lodge a criminal complaint against a known individual or persons unknown with the police or the State prosecutor. The preliminary proceedings are further initiated upon the police or the State prosecutor being informed by any means whatsoever of a situation that gives rise to grounds for suspicion, that is, less than reasonable suspicion, that an offence subject to automatic prosecution has been committed.

49. If a State prosecutor, or a State prosecutor of the Special Matters Group, dismisses the criminal complaint or drops the charges at any time during the proceedings, the aggrieved party has the right to take over the conduct of the proceedings as a “subsidiary prosecutor” (*subsidiarni tožilec*). A subsidiary prosecutor has, in principle, the same procedural rights as the State prosecutor, except those that are vested in the State prosecutor as an official authority.

D. State Prosecutors Act (as in force at the material time)

50. The relevant provisions of the State Prosecutors Act, as in force at the material time, which concern the powers of the Special Matters Group, read as follows:

Section 10

“The [Group of State Prosecutors for Special Matters] (hereinafter “the Group”) shall operate as a separate organisational unit under the auspices of the Supreme State Prosecutor’s Office of the Republic of Slovenia (hereinafter “the Supreme State Prosecutor’s Office”).

The Group shall have jurisdiction to deal with criminal offences pertaining to traditional and commercial organised crime, terrorism, corruption, and other criminal offences whose investigation and prosecution rely on special organisation and qualifications.

The Group shall have jurisdiction in the entire territory of the Republic of Slovenia.

A specialist team shall operate within the Group which shall have exclusive jurisdiction over the prosecution of criminal offences committed by officers working for the police or [officials working for] other areas of home affairs, the units of the Ministry of Defence vested by the law with police powers in pre-trial proceedings, and officials vested with police powers in pre-trial proceedings seconded to missions abroad. State prosecutors of the Group shall be vested with powers to prosecute these criminal offences and to provide guidance to the police as regards [their] detection and investigation. ...”

Section 10e

The tasks of detection and investigation of the criminal offences specified in section 10(4) of this Act shall be carried out by persons vested with police powers who shall exercise the role of [Special Matters police officers].

[Special Matters police officers] may, for the purposes of implementing the jurisdiction of the [Group] specified in section 10(4) of this Act, carry out all police powers and tasks as determined by the [Police Act] and by the [Criminal Procedure Act], and regulations adopted on the basis thereof.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

51. The applicant complained that the State had been responsible for her son's death in the course of an intervention intended to take him to a psychiatric hospital. She also complained that the investigation into the circumstances of his death had been carried out by the authorities merely as an attempt to conceal the truth and to avoid liability. The applicant relied on Articles 2 and 13 of the Convention. However, the Court considers that her complaints fall to be examined solely under Article 2 of the Convention. The relevant parts read as follows:

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

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

...”

A. Admissibility

52. The Government objected that the applicant had failed to exhaust the effective domestic remedies available to her, as she had not brought an action against the police officers and/or the State seeking damages for her son's death. In this connection, the Government claimed that an action for damages had already been established to constitute an effective remedy by the Court, citing the case of *Butolen v. Slovenia* (no. 41356/08, 26 April 2012). Secondly, they submitted that the applicant could have continued the criminal prosecution as a subsidiary prosecutor, adding that private prosecutions by injured parties could, as had been established by the Constitutional Court, effectively ensure protection of the right to life.

53. The applicant pointed out that the domestic authorities should have prosecuted the people responsible for her son's death of their own motion.

As regards the possibility of bringing an action for damages, she alleged that such proceedings would have taken many years, and that as she was already in her eighties, most probably would not live long enough to witness their conclusion.

54. In the case of *Volk v. Slovenia* (no. 62120/09, §§ 78-79, 13 December 2012), the Court examined the two remedies invoked by the Government in the context of the State's positive obligation under Article 2 to safeguard the lives of those within its jurisdiction. It found that neither a civil action for damages nor subsidiary prosecution appeared to be avenues capable of satisfying the requirement of an independent and impartial official investigation of an alleged breach of this positive obligation, which must be, *inter alia*, carried out promptly and of the authorities' own motion (*ibid.*, § 78). The Court considers that this conclusion applies equally to the present case, which involves similar complaints of a lack of effective investigation into a death allegedly attributable to the State, albeit in the context of alleged excessive use of force.

55. This finding cannot be changed by the fact that in the Government-cited case of *Butolen* (cited above), the applicant succeeded in obtaining compensation for the injuries he had sustained as a result of ill-treatment by the police. In this regard, the Court would point out that the award of damages in the above-mentioned case was by no means considered by the Court to have constituted a discharge of the State's obligation to provide a thorough and effective investigation of wilful ill-treatment in breach of Article 3 (*ibid.*, § 59). The Court sees no reasons to depart from its previous case-law, and therefore rejects this objection on the part of the Government.

56. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

57. The applicant alleged that her son's death had resulted from an unprofessional and aggressive intervention during which the police and medical staff had attempted to take him to a psychiatric hospital for involuntary treatment. According to the applicant, her son had been strangled in his own home on the pretext of being armed, however, no weapons had ever been found there. She also suspected that the large amount of tranquilisers could have contributed to her son's death. The applicant was convinced that her son's behaviour had not necessitated such an extreme approach on the part of the police officers, and that his mental illness was not so severe as to threaten his life or the lives of others. In her

view, there had been no reason for her son's involuntary hospitalisation. She stated that whenever he had experienced an episode of illness, he would voluntarily admit himself to the psychiatric hospital and no forcible measures had ever been necessary in this regard.

58. The applicant further claimed that the police officers had exceeded their powers and used force beyond what had been necessary and reasonable, especially since they had been dealing with a person in need of special care who ought to have been treated as such. In this regard she pointed out that she herself should have been included in the intervention, as she had been the only person capable of having a normal conversation with her son. She also complained that the police and medical staff should have assessed the situation more carefully and refrained from using excessive force. Furthermore, in the applicant's opinion, the medical staff and police had failed to take reasonable and necessary measures when her son had started to vomit in order to prevent his death; he had remained handcuffed because the key to the handcuffs had broken, and they had had no spare key to unlock them.

59. Lastly, the applicant claimed that the authorities had only carried out the preliminary inquiry relating to her son's death as an attempt to conceal the truth and to avoid being held liable for their actions. She was convinced that the State prosecutors had disregarded the breaches of police procedure and violations of the civilised methods of dealing with people in need of special care. Moreover, the applicant took the view that the question of potential liability for her son's death should have been decided by the competent courts.

60. The Government firstly asserted that it had been necessary to confine Mr Štefančič to the psychiatric hospital for treatment, as he had threatened the lives of a large number of people and had clearly expressed that intention on several occasions. At the critical time, his behaviour had been unpredictable, and his consulting psychiatrist had assessed that he was dangerous to the people around him. In this connection, the Government emphasised that the police officers and medical team had first attempted to persuade Mr Štefančič to go with the intervention team of his own free will; the officers had also expressly warned him that force would be used should he resist. Only afterwards had they used physical force through professional police techniques; however, its intensity had been appropriate and commensurate to the objective of the intervention, namely to take a person suffering from a mental illness to the psychiatric hospital. In the Government's opinion, the level of force used on Mr Štefančič had been absolutely necessary within the meaning of Article 2.

61. As regards the immediate cause and circumstances of Mr Štefančič's death, the Government affirmed that he had died of asphyxiation from inhaling gastric contents. They relied on the forensic report, claiming that his vomiting had been caused by him being struck or pushed in the abdomen

in the course of the intervention, when the police had tried to restrain him in order to take him to the psychiatric hospital. As he had resisted actively and strongly, it had not been possible to lift him up into a vertical position or to turn him onto his side in order to mechanically clean his respiratory tract. The inhalation of the gastric contents had been very quick and intense, and moreover, it had only been possible to provide him medical assistance once he had calmed down – which had only occurred once his breathing had been disrupted due to the aspiration of the gastric contents. According to the Government, at that time it had been too late to save his life.

62. In conclusion, the Government pointed out that the death of Mr Štefančič had resulted from a tragic combination of circumstances which could not have been avoided or prevented by the intervention team. Moreover, the Government alleged that no causal link could be established between Mr Štefančič's death and the force applied by the team. In any event, the causal link had either been broken by Mr Štefančič's resistance or due to *force majeure*, namely the extremely aggressive, quick and massive inhalation of gastric contents.

63. Lastly, with regard to their procedural obligation to investigate Mr Štefančič's death, the Government, pointing out that statements had been obtained from all persons involved in the incident and that the investigating judge had examined the scene and ordered an autopsy of Mr Štefančič's body and a forensic report, claimed that all circumstances relevant to the case had been established, and that the investigation had been carried out swiftly and efficiently. The Government took the view that the respondent State had fully complied with its procedural obligation under Article 2.

2. *The Court's assessment*

(a) **General principles**

64. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life "intentionally" or by the "use of force" disproportionate to the legitimate aims referred to in sub-paragraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

65. Any use of force, including force which may result, as an unintended outcome, in the deprivation of life, must be no more than "absolutely

necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 148, Series A no. 324). Furthermore, the responsibility of the State under Article 2 is not confined to cases in which there exists significant evidence that the use of force by State agents has, or could have, directly caused a person’s death. It may also be engaged where those agents, when conducting an operation, fail to take all feasible precautions in the choice of means and methods with a view to avoiding or at least minimising incidental loss of life (see, for example, *Ergi v. Turkey*, 28 July 1998, §§ 77-79, *Reports* 1998-IV, and *Saoud v. France*, no. 9375/02, §§ 88-90, 9 October 2007).

66. Furthermore, in the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (*McCann and Others*, cited above, § 150). Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability (see *Jasinskis v. Latvia*, no. 45744/08, § 59, 21 December 2010). The State is therefore under a positive obligation to take all reasonable measures to ensure that the health and well-being of persons in detention, police custody or under arrest, who thus find themselves dependent on the State authorities, are adequately secured. This includes promptly providing them with the medical assistance required by their condition in order to prevent a fatal outcome (see *Saoud*, cited above, § 98 and the references cited therein). Moreover, the authorities are under an obligation to account for the treatment of people in custody, who are in a vulnerable position. Consequently, where an individual is taken into police 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 (see, among many authorities, *Anguelova v. Bulgaria*, no. 38361/97, § 110, ECHR 2002-IV).

67. Moreover, the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 thereof to “secure to everyone within their jurisdiction the rights and freedoms in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by agents of the State, amongst others (see *McCann and Others*, cited above, § 161; and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I).

68. The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and determining whether the force used was or was not justified and, secondly, in case that unjustified or disproportionate force was used, of leading to the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. The investigation's conclusions must be based on a thorough, objective and impartial analysis of all the relevant elements and must apply a standard comparable to the "no more than absolutely necessary" standard required by Article 2 § 2 of the Convention. Any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 223, ECHR 2004-III, and *Przemyk v. Poland*, no. 22426/11, § 65, 17 September 2013).

69. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Avsar v Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 131, ECHR 2014). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of people within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

(b) Application of these principles in the present case

70. Turning to the circumstances of the present case, the Court notes that Mr Štefančič died in the course of an intervention initiated in order to take him to the psychiatric hospital by force. The parties disagreed, firstly, on the issue of whether the intervention was at all justified given Mr Štefančič's mental state. Moreover, their views differed as regards the question whether Mr Štefančič's death was a tragic accident, the result of excessive force used by the police officers or a result of the intervention team's failure to provide him timely medical assistance in order to prevent a fatal outcome (see paragraphs 57, 58 and 62 above).

71. In so far as the applicant claimed that the intervention should not have taken place at all as there had been no reasons for her son's involuntary hospitalisation, the Court notes that in the weeks prior to the

incident, Mr Štefančič made a number of death threats to his doctor and family members, as well as against the State Prosecutors. In view of his medical history of paranoid schizophrenia and the threats aimed at several persons, Mr Štefančič's consulting psychiatrist took the view that he posed danger to others (see paragraph 6 above).

72. The Court accepts that Mr Štefančič's threats and visits to the State Prosecutor's Office justly gave rise to concern for his mental health and the safety of the people he threatened, and thus cannot concur with the applicant that her son did not require hospitalisation. What needs to be ascertained in the present case is whether the actions and/or omissions of the police officers and medical staff that carried out the intervention engage the responsibility of the State under Article 2 for Mr Štefančič's ensuing death.

73. It is not disputed between the parties that force was used on Mr Štefančič with a view to bringing him to the psychiatric hospital. In this connection, the Court points out that Mr Štefančič could be deemed to be vulnerable because of his particular medical needs in view of his mental illness (see *Ilievska v. the former Yugoslav Republic of Macedonia*, no. 20136/11, § 61, 7 May 2015). This in itself called for special protection (see *Renolde v. France*, no. 5608/05, § 93, ECHR 2008). Moreover, his vulnerability was compounded by a defenceless situation in which he found himself during the intervention. Considering that the domestic authorities were aware of Mr Štefančič's condition, they were required to demonstrate special care in the choice of methods used to manage his behaviour and to take him to the psychiatric hospital (see, *mutatis mutandis*, *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, § 61, 7 February 2006).

74. In this connection, although the present case does not involve a death in custody, at the time of his death Mr Štefančič was under the control of the police officers and medical staff who were sent to the scene in order to perform an official task, namely bringing Mr Štefančič to the psychiatric hospital against his will. He died in circumstances of which only they were aware, since there were no other eyewitnesses present at the incident, the applicant having waited outside. This means that the circumstances of Mr Štefančič's death were within the exclusive knowledge of the authorities within the meaning of the case-law of the Court on Article 2 of the Convention, and only they had the means of establishing whether any of the persons involved in the incident were criminally liable for his death. The Court is mindful of the fact that the intervention in question was performed with the purpose of ensuring the security of others, taking into account the seriousness of threats Mr Štefančič made on different occasions. At the same time, the Court considers that in cases where force is used on persons with mental health issues, the Government must demonstrate that that force was necessary for the purpose of securing the health and well-being of the individual concerned (see, in the context of the use of restraints in a sobering-up centre, *Bureš v. the Czech Republic*, no. 37679/08, §§ 86-87,

18 October 2012). Likewise, the Government must provide a plausible explanation for any injury sustained in the course of those procedures, particularly any act or omission which resulted in the death of an individual.

(i) Necessity and proportionality of the force used on Mr Štefančič

75. The Court notes that the domestic authorities carried out a preliminary inquiry into the circumstances of Mr Štefančič's death, in which they examined scene of the incident, acquired a forensic report and took statements from the applicant and the members of the intervention team. Those statements were not, however, compared with the forensic report or with each other for consistency.

76. As regards the cause of death, the Court notes that the forensic report established that Mr Štefančič died as a result of asphyxiation caused by aspiration of gastric contents. Although the applicant alleged that her son had been strangled by the police officers, the Court has no reason to doubt the accuracy of the expert report as regards Mr Štefančič's immediate cause of death, a detailed explanation having been provided in that regard. As to the cause of his vomiting, the forensic pathologist concluded that it had most likely been induced by a blow or pressure to the stomach during the struggle to restrain him.

77. The forensic pathologist proceeded from the assumption that Mr Štefančič had started to vomit during that struggle, concluding that his active resistance had prevented the intervention team from turning him onto his side or lifting him up into a vertical position in order to clear his respiratory tract. Only once he had lost consciousness was it possible to provide him with medical help, but by then, the medical staff could not have done anything to prevent his death.

78. The forensic pathologist's interpretation of the events leading to Mr Štefančič's death was accepted by the State Prosecutor's Office and later by a State prosecutor from the Group of State Prosecutors for Special Matters. Upon examining the statements of the police officers and medical staff involved in the incident, they decided that in the particular circumstances of the case at issue it had not been possible to save Mr Štefančič's life, thus the incident did not give rise to criminal liability on the part of the persons involved (see paragraphs 37 and 41 above). The hypothesis that timely medical help could not be provided to Mr Štefančič due to his forceful resistance was also relied on by the Government in the proceedings before this Court. They further submitted that the level of force used on Mr Štefančič had been absolutely necessary considering the intensity of his resistance and that, in any event, no causal link could be established between his death and the force applied by the intervention team.

79. Assuming that the hypothesis advanced by the forensic pathologist was correct, it inevitably gives rise, firstly, to the question of causality, and,

in so far as an affirmative finding would be made in that regard, the question of whether the force applied to Mr Štefančič was justified in the circumstances of the case. However, the Court notes with concern that neither the question of whether there was a causal link between the force used against Mr Štefančič and his death nor the question of necessity and proportionality of that force have been addressed by the domestic authorities.

80. They did not examine the seriousness of Mr Štefančič's injuries sustained during his struggle with the police, including those which could have supported the hypothesis that the vomiting had been induced by blows or pressure to the stomach. Nor were the police officers questioned by independent authorities about the force they had used to subdue him and secure the handcuffs on him.

81. In this connection, it is worth noting that one of the medical technicians stated that the force used on Mr Štefančič might have been excessive, given that he had not been particularly aggressive and had not physically attacked anyone (see paragraph 25 above). Although agitated and resistant to the idea of hospitalisation, Mr Štefančič did not respond with aggression until force was used on him (see paragraphs 11-12 above).

82. In sum, the Court is of the opinion that the omissions in the investigation of Mr Štefančič's death do not allow for a conclusion whether the use of force was absolutely necessary and proportionate, which includes the question of whether it was adapted to the vulnerable state of Mr Štefančič (see paragraph 73 above), and whether the intervention was conducted so as to minimise the risk to Mr Štefančič's life.

(ii) Provision of medical assistance

83. Secondly, the Court is not satisfied that the course of events as explained by the forensic pathologist and relied on by the Government before the Court was satisfactorily corroborated by the statements of the intervention team. Not one police officer or medical professional involved in the incident mentioned that Mr Štefančič had already started to vomit or exhibited any signs of respiratory distress related to the inhalation of gastric contents during his confrontation with the police (see paragraphs 21-24 above).

84. More importantly, all members of the intervention team who were in the applicant's house during the incident, with the exception of Dr B.A. who made no comment on this issue, stated that Dr B.A. had initially attributed Mr Štefančič's vomiting to exertion and done nothing to clear his respiratory tract (see paragraphs 21, 22 and 24 above). According to the medical technician, I.P., who stated that after Mr Štefančič had calmed down he had noticed that his breathing was disrupted and had warned Dr B.A. about it, the doctor had concluded that Mr Štefančič was breathing,

and had gone outside the house to arrange for his transport to the psychiatric hospital.

85. In the Court's opinion, in the absence of a more detailed clarification, the accounts of the police officers and the medical technicians involved in the incident are difficult to reconcile with the conclusions of the forensic pathologist that (i) Mr Štefančič had started to vomit during the physical confrontation with the police, and (ii) he could not be helped due to his strong resistance. Considering that the forensic report proposed what the pathologist described as a "likely" course of events (see paragraph 35 above), his conclusions in this regard need to be regarded with some reservation. Further, in the light of the above statements of the intervention team it was necessary to establish whether Mr Štefančič's breathing problems could and should have been recognised sooner and appropriate measures taken in order to prevent his death.

86. In this connection, the Court reiterates its view expressed in the *Saoud* judgment, cited above, that persons under arrest and thus dependant on the State authorities must be promptly provided with the medical assistance required by their condition (see paragraph 66 above). It is true that the Court has repeatedly held that errors of judgment on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient are not sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations, under Article 2 of the Convention, to protect life (see *Byrzykowski v. Poland*, no. 11562/05, § 104, 27 June 2004, and the references cited therein). It is also true that, according to the statements of the police officers and medical staff, the whole incident from the police struggle with Mr Štefančič to his vomiting and the loss of consciousness and interruption of breathing lasted only a few minutes.

87. However, the question of reaction time of the medical staff was not examined by the domestic investigating authorities, nor was it assessed whether the delay in the provision of medical care, although perhaps not significant, might have contributed to Mr Štefančič's death in a manner constituting a breach of duty of care on the part of Dr B.A. or the entire medical team involved in the incident.

(iii) Conclusion

88. In the Court's opinion the documents provided by the Government do not give a clear picture of the incident; nevertheless, the domestic prosecution authorities readily accepted the hypothesis suggested by the forensic pathologist, neglecting to notice the omissions and contradictions in the case material or take any steps in order to settle them. The domestic preliminary inquiry was thus not capable of determining to a sufficient extent whether any of the persons involved in the incident might be held responsible for Mr Štefančič's death. Yet no judicial investigation was

conducted in the course of which additional explanations might be requested from the intervention team and the forensic pathologist in order to clarify the questions identified above. The Court therefore finds that the conclusions made by the investigating authorities were inadequate, leaving open a number of questions which should have been examined in order to ensure that the investigation was effective.

89. Reiterating that this task is a matter for the national authorities, as they are better placed to examine the facts of cases and react to relevant information gathered in the course of a criminal investigation (see *Dobriyeva and Others v. Russia*, no. 18407/10, § 75, 19 December 2013), the Court adds that there is still room for clarifying the circumstances of Mr Štefančič's death and ascertaining the possible accountability of the persons involved in the tragic incident. As it stands, the Court is unable to rely on the conclusions of the domestic proceedings.

90. In view of the above, the Court concludes that there has been a violation of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant claimed 150,000 euros (EUR), without specifying whether this amount was for pecuniary or non-pecuniary damage. She alleged that she had experienced terrible pain and suffering because of the way she had lost her son. Moreover, he had taken care of her and helped her financially, so his death had rendered her helpless and entirely dependent on her small pension.

93. The Government disputed the applicant's claim, taking the view that it was unfounded or at least greatly exaggerated. Moreover, in so far as the applicant claimed that her son's death had deprived her of financial support, the Government took the view that her claim for pecuniary damage was not appropriately formulated or supported by evidence.

94. The Court observes that, in so far as the applicant claimed compensation for pecuniary damage due to the loss of financial support, she failed to properly substantiate her claim, which must therefore be rejected. However, the Court considers that the applicant must have suffered great pain and distress on account of her son's tragic death and the uncertain circumstances in which it occurred, not having benefited from an effective

investigation of her complaints in this regard. Making its assessment on an equitable basis, the Court awards the applicant EUR 36,000 in respect of non-pecuniary damage.

B. Costs and expenses

95. The applicant did not claim any costs and expenses.

C. Default interest

96. The Court considers it appropriate that the default interest rate should be based 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;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 36,000 (thirty six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Maridalena Tsirli
Registrar

Ganna Yudkivska
President