



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

CASE OF NACHOVA AND OTHERS v. BULGARIA

(Applications nos. 43577/98 and 43579/98)

JUDGMENT

STRASBOURG

6 July 2005

This judgment is final but may be subject to editorial revision.

In the case of Nachova and Others v. Bulgaria,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Sir Nicolas BRATZA,
Mr B.M. ZUPANČIČ,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr J. CASADEVALL,
Mr J. HEDIGAN,
Mrs S. BOTOCHAROVA,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Ms L. MIJOVIĆ,
Mr D. SPIELMANN,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr T.L. EARLY, *Deputy to the Registrar*,

Having deliberated in private on 23 February 2005 and on 8 June 2005,
Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 43577/98 and 43579/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Bulgarian nationals, Ms Anelia Kunchova Nachova, Ms Aksiniya Hristova, Ms Todorka Petrova Rangelova and Mr Rangel Petkov Rangelov (“the applicants”), on 15 May 1998.

2. The applicants alleged that their respective close relatives, Mr Kuncho Angelov and Mr Kiril Petkov, had been shot and killed by military police in violation of Article 2 of the Convention. Furthermore, the investigation into the events had been ineffective, in breach of both Articles 2 and 13 of the Convention. It was also alleged that the respondent State had failed in its obligation to protect life by law, contrary to Article 2, and that the impugned events were the result of discriminatory attitudes

towards persons of Roma origin, in breach of Article 14 of the Convention read in conjunction with Article 2.

3. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11) and assigned to the former Fourth Section. On 22 March 2001 the applications were joined (Rule 43 § 1).

4. Following the Court's decision of 1 November 2001 to change the composition of its Sections (Rule 25 § 1), the present case was assigned to the newly composed First Section (Rule 52 § 1). On 28 February 2002 a Chamber of that Section, composed of Mr C.L. Rozakis, *President*, Mr G. Bonello, Mrs N. Vajić, Mrs S. Botoucharova, Mr A. Kovler, Mr V. Zagrebelsky, Mrs E. Steiner, *judges*, and Mr S. Nielsen, *Deputy Section Registrar*, declared the applications partly admissible.

5. On 26 February 2004 a Chamber of the same Section, composed of Mr C.L. Rozakis, *President*, Mr P. Lorenzen, Mr G. Bonello, Mrs F. Tulkens, Mrs N. Vajić, Mrs S. Botoucharova, Mr V. Zagrebelsky, *judges*, and Mr S. Nielsen, *Section Registrar*, delivered a judgment in which it held unanimously that there had been violations of Articles 2 and 14 of the Convention and that no separate issue arose under Article 13 of the Convention.

6. On 21 May 2004 the Bulgarian Government (“the Government”) requested that the case be referred to the Grand Chamber, in accordance with Article 43 of the Convention and Rule 73 of the Rules of Court. A panel of the Grand Chamber accepted this request on 7 July 2004.

7. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court.

8. Before the Grand Chamber the applicants, represented by Mr Y. Grozev of the Sofia Bar, and the Government, represented by their co-agent, Mrs M. Dimova of the Ministry of Justice, filed memorials on 30 November 2004 and 29 November 2004 respectively. In addition, third-party comments were received from three non-governmental organisations, the European Roma Rights Centre, Interights and Open Society Justice Initiative, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 23 February 2005 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mrs M. DIMOVA, Ministry of Justice,
Ms M. KOTZEVA, Ministry of Justice,

co-Agents;

(b) *for the applicants*

Mr Y. GROZEV,

Lord LESTER OF HERNE HILL, Q.C.,

Counsel.

The Court heard addresses by them.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The case concerns the killing on 19 July 1996 of Mr Angelov and Mr Petkov by a member of the military police who was attempting to arrest them.

11. All the applicants are Bulgarian nationals of Roma origin.

12. Ms Anelia Kunchova Nachova, who was born in 1995, is Mr Angelov's daughter. Ms Aksiniya Hristova, who was born in 1978, is Ms Nachova's mother. Both live in Dobrolevo (Bulgaria). Ms Todorka Petrova Rangelova and Mr Rangel Petkov Rangelov, who were born in 1955 and 1954 respectively and live in Lom (Bulgaria), are Mr Petkov's parents.

A. Circumstances surrounding the deaths of Mr Angelov and Mr Petkov

13. In 1996 Mr Angelov and Mr Petkov, who were both twenty-one years old, were conscripts in the Construction Force (Строителни войски), a division of the army dealing with the construction of apartment blocks and other civilian projects.

14. Early in 1996 Mr Angelov and Mr Petkov were arrested for being repeatedly absent without leave. On 22 May 1996 Mr Angelov was sentenced to nine-months' imprisonment and Mr Petkov to five-months' imprisonment. Both had previous convictions for theft.

15. On 15 July 1996 they fled from a construction site outside the prison where they had been brought for work and travelled to the home of Mr Angelov's grandmother, Ms Tonkova, in the village of Lesura. Neither man was armed.

16. Their absence was reported the following day and their names put on the military police's wanted list. A warrant for their arrest was received on 16 July 1996 by the Vratsa Military-Police Unit.

17. At around twelve noon on 19 July 1996 the officer on duty in the Vratsa Military-Police Unit received an anonymous telephone message that Mr Angelov and Mr Petkov were hiding in the village of Lesura. On at least

one of the previous occasions when he had been absent without leave, it was there that Mr Angelov had been found and arrested.

18. The commanding officer, Colonel D., decided to dispatch four military police officers, under the command of Major G., to locate and arrest the two men. At least two of the officers knew one or both of them. Major G. apparently knew Lesura since, according to a secretary who worked at the municipality and was heard later as a witness, his mother was from the village.

19. Colonel D. told the officers that “in accordance with the rules” they should carry their handguns and automatic rifles and wear bullet-proof vests. He informed them that Mr Angelov and Mr Petkov were “criminally active” (криминално проявени) – an expression used to denote persons with previous convictions or persons suspected of an offence – and that they had escaped from detention. The officers were instructed to use whatever means were dictated by the circumstances to arrest them.

20. The officers immediately left for Lesura in a jeep. Two officers wore uniforms while the others were in civilian clothes. Only Major G. wore a bullet-proof vest. He was armed with a personal handgun and a 7.62 mm calibre Kalashnikov automatic rifle. The other men carried handguns. Three Kalashnikov automatic rifles remained in the boot of the vehicle throughout the operation.

21. The officers were briefed orally by Major G. on their way to Lesura. Sergeant N. was to cover the east side of the house, Major G. the west side and Sergeant K. was to go into the house. Sergeant S., the driver, was to remain with the vehicle and keep watch over the north side.

22. At around 1 p.m. the officers arrived in Lesura. They asked a secretary at the town hall and one of the villagers, Mr T. M., to join them and show them Mr Angelov's grandmother's house. The vehicle drove into Lesura's Roma district.

23. Sergeant N. recognised the house since he had previously arrested Mr Angelov there for being absent without leave.

24. As soon as the jeep drew up in front of the house at between 1 p.m. and 1.30 p.m., Sergeant K. recognised Mr Angelov, who was inside, behind the window. Having noticed the vehicle, the fugitives tried to escape. The police officers heard the sound of a window-pane being broken. Major G. and Sergeants K. and N. jumped out of the vehicle while it was still moving. Major G. and Sergeant K. went through the garden gate, the former going to the west side of the house, and the latter entering the house. Sergeant N. headed to the east side of the house. Sergeant S. remained with the car, together with the secretary who worked at the town hall and Mr T. M.

25. Sergeant N. later testified that, having noticed Mr Angelov and Mr Petkov escaping through the window and running towards a neighbour's yard, he had shouted: “Stop, military police!”. He had pulled out his gun, but had not fired any shots. The two men had carried on running.

Sergeant N. had run out on to the street in an effort to intercept them by circumventing several houses. While running, he had heard Major G. shout: “Freeze, military police, freeze [or] I'll shoot!”. It was then that the shooting had started.

26. Major G. stated in his testimony:

“... I heard Sergeant N. shouting: 'Freeze, police'... I saw the privates; they were running and then stopped in front of the fence between Ms Tonkova's and the neighbour's yards... I saw that they were trying to jump over the [chain-link] fence, so I shouted: 'Freeze, or I'll shoot'. I released the safety-catch and loaded the automatic gun. Then I fired a shot in the air, holding the automatic rifle upwards with my right hand, almost perpendicular to the ground... The privates climbed over the [chain-link] fence and continued to run, I followed them, then I fired one, two or three more times in the air and shouted: 'Freeze!', but they continued running. I again fired shots in the air with the automatic and shouted: 'Freeze, or I will shoot with live cartridges’, I warned them again, but they continued running without turning back. I fired to the right [of the two men] with the automatic after the warning, aiming at the ground, hoping that this would make them stop running. I again shouted “Freeze!” when they were at the corner of the other house and then I aimed and fired at them as they were scaling the fence. I aimed at their feet. The ground where I stood was at a lower level... [B]y jumping over the second fence they would have escaped and I did not have any other means of stopping them. The gradient there was a bit steep, [I] was standing on lower ground ... the second fence was on the highest ground, that is why when I fired the first time I aimed to the side [of the two men], as I considered that nobody from the neighbouring houses would be hurt, and the second time I aimed at the privates, but fired at their feet. Under Regulation 45 we can use firearms to arrest members of the military forces who have committed a publicly prosecutable offence and do not surrender after a warning, but in accordance with paragraph 3 of [that regulation] we have to protect the lives of the persons against whom [we use firearms] – for that reason I fired at [the victims'] feet – with the intention of avoiding fatal injury. The last time that I shot at the privates' feet, I was 20 metres away from them and they were exactly at the south-east corner of the neighbouring yard. After the shooting they both fell down... They were both lying on their stomachs, and both gave signs of life, ... moaning ... then Sergeant S. appeared, I called him ... and handed him my automatic rifle...”

27. According to the statements of the three subordinate officers, Mr Angelov and Mr Petkov were lying on the ground in front of the fence, with their legs pointing in the direction of the house from which they had come. One of them was lying on his back and the other on his stomach.

28. A neighbour, Mr Z., who lived opposite Mr Angelov's grandmother, also gave evidence. At about 1.00 or 1.30 p.m. he had seen a military jeep pull up in front of Ms Tonkova's house. Then he had heard somebody shout: “Don't run, I am using live cartridges”. He had then heard shots. He had looked into the next yard and seen Mr Angelov, whom he knew, and another man leap over the chain-link fence between Ms Tonkova's and another neighbour's yards. He had not seen the man who had shouted as he was hidden from view behind Ms Tonkova's house. Then he had seen Mr Angelov and Mr Petkov fall to the ground and the man who had shot them emerge, holding an automatic rifle. Mr Z. further stated:

“The other men in uniform then started remonstrating with [the man who had shot Mr Angelov and Mr Petkov] telling him that he should not have fired, that he should not have come with them. Of those who came in the jeep, only the senior officer fired ... I know him by sight, he has relatives in Lesura”.

29. Sergeant S. stated that upon arriving at the house he had remained with the vehicle and had heard Sergeant N. shouting from the east side of the house: “Freeze, police!”. He had also heard Major G. shout several times: “Freeze, police!” from the west side of the house. Then Major G. had started shooting with his automatic weapon, while continuing to shout. Sergeant S. had then entered the yard. He had seen Major G. leap over the chain-link fence and heard him shouting. He had gone up to him, had taken his automatic rifle and seen Mr Angelov and Mr Petkov lying on the ground next to the fence. They were still alive. At that moment Sergeant K. had come out of the house. Major G. had gone to get the jeep and had reported the incident over the vehicle radio. When they returned, Sergeant N. had appeared from the neighbouring street and helped them put the wounded men in the vehicle.

30. The head of the Vratsa Military-Police Unit and other officers were informed of the incident at around 1.30 p.m.

31. Sergeant K. testified that he had entered the house and had been speaking to Mr Angelov's grandmother and another woman when he heard Major G. shouting at Mr Angelov and Mr Petkov to halt. In the house, he had noticed that a window-pane in the room overlooking the yard had been broken. He had been on the verge of leaving the house when he heard shooting coming from behind the house. On his way to the yard he had met Major G., who had told him that the fugitives had been wounded. Sergeant K. had then climbed over the chain-link fence and approached the wounded men, who were still alive and moaning. He had found himself holding the automatic rifle, but could not remember how it had come into his possession. He had opened the magazine and seen no cartridges in it. There was only one cartridge left in the barrel.

32. Immediately after the shooting, a number of people from the vicinity gathered. Sergeant K. and Sergeant S. took the wounded men to the Vratsa Hospital, while Major G. and Sergeant N. remained at the scene.

33. Mr Angelov and Mr Petkov died on the way to Vratsa. They were pronounced dead on arrival at the hospital.

34. Mr Angelov's grandmother, Ms Tonkova, gave the following account of the events: Her grandson and Mr Petkov had been in her house when they had noticed a jeep approaching. She had gone outside and seen four men in uniform. They had all entered the yard. One of them had gone round the house and started shooting with an automatic rifle for a very long time. The other three men were also armed but had not fired any shots. She had been in the yard, pleading with the man who had been shooting to stop. However, he had walked towards the back of the house. Then she had heard

shooting in the backyard. She had followed and then seen her grandson and Mr Petkov lying in the neighbours' yard with bullet wounds.

35. According to another neighbour, Mr M.M., all three policemen were shooting. Two of them had fired shots in the air and the third officer – who had been on the west side of the house (Major G.) – had been aiming at someone. Mr M.M. had heard some fifteen to twenty shots, perhaps more. Then he had seen the military policemen go to the neighbouring yard, where Mr Angelov and Mr Petkov had fallen. That yard belonged to Mr M.M. and his daughter. On seeing his grandson – a young boy – standing there, Mr M.M. had asked Major G. for permission to approach and to take him away. Major G. had pointed his gun at him in a brutal manner and had insulted him, saying: “You damn Gypsies!” (“мамка ви циганска”).

B. The investigation into the deaths

36. On 19 July 1996 all the officers involved made separate reports on the incident to the Vratsa Military-Police Unit. None of them was tested for alcohol.

37. A criminal investigation into the deaths was opened the same day and between 4 p.m. and 4.30 p.m. a military investigator inspected the scene. In his report he described the scene, including the respective positions of Ms Tonkova's house, the first chain-link fence, and the spent cartridges and bloodstains found there. He indicated that the structure of the first chain-link fence was damaged and the fence had been torn down in one place.

38. A sketch map was appended to the report. It showed the yard of Ms Tonkova's house and the neighbouring yard where Mr Angelov and Mr Petkov had fallen. The places where spent cartridges had been found were indicated. The sketch-map and the report gave only some of the measurements of the yards. The gradient and other characteristics of the terrain and the surrounding area were not described.

39. Nine spent cartridges were retrieved. One cartridge was found in the street, in front of Ms Tonkova's house (apparently not far from where the jeep had stopped). Four cartridges were discovered in Ms Tonkova's yard, behind the house, close to the first chain-link fence separating her yard from the neighbour's yard. Three cartridges were found in the neighbour's (Mr M.M.'s) yard, close to the place where the bloodstains were found. The exact distance between those cartridges and the bloodstains was not given. A ninth cartridge was found subsequently and handed in to the military police by Mr Angelov's uncle. There is no record of where it was found.

40. The bloodstains were a metre apart. They were marked on the sketch map as being slightly more than nine metres from the first chain-link fence. The distance between the bloodstains and the second fence that Mr Angelov

and Mr Petkov had apparently been trying to scale when they were shot was not indicated. Samples of the bloodstains were taken by the investigator.

41. On 21 July 1996, a pathologist carried out an autopsy.

According to the autopsy report no. 139/96, the cause of Mr Petkov's death was "a wound to the chest", the direction of the shot having been "from front to back". The wound was described as follows:

"There is an oval-shaped wound of 2.5 cm by 1 cm in the chest, at a distance of 144 cm from the feet, with missing tissues, and jagged and compressed edges in the area of the left shoulder. There is an oval-shaped wound of 3 cm in the back, to the left of the infrascapular line at a distance of 123 cm from the feet with missing tissues, jagged and torn edges turned outwards."

42. As regards Mr Angelov, the report found that the cause of death had been "a gunshot wound, which [had] damaged a major blood vessel" and that the direction of the shot had been "from back to front". It was further stated:

"There is a round wound on the left of the buttocks at a distance of 90 cm from the feet... with missing tissue, jagged walls and edges, and a diameter of about 0.8 cm ... There is an oval wound of 2.1 cm with jagged torn edges and walls turned outwards and missing tissues on the border between the lower and middle third [of the abdomen], at a distance of 95 cm from the feet, slightly to the left of the navel."

43. The report concluded that the injuries had been caused by an automatic rifle fired from a distance.

44. On 22, 23 and 24 July 1996 the four military police officers, two neighbours (M.M. and K.), the secretary who worked at the town hall, and Mr Angelov's uncle were questioned by the investigator. Mr Petkov's mother was also questioned subsequently.

45. On 1 August 1996 Major G.'s automatic rifle, a cartridge that had been found in it and the nine spent cartridges found at the scene were examined by a ballistics expert from the Vratsa Regional Directorate of Internal Affairs. According to his report the automatic rifle was serviceable, all nine retrieved cartridges had been fired from it and the last cartridge which had not been fired was also serviceable.

46. A report by a forensic expert dated 29 August 1996 found an alcohol content of 0.55 grams per litre in Mr Petkov's blood and 0.75 g/l in Mr Angelov's blood (under Bulgarian law it is an administrative offence to drive with a blood alcohol content of more than 0.5 g/l).

47. On 20 September 1996 a forensic examination of the bloodstains found at the scene was carried out by an expert from the Vratsa Regional Directorate of Internal Affairs and they were found to match the victims' blood groups.

48. On 20 January and on 13 February 1997 another neighbour (Mr T.M.) and Ms Hristova (one of the applicants) were questioned. On 26 March 1997 Mr Angelov's grandmother and a neighbour, Z., were questioned.

49. On 7 January 1997 the families of Mr Angelov and Mr Petkov were given access to the investigation file. They requested that three more witnesses, T.M., Mrs Tonkova and Z.H. be heard. Their request was granted. The witnesses were heard by the investigator on 20 January and 26 March 1997. The applicants did not ask for any other evidence to be obtained.

50. On 31 March 1997 the investigator completed the preliminary investigation and drew up a final report. He noted that Mr Angelov and Mr Petkov had escaped from detention while serving a prison sentence, and had thus committed an offence. Major G. had done everything within his power to save their lives: he had instructed them to stop and surrender and had fired warning shots. He had aimed at them only after seeing that they were continuing to run away and might escape. He had not sought to injure any vital organs. The investigator therefore concluded that Major G. had acted in accordance with Regulation 45 of the Military-Police Regulations and made a recommendation to the Pleven Regional Prosecution Office that the investigation should be closed as Major G. had not committed an offence.

51. On 8 April 1997 the Pleven Military Prosecutor accepted the investigator's recommendation and closed the preliminary investigation into the deaths. He concluded that Major G. had proceeded in accordance with Regulation 45 of the Military-Police Regulations. He had warned the two men several times and fired shots in the air. He had shot them only because they had not surrendered, as there had been a danger that they might escape. He had sought to avoid inflicting fatal injuries. No one else had been hurt.

52. When describing the victims' personal circumstances, including details of their family, education and previous convictions, the prosecutor stated in the order that both men originated from "minority families", an expression mainly used to designate people from the Roma minority.

53. By an order of 11 June 1997 the prosecutor of the Armed Forces Prosecutor's Offices dismissed the applicants' subsequent appeal on the grounds that Mr Angelov and Mr Petkov had provoked the shooting by trying to escape and that Major G. had taken the steps required by law in such situations. Therefore, the use of arms had been lawful under Regulation 45 of the Military-Police Regulations.

54. On 19 November 1997 the prosecutor from the Investigation Review Department of the Armed Forces Prosecutor's Office dismissed a further appeal on grounds similar to those that had been relied on by the other public prosecutors.

II. REPORTS OF INTERNATIONAL ORGANISATIONS ON ALLEGED DISCRIMINATION AGAINST ROMA

55. In its country reports of the last few years, the European Commission against Racism and Intolerance at the Council of Europe (ECRI) has expressed concern about racially motivated police violence, particularly against Roma, in a number of European countries including Bulgaria, the Czech Republic, France, Greece, Hungary, Poland, Romania and Slovakia.

56. The Report on the Situation of Fundamental Rights in the European Union and Its Member States in 2002, prepared by the European Union (EU) network of independent experts in fundamental rights at the request of the European Commission, stated, *inter alia*, that police abuse against Roma and similar groups, including physical abuse and excessive use of force, had been reported in a number of EU member States, such as Austria, France, Greece, Ireland, Italy and Portugal.

57. In its second report on Bulgaria, published in March 2000, ECRI stated, *inter alia*:

“Of particular concern is the incidence of police discrimination and mistreatment of members of the Roma/Gypsy community... [T]he Human Rights Project documents in its Annual Report for 1998 numerous ... cases of police misconduct towards ... Roma... It cites as the most common violations: use of excessive physical force during detention for the purposes of extorting evidence; unjustified use of firearms ... and threats to the personal security of individuals who had complained against the police to the competent authorities... The Human Rights Project notes ... that the majority of complaints filed by this non-governmental organisation on behalf of Roma victims of police violence have not been followed up by the authorities... [V]ictims seem unwilling to come forward with complaints, particularly when they are awaiting court sentences ... [There is apparently also] some unwillingness on the part of the authorities to admit that problems of police misconduct do exist...

ECRI [reiterates its recommendation] that an independent body be set up – acting at central and local level – to investigate police, investigative and penitentiary practices for overt and covert racial discrimination and to ensure that any discrimination perpetrated be severely punished...

ECRI is concerned at the persistence of widespread discrimination against members of the Roma/Gypsy community in Bulgaria... It is reported that local authorities are sometimes involved in the illegal administration of justice as regards Roma/Gypsy communities, often with the silent collusion of local police.”

58. In its third report on Bulgaria, published in January 2004, ECRI stated, *inter alia*:

“[Since ECRI's second report,] there have been no changes in the Criminal Code [to ensure that criminal law provisions fully allow any racist motivation to be taken into account] ... ECRI recommends that the Bulgarian authorities insert a provision in the Criminal Code expressly stating that racist motivation for any ordinary offence constitute[s] an aggravating circumstance...

ECRI is concerned about allegations of instances of excessive use of firearms by the police, which have sometimes led to the death of Roma... ECRI strongly recommends that the Bulgarian authorities take steps to restrict the use of firearms by the law enforcement agencies to cases where their use is really necessary. In particular, it urges the Bulgarian authorities to amend the law to this end and ensure that international standards are conformed to in practice in this field.

ECRI is particularly concerned about the findings ... that the proportion of people of Roma origin who state that they have been subjected to physical violence in police stations is three times higher than the proportion of people of Bulgarian origin... So far, the Bulgarian authorities have not set up an independent body to investigate ill-treatment or acts of discrimination committed by members of the police force...

ECRI is pleased to learn that a specialised human rights committee was set up in the National Police Department in August 2000... Numerous schemes have been launched to provide human rights training for police officers...

The Framework Programme for Equal Integration of Roma in Bulgarian Society is unanimously considered, including by Roma representatives, to be well structured and fairly comprehensive... There is, however, a unanimous feeling within the Roma community and among non-governmental organisations, that, apart from the few initiatives mentioned in this report, the programme has remained a dead letter... The view in certain quarters is that the government lacks the political resolve to carry through such a programme... ECRI is very concerned to learn that, four years after the adoption of the Framework Programme, its implementation is still in its early stages..."

59. Non-governmental organisations, such as Human Rights Project and Amnesty International have reported in the last several years numerous incidents of alleged racial violence against Roma in Bulgaria, including by law enforcement agents.

III. RELEVANT DOMESTIC LAW AND PRACTICE

A. Unpublished Regulations on the Military Police, issued by the Ministry of Defence on 21 December 1994

60. Section 45 of the Regulations (Regulation 45), as in force at the relevant time, provided as follows:

“(1) Military police officers may use firearms ... under the following circumstances...

2. to arrest a person serving in the army who has committed or is about to commit a publicly prosecutable offence and who does not surrender after being warned...

(2) The use of force shall be preceded by an oral warning and a shot fired in the air...

(3) When using firearms military police officers shall be under a duty, as far as possible, to protect the life of the person against whom they use force and to assist the wounded...

(5) Whenever firearms have been used, a report shall be prepared describing the circumstances which occasioned their use; [the report] shall be transmitted to the superiors of the officer concerned.”

61. In December 2000 Regulation 45 was superseded by Decree No. 7 of 6 December 2000 on the use of force and firearms by military police (published in State Gazette No. 102/2000 and amended in 2001). According to Article 21 of the Decree, firearms may be used, *inter alia*, for the arrest of any person who has committed an offence of the category of publicly prosecuted offences. The vast majority of offences under the Criminal Code fall within that category, including, for example, petty theft. According to Articles 2, 4(1) and 21 of the Decree, the nature of the offence committed by the person against whom the force and firearms are used and the character of the offender are factors to be taken into consideration.

B. Other relevant law and practice on the use of force during arrest

62. Article 12 of the Criminal Code regulates the degree of force that may be used in self-defence. It requires essentially that any action in self-defence or defence of another be proportionate to the nature and intensity of the attack and reasonable in the circumstances. The provision does not regulate cases where force has been used by a police officer or another person in order to effect an arrest, without there being an attack on the arresting officer or any third party. Until 1997 there were no other provisions regulating this issue. However, the courts appear to have applied Article 12 in certain cases concerning the use of force to effect an arrest.

63. To fill that lacuna, in its interpretative direction no. 12 issued in 1973, the Supreme Court proclaimed, without further clarification, that causing harm in order to effect an arrest should not lead to prosecution if no more force was used than was necessary (12-1973-PPVS).

64. In its decision no. 15 of 17 March 1995, the Supreme Court, while noting that the use of force in order to effect an arrest was not regulated by law and thus engendered difficulties for the courts, considered that the principles to be applied were those that had been identified by legal commentators. In particular, inflicting harm would be justified only where there was a reasonable suspicion that the person to be arrested had committed an offence, there were no other means to effect the arrest and the harm caused was proportionate to the seriousness of the offence. The Supreme Court also stated:

“... [Causing harm to an offender in order to effect an arrest] is an act of last resort. If the offender does not attempt to escape or ... does attempt to escape, but to a known hiding-place, causing harm will not be justified...”

The harm caused must be proportionate to the seriousness ... of the offence. If the offender has committed an offence representing insignificant danger to the public, his life and health cannot be put at risk. Putting his life or health at risk may be justified, however, where a person is in hiding after committing a serious offence (such as murder, rape or robbery).

The means used to effect the arrest (and the harm caused) must be reasonable in the circumstances. This is the most important condition for lawfulness...

Where the harm caused exceeds what was necessary ..., that is to say, where it does not correspond to the seriousness of the offence and the circumstances obtaining during the arrest, ... the person inflicting it will be liable to prosecution..."

65. In 1997 Parliament decided to fill the legislative lacuna by adding a new Article 12a to the Criminal Code. It provides that causing harm to a person while arresting him or her for an offence shall not be punishable where no other means of effecting the arrest existed and the force used was necessary and lawful. The force used will not be considered "necessary" where it is manifestly disproportionate to the nature of the offence committed by the person to be arrested or is in itself excessive and unnecessary. Few judgments interpreting Article 12a have been reported.

C. Code of Criminal Procedure

66. Article 192 provides that proceedings concerning publicly prosecutable offences may only be initiated by a prosecutor or an investigator, acting on a complaint or *ex officio*. Under Article 237 § 6, as worded until 1 January 2000, the victim had a right of appeal to a higher ranking prosecutor against a decision not to proceed with pending criminal proceedings. The victim had no other means of challenging a refusal to prosecute.

67. When military courts have jurisdiction to hear a case, as for example when it concerns military-police officers, the responsibility for conducting the investigation and prosecuting lies with the military investigators and prosecutors, whose decisions are amenable to appeal before the Chief Public Prosecutor.

68. Article 63 entitles victims of crime to join the criminal proceedings, and in that connection to claim damages, to inspect the case file and take copies of relevant documents. They may also adduce evidence, raise objections, make applications and appeal against decisions of the investigating and prosecuting authorities.

D. The Protection against Discrimination Act

69. The Protection against Discrimination Act was passed in September 2003 and entered into force on 1 January 2004. It is a comprehensive piece

of legislation designed to create machinery providing effective protection against unlawful discrimination. It applies mainly in the spheres of labour relations, State administration and the provision of services.

70. Section 9 provides for a shifting burden of proof in discrimination cases. Under that section, where the claimant has proved facts from which an inference that there has been discriminatory treatment might be drawn, it is incumbent on the defendant to prove that there has been no violation of the right to equal treatment. The Act also provides for the creation of a Commission for Protection against Discrimination with jurisdiction, *inter alia*, to hear individual complaints.

IV. RELEVANT INTERNATIONAL AND COMPARATIVE LAW

A. United Nations principles on the use of force

71. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

72. Paragraph 9 provides:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

73. According to other provisions of the Principles, law enforcement officials shall “act in proportion to the seriousness of the offence and the legitimate objective to be achieved” (paragraph 5). Also, “Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law” (paragraph 7). National rules and regulations on the use of firearms should “ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm”.

74. Paragraph 23 of the Principles states that victims or their family should have access to an independent process, “including a judicial process.” Further, paragraph 24 provides:

“Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.”

75. The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65, provide, *inter alia*, that there shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions and that the investigation should aim at, *inter alia*, determining “any pattern or practice which may have brought about” the death. Paragraph 11 states:

“In cases in which the established investigative procedures are inadequate because of a lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognised impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided in these Principles.”

Paragraph 17 states:

“A written report shall be made within a reasonable time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures, methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law...”

B. International instruments and comparative law on racist violence

76. Article 4 of the International Convention on the Elimination of all forms of Racial Discrimination, ratified by Bulgaria in 1966, in force since 1969 and published in the State Gazette in 1992, provides, in so far as relevant:

“States Parties ... undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, [racial] discrimination and, to this end ...

(a) Shall declare an offence punishable by law ... all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin ...”

77. In its views of 16 March 1993 in communication no. 4/91, *L.K. v. the Netherlands*, which concerned racist threats uttered by private individuals against Mr L.K. and the inadequate reaction by the authorities to the victim's complaint, the Committee on the Elimination of All Forms of Racial Discrimination stated, *inter alia*, that it was incumbent on the State to investigate with due diligence and expedition cases of incitement to racist discrimination and violence.

78. Article 6 of the Council of Europe's Framework Convention for the Protection of National Minorities, in force in Bulgaria since 1999, provides, in so far as relevant:

“The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.”

79. In its decision of 21 November 2002, the United Nations Committee Against Torture (“CAT”), examining Complaint No. 161/2000 submitted by Hajrizi Dzemajl and others against Yugoslavia, found that a mob action by non-Roma residents of Danilovgrad, Montenegro, who destroyed a Roma settlement on 14 April 1995 in the presence of police officers, was “committed with a significant level of racial motivation”. That fact aggravated the violation of Article 16 § 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment found in the case. In assessing the evidence, the CAT noted that it had not received a written explanation from the State party concerned and decided to rely on “the detailed submissions made by the complainants”.

80. European Union Council Directive 2000/43/CE of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/CE of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, provide, in Article 8 and Article 10 respectively:

“1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures.

...

5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.”

81. In 2002 the EC Commission published a Proposal for a Council Framework Decision on Combating Racism and Xenophobia Article 8 of which includes, among measures to be implemented by member States in that area, action to ensure that in criminal law racial motivation is taken into consideration as an aggravating circumstance.

82. In April 2005 the European Monitoring Centre on Racism and Xenophobia published a comparative overview of racist violence and responses to it in fifteen of the member States of the European Union. It noted, *inter alia*, that, traditionally, the criminal law in most of the jurisdictions surveyed did not specifically refer to “racist violence”, the focus not being on the motivation behind acts of violence. However, that tradition was slowly changing as laws began to recognise crime as “racially motivated”. In particular, racist motivation was increasingly being considered as an aggravating factor for sentencing purposes under the legislation of some member States. The relevant legislation in the following countries specifically provided for that possibility: Austria, Belgium, Denmark, Finland, France, Italy, Portugal, Spain, Sweden and the United Kingdom. In particular, Article 132-76 of the French Penal Code, which was introduced in February 2003, provides in its second paragraph for an “objective” definition of racism as an aggravating circumstance leading to an increase in sentence:

“The penalties incurred for a crime or major offence shall be increased where the offence is committed on account of the victim's actual or supposed membership or non-membership of a particular ethnic group, nation, race or religion.

The aggravating circumstance defined in the first paragraph is constituted where the offence is preceded, accompanied or followed by written or spoken comments, images, objects or acts of any kind which damage the honour or consideration of the victim or of a group of persons to which the victim belongs on account of their actual or supposed membership or non-membership of a particular ethnic group, nation, race or religion.”

THE LAW

I. SCOPE OF THE CASE

83. In their request for the referral of the case to the Grand Chamber and in their written observations the Government asked the Grand Chamber to re-examine the issues raised by the case under Article 14 of the Convention. At the hearing before the Court the Government's representatives stated that they accepted the Chamber's findings under Articles 2 and 13 of the Convention.

84. The applicants asked the Court to deal with the issues under Article 14 alone, as the Chamber's conclusions under Articles 2 and 13 of the Convention were not contested.

85. The Court reiterates that the consequence of the panel's acceptance of a referral request is that the whole 'case' is referred to the Grand Chamber

to be decided afresh by means of a new judgment. The 'case' referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment, and not only the serious 'question' or 'issue' at the basis of the referral (*K. and T. v. Finland* [GC], no. 25702/94, ECHR 2001–VII, §§ 139-141).

86. Notwithstanding the parties' wishes to confine the rehearing procedure to the issues raised by the case under Article 14 of the Convention, the Grand Chamber must also deal with the issues raised under Articles 2 and 13 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

87. The applicants complained that Mr Angelov and Mr Petkov had been killed in violation of Article 2 of the Convention. It was alleged that they had died as a result of the failure of domestic law and practice to regulate in a Convention compatible manner the use of firearms by State agents. In effect, State agents had been authorised in the instant case to use lethal force in circumstances where this was not absolutely necessary. This fact alone violated Article 2. The applicants also complained that the authorities had failed to conduct an effective investigation into the deaths.

88. Article 2 of the Convention provides:

“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. The Chamber judgment

89. The Chamber held that Article 2 of the Convention prohibited the use of firearms to arrest persons who, like Mr Angelov and Mr Petkov, were suspected of having committed non-violent offences, were not armed and did not pose any threat to the arresting officers or others. The respondent State was accordingly responsible in the circumstances of the instant case for deprivation of life in violation of Article 2 of the Convention, as lethal force had been used to arrest Mr Angelov and Mr Petkov. The violation of

Article 2 was further aggravated by the fact that excessive firepower had been used and by the authorities' failure to plan and control the arrest operation in a manner compliant with Article 2.

90. The Chamber further found that there had been a violation of the respondent State's obligation under Article 2 § 1 of the Convention to investigate effectively the deaths of Mr Angelov and Mr Petkov. In particular, the investigation had been characterised by serious unexplained omissions and inconsistencies and its approach had been flawed in that it had applied a domestic-law standard that was not comparable to the "no more than absolutely necessary" standard required by Article 2 § 2 of the Convention.

91. As to the applicants' allegation that there had also been a violation of the respondent State's obligation to protect life by law, the Chamber considered that it had dealt with all relevant aspects of the case and that it was not necessary to examine that issue separately.

B. The parties' submissions

92. Before the Grand Chamber, the Government and the applicants stated that they accepted the Chamber's findings in respect of Article 2 of the Convention.

C. The Court's assessment

1. Whether Mr Angelov and Mr Petkov were deprived of their lives in violation of Article 2 of the Convention

(a) General principles

93. Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention and enshrines one of the basic values of the democratic societies making up the Council of Europe. The Court must subject allegations of breach of this provision to the most careful scrutiny. In cases concerning the use of force by State agents, it must take into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances including such matters as the relevant legal or regulatory framework in place and the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 46, § 150 and *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, 20 December 2004).

94. As the text of Article 2 § 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. However, any use

of force must be no more than “absolutely necessary”, that is to say be strictly proportionate in the circumstances. In view of the fundamental nature of the right to life, the circumstances in which deprivation of life may be justified must be strictly construed (see *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, pp. 2097-98, § 171, p. 2102, § 181, p. 2104, § 186, p. 2107, § 192 and p. 2108, § 193; and *McKerr v. the United Kingdom*, no. 28883/95, §§ 108 et seq., ECHR 2001-III).

95. Accordingly, and with reference to Article 2 § 2(b) of the Convention, the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity. The Court considers that in principle there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost (see the Court's approach in *McCann and Others*, cited above, pp. 45-46, §§ 146-50 and pp. 56-62, §§ 192-214 and, more recently, in *Makaratzis*, cited above, §§ 64-66; see also the Court's condemnation of the use of firearms against unarmed and non-violent persons trying to leave the former German Democratic Republic in *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, §§ 87, 96 and 97, ECHR 2001-II).

96. In addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis*, cited above, §§ 57-59, and the relevant provisions of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in paragraphs 71-74 above). In line with the above-mentioned principle of strict proportionality inherent in Article 2 (see *McCann and Others*, cited above, p. 46, § 149), the national legal framework regulating arrest operations must make recourse to firearms dependent on a careful assessment of the surrounding circumstances, and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed.

97. Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, cited above, § 58). In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms not only on the basis of the letter of the relevant regulations but also with due regard to the pre-eminence of respect for human life as a fundamental value (see

the Court's criticism of the “shoot to kill” instructions given to soldiers in *McCann and Others*, cited above, pp. 61-62, §§ 211-214).

(b) Application of these principles in the present case

98. Mr Angelov and Mr Petkov were shot and killed by a military police officer who was trying to arrest them following their escape from detention. It follows that the case falls to be examined under Article 2 § 2 (b) of the Convention.

(i) The relevant legal framework

99. The Court notes as a matter of grave concern that the relevant regulations on the use of firearms by the military police effectively permitted lethal force to be used when arresting a member of the armed forces for even the most minor offence. Not only were the regulations not published, they contained no clear safeguards to prevent the arbitrary deprivation of life. Under the regulations it was lawful to shoot any fugitive who did not surrender immediately in response to an oral warning and the firing of a warning shot in the air (see paragraph 60 above). The laxity of the regulations on the use of firearms and the manner in which they tolerated the use of lethal force were clearly exposed by the events that led to the fatal shooting of Mr Angelov and Mr Petkov and by the investigating authorities' response to those events. The Court will revert to these matters later.

100. Such a legal framework is fundamentally deficient and falls well short of the level of protection “by law” of the right to life that is required by the Convention in present-day democratic societies in Europe (see paragraphs 94-97 above setting out the principles on which the relevant legal framework must be based).

101. It is true that the Supreme Court had stated that a proportionality requirement was inherent in the domestic criminal law. However, the Supreme Court's interpretation was not applied in the present case (see paragraphs 50-54 and 64 above).

102. The Court thus finds that there was a general failure by the respondent State to comply with its obligation under Article 2 of the Convention to secure the right to life by putting in place an appropriate legal and administrative framework on the use of force and firearms by military police.

(ii) Planning and control of the operation

103. The Chamber gave separate consideration to the manner in which the arrest operation had been planned. The Grand Chamber endorses the Chamber's finding that the authorities failed to comply with their obligation to minimise the risk of loss of life since the arresting officers were instructed to use all available means to arrest Mr Angelov and Mr Petkov, in

disregard of the fact that the fugitives were unarmed and posed no danger to life or limb. As the Chamber rightly stated (§ 110):

“[A] crucial element in the planning of an arrest operation ... must be the analysis of all the available information about the surrounding circumstances, including, as an absolute minimum, the nature of the offence committed by the person to be arrested and the degree of danger – if any – posed by that person. The question whether and in what circumstances, recourse to firearms should be envisaged if the person to be arrested tries to escape must be decided on the basis of clear legal rules, adequate training and in the light of that information.”

104. The Grand Chamber for its part would again highlight the absence of a clear legal and regulatory framework defining the circumstances in which military police officers may have recourse to potentially deadly force (see paragraphs 99-102 above). It agrees with the Chamber's finding (§ 112) that the relevant regulations:

“...did not make use of firearms dependent on an assessment of the surrounding circumstances, and, most importantly, did not require an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed.”

105. In the event, the regulations in place permitted a team of heavily armed officers to be dispatched to arrest the two men in the absence of any prior discussion of the threat, if any, they posed or of clearing warnings on the need to minimise any risk to life. In short, the manner in which the operation was planned and controlled betrayed a deplorable disregard for the pre-eminence of the right to life.

(iii) The actions of the arresting officers

106. It was undisputed that Mr Angelov and Mr Petkov had served in the Construction Force, a special army institution in which conscripts discharged their duties as construction workers on non-military sites. They had been sentenced to short terms of imprisonment for non-violent offences. They had escaped without using violence, simply by leaving their place of work, which was outside the detention facility. While they had previous convictions for theft and had repeatedly been absent without leave, they had no record of violence (see paragraphs 13-15 above). Neither man was armed or represented a danger to the arresting officers or third parties, a fact of which the arresting officers must have been aware on the basis of the information available to them. In any event, upon encountering the men in the village of Lesura, the officers, or at least Major G., observed that they were unarmed and not showing any signs of threatening behaviour (see paragraphs 15-26 above).

107. Having regard to the above, the Court considers that in the circumstances that obtained in the present case any resort to potentially lethal force was prohibited by Article 2 of the Convention, regardless of any risk that Mr Angelov and Mr Petkov might escape. As stated above, recourse to potentially deadly force cannot be considered as “absolutely

necessary” where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence.

108. In addition, the conduct of Major G., the military police officer who shot the victims, calls for serious criticism in that he used grossly excessive force:

(i) It appears that there were other means available to effect the arrest: the officers had a jeep, the operation took place in a small village in the middle of the day and the behaviour of Mr Angelov and Mr Petkov was apparently predictable, since, following a previous escape, Mr Angelov had been found at the same address (see paragraphs 17, 18, 23 and 24 above);

(ii) Major G. chose to use his automatic rifle and switched it to automatic mode although he also carried a handgun (see paragraph 26 above). He could not possibly have aimed with any reasonable degree of precision using automatic fire;

(iii) Mr Petkov was wounded in the chest, a fact for which no plausible explanation was provided (see paragraphs 41 and 50-54 above). In the absence of such an explanation, the possibility that Mr Petkov had turned to surrender at the last minute but had nevertheless been shot cannot be excluded.

(iv) The Court's conclusion

109. The Court finds that the respondent State failed to comply with its obligations under Article 2 of the Convention in that the relevant legal framework on the use of force was fundamentally flawed and Mr Angelov and Mr Petkov were killed in circumstances in which any use of firearms to effect their arrest was incompatible with Article 2 of the Convention. Furthermore, grossly excessive force was used. There has therefore been a violation of Article 2 of the Convention as regards the deaths of Mr Angelov and Mr Petkov.

2. Whether the investigation into the deaths of Mr Angelov and Mr Petkov was effective, as required by Article 2 of the Convention

(a) General principles

110. 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 (see *Çakici v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving

State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Anguelova v. Bulgaria*, no. 38361/97, § 137, ECHR 2002-IV).

111. The authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures (see, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII).

112. For an investigation into alleged unlawful killing by State agents to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, p. 1733, §§ 81-82; *Öğür v. Turkey* [GC], no. 21954/93, §§ 91-92, ECHR 1999-III; and *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, pp. 1778-79, §§ 83-84).

113. The investigation must also 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 and to the identification and punishment of those responsible (see, *Oğur v. Turkey*, cited above, § 88). The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony and forensic evidence. The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements and must apply a standard comparable to the “no more than absolutely necessary” standard required by Article 2 § 2 of the Convention. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness (see *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 96-97, 4 May 2001; and *Anguelova v. Bulgaria*, cited above, §§ 139 and 144).

(b) Application of these principles in the present case

114. The Grand Chamber sees no reason to depart from the Chamber's findings. It observes, as the Chamber did, that the investigation into the deaths of Mr Angelov and Mr Petkov assessed the lawfulness of the officers' conduct in the light of the relevant regulations. The fact that the investigation validated the use of force in the circumstances only serves to confirm the fundamentally defective nature of those regulations and their disregard of the right to life. By basing themselves on the strict letter of the regulations, the investigating authorities did not examine relevant matters such as the fact that the victims were known to be unarmed and represented no danger to anyone, still less whether it was appropriate to dispatch a team of heavily armed officers in pursuit of two men whose only offence was to

go absent without leave. In short, there was no strict scrutiny of all the material circumstances (see paragraphs 50-54 above).

115. Quite apart from the excessively narrow legal framework in which the investigation was conducted, it is to be further observed that a number of **indispensable and obvious investigative steps were not taken**. In particular, the sketch map relied upon by the authorities did not indicate the characteristics of the terrain. Relevant measurements were missed. No reconstruction of the events was staged. Without the information that could thereby have been obtained, it was not possible to check the arresting officers' accounts of the events (see paragraphs 36-54 above).

116. Moreover, the investigator and the prosecutors **ignored highly relevant facts**, such as that Mr Petkov had been shot in the chest, that the spent cartridges were found in M.M.'s yard, only a few metres from the spot where Mr Angelov and Mr Petkov fell, and that Major G. used grossly excessive force by firing in automatic mode. The authorities ignored those significant facts and, without seeking any proper explanation, merely accepted Major G.'s statements and terminated the investigation. The investigator and the prosecutors thus effectively shielded Major G. from prosecution.

117. The Grand Chamber endorses the Chamber's view that such conduct on the part of the authorities – which has already been remarked on by the Court in previous cases against Bulgaria (see *Velikova v. Bulgaria*, no. 41488/98, ECHR 2000-VI and *Angelova*, cited above) – is a matter of grave concern, as it casts serious doubts on the objectivity and impartiality of the investigators and prosecutors involved.

118. The Court reiterates in this connection that **a prompt and effective response by the authorities in investigating the use of lethal force is essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts** (see *McKerr v. the United Kingdom*, cited above, §§ 111-15).

119. In the present case there **has been a violation of the respondent State's obligation under Article 2 § 1 of the Convention to investigate the deprivation of life effectively**.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

120. Article 13 of the Convention provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

121. In view of its findings under Article 2 of the Convention, the Chamber held that no separate issue arose under Article 13 of the Convention.

122. Before the Grand Chamber, the Government did not comment on the issues under Article 13 of the Convention. The applicants stated that they accepted the Chamber's finding.

123. Having regard to the grounds on which it has found a violation of the procedural aspect of Article 2, the Grand Chamber, like the Chamber, considers that **no separate issue arises under Article 13 of the Convention.**

IV. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 2 OF THE CONVENTION

124. The applicants alleged a violation of Article 14 of the Convention in that prejudice and hostile attitudes towards persons of Roma origin had played a role in the events leading up to the deaths of Mr Angelov and Mr Petkov. They also argued that the authorities had failed in their duty to investigate possible racist motives in their killing. The Government disputed the applicants' allegations.

125. Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. The Chamber judgment

126. The Chamber noted that in cases of deprivation of life Articles 2 and 14 of the Convention combined imposed a duty on State authorities to conduct an effective investigation irrespective of the victim's racial or ethnic origin. It also considered that the authorities had the additional duty to take all reasonable steps to unmask any racist motive in an incident involving the use of force by law-enforcement agents.

127. In the present case, despite Mr M.M.'s statement about racist verbal abuse and other evidence which should have alerted the authorities to the need to investigate possible racist motives, no such investigation had been undertaken. The authorities had on that account failed in their duty under Article 14 of the Convention taken together with Article 2.

128. Considering that the particular evidentiary difficulties involved in proving discrimination called for a specific approach to the issue of proof, the Chamber held that in cases where the authorities had not pursued lines of inquiry that had been clearly warranted in their investigation into acts of violence by State agents and had disregarded evidence of possible discrimination, the Court might, when examining complaints under Article 14 of the Convention, draw negative inferences or shift the burden of proof to the respondent Government.

129. On the facts of the case, the Chamber considered that the conduct of the investigating authorities – which had omitted to refer to a number of disquieting facts such as the excessive nature of the force used by Major G. and the evidence that he had uttered a racist slur – warranted a shift of the burden of proof. It thus fell to the respondent Government to satisfy the Court, on the basis of additional evidence or a convincing explanation of the facts, that the events complained of had not been shaped by discrimination on the part of State agents.

130. As the Government had not offered a convincing explanation, and noting that there had been previous cases in which the Court had found that law enforcement officers in Bulgaria had subjected Roma to violence resulting in death, the Chamber concluded that there had also been a violation of the substantive aspect of Article 14 taken together with Article 2 of the Convention.

B. The parties' submissions

1. The Government

131. The Government took issue with the Chamber's finding of a violation of Article 14, stating that the Chamber had relied solely on general material about events outside the scope of the case and on two fortuitous facts – the testimony of Mr M.M. about an offensive remark that Major G. had allegedly made against him, not against the victims, and the fact that the events had taken place in a Roma neighbourhood. In the Government's view, these considerations could not justify, by any acceptable standard of proof, a conclusion that the use of firearms had been motivated by racial prejudice.

132. The Government emphasised that the Court had always required “proof beyond reasonable doubt”. The burden of proof could shift where the events in issue were wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of death occurring during detention. However, no such circumstances had obtained in the present case.

133. As there had been no racial element in the incident at issue, any further investigation by the domestic authorities would have been to no avail. The Government accepted that racially motivated violence had to be punished more severely than violent acts without a racial overtone. However, States could not be required to investigate for possible racist attitudes in the absence of sufficient evidence supporting the allegations of racism. The Government considered that the Chamber's approach would lead to the responsibility of Contracting States being engaged in each and every case where an allegation of discrimination, however unfounded, had been made.

134. Moreover, the Chamber's approach lacked clarity and foreseeability. In particular, it was contradictory to state – as the Chamber did – that the Court could not examine intent and state of mind in the context of Article 2 of the Convention and then to reach the conclusion that there had been a substantive violation of Article 14 in conjunction with Article 2 because the death of Mr Angelov and Mr Petkov had been the result of a racially motivated act.

135. The Government, in both their written and oral submissions, gave a detailed overview of legislation, social programmes and other measures that had been adopted in recent years in Bulgaria with the aim of combating discrimination and intolerance and promoting the integration of Roma in society.

2. The applicants

136. In their written submissions, the applicants argued that the Convention had so far failed to provide effective protection against racial discrimination and invited the Grand Chamber to adopt an innovative interpretation of Article 14. The applicants welcomed the Chamber's views that Contracting States were under a duty to investigate possible racist motives for an act of violence and that the burden of proof might shift to the respondent Government. In their written submissions they considered, however, that the standard of proof in discrimination cases should not be “proof beyond reasonable doubt” and that in cases such as the instant case the burden of proof should always shift to the Government once a prima facie case of discrimination had been established. In their oral submissions at the hearing, the applicants' representatives invited the Court to follow the Chamber's approach.

137. As to the facts of the case, the applicants stated that there had been a substantive violation of Article 14 as they had established a prima facie case of discrimination and the Government had failed to present evidence to the contrary. In particular, the ethnicity of Mr Angelov and Mr Petkov had been known to the officers who had sought to arrest them. Major G. had addressed racially offensive remarks to a bystander on the basis of his Roma origin. Also, strong inferences were to be drawn from the fact that Major G. had used grossly disproportionate firepower in a populated area, the Roma neighbourhood of the village. Those facts should be assessed against the background of persistent discrimination against Roma on the part of law-enforcement agents in Bulgaria. Furthermore, the authorities should have investigated whether the deaths of Mr Angelov and Mr Petkov had been motivated by racial prejudice but had failed to do so.

3. *The interveners*

(a) **The European Roma Rights Centre**

138. The Centre pointed out that over the last few years various international bodies and non-governmental organisations had reported numerous incidents of ill-treatment and killing of Roma by law enforcement agents and private individuals of Bulgarian ethnic origin. It was widely acknowledged that racially-motivated violence against Roma was a serious problem in Bulgaria. The Roma community was furthermore largely excluded from social life as it laboured under high levels of poverty, illiteracy and unemployment.

139. Despite high levels of racially-motivated violence and repeated calls on the part of international bodies, such as the UN Committee Against Torture, for the establishment of “an effective, reliable and independent complaint system” and for adequate investigation of police abuse, the authorities had failed to act. Bulgarian penal legislation did not treat racist animus as an aggravating circumstance in cases of violent offences. In 1999 the Bulgarian authorities had acknowledged the need for an amendment but had never taken any action. Also, Article 162 of the Criminal Code, which made racist attacks punishable, provided for lighter sentences than the provisions dealing with common bodily harm. As a result, Article 162 was never applied, charges were brought – if at all – under the general provisions on bodily harm or murder and the racist nature of the attacks remained hidden. There was a climate of impunity, as noted by the Court in its *Velikova* and *Anguelova* judgments.

(b) **Interights**

140. Interights criticised the Court’s “beyond reasonable doubt” standard as erecting insurmountable obstacles to establishing discrimination. In Interights’ submission, those national jurisdictions in which judicial protection against discrimination was strongest tended to be common-law jurisdictions, which applied a “balance of probabilities” standard of proof for discrimination cases. While in civil-law jurisdictions judges enjoyed a fact-finding role and were therefore, theoretically at least, able to satisfy themselves to a higher standard of proof, a review of judicial responses to discrimination suggested that the common-law approach lent itself to stronger judicial protection against discrimination. In Interights’ submission, the Court had in practice adopted an intermediate standard, as it did not require the same high level of proof as in criminal trials, but its approach lacked clarity and foreseeability.

141. Interights further stated that international practice supported the view that in discrimination cases the burden of proof should shift to the respondent upon the claimant establishing a *prima facie* case. That was the

approach adopted by several EU directives, by the Court of Justice of the European Communities, the United Nations Human Rights Committee and the national courts in a number of European countries and also in the United States, Canada and other countries.

142. Interights also cited examples of the types of evidence that national jurisdictions had accepted as capable of establishing a prima facie case of discrimination: evidence of a “general picture” of disadvantage, “common knowledge” of discrimination, facts from “general life”, facts that were generally known, background facts and circumstantial evidence. Relying on inferences was also a common approach.

(c) Open Society Justice Initiative (OSJI)

143. The OSJI commented on the obligation of States, in international and comparative law, to investigate racial discrimination and violence. In their view, the widely accepted principle that no effective protection of substantive rights was possible without adequate procedural guarantees was also applicable to discrimination cases. Therefore, a procedural duty was inherent in Article 14 of the Convention. Furthermore, in accordance with the prevailing European and international practice racial motivation was an aggravating circumstance in criminal law and, hence, subject to investigation. States had, therefore, a duty to investigate acts of racial violence. That was an *ex officio* obligation and arose whenever there was a reasonable suspicion that a racially motivated act had been committed.

C. The Court's assessment

1. *Whether the respondent State is liable for deprivation of life on the basis of the victims' race or ethnic origin*

144. The Court has established above that agents of the respondent State unlawfully killed Mr Angelov and Mr Petkov in violation of Article 2 of the Convention. The applicants have further alleged that there has been a separate violation of Article 14 of the Convention in that racial prejudice played a role in their deaths.

145. Discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment. The Court will revert to that issue below.

146. Faced with the applicants' complaint of a violation of Article 14, as formulated, the Court's task is to establish whether or not racism was a causal factor in the shooting that led to the deaths of Mr Angelov and Mr Petkov so as to give rise to a breach of Article 14 of the Convention taken in conjunction with Article 2.

147. It notes in this connection that in assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see, among others, the following judgments: *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 161; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 24, § 32; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, Reports 1996-IV, p. 1211, § 68; *Tanli v. Turkey*, no. 26129/95, § 111, ECHR 2001-III; and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, 8 July 2004).

148. The applicants have referred to several separate facts and they maintain that sufficient inferences of a racist act can be drawn from them.

149. First, the applicants considered revealing the fact that Major G. had discharged bursts of automatic fire in a populated area, in disregard of the public's safety. Considering that there was no rational explanation for such behaviour, the applicants were of the view that racist hatred on the part of Major G. was the only plausible explanation and that he would not have acted in that manner in a non-Roma neighbourhood.

150. The Court notes, however, that the use of firearms in the circumstances at issue was regrettably not prohibited under the relevant domestic regulations, a flagrant deficiency which it has earlier condemned (see paragraph 99 above). The military police officers carried their

automatic rifles “in accordance with the rules” and were instructed to use all necessary means to effect the arrest (see paragraphs 19 and 60 above). The possibility that Major G. was simply adhering strictly to the regulations and would have acted as he did in any similar context, regardless of the ethnicity of the fugitives, cannot therefore be excluded. While the relevant regulations were fundamentally flawed and fell well short of the Convention requirements on the protection of the right to life, there is nothing to suggest that Major G. would not have used his weapon in a non-Roma neighbourhood.

151. It is true, as the Court has found above, that Major G.'s conduct during the arrest operation calls for serious criticism in that he used grossly excessive force (see paragraph 108 above). Nonetheless, it cannot be excluded either that his reaction was shaped by the inadequacy of the legal framework governing the use of firearms and by the fact that he was trained to operate within that framework (see paragraphs 60 and 99-105 above).

152. The applicants also stated that the military police officers' attitude had been strongly influenced by their knowledge of the victims' Roma origin. However, it is not possible to speculate on whether or not Mr Angelov's and Mr Petkov's Roma origin had any bearing on the officers' perception of them. Furthermore, there is evidence that some of the officers knew one or both of the victims personally (see paragraph 18 above).

153. The applicants referred to the statement given by Mr M. M., a neighbour of one of the victims, who reported that Major G. had shouted at him “you damn Gypsies” immediately after the shooting. While such evidence of a racial slur being uttered in connection with a violent act should have led the authorities in this case to verify Mr M.M.'s statement, that statement is of itself an insufficient basis for concluding that the respondent State is liable for a racist killing.

154. Lastly, the applicants relied on information about numerous incidents involving the use of force against Roma by Bulgarian law enforcement officers that had not resulted in the conviction of those responsible.

155. It is true that a number of organisations, including intergovernmental bodies, have expressed concern about the occurrence of such incidents (see paragraphs 55-59 above). However, the Court cannot lose sight of the fact that its sole concern is to ascertain whether in the case at hand the killing of Mr Angelov and Mr Petkov was motivated by racism.

156. In its judgment the Chamber decided to shift the burden of proof to the respondent Government on account of the authorities' failure to carry out an effective investigation into the alleged racist motive for the killing. The inability of the Government to satisfy the Chamber that the events complained of were not shaped by racism resulted in its finding a substantive violation of Article 14 of the Convention, taken together with Article 2.

157. The Grand Chamber reiterates that in certain circumstances, where the events lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of death of a person within their control in custody, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation of, in particular, the causes of the detained person's death (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). The Grand Chamber cannot exclude the possibility that in certain cases of alleged discrimination it may require the respondent Government to disprove an arguable allegation of discrimination and – if they fail to do so – find a violation of Article 14 of the Convention on that basis. However, where it is alleged – as here – that a violent act was motivated by racial prejudice, such an approach would amount to requiring the respondent Government to prove the absence of a particular subjective attitude on the part of the person concerned. While in the legal systems of many countries proof of the discriminatory effect of a policy or decision will dispense with the need to prove intent in respect of alleged discrimination in employment or the provision of services, that approach is difficult to transpose to a case where it is alleged that an act of violence was racially motivated. The Grand Chamber, departing from the Chamber's approach, does not consider that the alleged failure of the authorities to carry out an effective investigation into the alleged racist motive for the killing should shift the burden of proof to the respondent Government with regard to the alleged violation of Article 14 in conjunction with the substantive aspect of Article 2 of the Convention. The question of the authorities' compliance with their procedural obligation is a separate issue, to which the Court will revert below.

158. In sum, having assessed all relevant elements, the Court does not consider that it has been established that racist attitudes played a role in Mr Angelov's and Mr Petkov's deaths.

159. It thus finds that there has been no violation of Article 14 of the Convention taken together with Article 2 in its substantive aspect.

2. Procedural aspect: whether the respondent State complied with its obligation to investigate possible racist motives

(a) General principles

160. The Grand Chamber endorses the Chamber's analysis in the present case of the Contracting States' procedural obligation to investigate possible racist motives for acts of violence. The Chamber stated, in particular (§§ 156-159):

“... States have a general obligation under Article 2 of the Convention to conduct an effective investigation in cases of deprivation of life.

... That obligation must be discharged without discrimination, as required by Article 14 of the Convention... [W]here there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence. Compliance with the State's positive obligations under Article 2 of the Convention requires that the domestic legal system must demonstrate its capacity to enforce criminal law against those who unlawfully took the life of another, irrespective of the victim's racial or ethnic origin (see *Menson and Others v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V)...

... [W]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, *mutatis mutandis*, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). In order to maintain public confidence in their law enforcement machinery, Contracting States must ensure that in the investigation of incidents involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing.

Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute (see, *mutatis mutandis*, *Shanaghan v. the United Kingdom*, no. 37715/97, § 90, ECHR 2001-III, setting out the same standard with regard to the general obligation to investigate). The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.”

161. The Grand Chamber would add that the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination. Owing to the interplay of the two provisions, issues such as those in the present case may fall to be examined under one of the two provisions only, with no separate issue arising under the other, or may require examination under both Articles. This is a question to be decided in each case on its facts and depending on the nature of the allegations made.

(b) Application of these principles in the present case

162. The Court has already found that the Bulgarian authorities violated Article 2 of the Convention in that they failed to conduct a meaningful investigation into the deaths of Mr Angelov and Mr Petkov (see paragraphs 114-119 above). It considers that in the present case it must examine separately the complaint that there was also a failure to investigate a possible causal link between alleged racist attitudes and the killing of the two men.

163. The authorities investigating the deaths of Mr Angelov and Mr Petkov had before them the statement of Mr M.M., a neighbour of the victims, who stated that Major G. had shouted: “You damn Gypsies” while pointing a gun at him immediately after the shooting (see paragraph 35 above). That statement, seen against the background of the many published accounts of the existence in Bulgaria of prejudice and hostility against Roma, called for verification.

164. The Grand Chamber considers – as the Chamber did – that any evidence of racist verbal abuse being uttered by law enforcement agents in connection with an operation involving the use of force against persons from an ethnic or other minority is highly relevant to the question whether or not unlawful, hatred-induced violence has taken place. Where such evidence comes to light in the investigation, it must be verified and – if confirmed – a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives.

165. Furthermore, the fact that Major G. used grossly excessive force against two unarmed and non-violent men also called for a careful investigation.

166. In sum, the investigator and the prosecutors involved in the present case had before them plausible information which was sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible racist overtones in the events that led to the death of the two men.

167. However, the authorities did nothing to verify Mr M.M.'s statement. They omitted to question witnesses about it. Major G. was not asked to explain why he had considered it necessary to use such a degree of force. No attempt was made to verify Major G.'s record and to ascertain, for example, whether he had previously been involved in similar incidents or whether he had ever been accused in the past of displaying anti-Roma sentiment. Those failings were compounded by the behaviour of the investigator and the prosecutors, who, as the Court has found above, disregarded relevant facts and terminated the investigation, thereby shielding Major G. from prosecution (see paragraphs 36-54 and 115-117 above).

168. The Court thus finds that the authorities failed in their duty under Article 14 of the Convention taken together with Article 2 to take all

possible steps to investigate whether or not discrimination may have played a role in the events. It follows that there has been a violation of Article 14 of the Convention taken together with Article 2 in its procedural aspect.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

169. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

170. Before the Grand Chamber, the applicants made the same claims for compensation for pecuniary and non-pecuniary damage as they had in the Chamber proceedings. The Government did not comment.

171. The relevant part of the Chamber judgment reads (§§ 177-184):

“Ms Nachova, Mr Angelov's daughter, and Ms Hristova, his partner and the mother of Ms Nachova, claimed jointly 25,000 euros (“EUR”) in respect of the death of Mr Angelov and the ensuing violations of the Convention. That amount included EUR 20,000 in non-pecuniary damage and EUR 5,000 for pecuniary loss. Ms Rangelova and Mr Rangelov claimed jointly the same amounts in respect of the death of their son, Mr Kiril Petkov, and all violations of the Convention in the case.

In respect of non-pecuniary damage, the Court awards the amounts claimed in full.

In respect of pecuniary damage, the applicants claimed lost income resulting from the deaths. The applicants were unable to provide documentary proof but stated that each of the victims had supported his family financially and would have continued to do so had he been alive. They invited the Court to award EUR 5,000 in respect of each private. The Government stated that the claims were excessive in view of the standard of living in Bulgaria.

The Court observes that the Government have not disputed the applicants' statement that they had suffered pecuniary loss in that Mr Angelov and Mr Petkov would have supported them financially if they were still alive. The Court sees no reason to reach a different conclusion.

As to the amount, in some cases, such as the present one, a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by applicants may be prevented by the inherently uncertain character of the damage flowing from the violation. An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses. The question to be decided in such cases is the level of just satisfaction, which is a matter to be determined by the Court at its discretion, having regard to what is equitable (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 120, ECHR 2001-V).

In the present case, having regard to the submissions of the parties and all relevant factors, including the age of the victims and the applicants and how closely they were related to each other, the Court finds it appropriate to award EUR 5,000 jointly to Mrs Nachova and Ms Hristova in respect of lost income resulting from the death of Mr Angelov, and EUR 2,000 jointly to Ms Rangelova and Mr Rangelov for lost income as a result of the death of Mr Petkov.”

172. The Grand Chamber endorses the Chamber's analysis. It considers that the applicants' claims concern pecuniary and non-pecuniary damage resulting from the violations of Articles 2 and 14 of the Convention found in the present case and that there is no room for reducing the awards made on account of the fact that the Grand Chamber, unlike the Chamber, has only found a violation of Article 14 of the Convention in conjunction with the procedural aspect of Article 2. Accordingly, it awards jointly to Ms Nachova and Ms Hristova EUR 25,000 for pecuniary and non-pecuniary damage and jointly to Ms Rangelova and Mr Rangelov EUR 22,000 for pecuniary and non-pecuniary damage.

B. Costs and expenses

173. The Chamber accepted in full the applicants' claim under this head and awarded them jointly EUR 3,740 for costs and expenses.

174. Before the Grand Chamber, the applicants repeated their initial claims and sought additional amounts in respect of costs and expenses incurred in the Grand Chamber proceedings. In particular, they claimed 7,931 pounds sterling (the equivalent of approximately EUR 11,630) in respect of legal fees charged by Lord Lester Q.C. for his work on the case as well as expenses related to his participation at the oral hearing and EUR 1,920 for 48 hours of legal work by Mr Grozev during the written procedure before the Grand Chamber. They submitted copies of agreements on legal fees and of time-sheets. The applicants stated that they were not claiming legal fees or expenses in respect of Mr Grozev's appearance at the hearing, since that had been covered by the legal aid paid to him (EUR 1,906.50) by the Council of Europe. In sum, the applicants claimed EUR 5,660 in respect of Mr Grozev's work on the case and the equivalent of approximately EUR 11,630 in respect of Lord Lester's participation at the hearing before the Grand Chamber. The applicants requested that any award in respect of costs and expenses be paid directly to their lawyers. The Government did not comment.

175. The Court considers that the costs and expenses claimed were actually and necessarily incurred and relate to the violations found (see *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002). As to the amounts, it considers that the claims related to the oral hearing are excessive. Taking into account all relevant factors, it awards jointly to all applicants EUR 11,000 for costs and expenses (EUR 5,500 in respect of

Mr Grozev and EUR 5,500 in respect of Lord Lester), to be paid into their lawyers' respective bank accounts.

C. Default interest

176. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 2 of the Convention in respect of the deaths of Mr Angelov and Mr Petkov;
2. *Holds* unanimously that there has been a violation of Article 2 of the Convention in that the authorities failed to conduct an effective investigation into the deaths of Mr Angelov and Mr Petkov;
3. *Holds* unanimously that no separate issue arises under Article 13 of the Convention;
4. *Holds* by eleven votes to six that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2 of the Convention in respect of the allegation that the events leading to the death of Mr Angelov and Mr Petkov constituted an act of racial violence;
5. *Holds* unanimously that there has been a violation of Article 14 of the Convention taken in conjunction with Article 2 of the Convention in that the authorities failed to investigate possible racist motives behind the events that led to the deaths of Mr Angelov and Mr Petkov;
6. *Holds* unanimously
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts, plus any tax that may be chargeable:
 - (i) jointly to Ms Nachova and Ms Hristova, EUR 25,000 (twenty-five thousand euros) in respect of pecuniary and non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (ii) jointly to Ms Rangelova and Mr Rangelov, EUR 22,000 (twenty-two thousand euros) in respect of pecuniary and

non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(iii) jointly to all applicants, EUR 11,000 (eleven thousand euros) in respect of costs and expenses, payable as follows: EUR 5,500, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, into Mr Grozev's bank account in Bulgaria and EUR 5,500 into Lord Lester's bank account in the United Kingdom;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* unanimously the remainder of the applicants' claims for just satisfaction.

Done in English and in French, and delivered at a public hearing by Judge Costa, Vice-President, in the Human Rights Building, Strasbourg, on 6 July 2005.

T. L. EARLY
Deputy to the Registrar

Luzius WILDHABER
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Sir Nicolas Bratza;
- (b) joint partly dissenting opinion of Judges Casadevall, Hedigan, Mularoni, Fura-Sandström, Gyulumyan and Spielmann.

L.W.
T.L.E.

CONCURRING OPINION OF JUDGE SIR NICOLAS BRATZA

I fully concur with the conclusion and reasons of the majority of the Court on all aspects of the case save for one passage in the reasoning as to the complaint under Article 14 read in conjunction with the substantive aspect of Article 2 of the Convention.

In paragraph 157 of the judgment it is said that it cannot be excluded that in certain cases a respondent Government may be required to disprove an arguable allegation of discrimination, failing which a violation of Article 14 might be found. However, the judgment goes on to state that where, as in the present case, it is alleged that a violent act was motivated by racial prejudice, such an approach would amount to requiring a respondent Government to prove the absence of a particular subjective attitude on the part of the person concerned. The implication of this passage appears to be that, because of the evidential difficulties which would confront a Government, it would rarely, if ever, be appropriate to shift the burden of proof and require a respondent Government to disprove that a killing was racially motivated.

If this is the correct interpretation of the passage, I find it difficult to accept. I can readily envisage cases where, in the context of a killing by an agent of the State, the evidence before the Court is such as to impose a burden on the respondent Government to establish that the killing was not racially motivated. An example would be a case where the evidence showed that attempts to arrest persons of a particular ethnic group had invariably or consistently resulted in the deaths of the persons concerned, while the arrests of persons of other ethnic origin had seldom if ever resulted in the loss of life. A further example would be where the evidence showed that in the planning of an arrest operation it was only where persons of a particular ethnic origin were involved that the arrest team was provided with, or authorised to use, firearms. In such cases, it seems to me that it would be for the Government to satisfy the Court there were objectively justified reasons for the apparent difference of treatment and that the ethnic origin of a particular victim had not been a material element in the killing.

However, there was no evidence of this kind before the Court in the present case and for the reasons given in the judgment I do not find that the material which was before the Court was such as to justify shifting the burden of proof to the respondent Government or finding it established to the required standard of proof that the killing of Mr Angelov and Mr Petkov was, in addition to being wholly unjustified, also racially motivated.

JOINT PARTLY DISSENTING OPINION OF JUDGES
CASADEVALL, HEDIGAN, MULARONI,
FURA-SANDSTRÖM, GYULUMYAN AND SPIELMANN

(Translation)

1. We voted against point 4 of the operative provisions for the following reasons.

2. We cannot subscribe to the new approach adopted by the Court which entails linking a possible violation of Article 14 to the substantive and procedural aspects of Article 2 individually. An overall approach would have been preferable, since it would have better reflected the special nature of Article 14, which has no independent existence as it applies solely to the rights and freedoms guaranteed by the Convention. Since Article 14 has no independent existence, we consider it artificial and unhelpful to distinguish between the substantive and procedural aspects, especially as in the instant case the Court found violations of both these aspects of Article 2. An added problem is that it is too early to measure the impact which this new approach will have on the application and interpretation of Protocol No. 12 to the Convention, which has just come into force in respect of the States which have ratified it.

3. By drawing a distinction between the substantive and procedural aspects, the majority found a violation of Article 14 of the Convention taken together with Article 2 solely on the basis of the authorities' failure to examine whether the events that had led to the deaths of Mr Angelov and Mr Petkov may have been racially motivated.

4. We agree with that finding. However, looking beyond this purely procedural finding, we are of the view that the other factual elements taken as a whole disclose a violation of Article 14 of the Convention taken together with Article 2.

5. Among these elements, we would note: the fact that shots were fired in a populated area – the Roma district of the village – without regard for the safety of the public; the fact that the military police were aware of the Roma origin of the victims, neither of whom was armed or considered dangerous; the published accounts of the existence of prejudice and hostility against Roma in Bulgaria; the fact that this is not the first case against Bulgaria in which the Court has found that representatives of law and order have inflicted fatal injuries on Roma; Mr M.M.'s evidence that Major G. had hurled racial abuse at him immediately after the shooting, shouting: “You damn Gypsies”; and, lastly, the authorities' failure to take action and the grave procedural shortcomings which prevented the truth from being established.

6. It is true that the procedural shortcomings constitute a specific factor to which considerable weight must be given. They are central to the question of who must bear the burden of proof, since it is for the domestic authorities to take effective action to elucidate the relevant facts and a breakdown in the procedure will inevitably have a bearing on the conclusion to be drawn with regard to the substance of the problem.

7. However, by restricting the finding of a violation to the procedural aspect, the majority of the Court did not give sufficient weight to the sufficiently strong, clear and concordant unrebutted presumptions which arose out of the factual evidence in the case taken as a whole and which leads us to conclude that there has been a violation of Article 14 taken together with Article 2 of the Convention.