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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3197/2018*, **

Communication submitted by:	E.M. (represented by counsel, Ann Campbell and Aleksandra Ivankovic, Forum for Human Rights and Mental Disability Advocacy Centre)
Alleged victims:	The author and her son (deceased)
State party:	Czechia
Date of communication:	19 July 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 22 June 2018 (not issued in document form)
Date of adoption of decision:	28 March 2024
Subject matter:	Death of a person with a psychosocial disability following a police intervention
Procedural issues:	Exhaustion of available domestic remedies; lack of sufficient substantiation
Substantive issues:	Right to life; freedom from torture and cruel, inhuman or degrading treatment
Articles of the Covenant:	6 and 7
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The author of the communication is E.M., a national of Czechia born on 13 June 1957. She submits the communication on her own behalf and on behalf of her deceased son, D.H., a national of Czechia of Roma origin, born on 8 April 1985. She claims that the State party violated her son's rights under articles 6 and 7 of the Covenant owing to the treatment he received during a police intervention and his subsequent death. The Optional Protocol entered into force for the State party on 22 February 1993. The author is represented by counsel.

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

Facts as submitted by the author

2.1 The author's son, D.H., had been diagnosed with paranoid schizophrenia, a psychosocial disability. Prior to 26 November 2011, he had had violent outbursts on at least five occasions. In all those instances, his family had called the emergency services to request medical help. Doctors had attended to him, accompanied by police officers, and had successfully taken a subtle approach to de-escalate his outburst and, with his consent, inject him with a sedative.

2.2 On 26 November 2011, D.H. became restless and the author called the emergency services. A doctor and a nurse arrived at the apartment with police officers. The police officers entered the apartment and D.H.'s father informed them that there were knives on the table in his son's room. When the police officers entered the kitchen, D.H. shouted at them to go away or he would kill them. According to the author, that was the only aggressive action her son took. Subsequently, the police officers left the apartment and D.H. shut the door of his room. While the doctor was preparing a sedative injection, the police officers told the doctor that D.H. weighed at least 140 kg and that two doses would be necessary.

2.3 The police officers called for reinforcements and requested a taser gun, a brand of electroshock weapons that fire two small dart-like electrodes, causing neuromuscular incapacitation. The author and D.H.'s father vigorously protested against the use of the taser gun and were consequently told to leave their apartment. They went to the apartment above theirs. After at least 30 minutes, more police officers arrived, they put on bulletproof vests and knocked on the door of the apartment, then started banging on it. After two blows to the door, D.H. opened it. He was unarmed and asked, "What do you want here?" According to the police report, the officer in the lead used a shield to push D.H. back along the narrow corridor into the kitchen. The police officers forced D.H. to the floor and made him lie face down. The author, D.H.'s family and a neighbour heard D.H. yelling, "Let me go, what are you doing? That hurts, help me! Mum, help me!". The author disputes the police report, which states that her son had a knife in his hand when he opened the door, arguing that no documents refer to her son carrying a knife at that point. The author asserts that all the knives that had been on the table in her son's room were still there when she returned to the apartment and that she heard the police officers' saying the same thing. In addition, the police report suggests that D.H. was holding a knife in his right hand when he opened the apartment door. However, given the restricted space in the corridor, it would be extremely difficult to open the door while holding a knife.

2.4 The report of the emergency services indicates that D.H. was lying face down on the floor while the police officers laid on top of him, immobilizing him. They also handcuffed him. The doctor then injected one dose of sedative, followed by a second dose. Shortly after that, D.H. suffered a cardiac arrest. In response, the police officers and the doctor turned him onto his back and the doctor began attempting to resuscitate him. The handcuffs were removed. The attempted resuscitation lasted at least 15 minutes and was successful. The author's son was then taken to the emergency vehicle, where he suffered a second cardiac arrest. The medical staff again attempted to resuscitate him for another 15 minutes, after which he was considered to be in a sufficiently stable condition to be transported to hospital.

2.5 The author asserts that the police used the taser gun on her son and that, together with her family and the neighbour, they heard a strange sound followed by an immensely loud bang and brief whining, after which there was silence. They did not hear D.H. make any threats or behave in an aggressive manner, but did hear him moaning as if he were frightened and in pain. After the intervention, the author discovered a stain in the apartment where her son had lost control of his bladder and had urinated. The author and her family saw one of the police officers carrying the taser gun out of the building, wrapped in a towel taken from the apartment. The police officer put the taser gun in the police car, walked back to the apartment and put the towel back in the kitchen. When the criminal investigation police arrived, the family heard one of the police officers asking, "Is the door not damaged?" The police officer replied that D.H. had opened the door himself and had been unarmed, and that the knives had been lying on the table in D.H.'s room.

2.6 On 29 November 2011, D.H. was resuscitated one last time, but went into a coma and was subsequently declared brain-dead. He died on 1 December 2011. According to the

coroner's report, the immediate cause of death was malignant brain oedema and the preceding causes were paranoid schizophrenia, cardiac arrest and acute hepatitis C.

2.7 On 2 December 2011, the police ordered an examination and autopsy of D.H.'s body and an expert forensic medical opinion. On 6 December 2011, the expert opinion was released. It indicated that there were injuries on D.H.'s wrists owing to "ordinary medical care" and that the cause of death was malignant brain oedema. The expert opinion also indicated that D.H. was extremely obese and had hepatitis C-related liver problems and excess gallbladder fat.

2.8 On 7 December 2011, the author lodged a criminal complaint reflecting her suspicion that a crime had been committed, claiming that the police intervention had been unnecessary and disproportionate. She noted that her son's outbursts would usually last no more than 20 minutes and that the last one had already subsided by the time the police reinforcements had arrived. On 18 January 2012, the author amended her criminal complaint to add that her son had been injected with an excessive amount of sedative.

2.9 On 19 December 2011, the public prosecutor informed the author that her complaint regarding unlawful and disproportionate use of force should be lodged with the General Inspectorate of Security Forces of the police. She duly lodged it with that body.

2.10 On 9 March 2012, the General Inspectorate of Security Forces rejected the author's criminal complaint on the ground that it was unfounded. The General Inspectorate found that the investigation did not indicate that the police officers had used an unlawful, unnecessary or excessive amount of force or committed any other violations. On 16 March 2012, the President of the Community of Roma People in Moravia lodged a complaint against that decision. On 17 May 2012, that complaint was also declared unfounded by decision of the competent authority within the General Inspectorate.

2.11 Following the author's criminal complaint of 7 December 2011, the police ordered two further expert opinions. On 8 January 2012, the first toxicology expert opinion concluded that there were no high levels of toxicological substances present in D.H.'s body. On 14 June 2012, the second expert opinion indicated that there was no causal nexus between the sedative administered to D.H. and his death. The expert determined that the cause of death was a malignant brain oedema that was not curable by the time D.H. was sedated. The report indicated that the health complications that led to D.H.'s death were unavoidable and concluded that the brain oedema was related to the cardiac arrest.

2.12 On 29 June 2012, the criminal department of the police decided to suspend the criminal complaint, stating that there was no suspicion that the alleged crime had been committed. On 10 July 2012, the author lodged a complaint against that decision, arguing that the forensic expert opinion had failed to identify the precise cause of death. The author argued that there was no mention in the police report of the fact that numerous witnesses had seen one of the police officers carry a device out of the house wrapped in the author's towel and place it inside the police car.

2.13 On 19 July 2012, the district public prosecutor in Děčín rejected the complaint as unfounded. The prosecutor replicated the reasoning of the decision of the criminal department of the police of 29 June 2012 and pointed out that there was no causal nexus between the use of sedation during the police intervention and D.H.'s death.

2.14 The author did not file a constitutional complaint against the decisions of the criminal department of the police or of the public prosecutor as she claims that such a remedy would not be effective in the circumstances. She pointed out the absence of constant case law in relation to an enforceable individual right to effective criminal investigation. She argued that the prevailing jurisprudence of the Czech Constitutional Court regarding constitutional complaints against decisions on suspension of criminal investigations proves the ineffectiveness of that remedy. According to the author, the Constitutional Court refused, in the name of the balance of powers, to interfere with the discretionary power of the public prosecutor regarding the issue of whether to initiate prosecution.

Complaint

3.1 In relation to her claims of a violation of her son's rights under article 6 of the Covenant, the author submits that taser guns are increasingly regarded as lethal weapons as they can cause cardiac arrest and subsequent death. Moreover, their use together with the two doses of sedative, specific police grips and the fact that her son was forced to lie face down on the ground and was held there with force amounted to an arbitrary use of force that resulted in his death.

3.2 The author submits that, according to the Covenant, lethal force can be used by State actors only in case of absolute necessity. In this case, the use of lethal force was unnecessary and the police officers failed to take into account D.H.'s extreme vulnerability as a person with a psychosocial disability. His emotional outburst on 26 November 2011 was not unusual and the police had assisted medical staff in all of the previous instances of such outbursts with no recourse to the use of force. On 26 November 2011, the police evaluated D.H.'s behaviour completely differently from on prior occasions. The use of lethal force was not justified by any legitimate aim as D.H. was unarmed and was not endangering anyone's life at the time when the lethal force was used. Even if the police believed that the use of lethal force was absolutely necessary, the author claims that this could not be reasonable and amounted in these circumstances to a violation of her son's rights under article 6 of the Covenant.

3.3 The domestic authorities focused their investigation on the facts as presented by the police and did not take into account the diverging views presented by the author in the criminal complaint, and the diverging facts between the expert opinions. Therefore, the investigation was neither adequate nor effective, which also constitutes a violation of article 6 of the Covenant.

3.4 Furthermore, the combination of action taken in D.H.'s case amounted to torture or cruel and inhuman treatment, in violation of article 7 of the Covenant, as the police officers failed to take into account D.H.'s extreme vulnerability as a person with a psychosocial disability. The lack of an effective investigation also amounts to a violation of article 7.

3.5 The author claims that, as D.H.'s mother, she is an indirect victim of those violations.

Additional information submitted by the author

4.1 On 22 December 2018, the author submitted additional comments, reiterating that the option of a review before the Constitutional Court had not been open to her in 2012, given the absence of constant case law and the recent change to the Court's jurisprudence, resulting in such recourse not having been effective at that time.

4.2 Since almost five years elapsed between the final judicial decision in the case at the national level and her submission to the Committee, the author explains that the delay was the result of exceptional, highly unusual circumstances, as the Validity Foundation and the Forum for Human Rights were undergoing restructuring. The author points to case law indicating that a submission made within five years from exhaustion of domestic remedies is not necessarily to be found inadmissible on these grounds.[1]

4.3 As for remedies, the author requests that the State party, inter alia, take all steps necessary to prevent similar violations in the future, conduct a prompt and impartial investigation into the death and torture of her son, prosecute and punish those responsible and inform her about the investigation.

State party's observations on admissibility and the merits

5.1 On 14 January 2019, the State party submitted its observations, raising objections to the author's account of some of the facts and clarifying them.

5.2 As regards D.H.'s health and previous aggressive outbursts, he was a tall, well-built man of about 150–170 kg and had been diagnosed as having a mild intellectual disability. He occasionally abused addictive substances and consumed alcohol. He suffered from paranoid

[1] *Kudrna v. Czech Republic* (CCPR/C/96/D/1582/2007), para. 6.3.

schizophrenia, a serious psychosocial disorder that was frequently manifested through hallucinations and confusion concerning perception.

5.3 D.H. had been receiving treatment for his mental disorder at a psychiatric facility since 2004 and had been hospitalized repeatedly. He was not cooperative and took the medication he was prescribed irregularly, while at the same time depending on care provided by another person.

5.4 In 2009, D.H.'s father filed a motion before a court to deprive his son of legal capacity, which the court granted and the father was appointed as his guardian. A psychiatrist, P.S., discussed the issue of medication with D.H.'s parents, with varying degrees of success. The last time they discussed that issue was on the day before the event in question.

5.5 D.H.'s father admitted that, some 14 days before the event, his son had stopped taking the prescribed medication, which had resulted in a deterioration in his condition and his increasing aggression, which was causing him to inflict harm on himself and others.

5.6 As regards the events of 26 November 2011, D.H. consumed alcohol, as demonstrated by the results of a biochemical test on the same day, revealing 0.143 per cent of alcohol in his blood. Before noon, he grabbed several knives and started to threaten his parents, both of whom were compelled to flee the flat and take refuge on another floor of the building. In the afternoon, his father called an emergency medical unit to help, and at 2.48 p.m., the unit requested assistance from the Czech police to help to treat the aggressive patient. Police officers arrived on the scene at 3.02 p.m. and the intervening physician, J.T., was waiting for them there. He told the police officers that he had been called to help D.H., who was being aggressive and refusing to be treated.

5.7 The police officers and the physician went to the second floor and reached flat No. 8, where D.H.'s father was standing next to the entrance door. He explained that his son was undergoing treatment at a psychiatric facility and, although he was required to take tranquilizers, he had not been taking them for two weeks and on that day, his health had deteriorated rapidly. Specifically, he said that his son had threatened to kill his parents.

5.8 D.H.'s father also noted that his son had grabbed some knives upon the police officers' arrival and that he was afraid that his son could harm himself or take his own life. He added that his son was a well-built man weighing some 160 kg who trained with weights on a daily basis and that he was usually aggressive when not taking the prescribed medicine. D.H.'s father let the police officers and the intervening physician into the flat and told them that his son was in the back room. The police officers searched the room in which D.H. was sitting, holding a knife with a black handle in each hand. D.H. shouted death threats at the police officers while waving the knives. Police officers removed D.H.'s father from the apartment and left themselves after D.H. chased them out and closed the door after them.

5.9 The police officers immediately called for reinforcements and one of them put on riot gear. They called to D.H. to open the door, indicating that they were authorized to intervene. They kicked the door open and the police officer with the shield entered first and pushed D.H. back along the corridor towards the kitchen. In the kitchen, the police officers knocked D.H. to the floor, knocked the knife out of his hand and kicked it into an adjoining room to prevent him from using it. Using all possible means, the police officers immobilized D.H. on the floor using handcuffs so that the physician could administer a sedative by injection.

5.10 Since the sedative had no observable effects within the prescribed period, the intervening physician injected D.H. with a second dose. Subsequently, D.H. stopped breathing and went into cardiac arrest. Assisted by the police officers, the physician immediately started resuscitating him. Once D.H. had been resuscitated, he was moved to an ambulance to be transferred to hospital. During the journey, he suffered a second cardiac arrest. Following another successful resuscitation, his condition was stabilized and he was admitted to the hospital in Děčín. The attending doctors there examined him and did not find any visible external injuries.

5.11 Immediately after the intervention, on 26 November 2011 at 5 p.m., the site was examined in detail and described by the officers from the Criminal Police and Investigation Service of the Děčín Police Department. The two knives, with blades of 14.5 and 15.5 cm, were found in the flat, seized and documented. Subsequently, an expert appraised the two

knives as weapons capable of causing serious injury and death. In the hospital, the author's son was put on life support and was resuscitated several times, the last time on 29 November 2011, after which he fell into a coma. According to the autopsy report, he died on 1 December 2011 at 11.30 a.m.

5.12 The State party provides information on the investigation into the case, including the protocol on the use of coercive measures by the police, the interview with D.H.'s father, who was the only witness present during the first part of the intervention, and the institution of criminal proceedings for displaying threatening behaviour with the intention to harm a public official. On 2 December 2011, the police ordered an autopsy of D.H.'s body and commissioned expert opinions in forensic medicine to investigate any external injuries on his body. The police received the reports on 6 December 2011 and 16 January 2012. The court-appointed expert, R.M., did not find any signs that damage had been done to D.H.'s health that could not be explained by the medical intervention. From a medical perspective, R.M. did not consider that the steps taken by the police officers or the emergency medical services had been incorrect or non-compliant with the regulations. According to the expert opinion of 6 December 2011, which also included the autopsy report, D.H.'s death was caused by a malignant brain oedema due to cardiac arrest. Except for needle marks from the injections and tiny bruises on the wrists, no other injuries were found. Likewise, there was no indication of any external damage caused by a third party. The event was described in exactly the same way, with no differences, by the intervening police officers in the official record of 26 November 2011 and by the physician who had intervened on site in his statement for the Czech police of the same date. Similarly, neither the subsequent expert forensic opinion, the two opinions on toxicology or the opinion on urgent care medicine suggested that D.H.'s death had been caused by a third party. Thus, none of the four independent medical expert opinions provided by five doctors concluded that an electrical discharge device or a similar restraint device had been used.

5.13 On 7 December 2011, the author submitted a criminal complaint against the intervening police officers with the Děčín District Public Prosecutor's Office. The author claimed that the police intervention had been unnecessary and that the use of force had been manifestly disproportionate. Based on the outcome of the second expert opinion and the interview with the intervening physician, J.T., the Criminal Police and Investigation Service decided on 29 June 2012 not to proceed with the criminal complaint, as no suspicion of the commission of a crime could be proved. The subsequent complaint (appeal) against this decision was rejected on 19 July 2012, noting – as the Czech police had done in their decision of 29 June 2012 – that no causal nexus between the use of sedatives and the death of D.H. had been proved. On 18 January 2012, the author also submitted a criminal complaint against the intervening physician with the Děčín District Public Prosecutor's Office, whose procedure the Criminal Police and Investigation Service in its decision of 29 June 2012 did not consider to have been defective or unlawful, based on the separate expert opinion. The author lodged a complaint against that decision, which the District Public Prosecutor's Office assessed to be unfounded. No causal nexus was found between the intervening physician's medical procedure and D.H.'s death. Any form of third-party fault was ruled out.

5.14 On 1 February 2012, the General Inspectorate of Security Forces received a complaint about the police officers' intervention against D.H., arguing that the controversial circumstances under which D.H. had died had not been properly investigated. On 14 February 2012, the General Inspectorate received the criminal complaint submitted to the Děčín District Public Prosecutor's Office on 7 December 2011 and conducted a supplementary interview with the court-appointed expert who had carried out the autopsy. The expert reiterated that according to his findings, there was nothing to indicate that D.H.'s death had been caused by a third party. On 9 March 2012, the General Inspectorate found the complaint to be unfounded. On 17 May 2012, the General Inspectorate assessed the subsequent complaint against the decision of 9 March 2012 to be unfounded.

5.15 The State party refers to relevant domestic law and practice, including the Act on the police, the Code of Criminal Procedure, the Criminal Code, the Act on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Pharmacists' Chamber, the Civil Code and Constitutional Court judgments Pl. ÚS 17/10 and I. ÚS 745/11. The decision of 17 January 2012 in I. ÚS 745/11 is groundbreaking, as in it, the Constitutional Court

recognized the procedural right of the victims and their relatives to effective investigation in cases of suspicion of a violation of the prohibition of torture or inhuman or degrading treatment or punishment under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

5.16 As regards admissibility, the State party submits that the author has not exhausted all effective remedies available under domestic law, as required by article 5 (2) (b) of the Optional Protocol. It argues that merely doubting the effectiveness of domestic remedies does not absolve the author of a communication from the obligation to exhaust them,[2] that such remedies have to be futile objectively, and that it is up to the author to provide the competent authority with an opportunity to examine a contention between the parties over the effectiveness of a remedy. The Constitutional Court recognized the procedural right of the victims and their relatives to effective investigation in cases of suspicion of a violation of the prohibition of torture or inhuman or degrading treatment or punishment.

5.17 In her communication, the author notes that she did not seek to file a constitutional complaint, as such a complaint would not have been an effective remedy, in the light of the Committee's jurisprudence. The author referred to Constitutional Court decisions I. ÚS 2794/09 of 7 December 2009 and III. ÚS 8/03 of 24 April 2003 which, in her opinion, suggest that, at the time of D.H.'s death, there was no recognized, constitutionally guaranteed individual right at the domestic level for either him or his relatives to effective investigation. In her additional submission, the author referred to Constitutional Court decisions IV. ÚS 264/06 of 19 February 2007, III. ÚS 511/02 of 3 July 2003 and III. ÚS 554/03 of 5 February 2004, all of which the Constitutional Court had departed from by the relevant time. During that period, the Constitutional Court's case law was undergoing significant development. Based on its decision I. ÚS 745/11 of 17 January 2012, it would seem that the author would have had reason to believe that the Constitutional Court would not dismiss her complaint of a breach of the obligation to conduct an effective investigation without considering it on the merits. Since the Court's interpretation applied to the prohibition of torture and other ill-treatment, it would apply also to the right to life. The Constitutional Court confirmed that interpretation in respect of the right to life in its decision I. ÚS 2886/13 of 29 October 2013.

5.18 In the author's case, the complaint against the police authority's decision not to proceed in the case was rejected by the District Public Prosecutor on 19 July 2012, more than six months after the Constitutional Court reached decision I. ÚS 745/11. At the latest, as of 31 January 2012, when that decision was promulgated, Czech law recognized the right to effective investigation. At the same time, between January and September 2012, when the time limit for lodging a constitutional complaint ended for the author, the Constitutional Court did not deliver any decisions contrary to the conclusions set forth in its decision I. ÚS 745/11. The author's claim that the Constitutional Court's case law on the requirement for effective investigation was inconsistent is not justified. On the contrary, in its subsequent case law, such as decision I. ÚS 3888/13 of 26 February 2014, the Constitutional Court has firmly upheld that right. Moreover, in the domestic proceedings, the author was represented by legal counsel who should have had knowledge of the Constitutional Court case law. The State party regards the author's opinion that the constitutional complaint was not an effective remedy as a purely speculative opinion. In addition, the legal opinion of the author expressed in her additional submission, according to which the jurisprudence of the Constitutional Court did not change until 2014, is unsubstantiated. Since she has not exhausted the remedy provided by a constitutional complaint, the author has not shown reasonable diligence in pursuit of available remedies, as required by the Committee. The State party concludes that the author had an effective remedy available at the domestic level, offering the author reasonable prospects of success had she seized the Constitutional Court after the failure of her complaint to the public prosecutor in 2012. Therefore, the Committee should declare the author's communication inadmissible under article 5 (2) (b) of the Optional Protocol.

5.19 Referring to the remedies against the intervening physician, the author pointed to her amendment to her initial criminal complaint. However, the police did not consider that the intervening physician's procedure was illegal. As to the alleged negligence of the intervening

[2] *Kandem Foumbi v. Cameroon* (CCPR/C/112/D/2325/2013), para. 8.4.

physician, the State party emphasizes that the author has not exhausted all available and effective domestic remedies. When acts of medical negligence result in a person's death, criminal prosecution is not necessarily required because a civil action seeking satisfaction for the non-pecuniary damage suffered or disciplinary measures can constitute a suitable remedy. The same doctrine has been applied by the Committee[3] and the European Court of Human Rights.[4] The author does not contend that the intervening physician committed a wilful act against her son. If the intervening physician made a mistake, which the expert opinion explicitly ruled out, it would have been a mistake due to negligence. The State party hence considers that the author had an available civil remedy against the intervening physician, or his medical facility, through which she could have sought damages in proceedings before the ordinary courts, pursuant to the Civil Code. The author could also have lodged a disciplinary complaint against the intervening physician with the Czech Medical Chamber. The State party requests the Committee to declare the communication, as it relates to the physician's alleged mistake, inadmissible under article 5 (2) (b) of the Optional Protocol, for failure to exhaust all available domestic remedies.

5.20 The State party also raises an objection of abuse of the right of submission, pursuant to article 3 of the Optional Protocol. It argues that the five-year time limit is disproportionately long, unwarranted and untenable. The decision on the last available remedy was adopted on 19 July 2012, the author has not submitted a constitutional complaint, and the communication was submitted to the Committee on 19 July 2017. The author resorted to the Committee six years from the event in question and five years from the decision on the last remedy, without any objective reason[5] or a reasonable explanation. The explanation in the author's additional submission of 22 December 2018 is unconvincing. The State party requests the Committee to declare the communication inadmissible under article 3 of the Optional Protocol.

5.21 As regards the alleged violation of the substantive elements of articles 6 and 7 of the Covenant, the State party recalls that deprivation of life must not be arbitrary.[6] As regards general principles relating to article 7 of the Covenant, the State party points to a definition of ill-treatment, referring to the case law of the European Court.[7] The State party considers, in the light of all the circumstances, that the intervening police officers did not use disproportionate force against D.H. His parents must have been aware that, as he had not been taking his prescribed medication for some time, the likelihood that he would become aggressive would increase. They did not pay sufficient attention to this and allowed their son's health to deteriorate. The attending psychiatrist treated D.H. with varying degrees of success. On the day of the incident, D.H.'s aggression had increased to such a degree that he posed a threat to his own and his relatives' life and health. The emergency medical service and the police officers were therefore called to the scene primarily to perform the State's positive obligation stemming from articles 6 and 7 of the Covenant, for the protection of the lives and health of persons at risk. When assessing whether the intervening authorities proceeded proportionately, it should be considered that D.H. was well-built, had consumed a considerable amount of alcohol on that day and he had caused serious injuries to his relatives during such outbursts in the past. His paranoid schizophrenia made it difficult to predict his behaviour. On that day, D.H. verbally threatened first his parents and then the intervening police officers that he would kill them and he attacked them with a knife in each hand. D.H.'s parents and the two intervening police officers were compelled to flee the flat. It is understandable that the police officers who were present called for reinforcements, that they had brought adequate protective devices, and that during the intervention, they were compelled to use adequate coercive measures, in line with the Act on the police. The police officers used lawful and less severe coercive measures such as grips, holds, pushing with a shield and the use of handcuffs. No other coercive measures were used.

[3] *A.M. v. Italy*, communication No. 266/1987, para. 7.3.

[4] European Court of Human Rights, *Vo v. France*, Application No. 53924/00, Judgment, 8 July 2004, para. 90.

[5] *A contrario*, *Avadanov v. Azerbaijan* (CCPR/C/100/D/1633/2007), para. 6.4, or *D.V. and H.V. v. Czech Republic* (CCPR/C/105/D/1848/2008), para. 6.2.

[6] General comment No. 36 (2018) on the right to life, paras. 10–13.

[7] *Bouyid v. Belgium*, Application No. 23380/09, Judgment, 28 September 2015.

5.22 The police officers had to use sufficient force to achieve their aim, which was to disarm and immobilize the aggressive individual so that the physician could administer the sedative without endangering their own lives and health while doing so. When selecting the degree of force to apply, the intervening police officers relied on information that they had at that moment. The need to use physical force was caused by D.H.'s prior conduct. There is no reason to doubt that the intervening police officers acted based on the honest belief that using the above coercive measures was necessary. This belief also appears to be objectively reasonable. Furthermore, the author's claim that the intervening police officers used an electrical weapon or a similar restraint device against D.H. is pure speculation by the author and is not supported by any evidence. At the time of the intervention, the author was on a different floor of the building and therefore was not an eyewitness to the intervention. The use of a taser gun or a similar restraint device leaves visible traces on the victim's body, which are easily detectable even upon only cursory examination. D.H.'s body was examined immediately after the event in question when he was admitted to the Děčín hospital, and then again during the autopsy. Expert opinions ruled out traces of physical violence other than the injection needle marks and tiny bruises on the wrists caused by handcuffs. D.H. was not exposed to inhuman or degrading treatment in connection with the coercive measures used, because the use thereof was necessary and reasonable with regard to D.H.'s conduct.

5.23 The State party emphasizes that deprivation of life resulting from action that was strictly necessary and a proportionate response to an imminent threat cannot be regarded as arbitrary.[8] The State party also considers that the cardiac arrest resulting in the death of D.H. was not, under the circumstances, a predictable consequence with regard to the intensity of the physical force used, which was strictly necessary and proportionate in view of D.H.'s earlier aggressive conduct. In this case, the substantive elements of articles 6 and 7 of the Covenant were not violated.

5.24 As regards the intervening physician's procedure, the State party recalls the European Court's case law that the State cannot be held liable in case of death in the context of alleged medical negligence. In the present case, the author does not contend that the intervening physician committed a wilful act directed against D.H.'s life. Nothing like this is indicated by the findings of the domestic authorities that have examined the matter thoroughly. According to the expert opinion, the combination of medication used by the intervening physician during the event was reasonable and did not have any influence on D.H.'s death. The expert did not find a causal nexus between the intervening physician's therapeutic procedure and the death of D.H. The State party believes that there can be no question that if a mistake was made by the intervening physician, which the expert opinion ruled out, it would have been a mistake due to negligence on the part of the physician when administering the medication.

5.25 Concerning the alleged violation of the procedural elements of articles 6 and 7 of the Covenant, the State party submits that during the course of investigations, the criminal justice authorities gathered a large amount of evidence, including the autopsy and expert opinions in forensic medicine, toxicology and urgent care medicine, examination of the scene, two interviews with J.T., the intervening physician, and the interview with D.H.'s father who was, besides the police, the only witness present during at least part of the intervention. The circumstances of the case were reliably clarified and the possibility of third-party fault resulting in D.H.'s death was ruled out. The State party considers that the investigation was conducted in a manner that can be regarded as compatible with the requirements ensuing from articles 6 and 7 of the Covenant.

5.26 Lastly, the State party requests that the Committee declare the communication inadmissible on the basis of failure to exhaust all domestic remedies, or abuse of the right of submission because the communication was submitted five years after the exhaustion of domestic remedies. Alternatively, the State party requests that the Committee find no violation of articles 6 and 7 of the Covenant as the intervening police officers and physician did not arbitrarily use force against D.H. Therefore, the substantive and procedural elements of articles 6 and 7 of the Covenant were not violated.

[8] General comment No. 36 (2018), para. 12.

Author's comments on the State party's observations on admissibility and the merits

6.1 On 16 March 2019, the author submitted additional comments on the admissibility and merits.[9]

6.2 She reiterates that her communication is admissible since the effective available domestic remedies have been exhausted and the communication does not represent an abuse of submission. As regards Constitutional Court decision I. ÚS 745/11 of 17 January 2012, the author disagrees that it would be possible to successfully reverse a decision to terminate an investigation into a violation of the right to life by filing a constitutional complaint. The change in jurisprudence was not at all evident at the relevant time since the Constitutional Court decision concerned the right to an effective investigation in cases of suspicion of a violation of the prohibition of torture or other ill-treatment under article 3 of the European Convention on Human Rights. The author had no reasonable grounds to believe that a constitutional complaint would be an effective remedy in her case. Indeed, the State party admitted that the decision of January 2012 did not directly recognize a right to an effective investigation enforceable by victims before the Constitutional Court.

6.3 On 11 October 2012, the Constitutional Court adopted decision I. ÚS 2160/11, which concerned a complaint lodged by a victim against a decision of the police not to proceed with a criminal case. The Court concluded that, at that stage of proceedings, a victim was not entitled to any guarantees of due process under articles 36 (1) and 38 (2) of the Charter of Fundamental Rights of the European Union and article 6 of the European Convention. The Court did find that its views on that question could change in the future, in the light of judgments of the European Court of Human Rights, but that such a change would depend on the circumstances of every individual case.[10] Nine months after the "breakthrough" decision referred to by the State party (decision I. ÚS 745/11 of 17 January 2012), there had been no radical change in the examination of complaints against the decisions of the police in criminal proceedings. It cannot be inferred that the author had reasonable grounds to believe that a constitutional complaint constituted an effective remedy in her case. The long-standing viewpoint of the Constitutional Court was overruled only by decision I. ÚS 3196/12 of 12 August 2014 and after the deadline within which the author could have filed such a claim. The author also refers to the decision of the European Court of Human Rights in *Eremiášová and Pechová v. Czech Republic*, in which it ruled that a constitutional complaint was ineffective due to the substantially limited scrutiny before the Constitutional Court, and invites the Committee to take that decision into account. Since the author could not benefit from the scrutiny of the Constitutional Court in 2012, a constitutional complaint would not have been effective at that time. Lastly, the author argues that a civil action for non-pecuniary damages and a disciplinary motion were not accessible to her and she had no reasonable prospects of success in civil proceedings as the burden of proof would lie with her and she clearly did not have access to the materials necessary to meet that burden concerning the unlawful nature of the incident, the damage and the causal link.

6.4 The rights of D.H. under articles 6 and 7 of the Covenant were violated, both the substantive and procedural elements, through the actions of the police officers and the physician present at the scene. The author claims that the use of the electroshock device, the forcible entry into the property and the use of force to pin D.H. to the ground, the use of handcuffs as a concurrent form of physical restraint and of a chemical restraint in the form of two doses of sedatives, amounted to torture, or alternatively, to cruel, inhuman or degrading treatment. Such measures were used against a vulnerable person with a severe disability of which the police officers and the physician were, or should have been, aware at the time. That treatment ultimately led to D.H.'s death.

6.5 The actions of the police and the physician were motivated by D.H.'s psychosocial disability – such action would not have been inflicted had D.H. not been known to have a psychosocial disability. As such, the infliction of severe pain and suffering amounted to

[9] Represented by Forum for Human Rights and Validity Foundation, formerly known as Mental Disability Advocacy Centre.

[10] A judge rapporteur in the case was also a president of the Constitutional Court.

discrimination on the grounds of disability. It must also be emphasized that sufficient time was given to the police officers and the physician to prepare for the situation.

6.6 The State party did not provide an adequate explanation for D.H.'s death and the circumstances surrounding it or sufficiently rebut the facts presented by the author. Those facts include, but are not limited to, the disappearance of the knife that D.H. was supposedly holding in his hand when the police entered the apartment, the contradictory versions of events following the forced entry into the apartment, the silence of the reports on the stain that was left on the floor in the apartment when D.H. lost control of his bladder and urinated on himself (seen by the author), the failure to respond to the claim that the police officers carried an electroshock device out of the building wrapped in a towel belonging to the author, and the fact that no witnesses, apart from D.H.'s father, were questioned following the event, even though several persons were present during the first outburst and could hear the subsequent events from the apartment on the floor above. The author argues that the burden of proof shifts to the State in cases where the events in question are within its complete control at the time of the violations and the author is prevented from accessing evidence within the exclusive knowledge and control of the State.

6.7 The author reiterates that D.H. was alone with State officials at the time of the events leading to his death and the State officials excluded everyone else from the scene, in addition to failing to invite an independent observer, as required by law. The State party, however, did not take appropriate steps to investigate the actions of the police officers and the physician.

State party's additional observations

7.1 On 17 July 2019, the State party submitted additional observations.

7.2 Constitutional Court decision I. ÚS 2160/11 of 11 October 2012 cannot be regarded as relevant to the present case. An obligation of the State to conduct an effective investigation was recognized by the Constitutional Court already on 28 June 2011 in an obiter dictum of its plenary judgment Pl. ÚS 17/10 and reaffirmed in decision I. ÚS 745/11 of 17 January 2012.

7.3 As to the author's alleged limited access to justice, the Czech judicial system has offered diverse affirmative measures such as free counselling by the Czech Bar Association and assignment of a lawyer pro bono. The author could also have sought exemption from court fees and legal representation free of charge. A civil action and/or disciplinary complaint against the intervening physician were suitable remedies.

7.4 The State party holds that, even if the physician could have been held liable for making a mistake in his conduct, it would have been a *non lege artis* course of action for negligence or error in judgment, which cannot give rise to State responsibility for a wrongful act. In cases of medical negligence resulting in the death of a person, effective investigation is not necessarily required, since a civil action for damages, including non-pecuniary damages, or institution of disciplinary proceedings can be deemed a suitable form of redress. Accordingly, the communication should be declared inadmissible.

7.5 The State party reiterates its allegation of abuse of the right of submission.

7.6 On the merits, the State party argues that no impartial observer was present at the time of the incident since D.H. was endangering the police officers, as he was armed with knives and possibly posed a danger to himself as well. As for the alleged use of an electrical discharge device, the noise heard during the intervention could have resulted from D.H. falling to the ground. The urinary stain on the floor could have been caused either by the pressure applied in knocking D.H. to the floor or after the physician injected him with the sedative. The State party recalls that there were no visible signs of the use of an electrical discharge device on D.H.'s body.

Additional comments from the author

8.1 On 30 August 2020, the author recalled that she did not seek to file a constitutional complaint, as it would not have been an effective remedy.[11] The author dismissed the reference to Constitution Court decision I. ÚS 745/11, as it indirectly recognized the procedural right to an effective investigation in cases of torture or other ill-treatment under article 3 of the European Convention on Human Rights, and to Constitutional Court judgment Pl. ÚS 17/10 of 28 June 2011. In its judgment I. ÚS 2160/11 of 11 October 2012, the Constitutional Court stated that, from the point of view of the Court, it did not exclude the possibility that in the future it might adopt the conclusions of that case law of the European Court of Human Rights in specific cases and apply them at the national level. When the time limit for filing a constitutional case expired for the author in September 2012, it was therefore clear that such an avenue was not an effective remedy.

8.2 In its judgment I. ÚS 3196/12 of 12 August 2014, the Constitutional Court gave a clear signal, for the first time, that a constitutional complaint can be an effective remedy. Even the State party's 2015 Human Rights Report refers to judgments I. ÚS 3196/12 of 2014 and I. ÚS 1565/14 of 2 March 2015 as cornerstones of the right of a victim to effective criminal proceedings.

8.3 As regards the objection that the author should have tried to submit a constitutional complaint so that the Constitutional Court would have a chance to overrule its previous position, she adds that victims cannot be penalized for not taking measures that will most likely fail and will not provide redress for D.H. based on the possibility of a profound legal modification through case law in the future. The author reiterates that she and her family were in a dire situation after the death of D.H. It cannot seriously be argued that requesting legal aid and the appointment of a pro bono lawyer would have allowed the author to seek an effective remedy before the Constitutional Court, as specialized lawyers in the relevant field are rare and expensive. At the time, the jurisprudence of the Constitutional Court was the same as when the European Court of Human Rights, in the case of Eremiášová and Pechová, found that a constitutional complaint would be ineffective.

8.4 The author objects to the arguments that she should also have exhausted domestic remedies by bringing a civil action for non-pecuniary damages and by lodging a motion before the Czech Medical Chamber as D.H. was subjected to wilful acts, not acts of negligence. The European Court has held that wilful ill-treatment of persons who are within the control of State agents cannot be remedied exclusively through an award of compensation to D.H. A criminal complaint is the only effective remedy in the present case. Moreover, the author's family was indigent, they had only limited access to evidence and were not in a position to bear the costs of the proceedings if her civil claim proved unsuccessful. A civil lawsuit was therefore not accessible to her and the author had no reasonable prospect of success in civil proceedings as the burden of proof would lie with her and she clearly did not have access to the evidence to meet that burden concerning the unlawful nature of the incident, the damage and the causal link. A disciplinary complaint to the Czech Medical Chamber against the attending physician would not have been an effective remedy either due to its disciplinary nature.

8.5 The author's communication did not amount to an abuse of submission, since the communication was presented within five years of the final domestic judgment.

8.6 On the merits, the author insists that the presence of an impartial bystander was possible and also necessary. D.H. had calmed down by the time the police officers and the doctor entered the apartment, he was unarmed and did not present any danger to himself or to others.

8.7 The State party also commented on the urine stain left on the floor of the flat, but failed to document it in evidence, as the questioning was allegedly insufficient. The author disagrees with the State party about why D.H. lost control of his bladder. She asserts that

[11] The author referred to Constitutional Court decisions I. ÚS 2794/09 of 7 December 2009, IV. ÚS 264/06 of 19 February 2007, III. ÚS 554/03 of 5 February 2004, III. ÚS 511/02 of 3 July 2003 and III. ÚS 8/03 of 24 April 2003, which demonstrate that at the relevant time, a constitutionally guaranteed individual right to an effective investigation had not been recognized.

urination is not a normal consequence of being knocked to the floor or of administration of a sedative. Since the State party also admitted that the police could have called for an electrical discharge device to be brought to the scene, the author insists on her claim that the urination was a direct consequence of the use of that device.

State party's further observations

9.1 On 17 October 2023, the State party submitted further observations on admissibility, reiterating its observations of 14 January and 17 July 2019 and objecting to the author's claim that the constitutional appeal did not represent an effective remedy in this case.

9.2 The State party recalled that on 17 January 2012, the Constitutional Court issued its decision I. ÚS 745/11.[12] In September 2012, there was at least one decision of the Constitutional Court acknowledging the possibility of submitting a constitutional complaint to invoke the right to an effective investigation into police violence. The State party also pointed to the inadmissibility decision by the European Court in *Slunský v. Czech Republic*,[13] due to non-exhaustion of a constitutional complaint at the time that the case law of the Constitutional Court was in the process of evolving.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

10.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 The Committee notes the State party's objection that the author has not exhausted domestic remedies, arguing that she could have submitted a constitutional complaint to the Constitutional Court, based on its case law contained in decision I. ÚS 745/11. The Committee also notes, however, the author's objection that the case law to which the State party referred concerns ill-treatment, whereas her main claim concerns a violation of the right to life, that the new case law on the right to effective investigation in criminal matters was established only in 2013 and 2014, and that she could not reasonably be expected to submit a constitutional complaint given its limited prospects of success. The author also considers that civil and administrative remedies would not have been effective, since in the present case, which concerns a deliberate intervention that affected the right to life, the only effective remedy that should be exhausted is a criminal complaint and appeals against negative decisions by the police and the prosecutor. She did exhaust those remedies, but to no avail.[14] Taking into account that the proposed constitutional complaint to the Constitutional Court, in the light of the parties' arguments that the Constitutional Court case law on securing the individual right to effective criminal investigation of a violation of the right to life was not firmly established at that time (January–September 2012),[15] could not possibly lead to securing the author's right to effective investigation by the law enforcement authorities, and that that objective would not be achieved by civil and administrative remedies either, the Committee finds that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from considering the author's communication.

10.4 Furthermore, the Committee notes the State party's objection that the author's communication amounts to an abuse of submission. It also notes the author's argument that

[12] It dismissed the constitutional complaint as manifestly ill-founded.

[13] European Court of Human Rights, Application No. 31225/06, Decision, 5 April 2011.

[14] For example, *Lazarov and Lazarov v. Bulgaria* (CCPR/C/137/D/3171/2018), para. 7.3; and *Černáková v. Slovakia* (CAT/C/72/D/890/2018), paras. 8.2 and 9.8.

[15] See Constitutional Court judgments I. ÚS 2160/11 of 11 October 2012, I. ÚS 2886/13 of 29 October 2013 and I. ÚS 3196/12 of 12 August 2014, and European Court for Human Rights, *Eremiášová and Pechová v. the Czech Republic*, Application No. 23944/04, Judgment, 16 February 2012.

the communication was submitted within five years of the decision on the last domestic remedy, as foreseen in the Committee's rules of procedure. In those circumstances, the Committee considers that the author's claims do not amount to an abuse of submission and therefore, that it is not precluded from considering the author's claims by the requirements of article 3 of the Optional Protocol.

10.5 Regarding article 6, the Committee notes the author's main claim that the intervening police officers used unnecessary and disproportionate force against D.H., since he had been diagnosed with a psychosocial disability and regularly posed a threat, and that the intervening physician overdosed D.H. with sedatives. In particular, the author claims that the police used an electrical discharge device (taser gun) to pacify her son, adding that this conclusion is supported by the fact that her son urinated on himself, as attested by the urine stain on the floor, and that the police did not pay attention to this fact in the context of questioning and the urine stain was not registered as part of the evidence.

10.6 The Committee notes the State party's detailed information rebutting the author's claims. In particular, D.H. was considered to have an intellectual disability and suffered from paranoid schizophrenia, he had not taken his prescribed medication before the events in question, had angry outbursts and threatened his family and had also used physical violence and extortion against his parents, which had resulted in him being deprived of his legal capacity by the court. When the police and the physician tried to intervene, D.H. shouted out, making death threats, and threatened them with knives. Furthermore, the Committee observes that the State party's supervisory authorities interviewed the intervening police officers and the physician. The criminal complaints against the alleged suspects were rejected by the police and the prosecutor, the use of force was considered necessary in the circumstances of the case and there was found to be no suspicion of the commission of a crime. In addition, the Committee notes the State party's argument that the General Inspectorate of Security Forces also found the intervention to have been in accordance with the law.

10.7 As regards the proportionality of the force used during the intervention, the State party argued that the independent forensic expert opinions and autopsy report did not find traces of excessive use of force and there were no signs on D.H.'s body attesting to the alleged use of a taser gun on him. As concerns the intervention by the attending physician, the State party argued that the coroner's report pointed to brain oedema, following paranoid schizophrenia, cardiac arrest and acute hepatitis C, as the cause of death. The State party's authorities held that no causal nexus had been established between the sedatives that the physician administered and D.H.'s subsequent death, and that the expert and autopsy reports ruled out that the death had been caused by a third party or any external cause.

10.8 In that context, the Committee observes that, while the author made specific allegations about the police intervention, she presented unfounded arguments about the suspected use of a taser gun and inadequate evidence of D.H.'s urination and its cause, and disproportionate use of sedatives by the physician, without submitting any specific and supporting information. In such circumstances, the Committee considers that the author's allegations were not sufficient as she generally disputes the State party authorities' findings and questions its assessment of facts and evidence without providing the proof necessary to substantiate her claims. The Committee considers that the author has also not substantiated that the authorities' assessments and rejection of her criminal complaint and appeals were in any way arbitrary or amounted to a denial of justice. The Committee therefore finds that the author has failed to substantiate her claims for the purpose of admissibility and consequently declares this part of the communication inadmissible, pursuant to article 2 of the Optional Protocol.

10.9 The Committee finds that the author's claims under article 7 of the Covenant are largely congruent with her claims under article 6. Accordingly, the Committee considers that this part of the author's communication must also be rejected as inadmissible due to a lack of sufficient substantiation, in accordance with article 2 of the Optional Protocol.

11. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author.