



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

FOURTH SECTION

CASE OF KOOMEN v. THE NETHERLANDS

(Application no. 298/15)

JUDGMENT

Art 2 (substantive and procedural) • Death of the applicants' son as a result of a fatal gunshot wound inflicted in the course of a scuffle between a number of men and a police officer • In specific case-circumstances, use of lethal force by police officer "absolutely necessary in defence of any person from unlawful violence" • Effective and impartial investigation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

20 May 2025

FINAL

20/08/2025

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

In the case of Koomen v. the Netherlands,

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

Lado Chanturia, *President*,

Jolien Schukking,

Faris Vehabović,

Tim Eicke,

Lorraine Schembri Orland,

Ana Maria Guerra Martins,

Sebastian Rădulețu, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 298/15) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Dutch nationals, Ms Tineke Koomen and Mr Jan Koomen (“the applicants”), on 17 December 2014;

the decision to give notice to the Government of the Kingdom of the Netherlands (“the Government”) of the complaints concerning the right to life;

the President’s decision to treat some of the documents in the case file as confidential under Rule 33 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 29 April 2025,

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

INTRODUCTION

1. The case concerns the death of the applicants’ son as a result of a fatal gunshot wound inflicted in the course of a scuffle between a number of men and a police officer. The applicants complained under Article 2 of the Convention that the officer’s use of his firearm had not been absolutely necessary and that the authorities had failed to conduct an independent and effective investigation into the incident.

THE FACTS

2. The applicants were born in 1950 and live in Amsterdam. They are the parents of Michael Koomen, who was born on 20 July 1979 and died on 14 May 2011 of a gunshot wound. The applicants were represented by Mr W.H. Jebbink, a lawyer practising in Amsterdam.

3. The Government were represented by their Deputy Agent at the time, Ms K. Adhin, and subsequently by their Agent, Ms B. Koopman, both of the Ministry of Foreign Affairs.

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

I. THE CIRCUMSTANCES SURROUNDING MICHAEL KOOMEN'S DEATH

5. On the evening of 14 May 2011 members of an amateur soccer team were celebrating winning the league in which the team competed. The members of the team included Michael Koomen, his brother (N.K.), J.K. and D.M. The team and some of their friends – some twenty persons altogether – took a canal boat trip from a nearby village to central Amsterdam. From the mooring place they moved in smaller groups into the city centre.

6. A senior police officer, B. – a dog handler who was passing in his police van at around 10 p.m. – decided to arrest N.K. and J.K. for being publicly intoxicated. He radioed the control centre for assistance because his van was unsuitable for transporting people. He was told that police reinforcements were on their way.

7. Initially, the arrest proceeded peacefully. Officer B. handcuffed N.K. and J.K. to each other. Various members of the group – including Michael Koomen – came and stood around the police van.

8. The atmosphere changed when D.M. and others began behaving in a manner that Officer B. perceived as threatening. Officer B. decided to push N.K. and J.K. into his van, and he retrieved his long truncheon (*wapenstok*) with a view to defending himself. A scuffle broke out, during which Officer B. was pushed back into the van, ending up on top of – or wedged in between – N.K. and J.K. Meanwhile, Michael Koomen was trying to calm the situation.

9. In the ensuing scuffle and while lying in the van, Officer B. drew his service pistol and fired four shots through the open side door. The first shot hit Michael Koomen in the neck, which proved fatal. The second shot did not hit anyone. The third shot hit N.K.'s thigh. The fourth shot hit D.M.'s abdomen. Officer B. later stated that at the time that he had fired the shots, he had feared for his life (see paragraphs 16 and 25 below). Police reinforcements arrived some fifteen to twenty seconds after the last shot was fired.

10. The incident was captured on video by two CCTV cameras mounted outside a nearby shop. Those recordings formed part of the evidence examined during the domestic proceedings (see paragraphs 26 and 55-56 below) and were submitted by the Government to the Court.

II. THE INVESTIGATIONS INTO THE INCIDENT

11. Two separate investigations were conducted regarding the incident on the evening of 14 May 2011.

12. The use of force by Officer B. against Michael Koomen, N.K. and D.M. was investigated by the National Criminal Investigations Department (*rijksrecherche* – “the NCID”) under the supervision of L., a prosecutor with the Regional Public Prosecutor’s Office (*arrondissementsparket*) of Amsterdam (see paragraphs 14-19 below).

13. In parallel with that investigation, a criminal investigation was carried out into possible criminal offences committed by members of the group (see paragraphs 20-33 below). That investigation was carried out by the Amsterdam-Amstelland police force, under the supervision of W., a prosecutor with the Regional Public Prosecutor’s Office of Amsterdam.

A. Investigation by the NCID into the use of lethal force by Officer B.

1. Forensic investigation

14. On 15 May 2011, a few hours after the shooting incident, the forensic unit of the Utrecht regional police force (that is, a police force from a region other than the one in which the incident had occurred) – acting under the supervision of the NCID and in accordance with the Instruction for investigating the use of force by a (police) officer (*Aanwijzing handelwijze bij geweldsaanwending (politie)ambtenaar*; see paragraph 65 below) – carried out a forensic investigation of the scene of the incident and secured Michael Koomen’s body and Officer B.’s uniform and firearm for examination.

15. At the request of prosecutor L., the forensic unit also digitally enhanced the quality of the CCTV footage (see paragraph 10 above) which had meanwhile been seized and secured by the Amsterdam-Amstelland police. The official record of the forensic investigation (including its findings) and the enhanced CCTV footage was submitted to the NCID on 23 June 2011. Also on 15 May 2011 a coroner inspected Michael Koomen’s body. The following day an anatomical pathologist at the Netherlands Forensic Institute conducted an autopsy on his body. Their findings were forwarded to the NCID.

2. Interview with Officer B.

16. At 1 p.m. on 15 May 2011 two NCID officers interviewed Officer B. as a witness (but under caution and in the presence of a lawyer). His statement can be summarised as follows.

While driving his police van, Officer B. noticed a group of young men - two of whom appeared to be intoxicated and were hindering traffic (Officer B. later identified them as N.K. and J.K.). He placed the two under arrest and handcuffed them together. A third young man arrived on the scene (Officer B. later identified him as Michael Koomen) and adopted a conciliatory attitude, asking Officer B. to release the two. The situation was

not threatening at that point. Since it was impossible to transport the arrested persons in his police van, Officer B. radioed for assistance.

The remainder of the group (Officer B. later identified one of them as D.M.) approached and started to behave aggressively. Michael Koomen tried to calm them down, but to no avail. Upon being physically assaulted by D.M., Officer B. opened the side door of his police van and pushed N.K. and J.K. inside. He took his truncheon from inside the van and used it to fend off the group. He was then pushed into the van and fell on top of the arrested men. N.K. then put his arm around Officer B.'s neck and tried to pull him back and strangle him at the same time as the rest of the group was trying to pull him out of the van by his legs. In the meantime, Officer B. had lost his truncheon and the earpiece that was connected to his handheld radio and could therefore no longer hear radio traffic. Fearing for his life, Officer B. decided to use his firearm as a last resort.

The first shot was intended as a warning shot, aimed upwards into the air across the edge of the doorway of the van (*langs de rand van de opening van de bus omhoog naar buiten gericht*). The group did not react, and N.K. continued to strangle him. The second shot, aimed at someone's legs, provoked no reaction either. When N.K. tried to take the firearm from him, Officer B. fired his third shot into one of his legs. Officer B. then fired a fourth shot at someone's leg, prompting the group to retreat, except for Michael Koomen, who was lying motionless on his back. Officer B. expressed the view that the members of the group had appeared to be out for blood (*bloed wilden zien*) and that they would have kicked him to death if they had managed to drag him out of the van.

17. The official record of Officer B.'s statement was accompanied by a medical statement dated 15 May 2011 (according to which Officer B. had no permanent or visible injuries apart from a graze on his leg that was about 10 cm long) and documentary proof of the fact that he had been trained and authorised to use his firearm (see paragraph 63 below).

3. Interviews with witnesses

18. Between 15 May and 28 June 2011, NCID officers interviewed twelve members of the group as witnesses, including: N.K. (interviewed on 17 May 2011 – he was unable to recollect much of what had happened); J.K. (interviewed on 18 May 2011 – he described the manner of his arrest and the ensuing scuffle and shooting); and D.M. (interviewed on 28 June 2011 – he described the scuffle between him and Officer B.).

4. On-scene reconstruction

19. On the evening of 30 January 2012, the NCID staged an onsite reconstruction of the shooting incident, which was recorded and stored on DVDs. The reconstruction had been ordered by the investigating judge at the

Amsterdam Regional Court – at prosecutor L.’s request – because the situation inside the police van when the shots were fired remained unclear, despite the available CCTV footage. Officer B., J.K., D.M. and N.K. took part in the reconstruction. The investigating judge oversaw the reconstruction process. Immediately following the reconstruction Officer B., under caution and in the presence of a lawyer, was questioned by the investigating judge.

B. Investigation conducted by the Amsterdam-Amstelland police into criminal offences possibly committed by the members of the group

1. Arrest and questioning of members of the group as suspects

20. On 14 and 15 May 2011, the Amsterdam-Amstelland police arrested nine members of the group, including N.K., J.K. and D.M., on suspicion of involvement in the use of violence against Officer B.

21. On 15 May 2011 the Amsterdam-Amstelland police questioned as suspects five members of the group (C.T., M.H., L.B., S.P. and P.K.), who stated that they had not witnessed anything of the incident or had arrived at the scene only after the first shot. On the same day, a sixth suspect (Y.S.) gave a statement, which included the following:

“The officer got out [of the van] and told [N.K. and D.M.] that they had been arrested. The officer appeared tense and authoritarian to me ... After this, it quickly turned into a chaotic situation, which I did not perceive to be threatening to [Officer B.] ... at that moment. ... I saw [Officer B.], [J.K.], [N.K.] and Michael Koomen standing near the van. Someone ... ran very hard towards [Officer B.] At that moment, there was a sudden pulling back and forth, ... probably to get [N.K. and D.M.] into the van. I moved in that direction, [in order] to pull Michael Koomen away from there. I thought, ‘this is not going well’; when I got closer, I heard a shot ...”

22. On 16 May 2011 the Amsterdam-Amstelland police questioned J.K. as a suspect, but he refused to give a statement.

23. On 17 May 2011 prosecutor L. instructed the NCID to add the above-mentioned statements to the NCID investigation case file, as they could possibly be relevant to that investigation.

24. On 18 May and 24 May 2011, respectively, the Amsterdam-Amstelland police questioned N.K. and J.K. as suspects. The official records of these interviews were not added to the NCID investigation case file.

2. Interviews with Officer B.

25. On 18 May 2011 Officer B. was interviewed as person reporting a crime (*verhoor aangever*) by two officers of the Amsterdam-Amstelland police. Officer B. reiterated and referred to his statement of 15 May 2011 to the NCID (see paragraph 16 above) and described the impact that the incident had had – and continued to have – on him.

26. On 4 July 2011 Officer B. was again interviewed by a police officer of the Amsterdam-Amstelland police. His lawyer was present during the interview. After being shown and asked to comment on the CCTV footage, Officer B. stated, *inter alia*, that he remembered certain events differently from how they appeared in the footage.

27. The official records of the above-mentioned interviews were not added to the NCID investigation case file.

3. Interviews with other witnesses

28. On 17 and 26 May 2011, respectively, two other witnesses (a passer-by and a friend of the soccer team) were interviewed by the Amsterdam-Amstelland police. Those witness statements were added to the NCID investigation case file.

29. The statement of the passer-by (W.H.) included the following:

“I saw a policeman ... put [two men] against the van ..., as if they were under arrest. At the same time ... he was being attacked by five or six guys. ... The officer then hit a guy This guy was then about to go on the attack but was stopped by ... another guy. ... The situation looked threatening at that point I saw more people running towards the police van. Then I saw a hubcap flying through the air. This was picked up by the guy who had received a blow to the head. Then these guys returned to the confrontation I did not actually see the officer being punched and/or kicked. I saw, so to say, the beginning of the skirmish and then walked on [The whole incident] gave me the impression that those guys were at least going to make sure their friends were not going to be taken by the police.”

30. The statement of the friend of the soccer team (S.B.) included the following:

“While I was walking (towards the police van) ... Michael Koomen walked by me because [N.K.] was there talking to a police officer. At that moment, I saw that the conversation was not going at all too well. Contact was made with the officer and the officer made contact with [N.K.]. I saw Michael Koomen approaching at that moment At that moment, I saw Michael falling down and I went straight to him. ... At that point I fell on my knees; then another shot was fired and I jumped away. ... You ask if I saw [them] fighting near the van. Yes, the officer got into a scuffle with [N.K.]. That scuffle actually happened because [D.M.] kicked that officer – and because [D.M.] had kicked that officer, for that officer everyone who was standing nearby was just being annoying [*vervelend*] and [they] had to stay away from him, and of course he was already dealing with [N.K.]. ... But I did see clearly that [D.M.] was kicking that man. Eventually, I was able to see from my position (near the front of the van) ... that [N.K.] had fallen into that van. What I think and what I saw is that [D.M.] was kicking and that man – together with [N.K.] – lost his balance I clearly saw that [N.K.] at one point wanted to protect that officer. ... from being kicked by [D.M.] ... Whatever happened – and that’s not to be condoned and it all got out of hand – that kicking went too far ...”

4. Criminal proceedings against N.K. and D.M.

31. On 11 November 2011 the Amsterdam Regional Court convicted N.K. of committing a violent offence (*openlijke geweldpleging in vereniging*)

against a person in a public place and in concert (*openlijke geweldpleging in vereniging*), which had consisted of repeatedly and forcefully beating and kicking Officer B.'s body, forcefully putting an arm around his neck and holding it, and pulling him backwards. The court held that the remaining charges – including hitting Officer B. in the head or face with the championship trophy and forcefully pressing down on his neck or throat – could not be proved.

32. In setting a sentence of thirteen days' imprisonment, the court attached considerable importance to the fact that N.K. himself had been gravely affected by the consequences of the violence against Officer B.: not only had he been hit in the leg by a bullet, but, above all, he had lost his brother.

33. Also on 11 November 2011 the Amsterdam Regional Court convicted D.M. of committing an act of violent offence against a person in a public place and in concert (*openlijke geweldpleging in vereniging*) and of possession of 1.55 grams of the drug MDMA. The court held that the remaining charges could not be proved. In setting a sentence of forty-eight days' imprisonment, the court took into account the consequences of the gunshots.

III. PROCEEDINGS BROUGHT BY THE APPLICANTS

A. Preliminary developments

34. On 20 July 2011 the applicants lodged a request with the Chief Public Prosecutor (*hoofdofficier van justitie*) of Amsterdam for Officer B. to be prosecuted for the murder or manslaughter of Michael Koomen.

35. On 2 September 2011 the applicants were informed that prosecutor L. was in charge of the investigation into Officer B.'s conduct.

36. On 30 December 2011 the applicants complained to the Chief Public Prosecutor that several requests that they had lodged with L. for them to be kept informed of the progress of the investigation had been ignored.

37. On 21 March 2012 the applicants wrote to L. that they had learned that he had worked as a police officer with the Amsterdam-Amstelland police force for approximately twenty years before joining the Public Prosecution Service. They asked him to state the nature of his acquaintance with Officer B., who at the time of his service with the Amsterdam-Amstelland police force would have been one of L.'s colleagues.

38. On 23 March 2012 L. confirmed that he had been a police officer of the Amsterdam-Amstelland police force until the mid-1998. He had, however, been employed for the most part in the central criminal investigation department (*centrale recherche*). He had never been a dog handler himself and he had not known Officer B. personally or professionally prior to the investigation.

39. On 27 March 2012 the applicants requested the Chief Public Prosecutor to entrust a public prosecutor other than L. with the investigation into Michael Koomen's death. The applicants expressed a concern that any decision not to prosecute Officer B. would be tainted by bias because of L.'s and Officer B.'s concurrent employment by the Amsterdam-Amstelland police force from 1986 until 1998. They also submitted that a lack of communication by prosecutor L. regarding the progress of the investigation played a role in their lodging their request.

40. On 29 March 2012 the Chief Public Prosecutor refused the applicants' request for L. to be replaced. The Chief Public Prosecutor stated that the investigation (including the witness interviews) had been carried out by the NCID, which was the first guarantee of an independent police investigation. The Amsterdam-Amstelland police had thus not been involved in the investigation into Michael Koomen's death. Furthermore, the forensic investigation of the scene of the incident had been carried out by a unit of the Utrecht police force. Investigations conducted by the NCID (including the one into Michael Koomen's death) were routinely supervised by a public prosecutor belonging (like L.) to a specialist team (*team specialistische zaken*) of the Amsterdam Public Prosecution Service that did not supervise criminal investigations carried out by district police officers (*politiemensen uit de districten*). This was to ensure that public prosecutors would not supervise NCID investigations against police officers known to them. In addition, L. had indicated that he did not know Officer B. in any way; otherwise he would not have been allowed to supervise the case. The independence of L. in investigating Michael Koomen's death had accordingly been guaranteed.

41. The Chief Public Prosecutor confirmed that both L. and Officer B. had been working with the Amsterdam-Amstelland police force from 1986 until 1998; however, that overlap was deemed irrelevant, given that they had not known each other during that time. What remained then was the mere fact that L. had been a police officer with the Amsterdam-Amstelland police until he had become a public prosecutor some fourteen years ago. The Chief Public Prosecutor considered that this was so long ago that this could not have given rise to any bias, or even any appearance thereof. Since no other relevant facts and circumstances had been advanced by the applicants (and nor did such facts or circumstances otherwise emerge), he refused the applicants' request.

42. For the sake of completeness, the Chief Public Prosecutor added that standard procedure dictated that when a public prosecutor in charge of a case wished to drop or proceed with the prosecution of a police officer, no decision was to be taken before consulting his or her immediate supervisor. The result of such a consultation would be submitted to the Chief Public Prosecutor in the form of a draft report. After being approved by the Chief Public Prosecutor, this report (*ambtsbericht*) would be submitted to the Public Prosecution Service's Advisory Board on the Police Use of Firearms

(*Adviescommissie politieel vuurwapengebruik*), which had its seat in 's-Hertogenbosch. The Advisory Board would then issue an opinion, which would count heavily (*telt zwaar*) with the Chief Public Prosecutor when the latter ultimately took the decision on whether or not to prosecute the police officer in question.

43. On 16 April 2012 the applicants were told that Officer B. would not be prosecuted. Prosecutor L. confirmed that information in a letter dated 6 July 2012.

44. Appended to L.'s letter of 6 July 2012 was a report written by him (dated 25 March 2012), which had been approved by the Chief Public Prosecutor and which had been submitted by the latter to the Advisory Board on the Police Use of Firearms on 27 March 2012. In his report, L. analysed the shooting incident and stated his intention to dismiss the criminal case against Officer B. The report included the following:

"1. Introduction

...[T]he available footage offered no or insufficient insight into the situational circumstances at the time of the incident in the police officer's van. An attempt was made to [determine] those circumstances through a reconstruction at the [scene of the incident] ... as [accurately] as possible. This too was recorded, which was important in assessing the present case and will be discussed in more detail below. ...

2. The incident: facts and circumstances

...What [Officer B.] does not mention in his extensive [NCID] statement [see paragraph 16 above] but which emerges conclusively from the footage is that, while he was wielding his truncheon, he was being grabbed by the throat from behind by the right arm of [N.K.], who was handcuffed to [J.K.] and who was at the same time trying to get out of the van, [while Officer B.] was being pulled forward into the van with a twisting motion.

During the reconstruction [of] 30 January 2012 ... (see the attached DVD [see paragraph 19 above]), [Officer B.] indicated that ... he was being pushed backwards by the group positioned in front of the police van and that he was being grabbed from behind in a firm stranglehold by one of the suspects in the van.

The CCTV footage shows that in all the turmoil [Officer B.] ended up in the van *under*, rather than *on top of*, [N.K.], and it seems that [B.] ended up on top of [J.K.]. At that moment, [D.M.] was fully in front of the [open] door ... of the van, still kicking in the direction of [B.].

In his [NCID] interview, [Officer B.] indicated in respect of this moment that (in the turmoil) he had lost his truncheon [and] had fallen backwards on top of a handcuffed man, and that, furthermore – owing to the loss of his earpiece – he had lost all contact with the control centre. At the time, he had found it to be a very threatening situation and he had realised that his life was at risk. In his statement, [Officer B.] indicated that he had felt that [N.K.] ... was trying to strangle him.

It can be seen from the CCTV that [N.K.] was standing on the ground with both his legs outside the van at the time, leaning forward slightly on top of [Officer B.] Also, it seems possible to conclude from the CCTV footage that the aforementioned grip of [N.K.] around [B.'s] neck continued until ... the first shot – a period of around nine seconds.

While [Officer B.] is being grabbed by the neck by [N.K.] and he is being forced into his van, [D.M.] can be seen attacking him at least twice with a kicking motion. [D.M.] gradually positions himself right in front of the opening of the sliding door of [B.'s] van – (from the perspective of the footage) to the right of [N.K.]. Diagonally to the left and behind [N.K.], we see that his brother, Michael Koomen – who consistently refrained from behaving violently towards [B.] – grabbed [N.K.] from behind with both arms by his shoulders, apparently in order to prevent or to stop any violent behaviour on the part of [N.K.] towards [B.].

First shot

A fraction of a second later, Michael Koomen can be seen to collapse and fall backwards onto the street (dead). ...

From the images it can be deduced that [Officer B.], from his precarious position at that moment, was confronted with a very confusing situation: lying backwards in his van; one person (J.K.) under/next to him; a large person hanging over him ([N.K.]), who had grabbed him by the neck and forced him backwards into the van and held him by the neck for a long time (around nine seconds); and in addition, [D.M.] ... kept kicking in [B.'s] direction with full force. It is not entirely clear to what extent [B.'s] legs were also being pulled by [N.K.]; however, that cannot be ruled out. Moreover, [J.K.'s] behaviour at that moment cannot be observed either. ...

It can very well be explained that from that position (lying down in the van), [B.] did not see Michael Koomen standing in front of his van, as at that very moment [N.K.] – who was standing diagonally in front of Michael Koomen – was hovering over [B.], keeping him (as [B.] points out) in a continuous stranglehold. That a stranglehold [was inflicted] is supported by the Regional Court's (final) verdict in the criminal case against [N.K.], in which it was found proven ... that [he] had been 'forcefully putting an arm around [B.'s] neck and holding it, and pulling him backwards' [see paragraph 31 above]. In the reasoning in respect of the sentence, it was noted: 'Owing to the actions of [N.K. and D.M.], the situation escalated to such an extent that [B.] drew and fired his weapon'.

In view of the fact that Michael Koomen was hit in the neck (with the direction of the shot pointing upwards towards the back), it can be concluded that the shot – which [Officer B.] had characterised as a warning shot – was aimed and fired from a lying position upwards. ...

The CCTV footage shows that at the time of this first shot, there was a clear space available in the opening of the vehicle's sliding door ... for a warning shot (see CCTV footage ... at 10:21:38). ...

4. Assessment of the legal position of the shooter/police officer

... First shot

... In the light of the foregoing, I consider that [Officer B.], by firing the first shot, was not at fault – in the sense of being culpable ... – for the death of Michael Koomen In my view, there was no disproportion between the nature of the assault and the manner of defending against it ...”

45. In the letter of 6 July 2012, the applicants were informed that they could lodge a complaint (*beklag*) under Article 12 of the Code of Criminal Procedure (*Wetboek van Strafvordering* – see paragraph 71 below) with the Amsterdam Court of Appeal (*gerechtshof*) against the decision that Officer B. would not be prosecuted.

B. Complaint proceedings before the Amsterdam Court of Appeal

46. On 13 July 2012 the applicants lodged a complaint with the Amsterdam Court of Appeal against the decision not to prosecute Officer B.

47. The applicants submitted that Officer B. should be prosecuted for the murder or manslaughter of Michael Koomen. In particular, they argued that parts of his statements had been inconsistent or false and that he had a previous conviction for assaulting an arrested person.

48. They also submitted that there had been no independent investigation into Michael Koomen's death because (i) the investigation had for the most part been carried out by the Amsterdam-Amstelland police force, (ii) it had been supervised by a public prosecutor of the Amsterdam Public Prosecutor's Office (namely, L.), (iii) L. had himself worked with the Amsterdam-Amstelland police force until 1998 and had thus in fact been a colleague of Officer B., and (iv) the applicants had not been kept sufficiently informed of the progress and outcome of the investigation. The applicants relied on Article 2 of the Convention and the relevant case-law of the Court – including the judgment of the Grand Chamber in *Ramsahai and Others v. the Netherlands* ([GC], no. 52391/99, ECHR 2007-II).

49. On 4 September 2013 the Chief Public Prosecutor of Amsterdam submitted an official report (*ambtsbericht*) to the Advocate General (*Advocaat-Generaal*) at the Amsterdam Court of Appeal, recommending that the applicants' complaint be dismissed. This report included the following:

“The decision not to prosecute [Officer B.] was taken after extensive internal consultations within the Public Prosecutor's Office. Prosecutor [L.] has written an extensive report in which the arguments are presented for the decision not to prosecute [see paragraph 44 above]. ... In my opinion, the [applicants'] complaint does not contain relevant elements which have not been addressed in that report.

The complaint furthermore explicitly questions the independence of [L.]. For the sake of clarity: [L.] did not know [Officer B.]; [L.] has never worked with [Officer B.]; and [L.] worked for the Amsterdam Public Prosecutor's Office department for serious crime and fraud [*afdeling zware criminaliteit/fraude*], and, in that capacity, [L.] had nothing to do with the police department where [Officer B.] was working. The investigation was, moreover, carried out by the NCID, and during the investigation [L.] never talked about the substance of this case with staff of the Amsterdam-Amstelland police, and [he] has never been approached about this case by anyone on that side.

And to repeat, the decision in this case was taken not only after extensive internal consultations but also after note was taken of [the opinion of] the experts of the Advisory Board on the Police Use of Firearms. The content of the complaint gives no cause to now reach a decision other than that taken previously. In my view, the complaint should be dismissed.”

50. On 9 December 2013 the Advocate General at the Amsterdam Court of Appeal submitted an opinion in which he advised that the applicants' complaint be dismissed. Referring to the CCTV footage (see paragraph 10

above) and the reports of prosecutor L. and the Chief Public Prosecutor (see paragraphs 44 and 49 above), the opinion included the following:

“Proof of attempted murder or manslaughter

...

The crux of the matter ... is whether the accused could successfully plead justification [*rechtvaardigingsgrond*] or an excuse [*schulduitsluitingsgrond*]. In his official report, the Chief Public Prosecutor agreed with the opinion of public prosecutor L. This also seems logical as this decision was reached after extensive internal consultations.

...

With regard to [D.M.], I have come to the conclusion that [Officer B.] can successfully plead self-defence [*noodweer*]. In my opinion, the same applies with regard to [N.K.], so that in this case, too, the prosecution was rightly dropped on that ground. The [above-noted conclusion] obviously does not apply in relation to Michael Koomen, because Michael Koomen did not attack [Officer B.].

I entirely agree with public prosecutor [L.], who states that it is extremely sad that Michael Koomen died. He was not violent; on the contrary, he tried to prevent violence and further escalation. This fact is highly pertinent for assessing whether (attempted) murder [or] manslaughter ... could be proved. Michael Koomen did not attack [Officer B.]. [Officer B.’s] violence was not directed against him, but against [N.K.] and [D.M.]. It logically follows that [Officer B.] had no intention of taking Michael Koomen’s life or of assaulting him.

... [I]n relation to Michael Koomen, ... the intention required for a conviction is lacking. In addition, I am of the opinion that given the circumstances, [Officer B.] cannot be reproached for having (otherwise) acted so carelessly as to warrant his being criminally reproached [*strafrechtelijk relevant verwijt*] with regard to the fatal injuries inflicted on Michael Koomen by the use of his firearm. ...

Whether it is in the public interest [opportuniteit] to prosecute

The [above-noted conclusion] does not detract from the fact that the situation was a tragic incident with disastrous consequences. It is extremely regrettable that the only sensible person in the group, Michael Koomen, died. It is terrible for the complainants that they have to face the consequences of the incident time and again for the rest of their life. But this is equally true for [Officer B.], who – regardless of how the matter is categorised legal – killed a human being and seriously injured two others.

Within this context, the question arises as to whether it would serve the purpose of determining the truth [*waarheidsvinding*] to bring the case to a criminal court. I consider the outcome of such a criminal case to be highly predictable. Given all the documents in the case file, a criminal court will not be able to reach a guilty verdict after the case is submitted. Therefore, I would not want to bring a criminal case [against Officer B.] against [any of the person] concerned. Accordingly, I agree with prosecutor [L.’s] decision not to prosecute.”

51. The Court of Appeal, sitting in chambers, heard the applicants assisted by a lawyer and (separately) Officer B.’s lawyer on 14 January 2014, and Officer B. assisted by his lawyer on 22 April 2014.

52. During the hearing the applicants elaborated on their complaint (see paragraphs 46-48 above). On the basis of publicly available court records they also challenged the Chief Public Prosecutor’s claim that prosecutor L. had

not had anything to do with the Amsterdam-Amstelland police at the time of the investigation into Michael Koomen's death (see paragraph 49 above). By way of example, the applicants pointed out that L. had acted as public prosecutor in a criminal case – concerning charges of money laundering and other financial crimes – in respect of which the Amsterdam Regional Court had delivered its judgment on 12 March 2012; in that judgment, the Regional Court had referred to, *inter alia*, investigative measures carried out by the Amsterdam-Amstelland police in 2010.

53. On 5 March 2014, Officer B.'s lawyer informed the Court of Appeal and the applicants' lawyer that Officer B. had been convicted of assault and fined – not only in 1987 (as had been submitted during the hearing of 14 January 2014 – see paragraph 51 above) – but also in 1996.

54. On 10 July 2014 the Court of Appeal dismissed the applicants' complaint of 13 July 2012.

55. The Court of Appeal noted at the outset that the file contained the applicants' complaint, the Chief Public Prosecutor's official report (see paragraph 49 above), the opinion of the Advocate General (see paragraph 50 above), official records drawn up by the NCID and the police, the CCTV footage (see paragraph 10 above) and the reconstruction videos (see paragraph 19 above).

56. As regards the CCTV footage, the court stated the following:

"5. ... The Court of Appeal notes that the recordings of the two security cameras ... provide an almost complete picture of what happened in this case. The Court of Appeal has viewed that footage and has observed – in so far as relevant – the following ...

10:19:41 - [A] police van, recognisable as such, ... stops diagonally opposite the roadway, in front of [N.K.] and [J.K.]. [Officer B.], dressed in police uniform, exits the van and walks in front of the van to [N.K.] and [J.K.]. Two other men are standing nearby.

10:20:05 - [Officer B.] places [N.K.] and [J.K.] next to each other right next to the van, with their faces turned towards the van. The two other men have continued on their way.

10:20:06 - [Officer B.] reaches for his belt with his left hand. [R.A.] approaches the van and talks to [Officer B.]. [Officer B.] places [N.K.] and [J.K.] in handcuffs; with a single set of handcuffs he attaches [N.K.'s] left wrist to [J.K.'s] right wrist.

10:20:35 - Michael Koomen walks to the van.

10:20:42 - [Y.S.] runs [towards] the van and [D.M.] also walks in that direction. [D.M.] holds the championship trophy in his hand.

10:20:50 - A group of five people stands near [Officer B.], who is facing Michael Koomen. [N.K.] and [J.K.] stand facing the van. [R.A.] pushes [Y.S.], [D.M.] and [O.B.] away from [Officer B.]. Michael Koomen stays with [Officer B.].

10:20:53 - [D.M.] walks around [R.A.] and walks in the direction of [Officer B.]. When he is close to [Officer B.], he bows his head and brings his head close to [Officer B.]. [R.A.] grabs [D.M.] and pulls him away from [Officer B.].

10:21:04 - [D.M.] walks around [R.A.] and walks in the direction of [Officer B.]. When he is close to [Officer B.], [Officer B.] pushes [D.M.] away from him.

10:21:08 - [D.M.] walks up to [Officer B.] and hits him with the championship trophy on the left side of his head. [Officer B.] pushes [D.M.] away; the trophy falls to the ground.

10:21:11 - [D.M.] moves in the direction of [Officer B.]. [R.A.] grabs [D.M.] and pushes him a few metres onto the pavement in front of the van.

10:21:15 - [Officer B.] opens the side door of the police van and pushes N.K. and [J.K.] inside. [R.A.] stops [Y.S.], who is about to run towards [Officer B.], and pulls Michael Koomen away. Meanwhile, [D.M.] is moving in the direction of [Officer B.].

10:21:20 - [D.M.] walks in the direction of [Officer B.] and kicks him with an outstretched right leg. As a result, [Officer B.] falls diagonally backwards into the police van. [R.A.] holds onto Michael Koomen. [Y.S.] and [R.M.] stand by and watch.

10:21:22 - [D.M.] kicks with his right leg in the direction of [Officer B.], who is in the van. [Officer B.] kicks out twice with one leg in the direction of [D.M.] but does not touch him. [R.A.], Michael Koomen, [Y.S.] and [R.M.] stand by and watch.

10:21:22 - [N.K.] grabs [Officer B.'s] clothes and pulls him back. [Officer B.] lies on his back in the van. [R.A.] points to [D.M.] and holds onto Michael Koomen. [Y.S.] and [R.M.] stand by and watch.

10:21:23 - [R.A.] grabs [D.M.] and tries to keep him away from [Officer B.]. [D.M.] keeps trying to break free and move in the direction of [Officer B.]. Michael Koomen and [Y.S.] stand by and watch.

10:21:29 - [D.M.] lashes out several times in the direction of [Officer B.]. [Officer B.] reaches out of the van with his upper body and hits out with a long truncheon in the direction of [D.M.]. [R.A.] holds [D.M.] and tries to pull him away. [D.M.] keeps moving in the direction of [Officer B.]. Michael Koomen grabs [D.M.] while [Officer B.] hits [D.M.] with his truncheon. Michael Koomen pulls [D.M.] backwards.

10:21:30 - [R.A.] is standing next to the police van. Michael Koomen holds onto [D.M.]. [Officer B.] stands with his back to the van and looks at [D.M.]. [N.K.] leans his upper body out of the police van and wraps his right arm around [Officer B.'s] throat. He pulls [Officer B.] backwards.

10:21:34 - Michael Koomen lets go of [D.M.]. [D.M.] runs in the direction of [Officer B.] and, while jumping up, kicks out with an outstretched right leg in the direction of [Officer B.], who is being held around his throat by [N.K.]. While [N.K.] continues to hold [Officer B.], [D.M.] makes striking movements in the direction of [Officer B.'s] head. [Officer B.] hits [D.M.] with his truncheon and pushes him away with his hands. [Y.S.], Michael Koomen and [R.A.] stand by and watch.

10:21:35 - [N.K.] stands outside the police van and holds [Officer B.] around his throat. [J.K.] wraps his left arm around the upper body of [Officer B.]. [Officer B.] falls backwards into the van. [D.M.] runs to the van. Michael Koomen runs in [N.K.'s] direction. [R.A.] walks away.

10:21:38 - [N.K.] stands in the doorway of the police van with his back facing the doorway. [Officer B.] is in the van. Michael Koomen stands behind [N.K.] and holds him by his shoulders. [D.M.] kicks out with an outstretched right leg in the direction of [N.K.] and strikes him, causing him to fall into the van.

10:21:40 - Michael Koomen stands in the doorway of the van in front of [N.K.], who is in the van. [D.M.] stands in the doorway and lashes out towards the inside of the van.

10:21:41 - Michael Koomen falls backwards and remains motionless on his back on the street. [D.M.] stands in the doorway and lashes out towards the inside of the van. [N.K.] gets out of the van. [Officer B.] and [J.K.] are in the van. [N.K.] and [D.M.] are facing the van, bent over into the doorway. [D.M.] makes striking movements towards the inside of the van and [N.K.] makes pushing and pulling movements towards the inside of the van. ...”

57. The court went on to describe the relevant facts as follows:

“6. ... The following can be deduced from the images and the case file.

Michael Koomen, [N.K.] and [D.M.] were part of a football team Large amounts of alcoholic beverages were consumed even before the football players arrived in Amsterdam on a canal boat. [D.M.] had also used cannabis and MDMA.

[Officer B.] was working as a senior police officer (dog handler) that evening.

He saw from his police van that [N.K.] and [J.K.], while walking on the street, were obstructing traffic. He decided to arrest them for public intoxication. [Officer B.] requested assistance, as his van was unfit to transport persons. The arrest initially proceeded peacefully. [Officer B.] used one set of handcuffs and handcuffed [N.K.’s] left wrist to [J.K.’s] right wrist. Several members of the football team then [approached] the police van. Michael Koomen asked [Officer B.] why [N.K.] and [J.K.] had been placed under arrest.

The atmosphere was peaceful at first. This changed when [D.M.] joined the group and interfered with the arrest. [D.M.] reacted aggressively towards [Officer B.], after which he was grabbed and pulled away by [R.A.]. [Officer B.] again called for reinforcements. [D.M.] approached [Officer B.], who pushed him away. Subsequently, [D.M.] again approached [Officer B.] and hit him with the championship trophy against the head. [Officer B.] responded by pushing [D.M.] away again and again calling reinforcements with urgency. When [D.M.] again walked towards [Officer B.], he was grabbed by [R.A.] who pushed him away.

Because of the disturbance that had arisen, [Officer B.] decided to place [N.K.] and [J.K.], temporarily and for their own safety, in his van. [Officer B.] considered releasing his dog but decided not to do so because he foresaw that – owing to the aggression of [D.M.] and others and the limited space in the van – he would lose control of the dog, which was likely to bite someone and not let go. Instead, [Officer B.] decided to take his long truncheon from the van.

While [N.K.] and [J.K.] were in the van and [Officer B.] tried to grab his truncheon, [D.M.] kicked [Officer B.] with an outstretched leg, causing him to fall through the doorway into the police van. While [Officer B.] was in the van, [D.M.] kicked him again. [Officer B.] tried to kick him away but did not [make contact with] him. [Officer B.] was then grabbed by his clothes by [N.K.] and pulled backwards. [Officer B.] was then lying on his back in the van. [D.M.] was held by [R.A.] but kept trying to break away and go to [Officer B.]. Meanwhile, he hit [Officer B.] several times. [Officer B.] then hit out with his truncheon several times in the direction of [D.M.]. [R.A.] again tried to pull [D.M.] away when the latter kept running towards [Officer B.].

At this moment, Michael Koomen grabbed [D.M.] and pulled him away. [N.K.] then grabbed [Officer B.] from behind by wrapping his arm around his throat, and pulled [Officer B.] backwards. Michael Koomen released [D.M.], who again ran towards

[Officer B.] and, making a leap, kicked [Officer B.] with an outstretched leg. [Officer B.] was then still being held around his throat by [N.K.]. Meanwhile, [D.M.] made striking movements towards [Officer B.'s] head. [Officer B.] hit [D.M.] with his truncheon and pushed him off with his hands, causing [D.M.] to fall to the ground. While [N.K.] continued to hold the accused around his throat, [J.K.] wrapped his arm around the upper body of [Officer B.] and pulled him backwards into the van. [D.M.] ran to the van and kicked [N.K.] with an outstretched leg, which also caused him to fall into the van. Michael Koomen and [D.M.] stood in the doorway of the van, while [N.K.], [J.K.] and [Officer B.] were in the van (with [Officer B.] half lying – trapped between [N.K.] and [J.K.]). Meanwhile, [D.M.] was making striking motions towards the inside of the van.

At that point, [Officer B.] decided to fire a warning shot, in an attempt to stop the violence being exerted towards him.

According to [Officer B.], using pepper spray was not an option because in the limited interior space of the van, this would have incapacitated mainly himself. He pointed his firearm from the van through the doorway and shot upwards. However, this shot hit Michael Koomen, who fell backwards as a result and died – it may be assumed – almost instantly. The gunshot and Michael Koomen's falling backwards did not elicit any reaction from [N.K.] and [D.M.]. [N.K.] got out of the van and then made pushing and pulling movements towards the inside of the van, while [D.M.] was still lashing out towards the inside.”

58. Turning to the question of whether the firing of the first shot (which killed Michael Koomen) constituted a criminal offence that should be submitted for examination to a criminal trial court for judgment with prospects of a conviction, the Court of Appeal held as follows:

“7.3. The Court of Appeal notes that the statements of [Officer B.] and those of the other persons involved in the incident differ from each other in respect of many points and from what can be seen in the camera footage. These differences can, however, be disregarded, as the Court of Appeal, in assessing the complaint, bases its standpoint on its own observation of the camera footage (as set out above [see paragraph 56 above]) and uses information from statements only where that information is confirmed by the footage or to a sufficient extent by information from other sources.

7.4. The Court of Appeal considers at the outset that it is extremely regrettable that Michael Koomen died as a result of a gunshot by [Officer B.]. The camera footage shows that Michael Koomen did not at any time act violently towards the defendant and that he was actually trying to prevent escalation.

7.5. The violence against which [Officer B.] tried to defend himself came from [D.M.] and [N.K.]. Within this context, the court considers that the intensity of [D.M.'s] and [N.K.'s] aggression (visible on the camera footage) must have been very frightening – even for such a very experienced police officer as [Officer B.].

[D.M.] assaulted the defendant like a madman [*als door het dulle*], continuously beating and kicking him; he did not allow himself to be restrained by others, who tried five times to prevent him from approaching [Officer B.].

7.6. [N.K.] initially seemed to submit to his arrest calmly, but he soon began to participate in the violence against [Officer B.] by pulling him backwards into the van, holding him with his arm around his neck – an act that was perceived by [Officer B.] as a stifling neck hold [*nekklem*] – striking him and pulling at him as he was lying in the van, and holding onto his leg. It should be borne in mind that, owing to the

aggression directed at him, [Officer B.] was in the narrow space of his van for part of the time that the incident took (less than three minutes), together with [N.K.] and [J.K.]. [Officer B.] stated that he had been scared to death [*doodsangsten uigestaan*], which – in view of what can be seen on the camera footage and the absence (at that stage) of the assistance requested by [Officer B.], who was alone – is by all means plausible [*alleszins aannemelijk*].

[Officer B.] defended himself by employing increasingly intense means of violence. He initially pushed [D.M.] away, tried to kick [him] and, when this turned out not to have any effect, hit with a truncheon. He took a conscious decision not to deploy the police dog and not to use pepper spray because of the dangers that this would have entailed. After that, his only recourse was to use his firearm for the sole purpose, according to him, of firing warning shots.

Apparently [Officer B.’s] first and second shot made no impression whatsoever on [D.M.] and [N.K.]; after all, they continued unabated their violence against [Officer B.]. They ceased the violence against [Officer B.] only when they were hit by the subsequent two shots.

7.7. It [can] only [be a subject of] conjecture [*giswerk*] as to whether the large amounts of alcohol that [D.M.] and [N.K.] ... must have consumed beforehand – and in the case of [D.M.] also the use of drugs – contributed to the level of violence that they exercised. It must be stated that [N.K.] later, in his own words, could barely remember anything that had happened and that [D.M.] in his statements and during the reconstruction based thereon, gave a version of the incident that significantly differs from what is visible on the camera footage.

7.8. The court finds that given the circumstances – when the use of [Officer B.’s] truncheon by no means had had the intended result and the deployment of the police dog and the use of pepper spray had been discarded as means by which to stop the ongoing violence – no other option remained to [Officer B.] but to fire a warning shot.

There is no indication that in so doing [Officer B.] had the intention of hitting Michael Koomen – let alone killing him. It is deeply regrettable that the bullet resulted in the death of Michael Koomen, but on the basis of the contents of the file and what has become apparent in chambers, [Officer B.] cannot be reproached in respect of this.

In view of that state of affairs, the court finds that if the case were to be submitted to a criminal trial court, that court would be unable to reach a guilty verdict in respect of the murder or manslaughter of Michael Koomen.

...

7.12. The conclusion is that ... it must reasonably be ruled out that the criminal courts would arrive at a finding of guilty or a conviction; thus, the Court of Appeal dismisses the complaint.”

59. Addressing the applicants’ complaint concerning the lack of an independent investigation, the Court of Appeal noted the following:

“7.13. ... [T]he investigation [into Michael Koomen’s death] was largely carried out by the NCID or, under the guidance of the NCID, by police forces other than the Amsterdam-Amstelland police force. In so far as members of the latter force participated in investigative measures – it appears from the file that this involved primarily the questioning of persons directly involved – the Court of Appeal notes that it has made very limited and ... very cautious use of the results of those interviews and is not dependent on them to a decisive degree in order to establish the facts, since the

camera footage available provides sufficient information in respect of the matter. The remarks made by the lawyer in this connection about the developments in the investigation of which he complains – together with the statements of [Officer B.] – need therefore not be discussed, since they do not concern the camera footage. Moreover, it does not appear that the public prosecutor acted with insufficient independence.”

60. No appeal lay against this decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Police authorisation for the use of firearms

1. Police Act 1993

61. At the relevant time, section 8 of the Police Act 1993 (*Politiewet 1993*) provided as follows:

“1. A police officer appointed to carry out the tasks of the police force shall be authorised to use force in the lawful exercise of his duties when it is justified by the purpose thereby intended to be served, also taking into account the dangers involved in such use of force, and when that purpose cannot otherwise be served. The use of force shall be preceded, if possible, by a warning.

...

5. The exercise of the powers referred to in [subsection 1] must be reasonable and moderate and in proportion to the objective [*in verhouding tot het beoogde doel redelijk en gematigd*]. ...”

2. Standing Orders for the police, the Royal Military Constabulary and officers invested with special investigative powers

62. At the relevant time, rules on the implementation of section 8 of the Police Act 1993 were laid down in the Standing Orders for the police, the Royal Military Constabulary and officers invested with special investigative powers (*Ambtsinstructie voor de politie, de Koninklijke Marechaussee en de buitengewone opsporingsambtenaar*), which included the following:

Section 4

“An officer shall be permitted to use a weapon [*gewelddmiddel*] only:

- (a) if he has been legally assigned that weapon, in so far as he acts to carry out the task for which the weapon has been assigned to him, and
- (b) he has received training in the use of that weapon.”

Section 7

“1. The use of a firearm, other than a firearm suitable for automatic fire or long-range precision fire, shall be permitted only:

- (a) ...

(b) to arrest a person who is trying to evade, or has evaded, being arrested, being brought before the competent legal authority or being subjected to another lawful form of deprivation of liberty and who is suspected or has been convicted of committing a crime

- 1°. for which the law prescribes a term of imprisonment of four years or more, and
- 2°. which constitutes a serious infringement of physical integrity or privacy, or
- 3°. whose consequences pose or may pose a threat to society; ...”

Section 10a

“1. Immediately before discharging a firearm, other than a firearm suitable for long-range precision fire, an officer must issue a warning in a loud voice or in some other unmistakable manner that a shot will be fired unless the order that has been given is obeyed forthwith. This warning, which can, if necessary, be replaced by a warning shot, may be omitted only if circumstances do not allow it to be given.

2. A warning shot must be given in such a way as to avoid, as far as possible, endangering persons or property.”

3. *The Police Arms and Equipment Decree*

63. The Police Arms and Equipment Decree (*Besluit bewapening en uitrusting politie*) provides that while on duty, uniformed police in the Netherlands may be armed with a semi-automatic pistol. Police officers are required to maintain proficiency in the use of their firearms, failing which they are not allowed to carry any.

B. Instruction for investigating the use of force by a (police) officer

64. The NCID comes under the direct authority of, and is solely accountable to, the Board of Prosecutors General (*College van Procureurs-Generaal*) of the Public Prosecutor’s Office (*arrondissementsparket*). Its main field of work is investigating public and semi-public sector officials who are suspected of having committed criminal acts that seriously prejudice the integrity of the administration of justice or the public administration.

65. Following the Chamber judgment in *Ramsahai and Others v. the Netherlands* (no. 52391/99, 10 November 2005), a new Instruction for investigating the use of force by a (police) officer (*Aanwijzing handelwijze bij geweldsaanwending (politie)ambtenaar*) of the Board of Procurators General was adopted on 26 July 2006 (Official Gazette (*Staatscourant*) 2006, no. 143) in order to clarify the investigative tasks of the NCID and the role of the local police force. The Instruction (which was in force from 1 August 2006 until 30 June 2022; see paragraph 66 below) included the following:

2. Summary

“The use of force by police officers constitutes a particularly serious interference with the fundamental rights of citizens. Therefore, an effective, objective and expeditious [*effectief, objectief en voortvarend*] investigation into the circumstances of the incident [in question] should take place in all cases where the use of force has had serious consequences. This investigation must be conducted under the responsibility of independent officers [*onafhankelijke functionarissen*]. ... The Chief Public Prosecutor assesses whether the use of violence was lawful and decides on the (further) prosecution of the police officer. If it concerns a violent incident in which the police officer has ... actually shot (and hit) someone, the Chief Public Prosecutor must submit his assessment and proposed decision to the Advisory Board [on the Police Use of Firearms].”

4. Investigation

4.1. Deployment of the National Criminal Investigation Department

“In cases ... involving the use of force by a police officer ..., the investigation into ... the circumstances will be conducted by the NCID. ...”

4.2. Investigating the scene of the incident

“... Until the arrival of [the relevant NCID officer on call – *piket-ambtenaar*], the local police force [*lokale politiekorps*] will take initial measures to freeze [*ter bevestiging*] the situation – such as cordoning off the scene of the incident, caring for victims and taking stock of witnesses. Investigative acts, however, are in principle not undertaken by the local force. However, if the need arises, necessary investigative acts may be carried out for the purpose of the NCID investigation. In that investigation, these investigative acts are re-executed or checked for completeness and reliability [*opnieuw uitgevoerd of gecontroleerd op volledigheid en betrouwbaarheid*] by the NCID, if warranted. These actions [undertaken] by personnel of the local police force, prior to the arrival of the NCID, take place at the behest and under the responsibility of the assistant public prosecutor on duty.

If, owing to a lack of capacity, the NCID requires the assistance of other investigating officers for hearing witnesses, conducting a neighbourhood investigation, or carrying out other investigative acts, assistance will be provided at its request by employees of the Internal Investigations Bureau [*Bureau Interne Onderzoeken*] of the police region concerned or by employees of a neighbouring police force.

To carry out the technical investigation into the circumstances of the incident, assistance will initially be requested from the forensic police [*technische recherche*] from a region other than that of the relevant regional police force in which the violent incident occurred.”

4.4. Hearing the police officer involved

“The police officer involved will be heard for the first time by the NCID soon after the violent incident [in question] –, in principle within twenty-four hours Prior to such questioning, the police officer will be informed that he [or she] does not have to answer any questions if by answering them he [or she] could expose himself [or herself] to the risk of prosecution. ...”

4.6. Role of the public prosecutor (charged with the investigation)

“The Chief Public Prosecutor shall ensure that the investigation into the circumstances of the violent incident [in question] is not under any circumstances supervised by a public prosecutor (such as a district public prosecutor [*districtofficier*]) who maintains close links [*nauwe banden*] with the relevant part of the police force to which any police officers involved belong [*het betreffende onderdeel van het politiekorps waartoe de betrokken functionarissen behoren*]. Every appearance of a lack of independence is to be avoided.

The prosecutor (charged with the investigation) [*zaaksofficier*] is closely involved in the investigation. He [or she] is responsible for directing the investigation and its progress. For example, the public prosecutor is consulted on the provision of assistance and the deployment of forensic investigators.

...

The prosecutor (charged with the investigation) informs the Chief Public Prosecutor about the progress of the investigation and consults him [or her] on all relevant decisions. ...”

5. Prosecution

5.1. Framework of assessment

“The investigation is documented in an official report and sent to the Chief Public Prosecutor in the region [*arrondissement*] in which the violent incident [in question] took place. He or she will assess the use of force in the light of the provisions of the Police Act 1993 [see paragraph 61 above], the Standing Orders [for the police, the Royal Military Constabulary and officers invested with special investigative powers – see paragraph 62 above] and the relevant provisions of the Criminal Code [see paragraph 74 below]”

5.2. Further investigation

“The Chief Public Prosecutor may rule that there is cause for further investigation. After all, the factual circumstances may turn out to be insufficiently clear, or the investigation – because of the way in which the result was obtained – may not be sufficiently valid to answer all the questions of Article 348 and Article 350 of the Code of Criminal Procedure. The further investigation may be assigned to the NCID. In a number of cases, it may be considered to have further examination of witnesses or experts by the investigating judge ... If warranted, a reconstruction may also be held in that context.”

5.3. Point of departure

“With respect to the decision on whether or not to prosecute [*afdoeningsbeslissing*], the basic principle is that criminal prosecution (or further prosecution) will not take place if there can be no relevant doubt that the criminal court would accept a plea of justification [*rechtvaardigingsgrond*] or excuse [*schulduitsluitingsgrond*] and discharge the police officer from prosecution proceedings [*ontslaan van rechtsvervolging*] if [such a] case were brought before it. However, there may be circumstances in which it is reasonable to seek a decision from [a criminal court].”

5.4. Advisory Board on the Police Use of Firearms

“... The Chief Public Prosecutor is obliged to submit his [or her] proposed assessment to the Advisory Board [on the Police Use of Firearms (which has its seat at the Regional Public Prosecutor’s Office in ‘s Hertogenbosch)]. The Advisory Board receives a request for advice from the Chief Public Prosecutor concerned. This request is accompanied by [the Chief Public Prosecutor’s] proposed position on the circumstances, assessment and decision [*toedracht, beoordeling en afdoening*], [and] a copy of the official reports of the National Criminal Investigation Department (with all accompanying documents).

The [Advisory] Board assesses the Chief Public Prosecutor’s report, formulates the circumstances on the basis of all the documents and gives [his or her opinion] on the Chief Public Prosecutor’s proposed decision. Within seven working days of receipt, the opinion is sent to the relevant Chief Public Prosecutor.”

66. On 1 July 2022 the Instruction was replaced by the Instruction on the use of force by civil servants vested with investigative powers (*Aanwijzing geweldsaanwending opsporingsambtenaar*) (Official Gazette, 2022, no. 16 635).

C. Organisation of the police and the prosecution of “ordinary” crimes in Amsterdam

67. At the time in question, the police organisation in the Netherlands was composed of the National Police Agency (*Korps Landelijke Politiediensten*) and twenty-five regional forces (*regiokorpsen*). The Amsterdam-Amstelland regional police force consisted of five districts (*districten*). According to publicly available information, the control centre and dog handlers fell under the Executive Support Service (*Dienst Executieve Ondersteuning*) unit.

68. Following a reorganisation of the police organisation, the Amsterdam-Amstelland regional police force became the Amsterdam Regional Police Unit (*regionale eenheid*) on 1 January 2013.

69. Public prosecutors of the Amsterdam Public Prosecutor’s Office are charged with investigating criminal offences that have been committed within the jurisdiction of the Amsterdam Regional Court to which they are appointed (Article 9 § 1 and Article 148 § 1 of the Code of Criminal Procedure – “the CCP”). They are empowered to order investigative measures (Article 148 § 2 of the CCP) and to take the necessary action if prosecution is deemed to be required (Article 167 § 1 of the CCP).

70. The Amsterdam Public Prosecutor’s Office Amsterdam and the Amsterdam Regional Police Unit (before 2012: the Amsterdam-Amstelland regional police) operate within the same area of jurisdiction.

D. Proceedings under Article 12 of the Code of Criminal Procedure

71. At the relevant time, the Code of Criminal Procedure (*Wetboek van Strafvordering*) provided as follows:

Article 12

“1. If the perpetrator of a punishable act is not prosecuted, or if the prosecution is not pursued to a conclusion, then anyone with a direct interest [*rechtstreeks belanghebbende*] may lodge a written complaint with the [relevant] Court of Appeal within whose area of jurisdiction the decision has been taken not to prosecute or not to pursue the prosecution to a conclusion. ...”

Article 12i

“1. If the complaint falls within the Court of Appeal’s jurisdiction, if the [action brought by the complainant] can be admitted [*de klager ontvankelijk is*], and if the Court of Appeal finds that a prosecution ought to have been brought or pursued to a conclusion, the Court of Appeal shall order the prosecution to be brought or pursued in respect of the fact to which the complaint relates.

2. The Court of Appeal may also refuse to give such an order for reasons relating to the general interest.

3. The order may also include an instruction [*last*] that the public prosecutor shall make the request referred to in Article 181 or Article 241 [that is, a request lodged with the investigating judge (*rechter-commissaris*) for the implementation of investigative measures] or that the person whose prosecution is being sought be summoned for trial.

4. In all other cases the Court of Appeal shall ... dismiss the complaint.”

Article 148

“1. The public prosecutor shall be tasked with the investigation of criminal acts that are triable by the regional court to which he is appointed, as well as the investigation, within the area of that regional court’s jurisdiction, of criminal acts triable by other regional courts.

2. To that end, he shall give orders to other persons tasked with [such an] investigation. ...”

E. The Criminal Code

72. At the time in question, Article 287 of the Criminal Code (*Wetboek van Strafrecht*) provided that anyone who intentionally took the life of another person was guilty of manslaughter (*doodslag*) and liable to a term of imprisonment not exceeding fifteen years or to a fifth-category fine.

73. Article 289 of the Criminal Code provides that anyone who intentionally and with premeditation (*met voorbedachten rade*) takes the life of another person is guilty of murder (*moord*) and liable to life imprisonment or to a term of imprisonment not exceeding thirty years or to a fifth-category fine.

74. Article 41 § 1 of the Criminal Code governs the right to self-defence (*noodweer*) and provides that anyone who commits an act which is necessary in order to defend his or her own or someone else’s physical integrity (*lijf*), sexual integrity (*eerbaarheid*) or property against immediate unlawful assault shall not be liable for punishment in respect of that act.

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

75. The applicants complained under Article 2 of the Convention that the use of force that led to the death of their son had not been “absolutely necessary”, that the authorities had failed to conduct an effective investigation into Michael Koomen’s death, and that the Court of Appeal’s ruling of 10 July 2014 had been based on incorrect and incomprehensible findings.

76. Article 2 of the Convention reads:

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

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

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

77. The Government did not contest the admissibility of the complaint.

78. The Court considers 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

79. The applicants’ complaint relating to the State’s obligations under Article 2 of the Convention has two limbs: substantive and procedural. The Court will address them in turn (see, for a similar approach, *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, § 66, 19 July 2018, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, ECHR 2011 (extracts)).

1. Alleged violation of the substantive limb of Article 2

(a) Submissions of the parties

(i) The applicants

80. The applicants complained that the use of force that caused Michael Koomen’s death had not been “absolutely necessary” given the circumstances. In that connection, the applicants submitted, in particular, that:

a) the arrest of N.K. and J.K. had been based on the suspicion of their having committed a minor offence (if any offence at all), and Officer B. could have either simply issued a warning or a fine, or he could have waited for assistance prior to proceeding with the arrests;

b) rather than de-escalating the situation, Officer B. had deliberately and consciously used force in a manner that had been unnecessary and disproportionate – for instance by handcuffing N.K. and J.K. together and forcing them into his van and hitting D.M. so hard that he had staggered back a few metres;

c) the partial acquittal of N.K. and D.M. in the criminal proceedings against them (see paragraphs 31-33 above) had demonstrated that Officer B. had exaggerated the scope and seriousness of the violence against him;

d) the statement given by Officer B. on 4 July 2011 after being confronted with the CCTV footage (see paragraph 26 above) had differed in many respects from his earlier statements (see paragraphs 16 and 25 above); and

e) in their decisions the domestic authorities had paid no heed to Officer B.’s past convictions and bad reputation (see paragraph 53 above).

81. Given the above-noted circumstances and in view of what could be observed on the CCTV footage, the applicants argued that it could not be said that Officer B. had taken appropriate care to ensure that any risk to the life of others would be avoided or kept to a minimum. The chosen method of self-defence (shooting) had not met the requirement of being “absolutely necessary” within the meaning of Article 2 § 2 of the Convention, as it could have resulted in multiple people being killed. Officer B. had not been fighting for survival at the time of the first shot. Neither had he been so beleaguered at that time that the use of a firearm had been necessary, as testified also by the fact that the entire incident had left him with no injuries (see paragraph 17 above). Accordingly, the decision to open fire had not met the “honest belief” test (that is to say, Officer B. had not acted in the honest belief that his own life and physical integrity were in danger).

82. Lastly, the applicants argued that if the shot that had killed Michael Koomen had genuinely been intended as a warning shot (which the applicants contested), his death had at the very least been caused by negligence because Officer B. had fired that shot despite knowing (or at least, he should have known) that someone could be hit. The fact that, given the circumstances, it had not been possible for Officer B. to use a firearm in a controlled manner was also relevant. For those reasons, too, the “honest belief” test had not been met and the Court of Appeal had been wrong to dismiss the applicants’ complaint (see paragraphs 54-59 above).

(ii) The Government

83. The Government submitted that Officer B. had acted in the honest and genuine belief that his own life and physical integrity were in danger because of the unlawful attack to which he was being subjected, and that his belief

had been subjectively reasonable having full regard to the circumstances at the relevant time. In that connection, the Government submitted, in particular, that:

a) Officer B. fired his weapon only after other means of stopping the violence against him (such as deploying his dog or pepper spray, pushing and kicking his assailants away and using his truncheon) had proved unsuccessful or could not have been deployed;

b) Officer B. had found himself in an extremely perilous situation, ending up in the confined space of his van while being hit, kicked and/or held in a stranglehold by N.K. and D.M. – who could not be restrained by their friends and were visibly under the influence of alcohol and/or drugs;

c) the first shot, intended as a warning shot, had been directed upwards across the edge of the door opening of the van, where there had been sufficient free space for the bullet not to hit any of his assailants;

d) the severity of the attack on Officer B. had been further demonstrated by the fact that his assailants had continued to assault him even after the first shot had been fired.

84. The Government submitted there was no reason to believe that Officer B. had fired the first shot other than as a warning. That shot, which had fatally injured Michael Koomen, had been fired by Officer B. in an attempt to warn his assailants that he would have to defend himself against the violence to which he was being subjected.

85. The Government further submitted that the Court of Appeal had considered it entirely plausible that Officer B. had feared for his life at the moment when he had fired the first shot as a warning shot (see paragraph 58 above). The “honest and genuine belief” test had been clearly reflected in the Court of Appeal’s reasoning. By reviewing the CCTV footage together with the other evidence in the investigation file (such as the various statements – see paragraphs 10 and 55 above), the Court of Appeal had been able to assess what Officer B.’s subjective perception of events must have been during the attack. In the Government’s opinion, that assessment had complied with the requirements set by the Court in this respect.

86. The Government noted that it was deeply regrettable that the first shot had caused Michael Koomen’s death. Nonetheless, in the light of the foregoing, the use of force had been absolutely necessary and strictly proportionate to the achievement of the aim of legitimate self-defence within the meaning of Article 2 § 2 (a) of the Convention. The Government thus asserted there had been no breach of the substantive limb of this provision.

(b) The Court’s assessment

(i) General principles

87. The Court refers to the judgments in the cases of *McCann and Others v. the United Kingdom* (27 September 1995, § 200, Series A no. 324);

Giuliani and Gaggio, cited above, §§ 174-82); *Makaratzis v. Greece* ([GC], no. 50385/99, §§ 56-60, ECHR 2004-XI); and *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 244-48, ECHR 2016), which set out the general principles emerging from its case-law on the substantive limb of Article 2 of the Convention and the use of lethal force by State agents.

88. The Court reiterates that the text of Article 2 of the Convention, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted to intentionally kill an individual, but rather describes situations in which it is permitted to “use force” that may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than is “absolutely necessary” for the achievement of any of the purposes set out in Article 2 § 2 (a), (b) or (c) of the Convention. In this respect the use of the term “absolutely necessary” in Article 2 § 2 of the Convention indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under the second paragraph of, respectively, Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in Article 2 § 2 (a), (b) and (c) of the Convention (see *McCann and Others*, cited above, §§ 148-49). Law-enforcement personnel in a democratic society are expected to show a degree of caution in the use of firearms – even when dealing with dangerous suspects (*ibid.*, § 212).

89. The test consistently applied by the Court in determining whether the use of lethal force by State agents was justified under this provision is whether the person concerned had “an honest and genuine belief” that the use of force was necessary. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duties – perhaps to the detriment of their lives and those of others. In addressing the question of whether a belief was perceived, for good reasons, to be valid at the time, the Court, being detached from the events in issue, cannot substitute its own assessment of the situation for that of a police officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life or the lives of others; rather, it must consider the events from the viewpoint of the person(s) acting in self-defence at the time of those events. It will thus have to consider whether the belief was subjectively reasonable, having full regard to the circumstances that pertained at the time in question. If the belief was not subjectively reasonable (that is, it was not based on subjective good reasons), it is likely that the Court would have difficulty accepting that it was honestly and genuinely held (see *Armani Da Silva*, cited above, §§ 244-48, and the case-law cited therein).

90. When called upon to examine whether the use of lethal force was justified, the Court is also sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case.

Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from findings of fact reached by those courts. Where allegations are made under Articles 2 of the Convention, however, the Court must be especially vigilant. When there have been criminal proceedings in the domestic court concerning those same allegations, it must be borne in mind that criminal-law liability is distinct from international-law responsibility under the Convention. The Court's competence is confined to the latter. The Court is not concerned with reaching any findings as to guilt or innocence in the sense of individual criminal responsibility (see *Giuliani and Gaggio*, cited above, § 182, and *Bouras v. France*, no. 31754/18, §§ 53-55, 19 May 2022).

(ii) *Application of the above principles to the present case*

91. Turning to the facts of the instant case and the question of whether or not the use of force was “absolutely necessary”, the Court notes at the outset that it is not in dispute that the applicants' son was killed by a shot fired by Officer B.

92. The Court considers on the basis of the evidence in the case file, including the CCTV footage, that there is no reason to call into doubt the conclusions reached by the Amsterdam Court of Appeal. This court found that Officer B. honestly perceived that his life was in danger (given that D.M.'s and N.K.'s aggression must have been very frightening for him under the circumstances in question) and that he had no other option left than to use his service weapon to fire – as was his intention – a warning shot. In reaching these conclusions the Court of Appeal took into account the fact that owing to the aggression directed at him, Officer B. was pushed into the narrow space of his van, that N.K. was holding an arm around his neck and that the assistance requested by Officer B. was (thus far) lacking. The court also considered that Officer B. had defended himself by employing means of force of increasing intensity (pushing, kicking, hitting with a truncheon) and that, after consciously deciding not to deploy his dog or to use any pepper spray because of the dangers this would have entailed under the specific circumstances, the use of his firearm was the only way for him to stop the violent attack (see paragraph 58 above).

93. The Court notes that the Court of Appeal based these findings almost exclusively on its own observation of the CCTV footage of the incident and on the records of the on-scene reconstruction. The court explained that it used information deriving from statements (including Officer B.'s) only where that information was confirmed by the footage or to a sufficient extent by data from other sources (see paragraph 58 above – specifically, the quotation from point 7.3 of the Court of Appeal's judgment). It in no way appears that the

Court of Appeal established any facts on the basis of statements conflicting with the footage.

94. Having full regard to the circumstances that pertained at the relevant time, the Court considers that Officer B.’s belief that his life and physical integrity were in danger because of the attack to which he was being subjected was subjectively reasonable. Given that no other means of force remained to stop the attack, Officer B. could only fire a shot in order to defend himself (pointing his firearm upwards through the doorway of the van). The fact that a shot fired into that space risked causing injury (or even a killing – as, sadly, was what in fact occurred) does not mean in and of itself that – given the circumstances in question – the defensive action was excessive or disproportionate (compare *Giuliani and Gaggio*, cited above, § 193).

95. In the light of the foregoing – and noting that the other issues raised by the applicants (see paragraph 80 above) are not directly connected to the heat of the moment at which Officer B. decided to use his firearm – the Court accepts that the use of force that caused the death of Michael Koomen, while extremely unfortunate and tragic, was “absolutely necessary in defence of any person from unlawful violence” within the meaning of Article 2 § 2 (a) of the Convention.

96. There has accordingly been no violation of the substantive limb of Article 2 of the Convention.

2. *Alleged violation of the procedural limb of Article 2*

(a) **Submissions of the parties**

(i) *The applicants*

97. The applicants submitted that the procedural limb of Article 2 of the Convention had been violated because the investigation into Michael Koomen’s death had not been sufficiently independent and the Court of Appeal’s ruling of 10 July 2014 had been based on incorrect and incomprehensible findings.

98. They claim that the matter had been investigated by the Amsterdam-Amstelland police (the force for which Officer B. had worked and continued to work) and the NCID. Both teams had been led by a public prosecutor of the Amsterdam Public Prosecutor’s Office. The NCID’s investigation had not been prioritised and had largely been based on the findings of the Amsterdam-Amstelland police force, which the NCID had copied into its own case file. The applicants contested the Government’s assertion (see paragraph 106 below) that sufficient consultation or coordination had taken place between the leaders of the investigation teams. The investigation in respect of the use of force by Officer B. had thus been insufficiently independent of the investigation in respect of the force used against him.

99. The applicants further noted that prosecutor L. – who, in addition to leading the team of the NCID investigators had decided not to initiate prosecution proceedings against Officer B. – had been a former colleague of Officer B.’s in the Amsterdam-Amstelland police from 1986 until 1998. By the time of the start of the investigation in 2012, L. had been a public prosecutor in the Amsterdam Public Prosecutor’s Office for thirteen years. It could be seen from domestic case-law that during these years L. had regularly acted as public prosecutor at hearings held before the Amsterdam Regional Court – including in respect of cases pertaining to investigations conducted by the Amsterdam-Amstelland police. An explicit request lodged by the applicants for the replacement of L. (owing to his allegedly insufficient level of independence) had been refused by the Chief Public Prosecutor (see paragraphs 40-42 above). Also in view of those circumstances, no sufficiently independent investigation had been conducted into Michael Koomen’s death.

100. The applicants further alleged that the investigation had lacked sufficient independence because the decision not to prosecute Officer B. had been taken by L. himself (rather than by the Chief Public Prosecutor, as required under the Instruction for investigating the use of force by a (police) officer – see paragraph 65 above).

101. The applicants also submitted that the investigation had lacked thoroughness as regards the assessment carried out by the Court of Appeal that had resulted in the ruling of 10 July 2014 (see paragraphs 54-59 above), given that:

a) Officer B. had given his statement on 4 July 2011 (see paragraph 26 above) and taken part in the reconstruction (see paragraph 19 above) only after he had been confronted with the CCTV footage and the inconsistencies between that footage and his statement of 15 May 2011 (see paragraph 16 above);

b) the domestic authorities had not taken into consideration either Officer B.’s prior convictions or the fact that he had failed to de-escalate the confrontation between him and his assailants; and

c) many of the factors taken into consideration in the decision of the Court of Appeal had been based on Officer B.’s statements (whereas those statements had often contradicted the CCTV footage) instead of the results of the reconstruction (which had been carried out precisely because the situation in the van remained unclear – despite the CCTV footage).

(ii) *The Government*

102. The Government noted that the investigation into the lawfulness of the use of firearms by Officer B. had been carried out by the NCID, under the supervision of prosecutor L.

103. By contrast with the case of *Ramsahai and Others v. the Netherlands* ([GC], no. 52391/99, §§ 333-341, ECHR 2007-II), in the present case the NCID – which independence has not been questioned – had begun its

investigation into the use of a firearm by Officer B. immediately on the evening of the incident. Moreover, the forensic examination had been carried out by officers from the Utrecht police force (that is, police from a region different from the one in which the incident had occurred), and the NCID itself had questioned the main persons involved in the incident as soon as possible and – where possible – before the Amsterdam-Amstelland police force had done so.

104. The investigation had been prompt and extremely thorough, which was evident from, among other things, the fact that L. had ordered a reconstruction in order to establish as clearly as possible the situation at the moment of the shooting. The victim's family was kept informed throughout the investigations by a specially appointed family liaison officer from NCID.

105. The Government was of the opinion that they had provided sufficient explanation as to any convergence and overlap between the investigations by the NCID and the Amsterdam-Amstelland police force. Although the two investigations had inevitably overlapped, this did not mean that they had been insufficiently separate from one another or that the hierarchical, institutional or practical independence of the NCID investigation had been compromised. The Government submitted that the leaders of the two investigation teams had held regular consultations, which had been coordinated by the NCID. Partly on the basis of what could be seen on the available CCTV recordings (see paragraph 10 above), the teams had agreed on which of those persons involved in the incident in question would be interviewed by the NCID and which of those person would be interviewed by the Amsterdam-Amstelland regional police.

106. The Government further submitted that the fact that prosecutor L. and Officer B. had worked for the same police force in the distant past, namely in the period 1986-1998, was in itself not sufficient to conclude that prosecutor L. had been unable to supervise the investigations in an independent manner. They had not known each other. The Government referred in this respect to the assessment and conclusions of the Chief Prosecutor (see paragraphs 40-41 above) and the Court of Appeal (see paragraph 59 above).

107. In view of the above, the Government concluded that the investigation of the NCID, under the supervision of L., had been sufficiently independent as to satisfy the procedural requirements of Article 2 of the Convention. Moreover, the investigation had adequate in being able to leading to establishing the facts and in determining whether the force used had or had not been justified, given the circumstances of the case.

(b) The Court's assessment

(i) General principles

108. For a summary of the general principles concerning procedural requirements in cases concerning the use of lethal force by State agents, the Court refers to the judgments in the cases of *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 169-82, 14 April 2015), *Armani Da Silva* (cited above, §§ 229-39, 30 March 2016), and *Hanan v. Germany* ([GC], no. 4871/16, §§ 198-210, 16 February 2021).

109. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The specific requirements of the duty to investigate can be found in *Mustafa Tunç and Fecire Tunç* (cited above, §§ 169-82). In summary, compliance with the procedural requirements set out under Article 2 of the Convention is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the deceased person's family and the independence of the investigation. These elements are inter-related, and none of them, taken separately, amounts to an end in itself. Rather, they constitute criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues, including that of independence, must be assessed (*ibid.*, § 225).

110. The investigation must be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances. This is not an obligation of result but of means: the authorities must take all reasonable measures available to them to secure evidence concerning the incident at issue (see *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 115-117, ECHR 2005-VII).

111. The question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Dobriyeva and Others v. Russia*, no. 18407/10, § 72, 19 December 2013).

112. It cannot be inferred from the foregoing that Article 2 may entail the right to have third parties prosecuted or sentenced for a criminal offence or an absolute obligation for all prosecutions to result in convictions, or indeed in a particular sentence. On the other hand, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished. The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have

submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined (see *Giuliani and Gaggio*, cited above, § 306).

(ii) *Application of the above principles to the present case*

113. The applicants alleged that the investigation into the facts, which had resulted in the decision of the Court of Appeal (see paragraphs 54-59 above), had lacked the required independence and that the court's decision had been based on incorrect and incomprehensible findings. They argued that a large number of the factors examined in that decision had been based on Officer B.'s statements (see paragraphs 16, 25 and 26 above), which had often fundamentally contradicted the CCTV footage.

114. As regards the adequacy of the investigation, the Court reiterates that its task is, having regard to the proceedings as a whole, to review whether and to what extent the domestic authorities submitted the case to the careful scrutiny required by Article 2 of the Convention (see *Armani Da Silva*, cited above, § 257; and *Giuliani and Gaggio*, cited above, § 306).

115. The Court observes at the outset that it has concluded, from the standpoint of the substantive limb of Article 2 of the Convention (see paragraphs 91-96 above), that the use of lethal force by Officer B. was "absolutely necessary in defence of any person from unlawful violence", and that there was no violation in the instant case in this regard. In arriving at that conclusion, the Court, on the basis of the information provided by the domestic investigation, had available to it sufficient evidence to be satisfied that Officer B. had acted in the subjectively reasonable belief that his life was in danger and that his defensive action, given the specific circumstances, could not be regarded as excessive or disproportionate (see paragraph 94 above). The investigation was thus sufficiently effective to enable it to be determined whether the use of lethal force had been justified in the present case (compare *Giuliani and Gaggio*, cited above, §§ 307-09).

116. In that connection, the Court considers that the authorities took sufficient measures to collect and secure evidence in respect of the incident in issue.

117. Firstly, it notes that the NCID investigation into the shooting of Michael Koomen by Officer B. consisted of an interview with Officer B. immediately following the incident (see paragraph 16 above), interviews with other witnesses (see paragraph 18 above), and an on-site reconstruction of the incident (with the participation of Officer B., J.K., D.M. and N.K.) in order to establish a more complete picture of the events leading up to the fatal shot (see paragraph 19 above). A forensic investigation was promptly carried out by the police force of Utrecht (see paragraph 14 above) which, as required by point 4.2 of the Instruction for investigating the use of force by a (police) officer (see paragraph 65 above), were from a region other than that of the

relevant regional police force where the violent incident had occurred. The NCID also had at its disposal the CCTV footage from the security cameras that had recorded the incident (see paragraph 10 above), and the findings of a coroner and of an anatomical pathologist who had examined Michael Koomen's body (see paragraph 15 above). It was also established that Officer B. had undergone the training and certification required by domestic law to use his firearm (see paragraphs 17 and 63 above).

118. Furthermore, it notes that in parallel with the NCID investigation, a police investigation was carried out by the Amsterdam-Amstelland police force under the supervision of another public prosecutor (W.) (see paragraph 13 above) into the violence allegedly perpetrated against Officer B. In the course of that investigation Officer B. and several suspects and witnesses were interviewed (see paragraphs 21-22 and 24-30 above). It can be seen from the documents submitted by the parties that the official records of the interviews with the suspects and witnesses (but not those with Officer B.) were included in the case file of the NCID investigation (see paragraphs 23, 27 and 28 above). That being the case, the Court does not consider that the local police force carried out parallel investigative measures to such an extent as to cast legitimate doubts on the accuracy and credibility of the NCID investigation and on the State's compliance with its procedural obligations under Article 2 of the Convention.

119. In view of the above-noted factors and the Court's conclusion as regards the complaint under the substantive limb of Article 2 of the Convention (see paragraphs 92-96 above), the Court perceives no shortcomings that might call into question the overall adequacy of the investigation conducted by the domestic authorities. It follows that the applicants' complaint that the Court of Appeal's decision had been based on incorrect and incomprehensible findings, cannot be upheld. The Court further notes that, as submitted by the Government (see paragraphs 103-104 above) and not contested by the applicants before this Court, the investigation into the shooting incident had started without delay and the applicants had been kept informed throughout the investigations by a specially appointed family liaison officer from the NCID.

120. As regards the required degree of independence of the investigation, the Court notes at the outset that the independence of the NCID has not been contested and the Court sees no reason to conclude otherwise. Addressing the applicant's complaint that the investigation into Michael Koomen's death had lacked independence in the light of the connection between Officer B. and L., the Court notes the following.

121. In the present case, prosecutor L., who was in charge of the investigation into Officer B.'s alleged misconduct, had been a member of the Amsterdam-Amstelland police force from 1986 until 1998. He would therefore have been a colleague of Officer B. during that period. It was established in the domestic proceedings, however, that during this period L.

had mostly been employed in the central criminal investigation department, that he had never been a dog handler himself, that he had never had much to do with dog handlers, and that he had not known Officer B. personally or professionally prior to the present case (see paragraph 38 above). None of this was contested by the applicants – either during the domestic proceedings or before this Court.

122. The Court further notes that at the time of the investigation into the incident, L. was a member of a specialist team of the Amsterdam Public Prosecutor's Office dealing with serious crime and fraud (see paragraph 49 above). That being so, the Court considers it highly unlikely that L. maintained, at the material time, any "close links" (compare the relevant domestic law quoted in paragraph 65 above – specifically, the quotation from point 4.6 of the Instruction for investigating the use of force by a (police) officer) with the Executive Support Service unit of the Amsterdam-Amstelland police, to which dog handlers such as Officer B. belonged (see paragraph 67 above).

123. As to the decision-making process, the Court cannot accept the applicants' contention that it was L., rather than the Chief Public Prosecutor, who had decided not to prosecute Officer B. (see paragraph 104 above). In that connection it notes that it can be seen from the documents in the case file that L.'s report of 25 March 2012 was approved by the Chief Public Prosecutor and submitted by the latter to the Advisory Board on the Police Use of Firearms on 27 March 2012 (see paragraphs 44 and 49 above). The applicants submitted no proof that would suggest otherwise.

124. The Court also considers it of importance that the applicants' complaint against L.'s decision not to prosecute Officer B. was examined by impartial and independent judges of the Court of Appeal (see paragraphs 54-59 above); this should be considered as constituting a strong safeguard of an effective procedure aimed at the finding of facts and the attribution of criminal responsibility. In view of the foregoing, the Court finds that the investigations did not lack the required degree of independence.

125. Lastly, the Court notes the following. Even if certain weaknesses in the investigation may be perceived on account of the collaboration between the NCID and the Amsterdam-Amstelland police force, the Court does not consider that these weaknesses, either individually or cumulatively, undermined the ability of the investigation to fulfil its essential purpose. After all, the investigation was effective in that it was independent of the person involved, it was able to elucidate the facts and circumstances of Michael Koomen's death on the basis of objective evidence, and it was able to determine whether or not Officer B.'s use of force was justified. In this regard the Court has also taken account of the fact that the Court of Appeal based its findings almost exclusively on its own observation of the CCTV footage of the incident and on the records of the on-scene reconstruction and used only information deriving from statements (including Officer B.'s statements)

where that information was confirmed by the footage or to a sufficient extent by data from other sources (see paragraph 93 above).

126. In view of the foregoing, and having regard to the specific circumstances of the case, the Court concludes that the investigation into the death of the applicants' son complied with the requirements of an effective investigation under Article 2 of the Convention (compare *Semache v. France*, no. 36083/16, § 118, 21 June 2018, and *Gribben v. the United Kingdom* (dec), no. 28864/18, §147, 17 February 2022).

127. It follows that there has been no violation of the procedural limb of Article 2 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 2 of the Convention.

Done in English, and notified in writing on 20 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski
Deputy Registrar

Lado Chanturia
President