

Paris, 26th June 2023

Defender of Rights Decision No. 2023-046

The Defender of Rights,

Having regard to Article 71-1 of the Constitution of 4 October 1958;

Having regard to the organic law No. 2011-333 of 29 March 2011 on the Defender of Rights;

Having regard to Decree No. 2011-904 of 29 July 2011 on the procedure applicable before the Defender of Rights;

Having regard to the Code of Criminal Procedure;

Having regard to the Internal Security Code, in particular Title IV *Internal Security Ethics* of Book I of its regulatory part;

After having been seized of the circumstances of X.'s apprehension in the municipality of E. and his handling in Y. on 19 July 2016;

After having read the judicial investigation in progress;

After obtaining documents from the general management of the national gendarmerie;

After having heard four members of X.'s family;

After having heard eight gendarmerie officers;

After hearing Mrs L.', triage doctor of the department's Emergency Medical Services (SAMU) on the date of the facts;

After hearing Mr. L., the departmental contact for first aid to the Departmental Fire and Rescue Service (SDIS) of the department on the date of the events;

After having sent a summary note to the Chief Warrant Officer K., Warrant Officer G., Gendarme H. and Sergeant I.;

After taking note of the refusal of the four aforementioned military members to respond to the summary notes for which they were addressed;

After consulting the competent safety ethics college;

Concerning the reasons for X's identity check:

Considers that it is established that X. started to run when they were in the vicinity of a wanted person who is the subject of an identity check and that this behaviour could justify that the gendarmes catch up with them, in order to understand the reasons for their behaviour;

Therefore, there is no breach of ethics.

Concerning the circumstances of X's first arrest:

Considers that the use of force was necessary to arrest X.;

Considers that there is no evidence to conclude that the use of force in the first phase of its questioning was disproportionate;

Considers that there is no evidence to indicate that recourse to force took place against X. during the alternation that took place with a third party at the end of this arrest.

Concerning the circumstances of X's second arrest:

Considers that the use of force, under the conditions described by the gendarmes, could appear necessary;

Considers that it cannot rule on the proportionality of the use of force by gendarmes with regard to X;

Notes, from a more general point of view, that it is not aware of any specific instructions within the national gendarmerie concerning the risks of ventral immobilisation;

Recommends that a note be circulated within the national gendarmerie on the risks of ventral immobilisation.

Concerning the handling of X. during transport and in the courtyard of the brigade:

Recalls that, in accordance with Article R. 434-17 of the Internal Security Code, gendarmes are subject to a duty of protection with regard to any person apprehended, who is in their custody, and that they must thus be attentive to his physical condition and take all measures to preserve the life, health and dignity of that person, the use of handcuffs is only justified when the person apprehended is considered either dangerous to others or for themselves, or likely to escape;

Notes that it emerges from the story of the three arresting gendarmes that the latter did not exchange any words with X. during the journey by car to the brigade;

Considers, notwithstanding the shortness of the journey to the brigade and the version of the gendarmes that they did not note anything particular concerning X., that at the end of an interview at the end of an arrest at the end of which the arrestee had indicated to them to have difficulty breathing, it was up to the crew to remain attentive to his state of health throughout his care;

Considers that the Chief Adjutant K. lacked rigour and objectivity in the report he carried out with the firefighters during the call to emergency services;

Notes that prior to the arrival of the firefighters, the arresting gendarmes did not remove X.'s handcuffs before putting them in a recovery position (PLS Position Latérale de Sécurité) and that, consequently, contrary to what they indicate, they did not use a regulatory recovery position.

Notes that upon the arrival of the firefighters, the gendarmes refused to access their request to remove X.'s handcuffs, considering that they were faking their injuries, before accepting to do so on the insistence of the firefighters;

Considers that with regard to all of these elements, the gendarmes breached their duty of protection and respect for persons deprived of liberty, thus infringing the provisions of Articles R. 434-17 of the Internal Security Code;

Considers that this obligation was more particularly the responsibility of the three gendarmes of the *gendarmerie* (PSIG) (MM. G., H. and I.) who had just questioned X., as well as the Chief Warrant Officer K. who coordinated the arrival of the emergency services;

Notes this breach against the military members MM. G., H., I. and K.;

Notes that the firefighters had difficulties in entering the gendarmerie brigade to help X., insofar as the gate was blocked and barriers hindered the passage;

Considers that by not having taken care to prepare and facilitate the arrival of firefighters, the gendarmes breached their duty to protect persons deprived of liberty provided for in Article R. 434-17 of the Internal Security Code;

Notes this breach against the Chief Warrant Officer K., insofar as he coordinated the arrival of the emergency services;

Recommends, with regard to all the aforementioned breaches identified against them, that disciplinary proceedings be brought against the military members MM. G., H., I. and K.

Regarding the announcement by the gendarmes of X's death to their family members :

Notes that the death of X. was announced to his family by a captain of gendarmerie several hours after its occurrence;

Regrets the conditions in which P. was informed of the death of her son, belatedly, at the brigade portal, after she had presented herself there, whereas such an announcement, which is particularly serious, should have been made with all the necessary precautions and consideration in such circumstances;

Considers that in view of the context in which X's death occurred, it appeared appropriate for a third party to take charge of the announcement in order to pacify the situation, and regrets that Commander T's steps to this effect T. were successful;

Notes that there existed no training in the announcement of deaths within the national Gendarmerie on the date of the facts;

Takes note of the establishment of new training systems within the national Gendarmerie since 2018;

Notes that there was no legal framework providing for the procedures for announcing the death by the gendarmerie on the date of the facts;

Notes that an inter ministerial circular on the announcement of death and respectful treatment of the deceased and his relatives was signed on 2 December 2022;

Will closely monitor the implementation of this new regulatory framework, particularly with regard to the announcements of deaths that occur during the intervention of the law enforcement authorities.

In accordance with Articles 25 and 29 of Organic Law No. 2011-333 of 29 March 2011, the Defender of Rights sends this decision to the Minister of the Interior, who has a period of two months to make known the follow-up to these recommendations and transmits it to the investigating judges seized of the case for their information.

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Claire HÉDON

FACTS

The description of the facts below is derived from the elements collected during the ongoing judicial investigation, as well as from the investigations of the Defender of Rights.

On 19 July 2016, the police members of the surveillance and intervention patrols of the gendarmerie (PSIG) of the municipality of Z. were instructed to question four people, including Mr A., wanted in the context of a very short investigation conducted by the autonomous territorial brigade (BTA) of Y. and Z's research brigade (BR) for acts of extortion and theft with violence.

The questioning of X. on the public road

Around 17H15, a crew of the Z. PSIG, composed of the Chief Warrant Officer (ADC) B. and the gendarmes C. and D., in civilian clothes on board an unmarked vehicle, in the city centre of the municipality of E., noted the presence of two people at the edge of the road, one on foot and the other on a bicycle, one of which corresponded to Mr A's report. The military decided to carry out an identity check. They came out of their vehicle and Chief Warrant Officer B. announced his quality, whilst putting his gendarmerie armband. He told them that he was going to carry out an identity check. Mr. A. stayed on site, but the second person, later identified as X., ran away.

The version of the gendarmes was contradicted by Mr. A., who said that his brother X., was already leaving when the gendarmes arrived and told him that they were going to verify his identity.

Chief Warrant Officer B. asked Gendarme C. to stay with Mr. A., while he and his colleague Mr. D. pursued X on foot. Chief Warrant Officer B. declares that he managed to catch up with him in the park next to the town hall. He indicates that he then asked him to present him with an identity document, and that X refused to present it. The gendarme indicates that X. suddenly pushed him back with his forearm and immediately started running away again. The gendarme resumed his pursuit, ordering him to stop and lie on the ground, in vain. He explained that he finally caught up with X., having seized him by the shoulder, before practising an armlock, and bringing him to his knees.

Chief Warrant Officer B. was then joined by Gendarme D., who handcuffed X.'s hands behind his back. After carrying out a summary pat down for safety, the gendarmes indicate that they helped him stand up. They then proceeded to the initial control site. Chief Warrant Officer B. decided to run alone to Gendarme C. who had remained alone with Mr. A., and gave the Gendarme D. mission to join them on foot with X.

While they walked, Gendarme D. indicates that X. gave him his identity, at his request. At the same time, X. asked him to let him sit down in order to catch his breath. The Gendarme told him that he would not let him sit, for safety reasons, but that he agreed to take a short break. Still according to the Gendarme, after taking a thirty-second break, X. told the Gendarme that they could continue walking. Gendarme D explains that a person went to them and asked him what he was doing, and telling him that X. was "*his mate, his brother*". At the same time, and still according to the Gendarme, X. nodded and shook his head to this man to ask him to come over.

Mr D. said he told this man that he was a Gendarme and asked him to let him do his work. This man then continued to move towards them, despite the Gendarme's orders to stay away. Gendarme D. indicates that, as he saw this man approaching them, and knowing instinctively that he wanted to free X., he punched him in the face to stop him. Then all three of them fell to the ground. Gendarme D. indicates that X. tried to escape, but that he hung on to him by grasping his arm. While the third person who interfered was positioned above Gendarme D., the latter let go of X., who fled. Gendarme D. says he fought with this man, who wanted to prevent him from pursuing X. During this fight, the man bled, and his blood spread over the Gendarme's polo shirt. As soon as X. was out of reach, the man also fled.

The unknown person involved in the story of Gendarme D. was identified during the judicial investigation. This person, Mr F., was heard during the judicial investigation on 18 March 2021, and gave a different version of the circumstances of his intervention. According to his narrative, while he was sitting on a wall near the old park fountain, he noticed two people of black skin colour who were walking down the alley, they were struggling but without exchanging blows. Among them, Mr. F. recognised X. that he had known since his childhood. He declares that he did not know that the other person was a Gendarme, the latter being in civilian dress and not wearing an armband or distinctive sign of his occupation. According to Mr F., if it had been otherwise, he would not have interposed himself between the Gendarme and X. He also states that he had not seen what had happened before between them, nor that X. was handcuffed.

Mr F. reports that he went to X. and the other person and that, in order to separate them, he *"held his hands up to either side" whilst repeatedly declaring "let him go"*. At this point, neither X. nor the person spoke. Mr. F.'s action resulted in all three of them falling to the ground, one on top of each other. Mr F. states that it was during this fall that on the one hand, the person declared that he was a Gendarme, and that on the other hand, he realized that X was handcuffed by the wrist.

Still according to Mr F.'s story, after they stood up, the gendarme punched Mr F. at the level of one of his eyebrow archs and X. took the opportunity to go in direction of the city centre, walking away and not saying a single word. Mr F. indicates that he left the scene. When questioned about X's state of health, Mr. F. indicated that he was surprised to see that he was tired. He stated that it was clear that the Gendarme and X. had made a physical effort.

According to Gendarme D., while this man and X. were escaping, he was joined by Chief Warrant Officer B., who went back to him after Mr A. had been detained at the place of initial control. Chief Warrant Officer B. reported X.'s escape *via* the radio, giving his description and mentioning that he had been helped with his leak by an individual, and that Gendarme D. had been injured.

A PSIG crew, comprising of the Chief Sergeant G., Gendarme H. and voluntary deputy Gendarme I. who were stationed five minutes from the municipality of E., immediately went to the premises. During the journey, they became aware of another call on the radio conference from another unit, that said that a motorist had just contacted the Gendarmerie services because he had just seen an *"African-type individual"* wearing handcuffs hiding between vehicles. The PSIG crew therefore immediately went to the address indicated by that person.

On the scene, the crew noticed the presence of a man, Mr. J, waving in at them.

Mr J. was interviewed twice during the judicial investigation.

According to his convergent hearings, Mr J. was with his 7 year-old son in his apartment (located on the ground floor) when he heard a noise from his front door. When he opened it, Mr. J. saw X. sitting with his back against his door, with his hands handcuffed in his back. The opening of the door made X. fall backwards into the apartment. He found himself lying on the ground on his back. Mr J. said he recognised him because he knew him by sight like other young people in his municipality, and asked him what was going on. He did not get a response from X., who simply said *"pull me"*.

Contrary to what he had said during his first hearing, Mr. J. stated, during his second hearing, that he had responded to X's request and had pulled him by the shoulders, into his apartment, in order to help him, *"given the state he was in"*, namely that *"he was not well at all"*. Then he *"tried to speak with him"* but X. did not answer. Still during his second hearing, Mr J. specified that *"white stuff"* was coming out of X's mouth. However, he refuted the statements he had made during his first hearing as to the fact that X. was *"out of breath"* and *"breathing noisily"*¹.

Mr J. then stated that after trying to speak again with X., the latter said the word *"money"*, without Mr J. understanding what it was.

The two hearings concur on the fact that at some point, X. turned - to the side(1st hearing) or onto his belly (1st hearing) hearing) or onto his belly (2^{no}f hearing) - and that on this occasion Mr J. noticed that his hands were no longer attached, because the handcuffs had *"broken"* (1st hearing) or *"come undone"* (2ⁿ of hearing).

Subsequently, looking through the window, Mr J. noticed the presence on the street of a Gendarmerie vehicle and Gendarmes leaving it and running.

During his second hearing, Mr. J. reported that he had told X. that the gendarmes were there and told him that he could not stay. Initially, X. did not reply and then said the words *"I'm going to die"* to Mr. J., who said he had *"a shock"*, and that he was afraid for his son and decided to leave the apartment with him². MR. J. said (2nd hearing) that when he came out on the street with his son, the Gendarmes *"understood"* and that coming towards him, one of them asked him *"is it here?"*. To which he gave a positive answer.

The crew, on the other hand, declared that he went to the height of Mr J., who told him which flat an *"African type"* man with handcuffs had just entered.

The arrest of X. in the apartment

The three members of the PSIG crew entered Mr. J.'s apartment, which was plunged into darkness, with closed shutters. The gendarmes explain having seen at the foot of a sofa located in the living room, the presence of a *"human shaped mass"* that moved, rolled up in a sheet. Understanding that it was the wanted person, they went up to him to question him and found that X. had his hands under his body.

¹ Mr J. stated that the investigators who interviewed him for the first time may have misunderstood his words and that, moreover, he did not understand the term *"out of breath"*

² These facts do not appear in the minutes of Mr J.'s 1st hearing.

Gendarmes I. and G. stated that they had positioned themselves on both sides of X. and that they each took hold of one of his arms in order to bring them behind his back to handcuff him. The versions of the three Gendarmes concur: X. was struggling and kicking, which required the intervention of Gendarme H. to keep them still. Gendarme G. also indicates that X. resisted with his arms.

After bringing X.'s arms behind his back, the Gendarmes I. and G. found that X. had a pair of handcuffs on his right wrist. Gendarme I. put a new pair of handcuffs on him, without removing the ones he was already wearing.

Chief Sergeant G. placed X. on their right side, with a *"tipping movement to turn him round"*, in order to pat him down for safety. During the pat down, Gendarme H. indicates that he left the apartment to prepare the vehicle in which X was going to be driven.

The Gendarmes report that at the end of the pat down, X. said that he had difficulty breathing. The Gendarmes M.G. and M.I. indicate that they helped him stand up³. The Gendarmes then led them to their vehicle. According to them, X. was able to walk without assistance, accompanied by a Gendarme on either side, who each held him by an arm.

Mr J., who had remained outside, explained that the action of the gendarmes had been fast (*"thirty seconds, barely a minute"* according to his first hearing, *"between one and two minutes"* according to his second hearing). He then saw two gendarmes leaving the apartment holding X., one by his left arm and the other by his right arm. According to him, X. walked with his chest pushed forwards, held on both sides by the two Gendarmes. One of the Gendarmes then pushed X. into their vehicle.

X.'s transport by car to the brigade

In the vehicle, X. was placed in the back, on the right. Gendarme H. indicates that he is the one who put on his seat belt. The vehicle was driven by Gendarme H. The Chief Sergeant G. was in the front passenger seat. Voluntary Deputy Gendarme I. was sitting in the back, to the left of X.

According to The Gendarmes, transport from X. to Y's brigade. - carried out with the emergency light and the two tone siren - was very brief, given the proximity of the brigade to Mr J's home. According to their hearings, the transport lasted between one and four minutes. Still according to their statements, no incident occurred during the transport, nor any verbal exchange with X., who was *"conscious"* and did not mention any problems or difficulties.

The arrival of X. to the Gendarmerie Brigade

Voluntary Deputy Gendarme I. stated that when their vehicle arrived in front of the entrance of Y's Gendarmerie Brigade, he noted that X.'s *"head was falling forwards"* and then reported to Chief Sergeant G. that X. was showing signs of discomfort. Chief Sergeant G. said that he saw that X. was *"slumping in the vehicle"*. Gendarme H., for his part, indicated that he saw that X. was *"held upright by his seat-belt"*.

³ There is uncertainty about how X. managed to stand up. According to G., X. was first placed in a semi-seated position against him, before being lifted up. Mr I. initially indicated that when X. said he had difficulty breathing, he was invited to stand up, which he did alone, but with difficulty. Later, he indicated that X. had been put in a seated position, before the gendarmes helped him stand up.

According to them, at the same moment, the brigade doors opened. The gendarmes report that after driving their vehicle into the brigade court, they carried X. out of it, and that on that occasion, they noticed an stain on the seat on which X. had been sitting and concluded that he had just urinated. The Gendarmes indicate that they then placed him in recovery position, without removing the handcuffs, considering that he was faking. They concur in saying that X. was breathing and had a pulse, but that he did not respond to their verbal and physical stimuli.

At 17:44, the Chief Warrant Officer K., who was present in the brigade court, called the firefighters. Questioned by the agents of the Defender of Rights, Mr. L., the interlocutor of Chief Warrant Officer K. at the CODIS (departmental fire and rescue operational centre), stated that after this call, he took a firefighter vehicle at the same time as he called the Emergency Medical Services (SAMU) which he didn't manage to contact.

Chief Sergeant G. indicates that, whilst waiting for their arrival, he asked Messrs. I. and H. to monitor X's vital parameters, i.e. to check his pulse and breathing, which the latter say they had done until the firefighters arrived and took over.

The arrival of the emergency services at the Gendarmerie brigade

Three firefighters arrived on the premises at 17:50 on board an emergency and victim assistance vehicle (VSAV), which had difficulties in entering the brigade courtyard due to the entrance gate malfunctioning and the presence of barriers that obstructed the passage.

The crew was composed of Mr. M. (the firefighting gear officer), Mr. N. and Mrs O. Mr. M. and Mr. N. contradict each other on the fact of knowing whom first arrived with X.

The firefighters indicate that they had requested the handcuffs be removed from X., but that the Gendarmes refused because they still felt that he was "*faking*". Following the insistence of the firefighters, X.' handcuffs were finally removed.

The firefighters carried out cardiac massage on X.

At 17:50, they warned the SAMU⁴. At 17:59, the firefighting gear officer requested the assistance of the SMUR (vehicle of the SAMU composed of a medical team and medical equipment).

The SMUR arrived on the premises at 18:10 and worked on X.

X.'s death was reported by the SMUR doctor at 19:05.

The announcement of the death of X. to his family

X.'s family was heard twice in the context of the legal proceedings, as well as by the agents of the Defender of Rights.

⁴ According to the time noted on the firefighters intervention sheet

During these hearings, they report that, until the Gendarmes announced X.'s death to his mother Ms P., and his brother Q., in the Gendarmerie precinct around 22 hours, no information had been given to them by the Gendarmes on X's situation or his health status:

- Not on the occasion of the search which took place at the family home around 17:40, in the presence of Mr A. and his partner, who were also detained;
- Nor when Mrs P., first introduced herself to the brigade to obtain information because family members had heard, through acquaintances or friends, that X. had "*collapsed*" and that he was in hospital, or that he was "*dead*". Mrs P. stated that during this first visit to the brigade, a Gendarme informed her that X. was in police custody on the premises. She considers that this information was false;
- Nor when Mr R., another brother, brought some sandwiches to the brigade for X., M.A and the latter's partner, which were accepted by the gendarmes;
- Nor when Mrs P. returned to the entrance to the brigade, where she claims she stayed more than an hour whilst crying and shouting. Then, around 22:00 h, a Gendarme replied to her on the intercom "*that it was 22 hours and that he had nothing to tell her*" when she threatened to file a complaint if something had happened to her son. Still according to her story, Mrs P. was then joined by her son Mr Q., who took advantage of an opening of the gate to insert his foot in it and get them into the brigade court. Two Gendarmes, a man and a woman, came to meet them.

It emerges from the legal proceedings that the gendarmes who took charge of Mrs P. and her son Mr. Q., are Captain S. and Commander T., who stayed in the background. According to Commander T, Ms P. and Mr Q. presented themselves at the brigade portal around 21:30-22:00 h.

According to Mrs P., the Gendarme identified as Captain S., told her son Mr Q. : "*if I tell you something, will you take it badly?*" and Mr. Q. replied that he wouldn't. She clarifies that Mr. Q. did not expect to learn the death of his brother.

According to Captain S.⁵, when he went towards him, Mr Q. asked him directly "*Is my brother dead?*", to which he responded to "*yes*". The captain explained that Mr. Q. then began to strangle him, before both fell to the ground. He states that Mr. Q. then punched him in the face. When Captain S. managed to stand up, Mrs. P. fell into his arms. He explains that, at the same time, Mr. Q. tried to leave the brigade, and punched a member of the Gendarmerie in the face. A Gendarme used tear gas and Mr Q. left. The brigade gate closed⁶.

The Commander Ms T. explained that approximately a hundred people were present in front of the brigade at that point and that several attempted to enter by force. She states that some people were in possession of "*sticks and a variety of projectiles and improvised weapons*". She explains that some succeeded in entering the brigade.

⁵ According to his hearing before the Defender of Rights

⁶ During her hearing before the Defender of the rights, Ms T. indicated that Mr Q. had been sentenced for these facts

Mrs P. indicated that, refusing to leave before having seen her son X., she stayed in front of the door of the brigade, and then was informed that she could only come in if she was alone, which she refused because she wanted to go in with someone. Later, accompanied by a friend, Ms. P. was shown to an office in the brigade.

Commander Ms T. confirms that during the evening, around 22:30, a friend of Ms. P. appeared in front of the brigade door, asking to have a discussion with the Gendarmes about the causes of X's death. Mrs P. and her were received by Captain S. and Sergeant Major U. in an office of the brigade. Sergeant Major U. told them what he knew. Mrs P. asked to see her son's body. In keeping with the procedure, Sergeant Major U. contacted a deputy commander, who gave his consent. However, the criminal identification technician and the forensic pathologist who were next to the body refused.

The next day, Ms. P. and her friend were once more received by Captain S. According to the latter, he presented the information that he was aware of and explained to them that it was appropriate to wait for the results of the autopsy to determine the causes of death, as well as the results of the toxicological examinations to determine whether X. had consumed alcohol or narcotics. He also told Ms. P. he would try to get permission for her to see the body of her son. Captain S. indicates that he obtained permission for the family to see the body before the autopsy.

Follow-up

A judicial investigation has been opened to investigate the causes of death. X.'s family then sued on the charge of voluntary violence by a person custodian of the public authority that resulted in involuntary death.

The case, was first dealt with in the court of First Instance in civil and criminal matters (Tribunal de grande instance) of the municipality of V., was then moved to the judicial court of W.

A judicial investigation was opened on the charges of violence by a person holding the public authority that resulted in unintentional death and non-assistance to a person in danger. This judicial investigation is still ongoing. It led to the placement of Gendarmes G., H. and I in a supervised witness status.

The Defender of Rights obtained the consent of the investigating judge to carry out his investigations, first of all from the examining magistrate of V., then from the investigating judge of W., following the change of jurisdiction. The Defender of Rights received the documents relating to the procedures in progress (up to classification D 2271).

On several occasions, the Defender of Rights also asked the Director General of the National Gendarmerie (DGGN), for information several times, each time he sent the requested information. At his request, the DGGN informed the Defender of Rights that no administrative investigation had been carried out by its departments concerning the facts.

The agents of the Defender of Security Ethics heard four members of X's family. In particular, they denounced the circumstances of his arrest in the apartment, the lack of information on his situation when he was in the Gendarmerie brigade, the circumstances in which his death was announced to them and the slowness of the judicial system.

The agents of the Rights Defender also heard eight members of the gendarmerie. They finally heard a regulator doctor of the departmental SAMU and a departmental first aid contact at the departmental fire and rescue department (SDIS).

ANALYSIS

1° concerning X's identity check.

According to ADC B. and Gendarmes D. and C., the identity check was decided on and carried out while X. was alongside Mr. A., who was wanted.

This version is contradicted by Mr. A., according to whom his brother X. was already leaving at the time of the crew's intervention. He claims that he was therefore not concerned by the identity check and did not refuse to submit to it.

Despite these contradictions, it remains established that X. started to run whilst he was close to a wanted person who was subject to an identity check. X.'s behaviour could justify that the Gendarmes catch up with him, in order to understand the reasons for his flight.

Under these conditions, the Defender of Rights does not note a breach of ethics concerning the circumstances of X's identity check.

2. concerning the first apprehension of X. on the public road

With regard to both the apprehension of X. on the public highway, and the one that followed in the apartment, any use of force must meet the imperatives of necessity and proportionality, as provided for in Article R. 434-18 of the French Internal Security Code (CSI), under the terms of which: *"the police or gendarme shall use force within the framework laid down by law, only where necessary, and proportionate to the purpose to be achieved or the seriousness of the threat, as the case may be."*

First and foremost, it should be recalled that the administrative investigation of the Defender of Rights is not intended to rule on the existence of a causal link between the action of gendarmes (on the public highway and in the apartment) and the death of X., as this prerogative belongs exclusively to the judicial authority.

The Defender of Rights, among the elements sent to him by the judicial authority, reviewed the medical reports carried out on the instructions of the judges or at the request of the family, as well as the other medical elements present in the legal proceedings. Several experts have presented different conclusions on the series of events leading to X's death and which of these events contributed to it.

In his analysis of the proportionality of the use of force, the Defender of Rights takes into account the presence of injuries discerned upon medical expertise, regardless of the role played by these lesions in the process leading to death, which shall be determined by the judicial judge.

In the case in point, while the preliminary autopsy report explicitly mentions a "absence of injuries indicating recent violence," it is important to indicate that this finding does not rule out disproportionate use of force, and that this same report also mentions the injuries observed on X. (at the level of his forehead and his shoulder). Subsequent reports report further injuries. However, the sheer number of people and events who played a part in the events leading to X.'s death (an initial questioning on the public road, followed by a physical altercation with a

third party, then a second apprehension in an apartment), means it is not possible to know with certainty when, or after which action, exactly the injuries occurred.

2.1. The apprehension of X. in the town hall park

Mr B. states that when he managed to catch up with X., the latter first submitted to the checks, before pushing him back with his arm when he was asked to present an identity document. He then resumed his flight. Then, when Mr. B. caught up with him and asked him to stay where he was and lie on the ground, X. refused to comply. Therefore, Mr B. overcame him using force.

The analysis of the necessity and proportionality of the use of force during this first questioning by X. on the public highway is based on the statements of ADC B. and Gendarme D., informed by the testimonies collected in the judicial investigation, as it is specified that the intervention was not filmed by the city's video surveillance cameras.

On the need to use force to question X.

Two witnesses who wished to remain anonymous were heard during the legal proceedings⁷. Both indicate that X. was caught up by the Gendarme a first time, after he had said "*stop gendarmerie* " or "*Halt*", and that X. started running again, seeing as he was caught up a second time.

These testimonies support the version of ADC B. on the fact that X. ceased to comply. Therefore, the use of force to apprehend him was necessary, as well as placing handcuffs on him pursuant to the provisions of Article 803 of the Code of Criminal Procedure, under the terms of which: "*No one may be subjected to the wearing of handcuffs or shackles unless they are considered to be either dangerous to others or for themselves, or as likely to try and run away (...)* "

The Defender of Rights does not note any breach as to the need for the use of force and coercion to control X.

On the proportionality of the use of force

The use of force must be proportionate to the goal to be achieved and the seriousness of the threat and not go beyond what is necessary. Several criteria make it possible to assess this proportionality: the behaviour of the person apprehended (whether they resist arrest or not), what the Gendarmes do to control and restrain the subject (what they do exactly, for how long and how much force they apply) as well as any injuries caused during or after this use of force.

⁷ For one of the witnesses, a contact report has been drawn up, and for the other, a report of the hearing has been established.

These criteria are not exclusive of each other or exhaustive, and their presence depends on the circumstances of the intervention.

In the present case, Gendarme B. states that after catching up with X. a second time, he stopped him in his flight by seizing him by the shoulder, and then used an armkey on him. When he was questioned about this and asked to describe his movements, Gendarme B. indicates that he had rotated X.'s shoulder blade downwards, and then pushed his shoulder to the ground by pressing on it with his right hand, whilst raising his arm, which had the effect of bringing him down to his knees in front of him and immobilising him on the ground. Mr B. was then joined by Gendarme D.

Gendarme D declares that, upon his arrival, X. on the ground on four legs, that his arms were straight and pressing down on the ground. He also states that he was not and stated that he was not held down on the ground. Gendarme D. explains that he then pulled X.'s left hand onto his back, whilst the adjudant B. seized his right hand. The handcuffing was carried out in X.'s back by Gendarme D.

Contrary to the Gendarme's statements, a witness claims to have seen X. flat on his tummy during his apprehension. He said he saw a gendarme put a hand on X.'s back, which caused him to fall on the ground. He also reported that X. found himself lying on his stomach flat on the grassy ground, that the gendarme crouched next to him and put one of his knees on ground and the other on X.'s buttock.

In addition, another witness declares that he saw a gendarme bring X. to the ground by putting a knee on his back, before pulling his hands to his back.

The two testimonies therefore concurred on the fact that X. was kept on the ground by a gendarme using a knee pushing down on his back or buttock.

In the course of their investigations, the Defender of Rights agents became aware of the movements and techniques that are taught to gendarmes' regarding the handcuffing of an apprehended individual. The technique taught for placing handcuffs on a person who is lying on the ground provides for control with the knees and the extension of the arm.^{8 9} The presence of this movement in the techniques that are taught does not however prejudice the absence of a breach if a disproportion is established in the duration or intensity of the gesture.

However, in the present case, the testimonies collected do not provide any information concerning how long X. was kept on the ground with a knee on his back or on his buttocks, or concerning how hard the knee was maintained. They also do not give any information about X.'s behaviour at this time.

The medical report states that lesions were found on X.'s back, "*which may agree with X.'s being held down by a knee as reported by one of the gendarmes*"⁹. However, as indicated above, the multiple interventions do not make it possible to know at which stage or to which specific action this injury can be attributed to.

Similarly, lesions were observed at the level of X.'s forehead and at the level of his left shoulder, "*these injuries are compatible with X.'s arm being pulled back*"¹⁰, without it being possible to determine the exact origin of this injury.

⁸ Documentation sheet no. 52-02 " weaponless control of an opponent" sent to the Defender of Rights by the DGGN (page 9).

⁹ Medical-legal expert report drawn up by a Belgian panel of experts, drawn up on 13 January 2021

¹⁰ Preliminary autopsy report drawn up on 21 July 2016

In conclusion, the Defenders of Rights considers that there is no evidence to conclude that the use of force by gendarmes D. and B. in the first phase of X.'s apprehension was disproportionate.

2.2 Taking X. to the initial place of control

It is established that Mr. F. intervened during X.'s apprehension by Gendarme D. whilst they were going back to the initial place of control, and that a dispute took place. It is also established that during this dispute, the three protagonists fell to the ground. After the facts, Gendarme D. had contusions at the level of his right ankle and right shoulder.

However, the versions of Mr. F. and Gendarme D. differ on what came before this dispute and what happened exactly.

Two witnesses who were at the scene give a version contradicting Mr. F.'s. In fact, these two people indicate that prior to his arrival, the situation was calm and that X. was walking with the gendarme. One of the witnesses stated that the person arrived and attacked the gendarme, punching him in the face, drawing blood.

These testimonies corroborate Gendarme D.'s version, according to which he was attacked by Mr. F.

These testimonies do not mention any blows dealt by Gendarme D. to X. during the altercation, although it was specified that the traces of blood found on the gendarme corresponded to Mr F's blood.

In view of these elements, the Defender of Rights considers that at this stage of the intervention, there is no evidence to indicate that Mr D. used force against X. during this altercation.

3. Concerning X.' second apprehension in the apartment

There were no witnesses. Indeed, Mr. J. saw X. just before the gendarme's arrival but he was not present in the apartment. He then saw the gendarmes coming out of the said apartment holding X. in handcuffs. Thus, here the analysis of the use of force can only be carried out on the basis of the gendarmes' statements (they were interviewed four times during the judicial investigation), and Mr.J's testimony (he was heard twice during the judicial investigation) on what he saw before and after their intervention.

On the need for the use of force

The gendarmes state that before they arrived on the site, they had been informed that X had fled and been violent towards a gendarme *via* the radio. Therefore, they could legitimately proceed with his apprehension, as well as his handcuffing, pursuant to the provisions of Article 803 of the aforementioned Code of Criminal Procedure.

The gendarmes chose to use force to apprehend him in view of their experience from the previous apprehension. The Defender of Rights considers that the use of force, under these conditions described by the gendarmes, could seem to be necessary.

On the proportionality of the use of force

The gendarmes, who were auditioned four times during the proceedings (between 2016 and May 2022, the dates of their last hearings), were consistent on the fact that the use of force had been brief (a few seconds) and had ceased as soon as X. was handcuffed. In the absence of a witness, it is impossible to establish with certainty how long it took to get X. under control in the apartment. However, the shortness of the intervention of the gendarmes, as a whole, is corroborated by the testimony of Mr. J., who saw them emerge. According to him, it lasted between *"thirty seconds, barely one minute"* according to his first hearing, *"between one and two minutes"* according to his second hearing.

The gendarmes were also concordant about the fact that they had intervened simultaneously on X., while he was lying down on the ground, the hands under his torso, with the purpose of handcuffing him. Thus, according to their statements:

- Deputy Gendarme I. brought X.'s left arm behind his back whilst kneeling;
- Sergeant G. pulled back his right arm, by placing his knees on the top of X's body;
- and Gendarme H. held the legs of the concerned party still;
- Deputy Gendarme I. then put the handcuffs on X while he was still face down on the ground.

Messrs G. and H. qualified the techniques they used, stating that they were taught movements. Thus, Mr. G. explains that after pulling back X.'s right arm, he carried out a costal dorsal check, which is to say that, while holding down his feet, he put his right knee on the centre of X.'s back and his left knee at the level of his ribs. He stated that he maintained X's right arm between his two knees in order to allow Mr. I. to proceed with a handcuffing by extension of arms.

Mr H., for his part, explained that he had immobilised X.'s legs by winding their legs i.e. he wound X.' left leg with his own left leg in order to immobilise him. The purpose of the position is that he was eventually perpendicular to X., with his left tibia resting on the back of X.'s left thigh.

The Defender of Rights notes that the techniques used by the gendarmes are indeed taught to them¹¹, without this guaranteeing that they are used in a proportionate manner.

Beyond the points that can be considered as established thanks to concurrent hearings of the gendarmes, other aspects of the sequence of events remain uncertain in the state of the elements in the possession of the Defender of Rights. This does not allow him to assess the proportionality of the use of force. Indeed, with regard to X.'s behaviour whilst they were bringing him under control, although the three gendarmes agree on the fact that he was struggling and kicking, their statements do not agree on how much he resisted with his arms.

¹¹ The Defender of Rights received from the DGGN the documentation sheets "weapon-less control of an opponent"

Thus, during the radio report he made to his chain of command while X. was in the care of the SMUR in the brigade, Mr G. indicated that there was *"not a rebellion specifically"* during this apprehension. However, during the four hearings that followed, he consistently claims that X. had resisted with his arms. As for Mr H., he indicated that X. kept his arms under his body and that his colleagues had had difficulties in controlling him. For his part, Mr I. had said in his first statements that X. had not resisted when he had handled his left arm and that he had not resisted. Later though he stated, on the contrary, that he had struggled with his arms. Faced with these change in the statements he stated that X. was trying to struggle to free his arms and legs. The changes in these statements casts doubt on the reality of the resistance that X. opposed with his arms. Faced with Mr.I.'s initial statements, Messrs G. and H. maintained that X.struggled with his arms.

The Defender of Rights further notes that the elements of the case do not make it possible to establish with certainty the state in which X was in at the time of the Gendarme's arrival in the apartment, which could have shed light on the question of the behaviour of the concerned party during his overpowering. Indeed, Mr J. describes a person who was out of breath, unable to speak or to move, which is in contradiction with an action of resistance. It should be noted, however, that this witness had not indicated these elements in his initial statements. Beyond the question of X.'s behaviour during his control, there is also doubt as to the intensity with which the gendarmes implemented the actions described above.

Indeed, Mr. G. initially stated that he and his two colleagues had all three pounced on X. ("*above*") or that X. had borne the body weight of the three gendarmes at the time of his apprehension. Similarly, Mr. H. stated in his first statements that the gendarmes were three on top of X. ("*above*") when they were trying to overpower him. However, when they were interviewed about these statements, they later claimed that they had only wanted to mean how swiftly they had had to act and that X. had not borne their three combined weights. Mr G., for his part, stated that X. had only borne the weight of his body during the handcuffing phase.

Finally, from a medical point of view, injuries were found at the dorsal level, *"that may agree with the knee pressure reported by one of the gendarmes"*¹². However, as indicated above, the multiple interventions mean that it is impossible to know at which stage or to which specific action this injury can be attributed to.

In conclusion, some factual elements - which would have made it possible to assess the proportionality of the use of force - cannot be established in the light of the elements in the possession of the Defender of Rights. In these circumstances, the Defender of Rights cannot rule on the proportionality of the use of force by gendarmes on X. during his apprehension in the apartment.

However, beyond the present case and from a more general point of view, the Defender of Rights, notes that it is not aware of the existence of specific instructions within the National Gendarmerie pertaining to the precautions to be taken in the event of overpowering a person who is lying on their front (also called *ventral decubitus*).

¹² Medical-legal expert report drawn up by a Belgian panel of experts, completed on 13th January 2021

Indeed, ventral immobilisation has been identified by international practice as highly dangerous for life¹³. The European Court of Human Rights thus referred to the Amnesty International conclusions which report that: *"According to experts, positional asphyxia occurs when an individual's neck is squeezed, making breathing difficult, or when a person is kept on the stomach in order to immobilise or transport them: this position prevents proper breathing. The fact of handcuffing a person behind their back also restricts their ability to breathe. Any pressure exerted on the back of the person in this position (such as the one that a law enforcement officer can exert, especially when trying to prevent someone from moving) further increases the difficulty of breathing. When a person is short of oxygen, the "natural reaction" is to struggle even more. Faced with this unrest, a law enforcement officer will tend to exert additional pressure or compression in order to control the person, further jeopardising their possibilities of breathing"*¹⁴. The Court also referred to the position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which states that: *"In cases where resistance*

*is encountered, escort staff usually immobilise the detainee completely on the ground, face down, in order to put on the handcuffs. . Keeping a detainee in such a position, in particular with escort staff putting their weight on various parts of the body (pressure on the ribcage, knees on the back, immobilisation of the neck) when the person concerned puts up a struggle, entails a risk of positional asphyxia (...)"*¹⁵.

The Court referred to Amnesty International's reports referring to several cases of death of persons forced to the ground on their stomach, in Austria, Switzerland, the United Kingdom, Denmark and the United States. According to this organisation, due to the hazardous nature of this technique, the law enforcement forces of certain American states, including the New York and Los Angeles polices, have prohibited it. In Belgium, the Minister of the Interior also decided to prohibit immobilisation techniques that could cause positional asphyxia, following recommendations issued by the CPT during a visit to Belgium between 25th November and 7th December 2001¹⁶.

The Defender of Rights, and before him the National Security Ethics Commission (CNDS), whose missions it has taken over, has on several occasions dealt with cases relating to deaths that occurred following immobilisation on the stomach practised by the police and drew attention to the dangers of this position, likely to lead to death¹⁷.

In France, at the level of the national police, a note¹⁸ was circulated in 2008 to raise awareness

¹³ ECHR *Saoud v France* 09.10.2007

¹⁴ Amnesty International, "Amnesty International Preoccupations in Europe January-June 2001"

¹⁵ CPT, 13th General Activity Report (2002-2003)

¹⁶ ECHR Judgment *Saoud v France*, 09.10.2007

¹⁷ In particular: CNDS Opinion No. 2007-83; CNDS Opinion 2008-109; Decision Defender of Rights No. 2009-207. The latter case was brought before the ECHR: *Case Boukourou et al. v France*, 16.11.17, having concluded that Article 3 of the Convention has been violated; Decision Defender of Rights No. 2018-155

¹⁸ Note from the General Inspectorate of the National Police (IGPN) of 8 October 2008 on the requirements of the IGPN relating to the use of force, replaced by a note of 4 November 2015 on the principles of use of force or coercion for the control of a highly agitated person in the purpose of apprehending or transporting them.

among civil servants about the dangers of forcing people to the ground on their stomach. Questioned by the Defender of Rights on the existence of such a note within the national gendarmerie, the DGGN sent them the training sheets relating to the weapon-less control of an opponent, which briefly mentions the case law of the ECHR, but no note specifically dedicated to the risks of forcing people to the ground on their stomach.

Accordingly, the Defender of Rights recommends that a note on the dangers of forcing people to the ground on their stomach be circulated within the National Gendarmerie.

4° concerning the handling of X. during the car journey and in the brigade courtyard

As a preliminary point, it should be noted that the three members of the PSIG who questioned and drove X. to the brigade, as well as Chief Warrant Officer K. who contacted the emergency services, were all trained in first aid on the date of the facts.

Pursuant to Article R. 434-17 of the Internal Security Code: *Any person apprehended is placed under the protection of police officers or gendarmes and protected from any form of violence and inhuman or degrading treatment. (...)*

The police or gendarme entrusted with an apprehended person shall be attentive to their physical and psychological condition and shall take all possible measures to protect the life, health and dignity of that person.

The use of handcuffs or leg irons is only justified when the apprehended person is considered either dangerous to others or for himself, or as likely to attempt to escape".

4.1 On the transport of X. by car to the brigade

The gendarmes claim that they have taken into account, in the apartment, X.'s stated difficulty in breathing at the end of the apprehension and that they lifted him into an upright position .

However, the Defender of Rights regrets that even though they had just been warned by X. about his difficulty in breathing, their attention to his state of health did not persist during the drive to the brigade, as the gendarmes say they had not exchanged any words with him during the drive. Therefore they did not inquire more about his state of health, before they realised, when they arrived at the brigade, that he had passed out.

Notwithstanding the shortness of the journey to the brigade and their version according to which they did not note anything particular concerning X., the Defender of Rights considers that at the end of an apprehension at the end of which the person apprehended had indicated to them to have difficulty breathing, it was up to the crew to remain attentive to his state of health throughout his apprehension .

4.2 On the report drawn up by the gendarme calling the firefighters

According to the recommendations of the Directorate-General for Civil Security and Crisis Management of the Ministry of the Interior, in their training unite relating to the "Level 1 civic prevention and rescue unit"¹⁹, an emergency call is defined as *"the action that consists of informing an emergency service of the presence of one or more victims affected by one or more distresses as well as the nature of the assistance provided to them.*

¹⁹ Recommendations of the Directorate-General for Civil Security and Crisis Management of the Ministry of the Interior, on the teaching unit "Level 1 civic prevention and rescue", September 2022 version
(<https://www.interieur.gouv.fr/Le-ministere/Securite-civile/Documentation-technique/Secourisme-et-associations/Les-recommandations-and-substantials>)

Not informing an emergency service can compromise the life or health of a victim despite a rescuer giving first aid. Therefore, the role of the rescuer in the alert is essential. The rescuer or a witness must transmit the alarm using the most appropriate means possible. It must be swift and precise in order to minimize the execution time of the rescue and care process. The alarm must be raised after a quick assessment of the situation, of the risks and possibly after making sure the people are safe."

Under these recommendations: *"The minimum information to provide is:*

- *the telephone number or terminal number from which the call was made;*
- *the nature of the problem: illness, accident, etc. ;*
- *the location of the event, given as precisely as possible".*

In the present case, Chief Warrant Officer K. called the firefighters on the emergency call number 18, very soon after the arrival of the PSIG crew at the brigade. His call was answered by Mr. L., an operator at the operational fire and rescue centre (CODIS). The Defender of Rights heard the recording of this phone call that lasts 4 minutes and 13 seconds.

It appears that, during the phone call, Chief Warrant Officer K. requested the assistance of the firefighters for a man who the gendarmes had just apprehended, stating that he had *"passed out"* in the brigade courtyard. He said that his eyes were *"strange"*. He then added that the gendarmes had put him in recovery position ²⁰ (*"We've just put him in recovery position"*). He said that he wasn't moving any more, that he no longer responded to the gendarmes' orders. During this report, Gendarme K. added that he was *"lying on his stomach"*. He also raised doubts about the fact that X. was faking (*"if he is faking or not, we don't know"* -sic). The gendarme added that the individual had not been *"tasered"*. The CODIS operator took note of this, before indicating to the gendarme that he was going to send someone to the gendarmerie brigade. Before ending the exchange, he was going to put the SAMU on line with him.

It emerges from the investigations that ultimately Gendarme K. was not put in contact with the SAMU.

The handling of this telephone call by Warrant Officer K. calls for several observations.

Firstly, it appears that Warrant Officer K. failed to pass on certain informations to the CODIS operator or that he passed on contradictory information. Thus, he did not say that X. had urinated. Questioned by the Defender of Rights agents on this point, he replied that he did not remember why he had not shared this information, even though he had been informed of it by the PSIG officers when they had arrived and he had himself noticed the presence of a urine stain on the seat of the vehicle. The Chief Warrant Officer K. also gave two different informations on X.'s position during the call to the firefighters, initially he said that he was in recovery position and then that he was lying face down.

²⁰ According to the aforementioned recommendations of the Ministry of the Interior on first aid, the recovery position is defined as follows: *"This technique is indicated in the case of any victim who does not respond, does not react or who doesn't breathe (loss of conscience)", it "allows the victim's upper airways to be kept free by allowing liquids to flow outwards and avoiding that the tongue does not fall into the back of the throat".* It is also specified that *"when someone is put in the recovery position, it must lead to (...) a stable position, that is as lateral as possible."*

When questioned by the Defender of Rights agents on this point, Mr. K. indicated that in no way had X. been put face down. He explained: *"If I said that, it was in the context of the conversation, because at the same time as I was talking to the firefighters I had an eye on what was going on around me and I specify that when the firefighters arrived, he was in recovery position.* It is regrettable that the CODIS operator, Mr. L., did not react when the Warrant Officer K. told him that X. was lying on his stomach.

The Defender of Rights considers that, in doing so, the Chief Warrant Officer K. did not give a sufficiently detailed report to the firefighters and that, therefore, he breached the provisions of Article R. 434-17 of the Internal Security Code.

Secondly, during his hearing before the agents of the Defender of Rights, Mr. K. explained that he had told the firefighters that he believed that X. was faking, while explaining to them that they had to come as fast as possible. He explained to the Defender of Rights agents that it was plausible that X. be faking because he knew him and that he was *"bellicose"* with regard to law enforcement, and that he had escaped the PSIG officers. Mr K. said, however, that despite his assessment of the situation, he had called the firefighters straight away and that at no time had he told his colleagues that he thought he was faking, but only to the firefighters, so that they could act with the necessary caution.

The Defender of Rights is surprised that despite the fact that X. had urinated and that he did not answer the gendarmes - Mr. K. indicating that he called him by his first name several times and having patted his cheeks, without eliciting any response that the military considered that he was faking.

The Defender of Rights considers that this type of assessment, which is subjective and not based on concrete elements, is not useful in a review carried out with emergency medical staff and reflects a lack of objectivity on the part of Chief Warrant Officer K., which could have limited the actions undertaken to save X's Chief Warrant Officer K. breached the provisions of Article R. 434-17 of the Internal Security Code.

4.3 On the use of first aid by the gendarmes

The PSIG gendarmes (MM. G., I. and H.) indicate that after having noticed that X. had collapsed in the vehicle, they carried him out, and then placed him in recovery position in the brigade courtyard, when his hands were still cuffed in his back. They explain that Messrs. H. and I. were holding him to keep him on his side: one was at the level of his face and the other at the level of his arms. Gendarme H. also indicated that he had placed a shirt under X.'s head. They concur on the fact that he was breathing and had a pulse, but he did not respond to their verbal and physical stimuli. Chief Warrant Officer G. explained that apart from putting X. in recovery position, they had not initiated any other first aid actions, such as heart massage, because they had not noticed any vital distress: he had a pulse and he was breathing.

According to this gendarme, X. even briefly opened the eyes several times. According to the gendarmes, he remained in recovery position, under the constant supervision of Messrs H. and I., who monitored his pulse and breathing, until the arrival of the firefighters, who then took over. Three other gendarmes confirm having seen X. *"in recovery position"* or placed *"on his side"* (according to the terminology used) before the arrival of the firefighters.

Two of the three firefighters who acted on the scene, Mrs O. and Mr N., also indicated that X. was placed on his side, with his hands cuffed in his back. Mrs O. indicates that he was in recovery position with his hands cuffed in the back. Mr N. explains that it was kept on his right side, held up by three PSIG gendarmes because he his hands were cuffed in the back and that it was therefore impossible to put him in a normal recovery position.

Despite the expression "*Recovery Position*" being used by some, the position in which the gendarmes put X. is not a genuine recovery position since the interested party had his hands cuffed in his back.

Indeed, the recovery position must be carried out like this:

- *"Delicately bring the lower limbs into the body's axis;*
- *place the person's arm, located on the rescuer side, at a right angle with his body;*
- *fold the elbow of the same arm whilst keeping the palm of the casualty's hand turned upwards;*
- *kneel or squat next to the person, at the level of their thorax;*
- *Take the person's opposite arm and bring the back of their hand to the level of their ear on the rescuer side;*
- *keep the back of the person's hands pressed against their ear, palm against palm;*
- *catch the person's opposite leg with the other hand, just behind their knee;*
- *raise the person's leg, whilst maintaining the foot on the ground;*
- *move away from the person's thorax in order to be able to turn them round if necessary without having to move backwards; Pull on the person's leg in order to turn it towards the rescuer, until the knee touches the ground, gently and in one single movement.*
- *slowly remove the rescuer's hand from under the person's head whilst preventing the head from falling back, the rescuer must maintain the victim's elbow using the hand that was previously located at the knee; adjust the person's leg located above so that the hip and knee are at right angles;*
- *open the person's mouth without mobilizing the head and without pushing the chin onto the sternum;*
- *continuously monitor breathing"* ²¹.

The hands of the victim are thus released, and it isn't necessary to hold them up for them to stay on the side.

If a person who is wearing handcuffs is positioned on their flank, they can quickly find themselves on their stomach if they are not constantly held up. In this case, the position X. was in, which is not a recovery position, led to him lying on his stomach at a point *T*. in time, before the arrival of the firefighters.

Several elements of the legal proceedings agree with this:

- the statements of Voluntary Deputy Gendarme VW, who, unlike his colleagues, says he saw X. *"flat on his stomach"* and who, faced with the statements of the other protagonists, confirmed his testimony;
- Gendarme K.'s statement during his telephone conversation with CODIS (*"So right now, he is lying on his stomach"*).

²¹See note 20

- the statements of firefighter M., who indicates, that X. was on his stomach at one point when he was in the courtyard. His fellow fire-fighters state that this is not the case and when he was faced with their contradicting testimonies, he maintained that he saw him on his stomach.

Moreover, it appears that upon their arrival, the firefighters had to insist on the gendarmes removing X.'s handcuffs. Indeed, the three firefighters agree that the gendarmes first refused to remove his handcuffs by indicating that he was violent and that he was faking, forcing them to carry out the first emergency actions (response to stimuli, measuring his pulse, verification of oxygen saturation in the blood, placing an oxygen mask)²² whilst his hands were cuffed in his back. Then, after finding that X. was not "*ventilating*" any more, the firefighters asked the gendarmes a second time, to remove his handcuffs, which they did. The firefighters then carried out a heart massage.

Article R. 434-17 of the Internal Security Code provides that the use of the port of handcuffs or fetters can only be justified when the person apprehended is considered to be either dangerous to others or for themselves, or as a flight risk.

Admittedly, in the present case, according to the information in the possession of the gendarmes, the person concerned had attacked one of their colleagues and had tried to take flight. However, in the presence of a person who is unconscious, lying on the ground, who has just urinated on themselves, within a brigade and surrounded by several gendarmes, the gendarmes should have removed his handcuffs immediately, to allow them to carry out first aid on him properly.

In conclusion, the Defender of Rights considers:

- that by placing X. in recovery position without removing his handcuffs first, thus carrying out a non regulatory recovery position,
 - and that by refusing to remove the handcuffs to allow the firefighters to carry out first aid,
- the gendarmes have failed to fulfil their obligation to protect X.'s life, health and dignity.**

Therefore, the Defender of Rights notes a breach of Article R. 434-17 of the Internal Security Code against the members of the PSIG MM. G., H., I. as well as against Chief Warrant Officer K. who coordinated the arrival of the emergency services.

4.4 On the firefighter's difficulties in entering the gendarmerie brigade

The firefighters agree that when they arrived at the gendarmerie brigade, they found that the gate was closed. The Firefighting Gear Officer indicates that he operated their two tone siren to report their presence, and that he parked their vehicle in front of the brigade gate. He explains that he asked a gendarme who was on the other side of the gate to open it for him. However, the gate was blocked, as the left side wouldn't open. The firefighters then had to manoeuvre the lorry in order to enter through the right side only. Behind the gate, there were removable barriers that obstructed the passage, according to the Firefighting Gear Officer, there were three or four, but the emergency vehicle driver claims there were only two or three. The emergency vehicle driver stepped off the vehicle to remove them, with the help of gendarmes.

²² According to firefighter Mr. N.

During the judicial investigation, when they were questioned on the time that had elapsed before they entered the courtyard, the firefighters said that their vehicle was blocked for one to three minutes, according to each of their statements (one to two minutes according to Mrs O.; for two to three minutes according to Mr. M.; approximately three minutes according to Mr. N.). Mr N. explained that it had felt like a long time, but that he had not looked at his watch. Mr. M. said, "*It was a long time. We know that the longer things take, the less likely we are to be able to resuscitate the victim*".

The gendarmes do not agree on whether the gate worked properly on the date of the facts. It does appear that at this time, the brigade gate was malfunctioning, such as the fact that one of the sides stayed closed despite attempts to open it.²³ It is regrettable that, despite this malfunction that was known to all, the gendarmes did not prepare for the arrival of firefighters, on the one hand by ensuring that the portal worked properly and, on the other hand, by removing the barriers that were placed behind the portal. In addition, it should be noted that a period of six minutes elapsed between Gendarme K.'s call to the firefighters (17H44) and their arrival on the premises (17H50), during which time the gendarmes had the opportunity to anticipate the arrival of emergency services. This prior preparation, in order to facilitate the action of the emergency services, fell within the obligation of protection provided for in Article R. 434-17 of the aforementioned Internal Security Code.

It is also in this concern of acting as fast as possible when it comes to starting the emergency care that Ministry of the Interior recommendations on first aid, specify with regard to the course to be taken after warning the emergency services: "*If possible, send a person to receive the emergency services and organise their access to the accident site, as close as possible to the victim*".

The Defender of Rights considers that by not taking the measures to prepare for the arrival of firefighters, by freeing up the access to the brigade, gendarmes breached their obligation of protection provided for in Article R. 434-17 of the Internal Security Code. It considers that, insofar as Chief Warrant Officer K. coordinated the arrival of the emergency services, it was his responsibility in particular to take care of this.

In conclusion, with regard to all breaches of the obligation of protection provided for in the aforementioned Article R. 434-17, with regard to gendarmes G., I., H. and K. during the various phases of intervention, namely:

- a lack of attention by gendarmes G., I. and H. towards X. when driving the brigade,
- Chief Warrant Officer K.'s lack of rigour and objectivity in his telephone report to the firefighters,
- inadequate providing of first aid actions in the gendarmerie brigade by gendarmes G., I. and H.,
- poor coordination of the emergency services by the Chief Warrant Officer K.,

the Defender of Rights recommends that disciplinary proceedings be brought against these four members of the gendarmerie.

²³ According to the statements of several gendarmes during the legal proceedings

5. Concerning the gendarmes notifying of X.'s family members of his death.

Captain S. announced X.'s death to his mother and brother at the brigade portal, where she had gone to wait for news of her son.

The Defender of Rights' investigations do not make it possible to state the time at which the death was announced to the family with certainty, but it is possible to say that this announcement was not made immediately after X.'s death, which was reported at 19:05. This announcement was allegedly made around 22:00²⁴. It is established that prior to this announcement, X.'s mother had already gone to the brigade, without having been able to enter it²⁵. However, it was not possible to establish the time of this first visit or to identify her interlocutor(s) on this occasion.

It is clear from the statements made by the gendarmes to the Defender of Rights that this announcement, although initially envisioned by the gendarmes, had to be dealt with as an emergency, in view of the fact that P. spontaneously presented herself at the brigade and that Mr. Q. asked whether his brother had died directly.

Commander T. thus informed the Defender of Rights that she had asked the Deputy Prosecutor and the Director of the Cabinet of the Prefect, upon their arrival in the Brigade (around 19:30) to tell her how to proceed to announce the death, but that she hadn't received an answer. She indicates that this question had appeared crucial to her, not only because a family had just lost one of its members, but also because of the risks of disturbances of law and order that this announcement could cause. Therefore she thought this issue needed to be treated seriously and quickly.

According to Ms T., it was necessary to "*deterritorialise*" the announcement of the death, that is to say that it was not done in the gendarmerie brigade, but in another place such as the hospital, where it is possible to take care of people in a state of shock, or the town hall, which is a public location. Ms T. indicated that she was unable to obtain the support of the mayor of E. (who was on leave), and that the on-call councillor stated that he could not support them in the process of the announcement of the death.²⁶

Ms T. explained that, despite their conscientiousness, from the moment X.'s mother presented herself at the brigade, the gendarmes no longer could choose an appropriate place, and that in the absence of a response from the authorities, she and Captain S. had taken "*responsibility*".

With regard to the way in which the death was announced, it emerges from Captain S.'s statements before the Defender of the Rights that Mr Q. already seemed to know that his brother had died even before the gendarme had told him, since he allegedly asked him the following question "*Has my brother died?*" To which the captain replied "*yes*". The captain indicated that he had not had the opportunity to take P. to an office, since Mr. Q. allegedly punched him in the face. In the course of the legal proceedings, the captain also stated that he could not let P. and her son enter the brigade offices because the body of X. was lying on the ground in front of the only access door of the brigade, because the public access door was temporarily closed.

²⁴ 22:00 p.m. according to X's mother; at 21:30 and 22h00 on the dot according to Commander Ms T.

²⁵ According to Mr S. and Ms P.'s convergent statements.

²⁶ For his part, Captain S. did not mention this point to the agents of the Defender of Rights, claiming that he had contacted the town hall of E., as well as that of Y., in order to inform them of the death of X.

With regard to all of these elements, and according to the gendarmes', the competent judicial and administrative authorities did not answer the gendarmes' questions on how to proceed to notify the family of the death, even though this was a crucial issue.

The Defender of Rights regrets the conditions under which P. was informed of the death of her son, late, at the brigade portal, after she had gone there. Such an announcement, particularly serious, should have been made with all the necessary precautions and consideration in the circumstances.

In the present case, the Defender of Rights considers that in view of the context in which X.'s death occurred, it would have been appropriate for a third party to take charge of this notification, in order to calm down the situation, and regrets that Commander T.'s efforts in this regard were unsuccessful.

It was also apparent from the Defender of Rights' investigations that there was no training in notification of death on the date of the facts. Indeed, several gendarmes heard by the Defender of Rights, including Captain S. who announced the death of X. to his mother and brother, stated that there was no training on how to notify a person's relatives of their death.

The Defender of Rights has been informed that the first training courses on the subject were implemented in February 2018. It is a two-hour initial training module for members of the gendarmerie whose purpose is to equip them with the necessary tools to enable them to notify family members of a death in the best conditions possible.

The Defender of Rights takes note of the implementation of these new training schemes since 2018.

Beyond the training issue, it emerged from the hearings conducted by the Defender of Rights, that on the date of the facts, there was no legal framework providing for the procedures for the gendarmerie to notify a death.

The Interministerial Delegation for the assistance of victims (DIAV) specifically noted this difficulty specifically, in its report issued in July 2019, which was on the manners of notifying of a death²⁷. The delegation pointed out that there was no general framework for the announcement of deaths. With regard in particular to law enforcement, it noted that *"there is no internal directive within the police and the gendarmerie on the conditions for carrying out death notification by its agents, even though these two institutions are fully aware that this is a delicate task, requiring great humanity and that their image is at stake when they announce a death"*.

In view of this, the DIAV proposed the drafting by the Ministry of Justice, in conjunction with the other ministries concerned, of a regulatory framework on the authority or authorities in charge of notifying deaths.

²⁷ Report "How to improve death notifications?", Interministerial delegation for the assistance of victims, July 2019

Subsequently, an interministerial circular on the notification of death and the respectful treatment of the deceased and their relatives was signed on 2nd December 2022²⁸. The purpose of this *"is to define a general framework for notifications of death and for the respectful treatment of the deceased and their relatives in the context of a judicial investigation (where a judicial investigation, including a search for the causes of death - Article 74 of the Code of Criminal Procedure - or a preparatory investigation are opened), in order to harmonise the best practices to be implemented during the various steps following the death"*.

It is specified in this circular that *"The services of the State must best meet the legitimate needs of relatives in the tragedy that affects them by avoiding additional trauma due to insufficient preparation or coordination of actors . This circular therefore creates a framework defining who are the authorities in charge of the notification of death and constitutes a support for professionals in the execution of their prerogatives (...)"*

The Defender of Rights will closely monitor the implementation of this new regulatory framework, in particular with regard to the notifications of deaths that occurred during law enforcement interventions, as in the present case.

²⁸ NOR Circular: JUST2233405C dated 2 December 2022 relating to the notification of death and respectful treatment of the deceased and their relatives