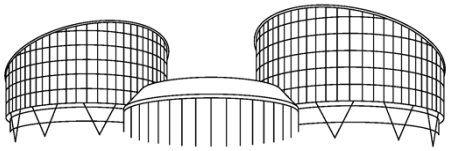

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SLÁDKOVÁ v. THE CZECH REPUBLIC

(Application no. 15741/15)

JUDGMENT

Art 3 (procedural and substantive) • Ineffective investigation into arguable allegations of ill-treatment by police officers • Allegations not proved "beyond reasonable doubt", partly due to investigation shortcomings

STRASBOURG

10 November 2022

FINAL

10/02/2023

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

In the case of Sládková v. the Czech Republic,

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

Síofra O'Leary*, President,*
Mārtiņš Mits*,*
Lətif Hüseynov*,*
Ivana Jelić*,*
Mattias Guyomar*,*
Kateřina Šimáčková*,*
Mykola Gnatovskyy*, judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 15741/15) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech national, Ms Lenka Sládková ("the applicant"), on 25 March 2015;

the decision to give notice to the Czech Government ("the Government") of the complaints raised under Article 3 of the Convention;

the parties' observations;

Having deliberated in private on 4 October 2022,

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

INTRODUCTION

1. The present application concerns the ill-treatment allegedly suffered by the applicant while in the hands of Czech police officers, as well as the alleged lack of effectiveness of the subsequent investigation by the domestic authorities. The applicant relied on Articles 3 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1983 and lives in Prague. She was represented before the Court by Ms Z. Candigliota, a lawyer practising in Brno.

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

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

I. EVENTS OF FEBRUARY 2013

5. On 18 February 2013 the applicant, while intoxicated, had an argument with a bartender in a restaurant in Prague. The bartender called the police, following which a patrol from the Vinohrady police department, composed of J.N. and P.P., arrived at the scene at around 7.30 p.m. and was later joined

by two emergency motorised patrol units of the Prague Regional Police Directorate. While being put into the police car, the applicant damaged a window, as was substantiated by photos taken at the scene and by a police report.

6. At 8.30 p.m. the applicant, with her hands handcuffed and legs tied together, was taken to the Nové Město police station. According to the Government, police officers L.D., J.M., L.R., J.Š. and E.M. were present at the police station at that time.

According to an official report drawn up that day by a police officer from one of the emergency motorised patrol units of the Prague Regional Police Directorate, coercive measures were used to prevent the applicant from attacking the officers, which entailed no consequences; the use of coercive measures was assessed as lawful by the superior police officer.

According to the applicant, the police officers present at the Nové Město police station had treated her very roughly and subjected her to abusive, degrading and violent treatment, leaving visible marks on her body. She asserted that she had been choked and thus could not speak properly for three days, and that as a consequence of the handcuffing, her hands had felt numb for several days. Moreover, the police officers, thinking that she was of Roma origin, had called her "black bitch", and had asked her to show them her breasts in exchange for a cigarette.

7. A medical emergency unit was called to the police station after the applicant complained of health problems, but it was concluded that she did not need any treatment. Afterwards, a police patrol composed of police officer F.V. and two municipal police officers, J.R. and M.K., took the applicant, without handcuffs, to a sobering-up centre.

8. On the morning of 19 February 2013 several police officers from the Nové Město police station – it appears from the file that they were L.D. and J.M., who had been present at the station the previous day, with M.K. driving – took the applicant, handcuffed, from the sobering-up centre back to the police station. According to the applicant, they repeatedly threatened her, which made her feel anxious and frightened. The applicant had been previously recognised as disabled on account of major depressive disorder and anxiety. When she asked the police officers to allow her to take her anxiolytics, they refused and responded with insults and humiliating questions.

At the police station, the applicant stated that she did not remember the events of the previous day on account of her intoxication and that she was prepared to pay for any damage caused, after which she was released.

9. The applicant asserted that because of the psychological trauma she had experienced while she was in the hands of the above-mentioned police officers, she had not been able to see a doctor immediately after her release.

10. She thus went to see a general practitioner on 21 February 2013. According to the medical certificate issued on that date, she had a bruise on

her upper lip, haematomas on her wrists, arms, lower legs and knees and small abrasions around her ankles. As to the applicant's complaints about numbness and tingling in her arms and pain in the neck, larynx and lumbar areas, the doctor did not find any signs of changes due to trauma. It was noted that the applicant claimed to have severe anxiety, fear and nightmares.

11. Because of persistent numbness in her wrists, the applicant consulted a surgeon in one of the Prague hospitals on 24 February 2013. The surgeon observed superficial skin lesions on her wrists, without haematomas or oedema, which could correspond to the earlier handcuffing, and requested a neurological examination.

12. According to the medical certificate of 24 February 2013 the neurologist found contusions on both wrists but no motor deficiencies; she also observed that the sensation issues had no characteristic distribution and were regressing. The overall neurological findings were described as normal.

II. STEPS TAKEN FOLLOWING THE CRIMINAL COMPLAINT BY THE APPLICANT

13. On 21 February 2013 the applicant lodged a criminal complaint against the police officers who had been on duty at the Nové Město police station on 18 February 2013 and who had brought her back from the sobering-up centre on the following day. She stated that she had been subjected to physical and degrading racial attacks, choking and disproportionate handcuffing, and that she had not been allowed to take anxiolytics, despite having told the police officers that she had been recognised as disabled and had had her medication with her.

She was allegedly instructed by a police officer over the phone to send the complaint to an address in Prague which was in fact the headquarters of the Regional Police Directorate. She therefore sent her criminal complaint to that address, accompanied by the medical certificate of 21 February 2013, but indicated the addressee as the General Inspectorate of Security Forces (hereinafter "the GISF") in the heading of her submission.

14. It appears from the case file that the Department of Internal Inspection of the Prague Regional Police Directorate forwarded the complaint to the lower-level Prague I and II District Police Directorates, asking them to review the conduct of their respective subordinate police officers. It appears that police officer F.V. and the municipal police officers (see paragraph 7 above) belonged organisationally to – and were investigated by – the Prague I District Police Directorate, while the police officers of the Nové Město police station belonged organisationally to – and were investigated by – the Prague II District Police Directorate.

15. When invited to comment on the complaint, all the police officers involved at different stages of the incident – most of them only on the first day – in statements given between 6 and 27 March 2013, stated that since the

applicant had been very aggressive during her transfer to the Nové Město police station, they had had to use coercive measures and handcuffs and tie her legs together. At the police station she had been attached to a bench by one hand, and her alleged health problem (an epileptic fit) had been refuted by the medical emergency unit which had been called to the police station. At no point had she asked for any medication. The police officers denied the use of any ill-treatment, threats or racial slurs aimed at the applicant.

In particular, police officer L.D., who had been present on both 18 and 19 February 2013 and was directly mentioned in the applicant's complaint, was questioned by a commissioner of the Department of Internal Inspection of the Prague II District Police Directorate on 12 March 2013. He stated that he had been present on 18 February 2013 when the applicant had been brought to the Nové Město police station by the emergency motorised patrol unit. According to him, members of that unit had guarded her as she was struggling, shouting and refusing to be transported to the sobering-up centre, while he had only checked on her from time to time and had offered her a cigarette to help her to calm down. The following day he had received an order to escort the applicant from the sobering-up centre back to the police station; according to him, the applicant had been handcuffed and there had not been any problems during the escort. She had not mentioned any medication, nor had the doctor of the sobering-up centre.

16. On 7 March 2013 the head doctor of the sobering-up centre stated that, when the applicant had been brought to that centre on 18 February 2013, she had been hostile or even aggressive, the breath test had established an alcohol level of 1.90‰ in her blood and she had not shown any apparent signs of trauma.

17. On 27 March 2013 members of the emergency medical unit which had been called to the police station on 18 February 2013 stated that they did not remember anything about those events.

A. Conclusions of the Prague I and II District Police Directorates

18. According to an official report issued on 12 March 2013 by the Department of Internal Inspection of the Prague II District Police Directorate, the security camera recordings from the police station had already been erased by the time they had been requested on 7 March 2013, and the attempts to contact the bartender from the restaurant had been unsuccessful.

19. The reports issued on 28 March and 8 April 2013 by the departments of internal inspection of the two district police directorates proposed that the applicant's complaint be rejected as ill-founded. The reports gave an account of the events as they had been described in the statements of the officers present at different stages of the incident, mainly on the first day (see paragraph 15 above), and the statement of the doctor from the sobering-up centre (see paragraph 16 above). The second report also contained a summary

of a statement by J.M., who had been present on both days, mentioning that the applicant had refused to undergo a breath test at the police station on 18 February 2013 and that during the escort on 19 February 2013 she had complained that she was experiencing depression and anxiety and had been hysterical about the possible consequences of her conduct the previous day, but had not asked for any medication. It was further noted that the security camera recordings from the Nové Město police station had already been erased by 7 March 2013 (see paragraph 18 above).

The reports concluded that the examination had not shown any of the misbehaviour on the part of the police officers described by the applicant. The latter had admitted herself (see paragraph 8 *in fine* above) that she did not remember what had happened. The credibility of her assertions was put in doubt by her state of intoxication, whereas the statements of the police officers involved were concordant and corroborated by persons not concerned by the complaint. The minor injuries mentioned in the medical certificate could have been caused by the coercive measures used to overcome the applicant's active resistance and by her intensive efforts to free herself from the handcuffs.

20. By letters of the Prague I District Police Directorate, dated 28 March 2013, and the Prague II District Police Directorate, dated 8 April 2013, the applicant was informed that her complaint, considered under Article 175 § 5 of the Administrative Code, had been declared ill-founded. It was noted that neither the statements of the police officers involved, the emergency doctor or the doctor in charge of the sobering-up centre nor the material in the police file showed any misbehaviour on the part of the officers from the police departments of Vinohrady and Nové Město.

B. Conclusions of the Prague Regional Police Directorate

21. The police commissioner of the Department of Internal Inspection of the Prague Regional Police Directorate mainly reviewed the conduct of the police officers belonging to the directorate's emergency patrol units who had been present during the incident (see paragraph 5 above).

22. On 6 March 2013 the deputy head of one of those units, who had joined them at the Nové Město police station on 18 February 2013, stated that the applicant had been either inert or highly aggressive and that all the police officers had behaved in a professional manner. The internal review of their conduct did not reveal any shortcomings, whereas the applicant's account of the events seemed unlikely.

23. On 6 March 2013 the commissioner interviewed the members of the patrol of the Vinohrady police department, namely J.N. and P.P., who had been the first to arrive at the restaurant (see paragraph 5 above). They stated that the applicant had been drunk and aggressive and had not reacted to any instructions; therefore coercive measures had been used against her, without

any form of ill-treatment. The emergency doctor who had been called to the police station concluded that the applicant had only been pretending that she had health problems and that she had not really been hurt.

24. Following a request by the above-mentioned deputy head on 5 March 2013, two members of one of the emergency patrol units provided a written statement on 10 March 2013 regarding the events of 18 February 2013. They both stated that the applicant had been drunk and aggressive when they had arrived and that she had been struggling, spitting and attacking the police officers and ignoring all warnings. According to them, she had only been pretending that she had health problems, as had been confirmed by the emergency doctor who had been called to the police station, and she had not mentioned any medication. The police officers denied that any of the police officers present had insulted or mocked the applicant.

25. On 9 April 2013 the Prague Regional Police Directorate responded to the applicant's complaint with regard to the conduct of its emergency unit. It noted that on 18 February 2013 the applicant had been intoxicated, aggressive and rude to the police officers and had refused to leave the restaurant. While entering the police car, she had kicked through a window. On account of her aggressive behaviour, an emergency police unit had been requested from the Prague Regional Police Directorate in order to bring her to the Nové Město police station. The coercive measures had been used lawfully, in accordance with section 53(1) of the Police Act (see paragraph 37 below). The emergency doctor who had been called to the police station had not considered it necessary to provide treatment or to transfer the applicant to a hospital. None of the official reports or statements of the police officers involved or of the head doctor of the sobering-up centre (see paragraph 16 above) had confirmed the assertions described in the criminal complaint. It was therefore concluded that the members of the emergency unit had duly analysed the situation and responded to it in an appropriate manner.

C. Other procedural developments

26. On 17 April 2013 the applicant sent her criminal complaint by email directly to the GISF. On 23 April 2013 the GISF forwarded it to the Prague Regional Police Directorate.

27. On 4 December 2013 the Prague Municipal Prosecutor responded to a complaint by the applicant about the GISF having forwarded her complaint of 17 April 2013 instead of examining it. The prosecutor stated that the submission had been assessed as a complaint about inappropriate conduct on the part of the police officers and had been forwarded without delay to the relevant police authority, that is, the Prague Regional Police Directorate, pursuant to Article 175 of the Administrative Code (see paragraph 38 below).

28. On 5 February 2014 the applicant lodged a constitutional appeal, complaining about the actions of the Prague Municipal Prosecutor and

the GISF. She relied on Article 3 of the Convention in its substantive and procedural limbs and on Article 13. She alleged that she had been subjected to inhuman and degrading treatment by the police officers and that her criminal complaint had not been investigated by an independent authority, that is, the GISF. Moreover, the investigation by the police had been inadequate, since she had not been interviewed, the medical reports had not been assessed and the security camera recordings from the police station had not been examined.

29. By decision no. II. ÚS 453/14 of 23 September 2014, the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded, since it did not find the conduct of the GISF to be unconstitutional. Moreover, given that the applicant had not agreed with the response of the Prague Municipal Public Prosecutor, she could have lodged a complaint with the higher public prosecutor's office. As for the alleged ill-treatment, the Constitutional Court held that the applicant's account of the incident had not been substantiated during the investigation. The decision was served on the applicant's lawyer on 25 September 2014.

III. CLAIM FOR COMPENSATION

30. On 29 April 2013 the applicant lodged a claim under Act no. 82/1998 with the Ministry of the Interior, seeking compensation for her alleged ill-treatment.

31. On 27 September 2013 the Ministry found the claim to be unfounded. It concluded that the applicant had been intoxicated and had behaved aggressively during the incident and that she herself had caused the injuries to her hands and legs. The Ministry referred to the applicant's own statement of 19 February 2013 that she did not remember the events on account of her intoxication. The Ministry also noted that the security camera recordings from the police station had been automatically deleted after thirty days and that their examination had not been requested before the expiry of that period.

RELEVANT LEGAL FRAMEWORK

I. GENERAL INSPECTORATE OF SECURITY FORCES ACT (LAW No. 341/2011, IN FORCE SINCE 23 NOVEMBER 2011)

32. In accordance with section 1 of this Act, the GISF is an armed security corps headed by a director. The director is appointed and dismissed at the request of the government and after examination by the security committee of the Chamber of Deputies and by the Prime Minister, to whom he or she is accountable. The GISF forms part of the State administration and is a budgetary unit whose receipts and expenses constitute an independent part of the State budget.

33. Section 2 provides that the GISF is responsible for searching for, revealing and verifying facts showing that a criminal offence has been committed by a police officer and for investigating such offences.

II. CODE OF CRIMINAL PROCEDURE (LAW No. 141/1961) AS IN FORCE AT THE MATERIAL TIME

34. Pursuant to Article 158 § 1 of this Code, the police authority was obliged, if its own findings or complaints or requests by other persons and authorities indicated that a criminal offence might have been committed, to carry out the necessary examination and measures aimed at establishing the relevant facts and the perpetrator.

35. Pursuant to Article 158 § 12, if there were indications that a criminal offence had been committed which the GISF was competent to investigate, the police authority was to immediately notify the GISF and hand the case over to the latter.

36. Pursuant to Article 159a § 1, when no suspicion arose that a criminal offence had been committed, the prosecutor or the police were to issue a decision to set the case aside, unless it was to be resolved in another way (for example by referring the case to the competent minor offences authority or disciplinary authority).

III. POLICE ACT (LAW No. 273/2008) AS IN FORCE AT THE MATERIAL TIME

37. Under section 53(1) and (3) of this Act, police officers were entitled to use coercive measures to protect their own or another person's safety, property or public order and to choose the coercive measure which would enable them to achieve the objective of the intervention and which was necessary to overcome the resistance or attack of the person concerned. Pursuant to section 53(5), when using coercive measures, police officers had to make sure not to cause harm to the person concerned which would be disproportionate to the nature and dangerousness of that person's unlawful conduct.

IV. ADMINISTRATIVE CODE (LAW No. 500/2004) AS IN FORCE AT THE MATERIAL TIME

38. Under Article 175 § 1 of this Code, the persons concerned were entitled to complain to the administrative authorities of inappropriate conduct on the part of officials or authorities, unless the Code provided another means of protection.

39. Pursuant to Article 175 § 5, the examination of such a complaint had to be terminated within the time-limit of sixty days, which was to start

running from the date of the notification of the complaint to the relevant authority.

40. Under Article 175 § 7, should the complainant have considered that his or her complaint had not been duly examined, he or she could request the higher administrative authority to review the examination of the complaint.

RELEVANT INTERNATIONAL MATERIALS

REPORTS FROM THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("THE CPT")

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

41. On 17 December 2014 the CPT's report on aperiodic visit to the Czech Republic from 1 to 10 April 2014 was published. The report contained the following part:

> "A. Police custody
>
> ...
>
> 2. Ill-treatment
>
> 9. The majority of persons interviewed by the delegation who were – or had recently been – detained by the police stated that they had been treated correctly by police officers.
>
> However, several allegations were received from detained persons that they had been subjected to excessive use of force at the time of apprehension (even when the person concerned allegedly displayed no resistance or after he/she had been brought under control). Some persons also complained about unduly tight handcuffing after their apprehension. Further, some allegations were received of physical ill-treatment (such as slaps, punches, kicks and blows with a baton) and threats thereof during questioning, apparently in an attempt to extract a confession.
>
> In a few cases, the allegations received were supported by medical evidence. For example, one person interviewed by the delegation alleged that during his apprehension, police officers had made him lie prone on the floor and when handcuffing him, had twisted his arms behind his back to the point that his elbow had been seriously injured. According to his personal medical file, upon admission to the remand prison, the person concerned had had a swollen right elbow with limited movement of the right forearm. He had been transferred to a hospital where a non-displaced epicondylar fracture of the right ulna was diagnosed.
>
> Further, the delegation heard several accounts of verbal abuse, including of a racist/xenophobic nature, by police officers during apprehension and/or in the context of police questioning.
>
> In the light of the above findings, the CPT must recommend once again that police officers throughout the Czech Republic be reminded regularly and in an appropriate manner that any form of ill-treatment – including threats, verbal abuse and racist/xenophobic remarks – towards detained persons is unprofessional and illegal and

will be punished accordingly. Further, it should be made clear to police officers, in particular through ongoing training, that no more force than is strictly necessary should be used when effecting an apprehension and that there can be no justification for striking apprehended persons once they have been brought under control. Where it is deemed essential to handcuff a person at the time of apprehension or at a later stage, the handcuffs should under no circumstances be excessively tight and should be applied only for as long as is strictly necessary.

10. Another effective means of preventing police ill-treatment lies in the effective investigation by the competent authorities into allegations of police ill-treatment. In this regard, the CPT welcomes the setting-up, on 1 January 2012, of the General Inspection of Security Forces (GISF), as an independent body responsible for the investigation of criminal offences committed by members of the police, the prison and customs services, as well as, in certain cases, of civil employees of the aforementioned services. The director of the GISF reports directly to the Prime Minister (who also has the authority to appoint him and remove him from the office)."

B. Report of 4 July 2019 (CPT/Inf (2019) 23)

42. On 4 July 2019 the CPT's report on aperiodic visit to the Czech Republic from 2 to 11 October 2018 was published. The report stated, *inter alia*:

"A. Police

...

Ill-treatment

10. The vast majority of persons interviewed by the CPT's delegation who were – or recently had been – in police custody made no allegations of ill-treatment by the police. On the contrary, several of them made positive comments about the manner in which they had been treated by police officers.

However, the delegation did receive a few allegations of excessive use of force, such as slaps, kicks and baton blows, during the actual apprehension (even if the person concerned did not resist or after he/she had been brought under control). Further, some persons met by the delegation complained about unduly tight and painful handcuffing after their apprehension. The delegation also heard a few allegations of verbal abuse, including of a racist/xenophobic nature, of detained persons by police officers at the time of the apprehension or during police questioning.

The CPT reiterates its recommendation that police officers throughout the Czech Republic be reminded that any form of ill-treatment (including threats, verbal abuse and racist/xenophobic remarks) of detained persons is unprofessional and illegal and will be punished accordingly. Further, it should be made clear to police officers, in particular through ongoing training, that no more force than is strictly necessary should be used when effecting an apprehension and that there can be no justification for striking apprehended persons once they have been brought under control. Where it is deemed essential to handcuff a person at the time of apprehension or at a later stage, the handcuffs should under no circumstances be excessively tight and should be applied only for as long as is strictly necessary."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained that she had been ill-treated during her stay at the Nové Město police station and during her transfer from the sobering-up centre to that police station. She also complained of the lack of an effective investigation in that regard. She relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. On the applicability of Article 3 of the Convention

44. The Government admitted that the applicant's account of the events could give rise to a suspicion of a violation of Article 3. However, a thorough examination and the domestic investigation showed, in their view, that many of the applicant's assertions were unfounded or at least doubtful, and the level of severity required by Article 3 had not been reached.

45. The applicant conceded that her injuries were rather light but emphasised the emotional abuse resulting from the threats, insults and denial of medication, asserting that the police officers' conduct had caused her psychological trauma and had worsened her long-term anxiety disorder. She asserted that, given her particularly vulnerable position, conduct which would normally not reach the minimum level of severity could in the instant case amount to ill-treatment.

46. The Court thus considers it necessary to rule first on the question of the applicability of Article 3 of the Convention to the facts of the case.

47. The relevant principles regarding the minimum level of severity which ill-treatment must attain to fall within the scope of Article 3 are summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 82-88 and 101, ECHR 2015, and the references cited therein, and also *Castellani v. France*, (no. 43207/16, §§ 53 and 66, 30 April 2020, and *Pranjić-M-Lukić v. Bosnia and Herzegovina*, 4938/16, § 73 and § 82, 2 June 2020).

48. For the purposes of the present case, the Court observes in particular that ill-treatment that attains that minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. Mental suffering may also be caused by a fundamental violation of human dignity when a person is deprived of his or her liberty and subjected to interrogation or physical intervention by police officers. An interference with bodily integrity may also be caused by the refusal to provide medication that a person deprived of liberty is urgently in need. The cumulation or close succession of those situations could increase the person's suffering and attain the minimum

level of severity required to constitute ill-treatment prohibited by Article 3 of the Convention.

49. The Court recalls that where an applicant is under the control of State agents, the Court's examination shifts to the necessity, rather than the severity, of the treatment to which the applicant was subjected to in order to determine whether the issue complained of falls within the scope of Article 3 of the Convention. If the treatment is not considered strictly necessary, it amounts to degrading treatment and thus a violation of Article 3 of the Convention (see *Bouyid*, cited above, §§ 100-101 and 111-112, and also §§ 45 and 47). The Court notes the Government's objection regarding the applicability of Article 3 under its substantive limb (see, for example, *Perkov v. Croatia*, no. 33754/16, §§ 31-32, 20 September 2022 – not yet final). In that regard the Court reiterates that the term "arguable claim" cannot be equated to finding a violation of Article 3 under its substantive head. An arguable claim only requires that there is a reasonable suspicion that applicants were ill-treated by the police or another national authority (compare *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101 and 102, Reports of Judgments and Decisions 1998-VIII, and *Đurđević v. Croatia*, no. 52442/09, § 86, ECHR 2011 (extracts)).

50. It is not disputed in the present case that the police officers used physical force against the applicant – who, on account of her drunkenness, was in a vulnerable state – causing her some minor injuries as described in a medical certificate (see paragraph 10 above). It appears that while at the police station, the applicant was handcuffed, had her both legs tied together and was attached to a bench (see paragraph 15 above). The following day the same police officers who had allegedly ill-treated her at the police station came to escort her from the sobering-up centre in a police car. Added to this are the allegedly racist and degrading remarks made to the applicant who was allegedly not allowed to take her medication (anxiolytics).

51. Against this background, the Court thus considers that the Government's objection regarding the threshold required for application of Article 3 of the Convention raises issues which are closely related to the merits of the substantive complaint (see *Perkov*, cited above, § 32). Accordingly, it finds that this objection is to be joined to the merits of the complaint.

2. On the Government's objection of non-exhaustion of domestic remedies

52. The Government asserted that any excessiveness could only have occurred on account of negligence while the police officers had been fulfilling their obligations, and had not reached the level of severity required by Article 3. The State had therefore not been called upon to criminalise the police officers' conduct, and any damage caused to the applicant could have been redressed through a compensatory remedy. However, the applicant had

failed to make use of such a remedy because she had not turned to the courts after her claim under Act no. 82/1998 had been dismissed by the Ministry of the Interior (see paragraph 31 above).

53. The applicant pointed to the Court's case-law, according to which proceedings that could only result in an award of compensation to be paid by the State did not satisfy the procedural requirements of Article 3 (citing *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004, and *Kopylov v. Russia*, no. 3933/04, § 130, 29 July 2010). In the instant case, the applicant had not brought a civil action under Act no. 82/1998 because what she was primarily seeking was not compensation but rather the punishment of the police officers responsible for her ill-treatment. To achieve this goal she had lodged a criminal complaint, which she had later sent directly to the GISF, had then asked the public prosecutor to supervise the investigation and had eventually lodged a constitutional appeal, thus using all the remedies capable of securing an effective investigation (she referred to, *mutatis mutandis*, *Eremiášová and Pechová v. the Czech Republic*, no. 23944/04, 16 February 2012).

54. According to the Court's established case-law, in cases where an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Proceedings that can only result in the award of compensation to be paid by the State, but not in the punishment of those responsible for the ill-treatment, cannot be considered to satisfy the procedural requirement of Article 3 in cases of wilful ill-treatment of persons who are within the control of agents of the State (see, for example, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 227, ECHR 2014 (extracts), and *R.R. and R.D. v. Slovakia*, no. 20649/18, § 127, 1 September 2020).

55. Consequently, given that the applicant was found to have an arguable claim under Article 3 (see paragraphs 50-51 above), proceedings for damages under Act no. 82/1998 are not an effective remedy that needs to be used for exhaustion purposes in respect of the applicant's complaint under Article 3 (see *Kummer v. the Czech Republic*, no. 32133/11, § 47, 25 July 2013).

56. Accordingly, the Court dismisses the Government's objection.

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

B. Merits

1. Procedural aspect of Article 3 of the Convention

(a) The applicant

58. The applicant disagreed with the Government's assertion that there had been no need in the present case to criminalise the non-intentional conduct of the police officers. In her view, only an effective investigation could have determined whether the police officers were to be prosecuted or not.

59. However, the investigation conducted in the present case had suffered from several shortcomings, the most serious being the failure to obtain the security camera recordings from the police station before they had been erased. The applicant pointed out in that connection that according to the police, the recordings had already been overwritten on 7 March 2013, whereas the Ministry of the Interior had stated that they had been automatically deleted after thirty days (see paragraph 31 above). She maintained that the authorities had shown no real interest in securing those recordings, although they would have constituted the only direct and objective evidence of what had really happened.

60. Another serious shortcoming, according to the applicant, was that despite the fact that her criminal complaint had clearly indicated a possible violation of Article 3, it had not been forwarded to the GISF and instead the incident had been investigated by the police, that is, by colleagues of the police officers involved. She contended in that connection that any allegation of ill-treatment on the part of the police officers should have been investigated from the very outset by the GISF and that the police should not have had the power to decide whether such an allegation was justified or not. In any event, the applicant doubted the independence and impartiality of the GISF, given that that authority had taken over practically all the personnel of the former Police Inspectorate, which had been disbanded after being found not to fulfil the requirements of Article 3 (the applicant referred to *Kummer*, cited above, §§ 85-86).

61. The applicant further contended that the police investigation had lacked the necessary promptness, since there had been long delays between her filing the criminal complaint on 21 February 2013 and the police's request for the security camera recordings on 7 March 2013 and the interviews of the police officers concerned, notably L.D. and J.M., on 12 March 2013. She observed in that connection that she did not blame all the police officers with whom she had come into contact during the events, but only the three who had taken part in her ill-treatment at the Nové Město police station and who had brought her back from the sobering-up centre. Since no one else had witnessed her ill-treatment, the statements of the numerous other police

officers and other persons had not been capable of clarifying the facts or refuting her assertions.

62. Moreover, the applicant maintained that the authorities had failed to do everything that could objectively have been done. In particular, they had not questioned her about the details of the incident in order to test her credibility, nor had they made her undergo a psychological or psychiatric examination, and they had ignored the medical reports submitted by her.

(b) The Government

63. With reference to the principles formulated in the Court's case-law (they cited, among other authorities, *Dushka v. Ukraine*, no. 29175/04, §§ 56-58, 3 February 2011; *Igars v. Latvia* (dec.), no. 11682/03, 5 February 2013; *Korobov and Others v. Estonia*, no. 10195/08, 28 March 2013; and *Svoboda and Others v. the Czech Republic* (dec.), no. 43442/11, 4 February 2014), the Government observed that Article 3 did not compel States to launch a criminal investigation whenever an individual raised a complaint of ill-treatment. In the field of police abuse the procedural limb of Article 3 required States to prosecute only cases in which the authorities received an arguable claim giving rise to a reasonable suspicion that the police's actions had reached at least the minimum threshold of ill-treatment prohibited by that provision.

64. In the instant case, however, there had never been a reasonable suspicion that a criminal offence had been committed by a police officer. The Government thus contended that since the applicant had not lodged an arguable complaint with the national authorities (see paragraph 82 above), the effectiveness, independence and impartiality of the subsequent investigation were not to be assessed in the light of the procedural requirements of Article 3. It could therefore be accepted that the applicant's complaint had been processed by the authorities of the internal police inspection department, pursuant to Article 158 § 1 of the Code of Criminal Procedure (see paragraph 34 above), even though those authorities did not meet the requirement of independence. Given that such a preliminary examination of the applicant's complaint had not disclosed anything warranting a criminal investigation within the meaning of Article 158 § 12 of that Code (see paragraph 35 above), it had not been necessary for the GISF to deal with the case. The Government maintained that had that preliminary examination revealed a suspicion that a criminal offence had been committed, the case would have been handed over to the GISF pursuant to Article 158 § 12 of the Code of Criminal Procedure.

65. The Government further observed that the applicant had lodged her criminal complaint only on 21 February 2013, that is, two or three days after the incident, and that the medical certificates, except for the first one, had been issued even later. In their view, there had been no delays in dealing with her complaint since the examination had started on 6 March 2013 and the

security camera recordings from the Nové Město police station had been requested the following day, by which time they had already been automatically overwritten on account of the limited capacity of the data storage device, given that the period of conservation of the recordings made in the corridors and offices of police stations was not regulated. In any case, those recordings would not have covered all the events in question, account being also taken of the fact that they would not have contained sound.

(c) The Court's assessment

66. The Court reiterates that Article 3 of the Convention requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see *Gök and Güler v. Turkey*, no. 74307/01, § 38, 28 July 2009, and *Tadić v. Croatia*, no. 10633/15, § 67, 23 November 2017). Such an investigation should be capable of leading to the identification and punishment of those responsible. The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports of Judgments and Decisions* 1998-VIII, and *Bouyid*, cited above, § 123). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, for example, *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV).

67. Moreover, for an investigation required by Article 3 to be effective, those who bear responsibility for it and those who carry it out must be independent and impartial, in law and in practice. This calls for not only a lack of any hierarchical or institutional connection with those implicated in the events, but also independence in practical terms (see *Najafli v. Azerbaijan*, no. 2594/07, § 52, 2 October 2012, and *Layijov v. Azerbaijan*, no. 22062/07, § 55, 10 April 2014).

68. The Court notes at the outset the arguable nature of the applicant's complaints, having regard to a number of factual elements regarding the incident. Indeed, the applicant's complaint to the domestic authorities, which was aimed at the police officers who had been on duty at the Nové Město police station on 18 February 2013 and who had brought her back from the sobering-up centre on the following day, contained sufficient specific information on the nature of the alleged ill-treatment and was accompanied by a medical certificate dated 21 February 2013 (see paragraph 13 above). In the Court's view, therefore, the authorities were under an obligation to conduct an effective investigation. In this connection, the Court considers that the arguable nature of the applicant's complaints is corroborated by the fact that numerous police officers (fourteen, according to the Government – see paragraph 78 below) were questioned or invited to comment on the incident.

69. The Court further observes that the examination of the applicant's criminal complaint was carried out by several internal police inspection departments which were part of the different directorates to which the implicated police officers belonged in organisational terms (see paragraphs 14 and 21 above). Leaving aside the issue of the independence and impartiality of this internal police investigation, the Court notes that the conclusions thereof relied entirely on the statements given by the police officers, both those of the Nové Město police station, who had been present on both days and whom the applicant had directly accused (see, in particular, the statements by L.D. and J.M. cited in paragraphs 15 and 19 above), and those of others who had come into contact with her only on 18 February 2013.

70. The police officers' version of the events was uncritically accepted and seen as sufficient to conclude that the applicant had been aggressive and had put up resistance and that the force used against her had been justified, without considering whether the force employed had been proportionate to the circumstances of the case, specifically whether it had been indispensable and/or excessive. No expert medical opinion was sought in this regard and no statement was taken from the applicant (see, *mutatis mutandis*, *Tadić*, cited above, § 69).

71. In that connection, the Court finds it problematic that in a situation where the applicant complained that she had been denied medication and been subjected to degrading and racist remarks, which the Government admitted would be unacceptable if true (see paragraph 82 below), and asserted that she had suffered psychological trauma, she was not in any way involved in the examination of her complaint. There is no indication in the case file that the police took any measures to inquire about the applicant's credibility (see, *mutatis mutandis*, *B.V. v. Belgium*, no. 61030/08, § 67, 2 May 2017) or to verify her account of the events. Indeed, the applicant was not interviewed, invited to provide a more detailed description of the facts or confronted with the statements of the police officers concerned. Nor was she invited to have her alleged psychological problems certified by a specialist, although she asserted to her general practitioner that she suffered severe anxiety, fear and nightmares (see paragraph 10 above).

72. The Court further notes that the applicant lodged her criminal complaint on 27 February 2013, three days following the event (see paragraphs 5 and 13 above) and that the security camera recordings were erased on 7 March 2013 (see paragraphs 18 and 19 above). This fact constitutes another element demonstrating that the investigation was not conducted with due diligence: the investigation authorities had sufficient time to secure this piece of evidence, but they failed to do so.

73. The Court reiterates in this context that it is incumbent on the State authorities, under Article 3 of the Convention, to take the necessary measures to assess the credibility of the claims made and to clarify the circumstances of the case (see *B.V. v. Belgium*, cited above, § 66). This means in the Court's

view that, when faced with a prima facie arguable complaint, even if formally imperfect, the State authorities should also assist the purported victim and secure his or her participation in the subsequent examination thereof.

74. The nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 234, 30 March 2016). The Court considers that in a case such as the present, as soon as there is an "arguable complaint" regarding ill-treatment, a fully-fledged examination has to be carried out by the independent and specialised body, which in the context of the Czech Republic is the GISF (see paragraphs 32-33, 35-36, 41-42 and 64 above), involving the victim and excluding any connivance with the alleged perpetrators.

75. In view of the above considerations, the Court cannot accept in the present case that the internal police inspection satisfied those requirements and that the conclusions thereof were able to reasonably justify the "decision" not to hand the case over to the GISF.

76. The Court observes in this connection that pursuant to the relevant domestic law (see paragraph 33 above), it was ultimately the responsibility of the GISF to search for, reveal and verify facts showing that a criminal offence had been committed by a police officer, and to investigate that offence. Even though the GISF was informed of the incident by the applicant on 17 April 2013 (see paragraph 26 above), the documents in the case file do not indicate that the GISF ever assessed the conclusions of the internal police inspection or engaged in any investigative acts on its own.

77. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities did not take all reasonable measures to shed light on the facts of the present case and that the investigation carried out was not effective for the purposes of Article 3 of the Convention.

78. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

2. Substantive aspect of Article 3 of the Convention

(a) The applicant

79. The applicant first admitted that she had been aggressive and under the influence of alcohol and that she had had memory lapses as regards what had happened in the restaurant and during her transfer to the police station; however, once at the police station, she had begun to sober up and to be aware of the events. The following day she had been forced to provide a statement (see paragraph 8 *in fine* above) despite the fact that she did not feel well and wanted to leave.

80. As to the events at the Nové Město police station, the applicant contended that the police officers had choked her, which had resulted in her being unable to speak properly for three days, and beaten her, causing her

several bruises and swellings, a bleeding cut under her upper lip, and bruises on her ribs, wrist and spine. Moreover, she had been handcuffed for an inappropriately long time and repeatedly insulted by means of racist and sexist comments. In her view, the conduct of the police officers and the force used had been disproportionate.

81. Lastly, conceding that her injuries had been rather light, the applicant emphasised the emotional abuse resulting from the threats, insults and denial of medication, asserting that the police officers had caused her psychological trauma and had worsened her long-term anxiety disorder.

(b) The Government

82. The Government contended that the required standard of proof "beyond reasonable doubt" had not been met by the applicant (they cited, *mutatis mutandis*, *Khatayev v. Russia*, no. 56994/09, §§ 106 and 110-11, 11 October 2011). They observed that the only consequences of the alleged ill-treatment had consisted of haematomas due probably to the handcuffing (see paragraph 10 above), which were not very serious, as they had already disappeared by the time of the medical examination on 24 February 2013 (see paragraph 11 above). Other health or psychological problems alleged by the applicant had not been corroborated by any evidence. Nor had her allegations of threats, emotional abuse and racist or sexist remarks which, if true, would have been unacceptable. Although the applicant had certainly been in a vulnerable position, it had to be borne in mind that she had been under the influence of alcohol and had not been able to remember the events, a fact that cast serious doubt on the veracity of her description of the officers' behaviour. Moreover, the applicant's version had not been supported by any other person. On the other hand, the fourteen police officers who had come into contact with her on 18 and 19 February 2013, and who could not have really coordinated their statements since they were not members of the same department, had not contradicted each other and had provided a complete picture of the events; most of them had mentioned the applicant's verbal and physical aggressiveness, which the applicant did not deny and which had also been reported by the doctor from the sobering-up centre.

83. The Government further observed that to avoid using disproportionate physical force while getting the applicant under control, the first intervening police officers had called for back-up emergency patrols (see paragraph 5 above), and that the applicant had had her legs tied together with textiles only during the transfer from the restaurant to the police station. Furthermore, although the applicant had had to be repeatedly handcuffed because of her aggressiveness and her attempts to flee, she had not worn the handcuffs for a long time and never in public (the Government cited, *mutatis mutandis*, *Kazakova v. Bulgaria*, no. 55061/00, §§ 51-53, 22 June 2006).

84. The Government emphasised that the domestic investigation had not proved any acts of violence on the part of the police officers. While it was

very unlikely that a number of the injuries complained of by the applicant had been caused by the police's conduct, it could not be ruled out that it had been the applicant who had harmed herself through her resistance and aggression. In this context, the Government firstly pointed to the delay of several days between the events and the issuance of the medical certificates, which made the relevance of the doctors' findings questionable. Secondly, the physical ill-treatment complained of by the applicant, specifically the choking and handcuffing, was not likely to have caused the injuries established by those certificates, except for the abrasions around the ankles and oedema on the wrists. Regarding the latter, the Government observed that the handcuffs used on the applicant had been equipped with a mechanism causing them to tighten when a person tried to break free from them. Lastly, no doctor had observed any signs of trauma or psychological suffering or been informed by the applicant of any denial of medication, nor had she consulted her psychiatrist (whom she had allegedly been seeing for the past ten years); her allegations of psychological problems mainly caused by verbal insults had therefore not been proven beyond reasonable doubt.

85. The Government were therefore satisfied that all the measures taken against the applicant had to be regarded as proportionate in the specific circumstances of the case and that the applicant had not been exposed to excessive suffering reaching the required level of severity.

(c) The Court's assessment

86. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Ramirez Sanchez v. France* [GC], no. 59450/00, § 117, ECHR 2006-IX, and *Bouyid*, cited above, § 82). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such 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).

87. Turning to the circumstances of the present case, the Court observes that the applicant presented quite a detailed description of her ill-treatment by the police officers of the Nové Město police station. In support of her complaint, she submitted several medical certificates (see paragraphs 10-12 above).

88. However, whereas the Court has found (see paragraph 68 above) that the applicant's allegations were such as to oblige the authorities to launch an official investigation, it considers, having regard to the parties' submissions

and all the material in its possession, that the evidence before it does not enable it to find beyond reasonable doubt that the applicant was subjected to treatment contrary to Article 3, as alleged (see, *mutatis mutandis*, *Jannatov v. Azerbaijan*, no. 32132/07, § 60, 31 July 2014, and *Mehdiyev v. Azerbaijan*, no. 59075/09, § 74, 18 June 2015).

89. The Court emphasises, however, that this inability derives at least in part from the failure of the domestic authorities to carry out an effective and independent investigation at the relevant time (see *Gharibashvili v. Georgia*, no. 11830/03, § 57, 29 July 2008; *Lopata v. Russia*, no. 72250/01, § 125, 13 July 2010; and *Mehdiyev*, cited above, § 75, and *Gablishvili and Others v. Georgia*, no. 7088/11, § 63, 21 February 2019).

90. In view of the foregoing and applying the standard of proof of "beyond reasonable doubt" (see paragraph 86 above), the Court cannot find a violation of the substantive aspect of Article 3 of the Convention on account of the applicant's alleged ill-treatment regarding the actions by the police officers. The above conclusion does not undermine the Court's finding (see paragraph 78 above) that the applicant's complaint of ill-treatment was arguable and that the procedural obligation to investigate was triggered in the present case.

Consequently, there is no violation of Article 3 of the Convention under its substantive limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

91. Lastly, the applicant complained under Article 13 of the Convention that the response from the Prague Municipal Public Prosecutor had not been adequately and sufficiently reasoned and that the Constitutional Court had failed to fully assess the effectiveness of the investigation.

92. The Court is of the view that the applicant's complaint can be considered to be directed at the outcome of the investigation in the present case and that, as such, it amounts to a restatement of her complaint under the procedural limb of Article 3 of the Convention. For this reason, it concludes that, although this complaint is admissible, no separate issue arises under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

95. The Government contested the claim as being overstated and requested that, should the Court find a violation of Article 3 of the Convention, the applicant be awarded a maximum of EUR 2,000.

96. The Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

97. The applicant also claimed 113,760 Czech korunas, equivalent to EUR 4,600, for the costs and expenses incurred before the Court.

98. The Government contested that claim, observing that it had been calculated on the basis of the non-pecuniary damage sought, which had been exaggerated, and tripled because of the need to use a foreign language.

99. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

100. 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. *Joins* to the merits the Government's preliminary objection concerning the applicability of Article 3 of the Convention and dismisses it;

2. *Declares* the application admissible;

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

4. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;

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

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President