



FOURTH SECTION

**CASE OF GIULIANI AND GAGGIO v. ITALY**

*(Application no. 23458/02)*

JUDGMENT

STRASBOURG

25 August 2009

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Giuliani and Gaggio v. Italy,**

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

Nicolas Bratza, *President*,

Josep Casadevall,

Lech Garlicki,

Giovanni Bonello,

Vladimiro Zagrebelsky,

Ljiljana Mijović,

Ján Šikuta, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 26 June 2008 and on 18 June 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

1. The applicants were born in 1938, 1944 and 1972 respectively and live in Genoa and Milan.

#### **A. The background to the G8 summit in Genoa and the circumstances preceding the death of Carlo Giuliani**

2. On 19, 20 and 21 July 2001 the G8 summit was held in Genoa. Numerous “anti-globalisation” demonstrations were staged in the city and substantial security measures were put in place by the Italian authorities. Under Law no. 349 of 8 June 2000, the prefect of Genoa was authorised to deploy armed forces personnel. In addition, the part of the city where the G8 were meeting (the historic centre) was designated as a “red zone” and cordoned off by means of a metal fence. As a result, only residents and persons working in the area were allowed access. Access to the port was blocked and the airport was closed. The red zone was contained within a yellow zone, which in turn was surrounded by a white (normal) zone.

3. With regard to the written orders issued by the officer in charge of the law-enforcement agencies, who was responsible for maintaining and restoring public order, the Government submitted to the Court service orders dated 14, 17 and 19 July 2001. Each of these orders began with the sentence: “The present order amends and supplements service order no. 2143/R of 12 July concerning law enforcement and security at the G8 summit to be held in Genoa from 20 to 22 July, as follows.” The order of 12 July was not submitted.

4. The service order of 19 July 2001 is the one issued the day before the events. It sums up the priorities of the law-enforcement agencies as follows: establishing a line of defence within the “red zone”, with the task of repelling rapidly any attempt to break through; establishing a line of defence within the “yellow zone” to deal with any incidents, taking account of the

position of the demonstrators in various locations and of actions perpetrated by more extremist elements; finally, putting in place public-order measures on the streets concerned by the demonstrations, in view of the risk of violence encouraged by the presence of crowds of people.

5. The parties agreed as to the fact that the service order of 19 July 2001 amended the plans hitherto established regarding the deployment of the available means and resources to enable the law-enforcement agencies to counter effectively any attempt to enter the red zone by participants in the demonstration by the *Tute bianche* (“White overalls”) which had been announced and authorised for the following day.

Referring to testimonies given during the criminal proceedings instituted against twenty-five demonstrators (see “the trial of the twenty-five” below), the applicants stated that the service order of 19 July gave the detachment of *carabinieri* concerned a “roving brief”, whereas it had previously been supposed to remain in one location.

As regards the manner in which these instructions were circulated, the Government stated that the orders issued and received by the officers on the ground were communicated orally. The applicants, meanwhile, referred to the evidence given to the public prosecutor and also in the context of the “trial of the twenty-five”, in particular by Mr Lauro (see paragraph 56 below).

6. The parties agreed that a radio communication system had been put in place, with an operations control room located in the *questura* (police headquarters), which was in radio contact with the officers on the ground. The *carabinieri* and police officers could not communicate directly amongst themselves by radio; they could only contact the control room.

7. The judgment given in the “trial of the twenty-five” (see below), which was added to the case file, makes clear that there had been some tensions before the G8 summit began. Hence, on 16 July, a bomb had been sent to the *carabinieri*. On 17 July a van containing an explosive device had been found near the Carlini stadium, where accommodation was to be provided for the persons taking part in the large demonstration on 20 July (the *Tute bianche* march). On 18 July law-enforcement officers went to the stadium to carry out checks. Approximately 500 demonstrators were there. The search lasted for about an hour and was conducted in the presence of journalists. The demonstrators showed their “personal protective equipment” in the form of Plexiglas shields and clothing designed to absorb the impact of possible clashes with the law-enforcement agencies.

8. The same judgment noted that on the morning of 20 July groups of particularly aggressive demonstrators, wearing balaclavas and masks (the “Black Bloc”) had sparked numerous incidents and clashes with law-enforcement officers. At around 1.30 p.m. the *Tute bianche* march was ready to set off from the Carlini stadium. This was a demonstration involving several organisations: representatives of the “No Global” movement and of community centres, and young communists from the *Rifondazione comunista* party. While they believed in non-violent protest (civil disobedience), they had announced a strategic objective, namely to try to penetrate the red zone. For that reason the Genoa police chief (*questore*) had decided on 19 July 2001 to prohibit the *Tute bianche* procession from entering the red zone or the zone adjacent to it, and had deployed law-enforcement officers to halt the procession at Piazza Verdi. Consequently, the demonstrators were able to march from the Carlini stadium and all the way along Via Tolemaide to Piazza Verdi, that is to say, well beyond the junction of Via Tolemaide and Corso Torino, where the events dealt with below took place. At around 1.30 p.m. the procession set off and headed slowly westwards. As they proceeded, the demonstrators appeared calm and in good spirits, at least until they saw columns of smoke coming from the direction of Via Canevari and a burnt-out car on Via

Montevideo, at which point some tension set in. There were signs of earlier disorder in the area around Via Tolemaide. The procession was headed by a contact group made up of politicians and a group of journalists carrying video recorders and cameras. The procession slowed down and made a number of stops. Further down, around Via Tolemaide, there were incidents involving persons wearing masks and balaclavas and law-enforcement officers. The procession reached the railway tunnel at the junction with Corso Torino. Suddenly, tear gas was fired on the demonstrators by *carabinieri* under the command of Mr Mondelli.

9. Mondelli, commander of the Alpha company of *carabinieri*, had informed his headquarters that his radio could only receive messages and that he did not have a guide to Genoa who knew the streets well. He was on Piazza Tommaseo with 200 *carabinieri* who were equipped with the new Tonfa truncheons, shields, new CS gas grenades and guns for firing them, as well as flame-resistant suits and fire-fighting equipment. At 2.29 p.m. the communications centre ordered Mondelli to go quickly to Piazza Giusti, as the *Tute bianche* procession was on its way down Corso Gastaldi. Mondelli agreed. Although there were three possible routes to his destination, he chose the route which put the company at risk of crossing the path of the *Tute bianche*, taking them along Via Invrea to the intersection with Corso Torino. A few minutes before 3 p.m. the *carabinieri*, finding themselves in the path of the demonstrators, attacked the *Tute bianche*, first using tear gas, then advancing and using their truncheons. The procession was pushed back towards the east (to the junction with Via Casaregis). The attack lasted for about two minutes. It had not been ordered either by the *carabinieri* control room or by the person authorised to do so. The *carabinieri* pushed the demonstrators back to the junction with Via Invrea. Once there, the demonstrators split up: some headed towards the seafront, while others sought refuge in Via Invrea and then in the area around Piazza Alimonda. Some demonstrators retaliated, finding hard objects such as glass bottles or rubbish bins and starting to throw them at the law-enforcement officers. Armoured vehicles belonging to the *carabinieri* drove up Via Casaregis and Via Invrea at high speed, knocking down the barriers erected by the demonstrators using containers, and forcing the demonstrators at the scene to leave. At 3.22"52' p.m. the control room ordered Mondelli to move away and allow the *Tute bianche* to pass. Once the attack was over, the *carabinieri* withdrew to Via Casaregis and then Via Invrea, to the north, before heading west along Via Tolemaide.

10. Some of the demonstrators retaliated with violence and engaged in clashes with the law-enforcement agencies. At around 3.40 p.m. a group of demonstrators attacked an armoured *carabinieri* van and subsequently set it alight.

11. At approximately 5 p.m. the presence of a group of demonstrators who appeared very aggressive was observed by, among others, the Sicilia battalion consisting of around fifty *carabinieri* stationed close to Piazza Alimonda.

12. Police officer Lauro ordered the *carabinieri* in question to charge the demonstrators. The *carabinieri* charged on foot, followed by two Defender jeeps.

13. Shortly afterwards, however, the demonstrators succeeded in pushing back the attack by the law-enforcement agencies. The *carabinieri* withdrew in disorderly fashion near Piazza Alimonda, leaving the two Defender jeeps which were bringing up the rear unprotected (the public prosecutor, in his request to have the proceedings discontinued, described this as "*ripiegamento disordinato che lascia scoperti i due defender che si trovano alle spalle del reparto*"). Pictures taken from a helicopter show the demonstrators running along Via Caffa at 5.23 p.m. in pursuit of the law-enforcement officers.

## B. The death of Carlo Giuliani

14. The two jeeps in question were blocking each other on Piazza Alimonda. When one of the jeeps eventually managed to move out the other, owing to an error by the driver, remained stuck on Piazza Alimonda, its exit blocked by an overturned waste container.

15. A group of demonstrators armed with stones, sticks and iron bars approached the jeep. The two side windows at the rear and the rear window of the jeep were smashed. The demonstrators shouted insults and threats at the jeep's occupants and threw stones at the vehicle.

16. There were three *carabinieri* in the vehicle: Mario Placanica, Filippo Cavataio and Dario Raffone.

17. One of them, Mario Placanica (“M.P.”), was a twenty-year-old *carabiniere* trained in the use of grenades. Suffering from the effects of the tear-gas grenades he had thrown during earlier clashes, he had been given permission by Captain Cappello (commander of the ECHO contingent within the CCIR – *contingente di contenzione e intervento risolutivo*) to get into the jeep in order to get away from the scene of the earlier clash. Crouched down in the back of the jeep, injured and panicking, defending himself on one side with a riot shield (according to the statement of a demonstrator named Predonzani) and shouting at the demonstrators to leave “or he would kill them”, M.P. drew his Beretta 9 mm pistol, pointed it in the direction of the smashed rear window of the vehicle and, after some tens of seconds, fired two shots.

18. The first shot struck Carlo Giuliani in the face, under the left eye, seriously injuring him. At the time he was no more than a few metres from the back of the jeep and had just picked up an empty fire extinguisher. Carlo Giuliani fell to the ground near the left-side rear wheel of the vehicle.

19. Shortly afterwards the driver, Filippo Cavataio (“F.C.”), managed to restart the engine and, in an attempt to move the vehicle away, reversed, driving over Carlo Giuliani's body. He then engaged first gear and again drove over the body as he left the square. The jeep then drove towards Piazza Tommaseo.

20. After “a few metres”, *carabinieri* Sergeant-Major Amatori got into the jeep and took over at the wheel, “as the driver was in a state of shock”. Another *carabiniere* named Rando also got in.

21. After the jeep had driven away a demonstrator, J.M., went over to Carlo Giuliani and observed that he was losing a large amount of blood, which was spurting from a wound near his left eye. J.M. noted that “Carlo Giuliani's pulse was very rapid and weak”. A few moments later, when several police officers and *carabinieri* arrived, J.M. moved away.

22. Police forces stationed on the other side of Piazza Alimonda intervened and dispersed the demonstrators (according to the statement of Captain Cappello). They were joined by some *carabinieri*.

23. At 5.27"25' p.m. a police officer present at the scene called the control room to request an ambulance. A doctor who arrived at the scene subsequently pronounced Carlo Giuliani dead.

### 1. Information provided by the parties concerning the moments leading up to the death of Carlo Giuliani

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### C. The investigation by the domestic authorities

#### 1. The first steps in the investigation

24. The Genoa province mobile police unit (3rd division – offences against the person) arrived on the scene at around 6 p.m. The report written by Ms Bucci, a police officer with the Genoa mobile police unit, stated that, at around 6 p.m., she had gone to Piazza Alimonda with two other police officers after information had been received from the control room that a young man had died. She had found the victim's body covered with a sheet. She had done what she could to seal off the area (by closing Piazza Alimonda to the public) in order to allow forensic officers to take down details. The victim's face had been bare, as his balaclava was behind his head. Evidence had been taken from police officers Fiorillo and Martino (see paragraphs 41-42 below).

25. A spent cartridge was found a few metres from Carlo Giuliani's body. No bullet was found. A fire extinguisher, a bloodstained stone, some money, a craft knife, a mobile phone, a lighter and a set of keys were found beside the body and were seized by the police. It also emerges from the file that the public prosecutor's office entrusted thirty-six investigative measures to the police.

26. The jeep, after it left Piazza Alimonda, and also the weapon and equipment belonging to M.P., remained in the hands of the *carabinieri* and were subsequently seized under a court order. A spent cartridge was found inside the jeep.

27. On the orders of the public prosecutor's office, the body was taken to Galliera hospital. It was identified by means of matching fingerprints in the database of the judicial authorities.

28. At 9.30 p.m. police officer Fiorillo, who had been in charge of the group of police officers in Via Caffa, gave evidence in the office of the Genoa mobile police unit. He said that he had seen a contingent of *carabinieri* on Piazza Alimonda being swept along (“*travolto*”) by a large number of demonstrators who were trying to attack the police officers. The two Defender jeeps were cut off in the middle of the group of demonstrators; they were surrounded and seriously damaged. Immediately afterwards, the two jeeps managed to drive away. A man wearing a balaclava was lying on the ground. A fire extinguisher was nearby.

29. At 8.50 p.m., in the office of the Genoa mobile police unit, police officer Martino stated that he had gone to Piazza Alimonda with his group of officers on the orders of officer Fiorillo, and had seen the body of Carlo Giuliani on the ground, bleeding profusely from the head. Nearby was a fire extinguisher. When the ambulance arrived, a doctor had tried to resuscitate Carlo Giuliani, before pronouncing him dead and awaiting the arrival of the judicial officer.

30. On 21 July 2001 Captain Cappello, who had been in charge of the ECHO company, recounted the events of the previous day and gave the names of the *carabinieri* who had been in the jeep in question, which had been surrounded by a large group of demonstrators armed with iron bars, stones and planks of wood. He stated that, once the jeep had managed to drive away, the police officers on the other side of the square had intervened and dispersed the demonstrators, thereby revealing the body of a person wearing a balaclava lying on the ground. Captain Cappello said that he had heard no shots, probably because of his radio earpiece, his helmet and his gas mask, which reduced his hearing.

31. On 28 July 2001 officer Mirante drafted an official memorandum which echoed the statements made by Captain Cappello concerning the events on Piazza Alimonda.

2. *Placing under investigation of M.P. and F.C., two of the three carabinieri in the jeep*

32. On the evening of 20 July 2001 two of the three *carabinieri* in the jeep at the time of the events were placed under investigation on suspicion of intentional homicide and gave evidence to the Genoa public prosecutor's office at the headquarters of the Genoa *carabinieri*.

**(a) First statement made by the person who fired the shots (M.P.) to the public prosecutor on 20 July 2001 at 11 p.m. at Genoa carabinieri headquarters**

33. M.P. was an auxiliary *carabiniere* assigned to Battalion no. 12 (*Sicilia*), and one of the members of the ECHO company constituted for the purpose of the G8 summit. Together with four other companies from different regions of Italy, the company formed part of the CCIR, under the orders of Lieutenant-Colonel Truglio. The ECHO company was under the orders of Captain Cappello and his deputies Mirante and Zappia, and was directed and coordinated by Mr Lauro, an officer (*vice questore*) of the Rome police. There was also a parachute battalion and units designated as G2 and G3. Each of the five companies was divided into four detachments of fifty men. The overall commander of the companies was Colonel Leso; Lieutenant-Colonel Truglio was deputy commander in charge of coordination.

34. M.P., who was born on 13 August 1980 and began serving as a *carabiniere* on 16 September 2000, was trained in the use of grenades and deployed to fire tear gas. He stated that during the public-order operation he had been supposed to move around on foot with his detachment. Having fired several tear-gas grenades, he had felt a burning in his eyes and face and had asked Captain Cappello for permission to get into the jeep being driven by F.C. Shortly afterwards, another *carabiniere* (Dario Raffone), who was injured, had joined them.

35. M.P. said that he had been very frightened, because of everything he had seen being thrown that day, and was particularly afraid that the demonstrators would throw Molotov cocktails. He went on to explain that he had grown more afraid after being injured in the leg by a metal object and in the head by a stone. He said that he had become aware that the jeep was under attack because of the stones being thrown and had thought that “hundreds of demonstrators were surrounding the jeep”, although he added that “at the time [he] fired the shots, no one was in sight”. He said he had been “in a panic”. M.P. described the moment when he had fired, saying that at some point he had realised that his hand was gripping his pistol. He had thrust the hand carrying the weapon through the rear window and, after about a minute, had fired two shots. M.P. did not give any details as to when he had removed the safety catch from his pistol. He maintained that he had not noticed Carlo Giuliani behind the jeep either before or after firing.

**(b) Statement made by the driver (F.C.) to the public prosecutor on 20 July 2001 at carabinieri headquarters**

36. The driver, F.C., who was born on 3 September 1977, had been serving as a *carabiniere* for twenty-two months. He stated that he had been in an alleyway near Piazza Alimonda and had attempted to reverse towards the square, as the detachment was being pushed back by the demonstrators. However, he had found his path blocked by a waste container which he was unable to remove as his engine had stalled. He said that he had been concentrating his efforts on how to move the jeep out, while his colleagues inside the vehicle were shouting. As a result, he had not heard the shots from M.P.'s pistol. Finally he stated: “I did not notice anyone on the ground because I was wearing a mask, which partly blocked my view ... and also because it is hard to see properly out the side of the vehicle. I reversed and felt no resistance; actually, I felt the left wheel jolt and thought it must be a pile of rubbish,

since the waste container had been turned over. The only thought in my head was how to get out of that awful situation.”

**(c) Statement made to the public prosecutor on 21 July 2001 by the third *carabiniere* (D.R.) in the jeep at the time of the events**

37. D.R., who was born on 25 January 1982 and had been performing military service since 16 March 2001 (*carabiniere di leva*), stated that he had been struck in the face and back by stones thrown by demonstrators, and had started to bleed. He had tried to protect himself by covering his face, while M.P., for his part, tried to shield him with his body. At that point, he could no longer see anything, but he could hear the shouting and the sound of blows and objects entering the jeep. He heard M.P. shouting at their attackers to stop and go away, and immediately afterwards heard two shots.

**(d) M.P.'s second statement to the public prosecutor**

38. On 11 September 2001 M.P., on being questioned by the public prosecutor, confirmed his statement of 20 July 2001, adding that he had shouted to the demonstrators: “Leave or I’ll kill you”.

*3. Statements taken during the investigation*

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**(c) Statements made by demonstrators to the public prosecutor**

39. Some demonstrators present at the time of the events also gave statements. Some of them said they had been very close to the jeep and had themselves thrown stones and had struck the jeep with sticks and other objects. One demonstrator said that M.P. had cried: “Bastards, I’m going to kill the lot of you”. Another had observed that M.P., inside the jeep, had taken out his pistol; the demonstrator had then shouted to his friends to be careful and had moved away. Another demonstrator said that M.P. was protecting himself on one side with a riot shield (see paragraph 23 above).

**(d) Other statements to the public prosecutor**

40. Some individuals who witnessed the events from the windows of their homes said they had seen a demonstrator pick up a fire extinguisher and raise it up. They had heard two shots and had seen the demonstrator fall to the ground.

*4. Audiovisual material*

41. During the investigation the public prosecutor's office ordered the law-enforcement agencies to hand over any audiovisual material which might help in reconstructing the events that had taken place on Piazza Alimonda. During the public-order operation photographs had been taken and video recordings made by film crews, helicopter cameras and miniature video cameras in the helmets of some of the law-enforcement officers. Pictures taken by private individuals were also available.



### 5. *The expert reports*

#### (a) **The autopsy**

42. Within twenty-four hours an autopsy was ordered by the public prosecutor's office to establish the cause of death. On 21 July 2001 at 12.10 p.m. notice of the autopsy – specifying that the injured party could appoint an expert and a lawyer – was served on the first applicant.

At 3.15 p.m. Mr Canale and Mr Salvi, the experts appointed by the public prosecutor's office, were officially sworn in and work commenced on the autopsy. The applicants did not send any representative or expert of their own.

The mandate issued to the experts read as follows: “The experts must indicate the cause of Carlo Giuliani's death and state whether the determining factors in that regard included external factors such as toxic chemical substances. If death was caused by one or more shots from a firearm, the experts should indicate the number of shots fired, the point of impact, the route taken by the bullet or bullets in the body, the position of the victim relative to the person who fired the shots and, if possible, the distance from which the shots were fired and whether there was a lethal struggle before the fatal wounding.”

43. When the autopsy was completed, the body was released to Carlo Giuliani's relatives, who wished to have it cremated. In view of the complexity of the issues, the experts requested the public prosecutor's office to give them sixty days to prepare their report. The public prosecutor's office granted the request.

44. On 23 July 2001 the public prosecutor's office authorised the cremation of Carlo Giuliani's body in accordance with the family's wishes.

45. The expert report was submitted on 6 November 2001. The experts noted that Carlo had been struck below the left eye by a bullet which had passed through the skull and exited through the rear of the skull on the left. The bullet's trajectory had been as follows: it had been fired from a distance exceeding 50 cm and had travelled from front to back, from right to left and in a downward direction. Carlo Giuliani had been 1.65 m tall. The person firing the shot had been facing the victim and slightly to his right. According to the experts, the bullet injury to the head was so severe that it would have resulted in death within a few minutes. The jeep being driven over the body had resulted only in minor injuries of no significance to the organs in the thorax and the abdomen.

#### (b) **The forensic medical report concerning M.P. and D.R.**

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#### (c) **The ballistics reports ordered by the public prosecutor's office**

##### (i) *The first expert report*

46. On 4 September 2001 the public prosecutor's office instructed Mr Cantarella to establish whether the two spent cartridges found at the scene (one in the jeep and the other a few metres from Carlo Giuliani's body) had been fired from the same weapon, and in particular from M.P.'s weapon. In his report of 5 December 2001, the expert concluded that there was a 90% probability that the cartridge found in the jeep had come from M.P.'s Beretta pistol, whereas there was only a 10% probability that the cartridge found close to Carlo Giuliani's body had been fired from the same pistol. This expert examination was carried out unilaterally under Article 392 of the Code of Criminal Procedure, that is to say, without the injured party having an opportunity to participate.

*(ii) The second expert report*

47. The public prosecutor's office appointed a second expert, police inspector Biagio Manetto. The latter, in a report submitted on 15 January 2002, concluded that there was a 60% probability that the spent cartridge found near the victim's body had come from M.P.'s weapon. He concluded that both the cartridges had been fired from M.P.'s pistol. As to the distance between M.P. and Carlo Giuliani at the moment of impact, he estimated it at between 110 cm and 140 cm. The expert examination was conducted unilaterally.

*(iii) The third expert report (produced by a panel of experts)*

48. On 12 February 2002 the public prosecutor's office instructed a panel of experts, made up of Nello Balossino, Pietro Benedetti, Paolo Romanini and Carlo Torre, ....

On the basis of a computer simulation, the experts concluded that the bullet fired upwards by M.P. had struck Carlo Giuliani after colliding with the stone in question, which had been thrown at the jeep by another demonstrator. The experts estimated the distance between Carlo Giuliani and the jeep at approximately 1.75 metres when the shot was fired and judged that, at that precise moment, M.P. had been able to see Carlo Giuliani.

*6. The applicants' investigations*

49. The applicants submitted a statement made to their lawyer by J.M., one of the demonstrators, on 19 February 2002. J.M. stated in particular that Carlo Giuliani had still been alive after the jeep had driven over his body and that he, J.M., had drawn officers' attention to the injured man, shouting out something like "Doctor, hospital...". When the law-enforcement officers arrived, J.M. had left.

The applicants subsequently submitted a statement made by a *carabiniere* (V.M.), who reported a widespread practice among law-enforcement officers consisting in altering bullets of the kind used by M.P. in order to make them more likely to expand and hence break up.

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50. In the light of these considerations, and having criticised the decision to entrust a number of investigative measures to the *carabinieri*, the applicants demanded that a trial be held in order to establish responsibility for Carlo Giuliani's death.

51. In the alternative, the applicants requested that further investigative measures be undertaken, in particular:

(a) that an expert report be prepared aimed at establishing the causes and the time of Carlo Giuliani's death, in order to ascertain in particular whether he had still been alive when the jeep drove over his body, and afterwards;

(b) that evidence be heard from the chief of police, Mr De Gennaro, and from *carabiniere* Zappia, to establish what instructions had been given regarding the wearing of weapons on the thigh;

(c) that the person who had thrown the stone in question be identified and traced;

(d) that further evidence be heard from the demonstrators who had come forward;

(e) that evidence be heard from the *carabiniere* V.M., who had reported the practice of cutting the tips of bullets in order to increase their impact;

(f) that an expert examination be carried out on the spent cartridges and on the weapons of all the police and *carabinieri* on Piazza Alimonda at the time of the events.

### 9. *The hearing before the investigating judge*

52. The hearing before the investigating judge took place on 17 April 2003. The verbatim record of the hearing shows that the applicants maintained their argument that the bullet had not broken up after colliding with the stone. They ruled out the possibility that the bullet had been deflected and submitted that it had struck the victim's body directly. Mr Vinci, the applicants' representative at the hearing, stated with regard to the theory that the bullet might have been modified in order to make it more effective, in line with the practice reported by one witness: “Obviously, we do not have any proof; it is a case of evidence adduced in order to advance different hypotheses. Naturally we cannot assert, nor do we wish to, that M.P. did that.”

53. The public prosecutor who attended the hearing said he had the impression that “certain points which [he had] believed to be the subject of mutual agreement were in fact not; on the contrary, there were divergences of opinion”. He pointed out that the applicants' expert, Mr Gentile, had been in agreement as to the fact that the bullet had been damaged before striking Carlo Giuliani, and had acknowledged that one of the possible causes of the damage was a collision with some object or an intrinsic defect in the bullet, and that the second hypothesis was less likely than the first.

### 10. *The decision of the investigating judge*

By an order lodged with the registry on 5 May 2003, the Genoa investigating judge discontinued the proceedings.

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54. The judge considered that the first possibility advanced by the public prosecutor – namely, that M.P. had fired with the sole aim of intimidating the demonstrators – should be ruled out; M.P. had sought to counter the attack. There was not sufficient evidence, either, to establish that M.P. had been able to see Carlo Giuliani at the moment of firing the shot and therefore had taken aim at him.

According to the judge, the most likely hypothesis was that M.P. had fired the shot knowing that there was a risk that someone would be killed; it was therefore a case of intentional homicide. However, two elements which excluded criminal responsibility were present in the case. The first was the legitimate use of weapons, as set forth in Article 53 of the Criminal Code (“a State agent who uses or orders the use of weapons or any other means of physical force in the exercise of his or her official duties shall not be liable to punishment where he or she is obliged to do so in order to repel an act of violence or thwart an attempt to resist official authority”); the second element was self-defence.

55. The first issue to be determined was whether the use of a weapon had been necessary. The detailed reconstruction of the events suggested that M.P. had been in a situation of extreme violence designed to disturb public order and targeting the *carabinieri*, whose physical integrity had been directly threatened. In the judge's view, the danger had stemmed from the number of demonstrators and the overall methods of action (“*modalità complessive dell'azione*”) which made the acts of violence against M.P. and the other two *carabinieri* liable to endanger their physical integrity. In conclusion, the use of a firearm had been justified and the likelihood had been that its use would not cause serious harm, given that M.P. had “certainly fired upwards” and that the bullet had struck Carlo Giuliani only because its trajectory had been altered in a way that could not have been foreseen.

56. The judge next considered it necessary to determine whether M.P. had acted in self-defence, given that this was a “more stringent” test for excluding responsibility.

In that connection that judge took the view that M.P. had rightly perceived a threat to his physical integrity and that of his colleagues, and that the threat had persisted on account of the violence of the context. In the judge's opinion, in assessing whether M.P.'s response had been necessary and proportionate, Carlo Giuliani's situation and action (lifting up an empty fire extinguisher) could not be viewed in isolation. On the contrary, his action had to be considered as one phase in a violent attack on the jeep by a crowd of demonstrators. The attack had not been perpetrated by Carlo Giuliani acting on his own, but by a crowd of assailants. Hence, M.P.'s response had to be viewed in relation to the latter in order to be assessed in its proper "context".

In view of the number of assailants, the means used, the sustained nature of the violence, the injuries to the *carabinieri* in the jeep and the vehicle's difficulty in leaving the square due to engine trouble, M.P.'s response could be said to have been necessary. Furthermore, it had been appropriate given the level of violence.

...

#### **D. The parliamentary commission of inquiry**

57. On 5 September 2001 a parliamentary commission of inquiry heard evidence from Mr Lauro, an officer of the Rome police, who had taken part in the public-order operation in Genoa.

58. Mr Lauro stated that the *carabinieri* had been equipped with throat microphones, enabling them to communicate very rapidly with one another.

When asked to explain why the law-enforcement officers stationed quite near to the jeep (fifteen or twenty metres away) had not intervened, Mr Lauro replied that the men had been on duty since the morning and had been involved in several clashes during the day. He added that he had not noticed at the time of the events that there was a group of *carabinieri* and police officers who could have intervened.

As to the function of the two jeeps, Mr Lauro explained that they had brought fresh supplies at around 4 p.m. and had left and then returned about an hour later to see if anyone had been injured.

Mr Lauro also said that he had called an ambulance for Carlo Giuliani as no doctor had been present at the scene.

59. On 20 September 2001 a group of parliamentarians called on the government to explain why law-enforcement officers being deployed on public-order operations were equipped with live ammunition rather than rubber bullets. The parliamentarians advocated the use of the latter, arguing that they had been used successfully on many occasions in other countries.

The government spokesman replied that the legislation made no provision for that option and that, moreover, it had not been proven that rubber bullets did not also entail very serious consequences for the victim. Finally, he said that the possibility of introducing non-lethal weapons was currently being examined.

#### **E. The judgment of the Genoa District Court in the "trial of the twenty-five"**

60. On 13 March 2008 the Genoa District Court made public its judgment following the trial of twenty-five demonstrators on a number of charges (including criminal damage, theft, destroying property, looting and acts of violence against law-enforcement officers) in relation to the events of 20 July 2001. The Ministries of the Interior, Defence and Justice, and the

government, had joined the proceedings as civil parties seeking damages. An appeal has been lodged against the judgment in question and the proceedings are pending.

61. This judgment helps shed light on the events of 20 July 2001 (see paragraphs 13-19 above). In the course of 144 hearings the Genoa District Court had the opportunity, *inter alia*, to hear evidence from large numbers of witnesses and to examine the abundant audiovisual material in detail.

62. In its conclusions the court held that the attack by *carabinieri* on the *Tute bianche* procession had been unlawful and arbitrary.

63. In reaching that conclusion, the court found it established that the *Tute bianche* demonstrators had not committed any significant acts of violence against the *carabinieri* who attacked them. The use of tear gas and the *carabinieri* advance towards Corso Torino had occurred without there being any real need to use force. The attack had been carried out against hundreds of persons who were doing no harm, and had not even been aimed at isolating and blocking off the few individuals engaged in throwing objects at the *carabinieri*, who were able to carry on undisturbed. Furthermore, no order to disperse had been given.

64.....

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### 1. *Legitimate use of weapons*

65. Article 53 of the Criminal Code provides that “a State agent who uses or orders the use of weapons or any other means of physical force in the exercise of his or her official duties [shall not be liable to punishment] where he or she is obliged to do so in order to repel an act of violence or thwart an attempt to resist official authority. In any event, he or she shall not be liable where such action is taken to prevent criminal acts entailing massacre, shipwreck, flooding, aviation or railway disasters, intentional homicide, armed robbery and abduction... The law provides for other cases in which the use of weapons or any other means of physical force is authorised.”

### 2. *Self-defence*

66. Article 52 of the Criminal Code states that “[p]ersons who commit an offence when forced to do so by the need to defend their rights or the rights of others against the actual danger of an unjust attack [shall not be liable to punishment] provided that the defensive response is proportionate to the attack.”

### 3. *Unintentional excess*

67. Under Article 55 of the Criminal Code, in cases, *inter alia*, of self-defence or legitimate use of weapons, where the person concerned has negligently (*colposamente*) overstepped the limits laid down by law or by the competent authority, or dictated by necessity, his or her conduct is punishable as unintentional conduct to the extent provided for by law.

### 4. *Provisions governing public safety*

68. Articles 18-24 of the Public Safety Code (*Testo Unico*) of 18 June 1931 govern public meetings and gatherings in public places. Where a meeting or gathering in a public place or which is open to the public is liable to endanger public order or safety, or where offences are

committed, the meeting may be dissolved. Before such a meeting is dissolved, the participants are requested by the law-enforcement agencies to disperse. If the request is not complied with, the crowd is given three formal warnings to disperse. If these are not complied with or cannot be issued because of revolt or opposition, the police officers or *carabinieri* order the meeting or gathering to be broken up by force. The order is carried out by the police and the armed forces under the command of their respective senior officers. Refusal to comply with the order to disperse is punishable by a term of imprisonment of between one month and one year and by a fine of between 30 and 413 euros (EUR).

*5. Rules governing the use of weapons*

69. In February 2001 the Ministry of the Interior issued a directive to *questori* containing general provisions on the use of tear gas and truncheons (*sfollagente*). The use of this equipment must be ordered clearly and expressly by the head of the service after consultation with the *questore*. The personnel must be informed.

*6. Preliminary investigation and injured parties*

70. The relevant Articles of the Code of Criminal Procedure (“the CCP”) provide:

**Article 79**

“Applications to join the proceedings as a civil party shall be made from the preliminary hearing stage ...”

**Article 90**

“Injured parties shall exercise the rights and powers expressly afforded to them by law and may furthermore, at any stage of the proceedings, submit pleadings and, except in cassation proceedings, request the inclusion of evidence.”

**Article 101**

“Injured parties may appoint a statutory representative for the exercise of the rights and powers afforded to them ...”

**Article 359 § 1**

“Where the public prosecutor is conducting a technical investigation ... which calls for a specific competence, he or she may appoint and make use of the services of experts. The latter may not refuse to cooperate.”

**Article 360**

“1. Where the technical investigation ... concerns persons, objects or places which may be subject to change, the public prosecutor shall inform the person being investigated, the injured party and the lawyers without delay of the date, time and place ... and of the possibility of appointing experts.

...

3. Any lawyers or experts appointed shall have the right to attend the appointment of the experts, participate in the technical investigation and make observations.”

**Article 392**

“1. In the course of the preliminary investigation, the public prosecutor and the person being investigated [*persona sottoposta alle indagini*] may apply to the judge for the immediate production of evidence ...

2. The public prosecutor and the person being investigated may request the judge to order an expert examination, where this could entail suspension (of the trial) for at least 60 days if ordered during the trial.”

**Article 394**

“1. Injured parties may request the public prosecutor to apply for the immediate production of evidence [*incidente probatorio*].

2. In the event that the public prosecutor fails to grant that request, he or she shall give reasons for the decision and notify the same to the injured party.”

**Article 409**

“1. Except in cases where an objection has been lodged against the request to discontinue the proceedings, if the judge grants the request for the proceedings to be discontinued he or she shall make an order to that effect and shall return the file to the public prosecutor. ...

2. If the judge refuses the request to discontinue the proceedings, he or she shall fix the date of the private hearing and shall inform the public prosecutor, the person under investigation and the injured party accordingly. The procedure shall be conducted in accordance with Article 127. The documents shall be deposited with the registry up to the day of the hearing, and copies of them may be made by counsel.

3. The judge shall inform the public prosecutor at the Court of Appeal of the hearing.

4. After the hearing, the judge may issue an order indicating to the public prosecutor the additional investigative measures he or she considers necessary and shall lay down a time-limit.

5. Where no additional investigative measures are required and the judge rejects the request to discontinue the proceedings, he or she shall request the public prosecutor to draw up the indictment within ten days...

6. An appeal against the decision to discontinue the proceedings shall lie to the Court of Cassation solely on grounds of nullity within the meaning of Article 127 § 5.”

**Article 410**

“1. When objecting to the request to discontinue the proceedings, the injured party shall request that the investigation be continued. The injured party shall indicate the purpose of further investigation and request the inclusion of evidence, failing which the objection shall be declared inadmissible.

2. Where the objection is declared inadmissible and the suspicions are unfounded, the judge shall issue an order discontinuing the proceedings and shall return the file to the public prosecutor.

3. In cases not covered by the second paragraph, the judge shall make a decision in accordance with Article 409 §§ 2, 3, 4 and 5. If there are several injured parties, notice shall be served only on the party that lodged the objection.”

### 6. *Burial and cremation*

71. Article 116 of the implementing provisions of the CCP pertaining to investigations into deaths that appear to have occurred as a result of a crime provides:

“Where it is suspected that a person died as a result of a crime, the public prosecutor shall verify the cause of death and, should he or she consider it necessary, order an autopsy in accordance with the procedure laid down in Article 369 of the Code or by applying for the immediate production of evidence...

... The burial may not take place without an order from the public prosecutor.”

72. Article 79 of Presidential Decree no. 285 of 10 September 1990 stipulates that cremation must be authorised by the judicial authority where death occurred suddenly or in suspicious circumstances.

## III. RELEVANT INTERNATIONAL MATERIALS

### **A. United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

73. The relevant parts of these principles, which were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, provide as follows:

“1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

...

9. 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.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:



(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

...

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

...”

## **B. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

74. The relevant part of the CPT report on its visit to Italy in 2004, published on 17 April 2006, states:

“14. As far back as 2001 the CPT began a dialogue with the Italian authorities concerning the events that took place in Naples (on 17 March 2001) and in Genoa (from 20 to 22 July 2001). The Italian authorities have continued to inform the Committee of the action taken in response to the allegations of ill-treatment made against the law-enforcement agencies. In that context the authorities furnished a list during the visit of the judicial and disciplinary proceedings in progress.

**The CPT wishes to be kept regularly informed of the progress of the above-mentioned proceedings. In addition, it wishes to receive detailed information on the measures taken by the Italian authorities to prevent the recurrence of similar episodes in the future (relating, for instance, to the management**

**of large-scale public-order operations, training of supervisory and operational personnel and monitoring and inspection systems).**<sup>1</sup>

15. In the report on its visit in 2000, the CPT recommended that measures be taken as regards the training of law-enforcement officers, with more particular reference to incorporating human rights principles in practical training – both initial and ongoing – concerning the management of high-risk situations such as the arrest and questioning of suspects. In their response, the Italian authorities simply gave general replies concerning the “human rights” component of the training provided to law-enforcement officers. **The CPT wishes to receive more detailed – and updated – information on this subject...**”.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

75. The applicants complained that Carlo Giuliani had been killed by the law-enforcement agencies and that the authorities had not safeguarded his life or conducted an effective investigation into his death. They relied on Article 2 of the Convention, which 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 parties' submissions**

.....

#### **B. The Court's assessment**

##### *1. General principles*

76. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, and one from which no derogation is permitted. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied

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<sup>1</sup> Original in bold type.

so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324). The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor, however, to be taken into account in assessing its necessity. Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) of the second paragraph of Article 2. This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the permitted aims (see *McCann and Others*, cited above, §§ 148-149). In that connection the Court reiterates that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others (*ibid.*, § 200).

77. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps within its internal legal order to safeguard the lives of those within its jurisdiction (see *Kiliç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III). This involves a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. As the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force (see *Makaratzis*, cited above, § 58).

78. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents, but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, §§ 147-150, and *Andronicou and Constantinou*, cited above, § 171).

79. 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 to “secure to everyone within their 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, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I). Such investigations should take place in every case of a killing resulting from the use of force, regardless of whether the alleged perpetrators are State agents or third persons (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 220, ECHR 2004-III). The investigation must be, *inter alia*, thorough, impartial and rigorous (see *McCann and Others*, cited above, §§ 161-163, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV).

80. The Court further considers that the nature and degree of scrutiny which satisfies the minimum threshold of the investigation's effectiveness depends on the circumstances of the particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria (see *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 101-10, ECHR 1999-IV; *Kaya v. Turkey*, cited above, §§ 89-91; *Güleç v. Turkey* 27 July 1998, §§ 79-81, *Reports* 1998-IV; *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI; and *Buldan v. Turkey*, no. 28298/95, § 83, 20 April 2004).

81. For an investigation to be “effective” in this sense it is generally necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-...; *McKerr v. the United Kingdom*, no. 28883/95, § 128, ECHR 2001-III; *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 120, ECHR 2001-III; and *Aktaş v. Turkey*, no. 24351/94, § 301, ECHR 2003-V). What is at stake here is nothing less than public confidence in the State's monopoly on the use of force.

82. 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 (see, for example, *Kaya*, cited above, § 87) and to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (as regards autopsies, see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; as regards witnesses, see, for example, *Tanrikulu*, cited above, § 109; as regards forensic evidence, see, for example, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000).

83. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports* 1998-VI; *Çakıcı*, cited above, §§ 80, 87 and 106; *Tanrikulu*, cited above, § 109; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as 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.

84. For the same reasons there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç*, cited above, § 82, where the father of the victim was not informed of the decisions not to prosecute; *Oğur*, cited above, § 92, where the family of the victim had no access to the investigation and court documents; and *Gül*, cited above, § 93).

85. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Aktaş*, cited above, § 300).

## 2. *Application of these principles to the instant case*

### (a) **The allegedly excessive use of force**

86. The Court must first seek to establish whether there was excessive use of force such as to give rise to a violation of the substantive aspect of Article 2.

87. The investigation conducted at domestic level concluded that Carlo Giuliani was killed by a bullet fired by M.P.

88. Notwithstanding the arguments raised by the Government, the decision to discontinue the case in respect of M.P. was not based on the absence of a causal link between the fatal shot and the death of Carlo Giuliani; the collision between the stone and the bullet was not capable of severing that link, as stated explicitly by the public prosecutor in his request for the proceedings to be discontinued (see paragraph 83 above).

89. The existence of a causal link between M.P.'s shot and the death of Carlo Giuliani is central to the reasoning of the investigating judge, who accepted its existence, although this is not stated explicitly in the text of the decision to discontinue the proceedings. Indeed, had it been established that there was no causal link, this alone would have sufficed to rule out M.P.'s guilt.

Having accepted the existence of a causal link, the investigating judge expanded on her reasoning. In doing so, she assessed with care the circumstances surrounding the death of Carlo Giuliani, seeking to obtain a precise picture of the events on the basis of the testimonies gathered, the investigation file and the copious audiovisual material, as is clear from the text of the decision summarised in detail in paragraphs 93-116 above.

90. Although it had not been possible to determine the precise trajectory of the fatal bullet (see paragraph 99 above), the investigating judge considered that M.P. had fired upwards, meaning that the possibility that he had killed Carlo Giuliani deliberately could be ruled out (see paragraph 101 above). In the judge's view, it was nonetheless a case of intentional homicide, as M.P. had not fired with the sole intention of intimidating his assailants, but in an attempt to counter the violence, thereby taking the risk of killing someone (see paragraph 100 above).

91. The investigating judge went on to examine whether there were any facts which might exclude responsibility on M.P.'s part. She concluded that there were two such facts: the legitimate use of the weapon and self-defence.

92. As to the use of the weapon, the judge considered that it had been absolutely essential, given that the detailed reconstruction of the events suggested that M.P. had been in a situation of extreme violence disturbing public order and directly threatening the physical integrity of the *carabinieri* (see paragraph 101 above).

In assessing the danger the judge took into account the number of demonstrators and the overall methods of action such as the acts of violence against M.P. and the other occupants of the jeep. In particular, the judge based her findings on the testimonies and images showing the violence of the demonstrators' attack, the constant barrage of stones to which the vehicle was subjected and which caused physical harm to its occupants, and the aggression shown towards the passengers by the demonstrators, who had continued to surround the vehicle at very close quarters while thrusting hard objects inside. This situation of persistent danger undeniably amounted, in the judge's view, to a real and unjust threat to the personal integrity of M.P. and his colleagues and called for a defensive reaction that had been bound to culminate in M.P.'s using the only means at his disposal: his weapon.

93. In the judge's view, even assuming that M.P. had deliberately fired his shots in the direction of Carlo Giuliani, the situation described above would in any case have made his use of the weapon legitimate (see paragraph 101 above).

94. As to the question of self-defence, the investigating judge considered that this too was a factor excluding criminal responsibility on the part of M.P., given that the latter had rightly perceived a threat to his physical safety and that of his colleagues. M.P.'s response had been necessary in view of the number of assailants, the means used, the sustained nature of the violence, the injuries to the jeep's occupants and the vehicle's difficulty in leaving the scene. His response had been appropriate given that, had he not taken out his weapon and fired two shots, the attack would have continued. If the fire extinguisher had landed in the jeep it would have caused serious injury to the occupants. Furthermore, M.P.'s response had been proportionate given the fact that, before shooting, he had shouted to the demonstrators to leave and given that he had fired upwards (see paragraphs 102-03 above). In conclusion, the action taken by M.P., who had taken the risk of killing someone by using his firearm, had been prompted by the need to defend the physical integrity of the jeep's occupants and had been proportionate to the importance of what was being defended and the means available to defend it.

95. As to F.C., taking into consideration the fact that he had driven over Carlo Giuliani's body without seeing him and that the jeep's driving over the victim's body had not been the cause of death or caused appreciable injuries, there was nothing to suggest that he had been in any way responsible (see paragraph 97 above).

96. In the light of the investigation's findings and in the absence of any other element leading it to conclude otherwise, the Court has no reason to doubt that M.P. honestly believed that his life was in danger, and considers that he used his weapon as a means of defence against the attack targeting the jeep's occupants, including himself, perceiving a direct threat to his own person (see *McCann and Others*, cited above, § 200, and *Huohvanainen v. Finland*, no. 57389/00, § 96, 13 March 2007). This is one of the circumstances enumerated in the second paragraph of Article 2 in which the use of lethal force may be legitimate; however, it goes without saying that a balance must exist between the aim and the means. In that context the Court must examine whether the use of lethal force was legitimate. In doing so it cannot, detached from the events at issue, substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life (see *Bubbins v. the United Kingdom*, no. 50196/99, § 139, ECHR 2005-II (extracts)).

97. M.P. used a Beretta pistol, a powerful weapon. Having been taken off duty, he no longer had tear-gas grenades, and it has not been judicially established – the decision to discontinue the proceedings makes no mention of it – that he had a riot shield with which to protect himself. However, the Court notes that the photographic evidence shows a shield in the jeep and that one demonstrator stated that M.P. tried to defend himself with it (see paragraph 23 above). Before firing, M.P. shouted out and held the loaded Beretta in his hand in such a way that it was visible from the outside (the pistol can be seen on the pictures in the file). M.P. found himself facing a group of demonstrators who were engaged in a violent attack on the vehicle in which he was travelling and had ignored warnings to leave. The Court considers that, in the circumstances of the case, the use of lethal force, although highly regrettable, did not exceed the limits of what was absolutely necessary in order to avert what M.P. honestly perceived to be a real and imminent danger to his life and the lives of his colleagues.

98. The Court has not overlooked the fact that the person who fired the shot did so on his own initiative, in a state of panic. Accordingly, the Court does not deem it necessary to examine *in abstracto* the compatibility with Article 2 of the applicable legislative provisions on the use of weapons by law-enforcement officers during public-order operations (see *McCann and Others*, cited above, § 153), as the situation under consideration concerns the defence of a member of the armed forces who had been taken off duty and was in an unarmoured vehicle, and falls within the scope of Articles 52 and 53 of the Criminal Code.

99. Having regard to the foregoing, the Court considers that there was no disproportionate use of force. Accordingly, there has been no violation of the substantive aspect of Article 2 of the Convention in this regard.

**(b) Failure to fulfil the obligation to protect the life of Carlo Giuliani**

100. The Court must next consider whether the public-order operation was planned, organised and carried out in such a way as to minimise, in so far as this was possible, the use of lethal force. Should this not be the case it would have to find a breach of the positive obligations arising out of Article 2 of the Convention in its substantive aspect.

101. It notes at the outset that the shortcomings identified by the applicants (see paragraphs 149-59 above) were not taken into consideration by the national authorities, as the investigation which was carried out focused on the actions of F.C. and M.P. taken in isolation. The Court will return to this point in the context of its analysis of the procedural obligations arising out of Article 2 (see paragraphs 245-55 below).

102. In carrying out its assessment of the planning and control phase of the operation from the standpoint of Article 2 of the Convention, the Court must have particular regard to the context in which the incident occurred as well as to the way in which the situation developed. Its sole concern must be to evaluate whether, in the circumstances, the planning and control of the public-order operation show that the authorities took appropriate care to ensure that any risk to the life of Carlo Giuliani was minimised and that they were not negligent in their choice of action (see *Andronicou and Constantinou*, cited above, §§ 181-82).

103. In general terms, the Court considers that when a State agrees to host an international event entailing a very high level of risk, it must take the appropriate security measures and deploy every effort to ensure that order is maintained. Hence, it is incumbent upon it to prevent disturbances which could lead to violent incidents. If such incidents should nevertheless occur, the authorities must exercise care in responding to the violence, in order to minimise the risk of lethal force being used. At the same time, the State has a duty to ensure that the demonstrations organised in connection with the event pass off smoothly, while safeguarding, *inter alia*, the rights guaranteed by Articles 10 and 11 of the Convention.

104. In the instant case the Italian authorities were dealing with a G8 summit during which they had to ensure the safety of the Heads of State and accompanying officials, the inhabitants of Genoa and the thousands of demonstrators who were expected to turn up. As regards the planning and organisation of the event, the case file shows that the prefect of Genoa had put in place measures aimed at limiting access to the sensitive areas of the city in a bid to ensure the safety of the participants in the G8 summit and prevent possible attacks and violence. Furthermore, in view of the importance of the event, the size of the city and the very large number of demonstrators expected, considerable numbers of law-enforcement officers had been drafted in to Genoa a few days ahead of the summit. On the eve of 20 July 2001, the persons in charge of the security arrangements drew up a strategy for the following day in the knowledge that they were dealing with a large-scale operation and that they must attempt to prevent any disturbances on the part of the demonstrators.

105. The Court must seek to establish whether the death of Carlo Giuliani was directly related to possible shortcomings affecting the preparation and conduct of the operation.

106. The shortcomings identified by the applicants included: the communications system put in place, which did not enable members of the different law-enforcement agencies to communicate directly with one another; the failure to circulate adequately the service order for 20 July 2001, as a result of which the law-enforcement agencies attacked the *Tute bianche* march, not realising that it had been authorised; and the lack of coordination between the law-enforcement agencies on the ground.

107. As regards the conduct of the operation, it is not disputed that the *carabinieri* attacked the authorised *Tute bianche* march. The Court notes in that regard that the Genoa District Court, when called upon to examine this episode in detail during the “trial of the twenty-five”, in which an appeal is pending, held at first instance that the actions of the *carabinieri* with regard to the attack in question had been unlawful and arbitrary.

That being said, the Court is mindful of the fact that the attack on the *Tute bianche* march does not have a direct bearing on the events on Piazza Alimonda, which took place a few hours later. It notes that the Genoa District Court drew a clear distinction between the reaction of the demonstrators while the aforesaid arbitrary actions were occurring and the later situation in which demonstrators driven solely by a desire for revenge, and no longer by the need to defend themselves, engaged in acts of violence (see paragraphs 120-28 above).

108. With regard to the events on Piazza Alimonda, the Court observes that, within the space of a few minutes, the group of *carabinieri* led by police officer Lauro attacked a group of particularly aggressive demonstrators coming out of an adjacent street, and that the latter forced the law-enforcement agencies to withdraw rapidly. The vehicle in which M.P. was travelling had followed the charge and became blocked on Piazza Alimonda during the withdrawal manoeuvre. Some nearby police officers did not intervene to assist the vehicle's occupants, and the latter perceived themselves to be in grave danger, with the result that M.P. made use of his firearm.

A number of questions certainly need to be asked: whether M.P., who was in a particular state of mind triggered by a high level of stress and panic, would have taken such action if he had had the benefit of appropriate training and experience; whether better coordination between the law-enforcement agencies present at the scene might have enabled the attack on the jeep to be warded off without claiming any victims; lastly, and above all, whether the tragedy could have been prevented if care had been taken not to leave the jeep, which had no protective equipment, right in the middle of the clashes, particularly given the fact that there were injured persons on board who were still carrying weapons.

109. The answers to these questions are not provided either by the investigation conducted at national level or by the other evidence in the file. In these circumstances the Court, detached from the events in issue, must be cautious about revisiting the events with the wisdom of hindsight (see *Bubbins*, cited above, §§ 139 and 141, and *Andronicou and Constantinou*, cited above, § 171).

110. The Court does not lose sight of the fact that, unlike in some other cases (see *McCann* and *Andronicou*, both cited above), the operation by the law-enforcement agencies in the present case did not have a specific target, given that the risk of disturbances was unpredictable and depended on how the situation developed. Consequently, the operation was very broad-ranging and the situation was somewhat ill-defined.

It further notes that the events in issue took place at the end of a long day of public-order operations during which the law-enforcement agencies had been confronted with rapidly unfolding and dangerous situations and had been required to make crucial operational



decisions. The Court is therefore satisfied that the law-enforcement agencies were operating under enormous strain, a fact confirmed by M.P.'s mental state.

The Court considers that the charge ordered by police officer Lauro resulted from an operational decision which was justified and was linked to a perception of the risks based on the way in which the situation was developing. The events that took place on Piazza Alimonda could not therefore have been foreseen.

Finally, it should be borne in mind that the incident which led to the death of Carlo Giuliani was of relatively short duration.

111. In view of the foregoing, and given that no domestic investigation was conducted in this respect, a fact which it deplors (see paragraphs 245-55 below), the Court is unable to establish the existence of a direct and immediate link between the shortcomings that may have affected the preparation and conduct of the public-order operation and the death of Carlo Giuliani.

112. Finally, the Court must examine the applicants' allegation that, after Carlo Giuliani had fallen to the ground, the authorities had delayed summoning and organising assistance.

113. The case file shows (see paragraph 19 above) that at 5.23 p.m. the group of demonstrators who had previously been charged by the law-enforcement agencies had managed to push back the latter and were proceeding back up Via Caffa. At 5.27"25' p.m. a police officer present at the scene called the control room to request an ambulance for Carlo Giuliani (see paragraph 29 above). The fatal bullet was therefore fired during that interval. Furthermore, the applicants observed that Carlo Giuliani was shown in one picture holding the fire extinguisher in his hand at 5.27 p.m., and that he was struck by the fatal bullet at that precise moment (see paragraph 31 above). In the circumstances, the Court considers that the call for assistance made by the police officer at the scene cannot be said to have been made with undue delay.

114. The time at which the ambulance arrived at the scene is not indicated in the case file. However, bearing in mind that Carlo Giuliani died within a matter of minutes owing to the seriousness of the bullet wound (see paragraph 63 above), the Court sees no indication that the ambulance arrived with undue delay in the circumstances.

115. In the light of the foregoing, the Court considers that it has not been established that the Italian authorities failed in their duty to protect the life of Carlo Giuliani.

116. Accordingly, there has been no violation of the substantive aspect of Article 2 of the Convention in this regard.

#### **(c) Compliance with the procedural obligations arising out of Article 2 of the Convention**

117. The applicants pointed to a number of problems with the investigation. The Court does not consider it necessary to examine all the points raised given that, as it has reiterated above, any deficiency in the investigation which undermines its ability to establish the cause of death or the persons responsible will risk falling foul of the procedural obligation under Article 2 (see *Aktaş*, cited above, § 300).

118. The Court lays emphasis on the following aspects.

119. Firstly, it notes that an autopsy was performed the day after Carlo Giuliani's death by two doctors instructed by the public prosecutor's office. The doctors found that the victim had been struck by a single bullet which had killed him. Despite the fact that a total body scan had revealed the presence of a metal fragment lodged in the victim's skull, the two experts did not mention this fact in their report, nor did they remove the fragment in question. In his evidence at the "trial of the twenty-five", Mr Salvi said that he had in fact tried to remove the fragment. Moreover, the bullets fired by M.P. had not been found, nor is there anything to indicate that

attempts were made to find them. Therefore, it would have been important for the purposes of the ballistic analysis and for the reconstruction of events to analyse this metal fragment. As to the bullet's trajectory, the doctors indicated that it had travelled in a downward direction, from front to back and from right to left, and that it had been fired from a distance exceeding fifty centimetres. However, it was not explicitly stated whether the shot had been direct.

120. The Court therefore shares the doubts voiced by the public prosecutor (see paragraph 82 above) regarding the superficial nature of the information gathered during this examination. It also considers it regrettable that the short notice of only three hours given to the applicants ahead of the autopsy examination probably prevented them from sending a representative.

121. The autopsy examination that was carried out and the findings set out in the autopsy report cannot be said to have been capable of providing the starting point for an effective subsequent investigation, or of satisfying the minimum requirements of an investigation into a very clear case of homicide, as they left too many crucial questions unanswered. These shortcomings must be regarded as particularly serious given that the body was subsequently released to the applicants and authorisation was given for its cremation, thereby rendering it impossible to conduct any further analyses, in particular of the fragment of metal lodged in the body.

122. The Court considers it highly regrettable that the public prosecutor should have authorised the cremation of the body on 23 July 2001, well before the results of the autopsy examination were known, and despite the fact that on the previous day he had given the experts sixty days in which to submit their report. This is particularly so since he himself described the autopsy report as “superficial”. That the failure to preserve the body acted as a major obstacle to the investigation is, moreover, confirmed by the four experts appointed by the public prosecutor (see paragraph 71 above), who found that it hampered them in their reconstruction of the events, preventing them from determining the precise trajectory of the fatal shot (see paragraph 99 above).

123. Given the shortcomings in the forensic examination and the failure to preserve the body, it is not surprising that the judicial proceedings culminated in a decision not to prosecute. The Court concludes that the authorities did not conduct an adequate investigation into the circumstances of the death of Carlo Giuliani.

124. Secondly, the Court notes that the domestic investigation was confined to examining whether F.C. and M.P. should be held responsible. In the Court's view, such an approach cannot be considered to be compatible with the requirements of Article 2 since, as it pointed out earlier (see paragraph 206 above), the investigation must be, *inter alia*, thorough, impartial and rigorous and must encompass the circumstances surrounding the death.

At no point was any attempt made to examine the overall context and consider whether the authorities had planned and managed the public-order operation in such a way as to prevent incidents of the kind that caused the death of Carlo Giuliani. In particular, the investigation made no attempt to establish why M.P. – whom his superior officers had considered unfit to continue on duty owing to his physical and mental state (see paragraphs 47 and 54 above) – had not been taken straight to hospital, had been left in possession of a loaded pistol and had been placed in a jeep which had no protection and which was cut off from the contingent it had been following.

125. In the Court's view, the investigation should have examined these aspects at least of the organisation and management of the public-order operation, as it regards the fatal shot as being closely linked to the situation in which M.P. and F.C. found themselves. In other words,

the investigation was not adequate in that it did not seek to determine who had been responsible for that situation.

126. There has therefore been a violation of Article 2 of the Convention in its procedural aspect.

127. Having reached that conclusion, the Court does not deem it necessary to examine the other shortcomings in the investigation alleged by the applicants, in particular the lack of independence of the investigators and the experts.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

128. Under Article 3 of the Convention, the applicants alleged that the lack of immediate assistance after Carlo Giuliani had fallen to the ground and the jeep had driven over his body had contributed to his death and amounted to inhuman treatment.

129. Article 3 of the Convention provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

130. The Government maintained that this complaint was manifestly ill-founded, given that the autopsy report had found that the jeep's having driven over Carlo Giuliani's body had not entailed any serious consequences for him and given the rapid attempts to render assistance to the victim.

131. The applicants disputed this argument and referred to paragraphs 5 and 8 of the UN Principles referred to above.

132. The Court considers that it cannot be inferred from the law-enforcements officers' conduct that they had the intention to inflict pain or suffering on Carlo Giuliani (see *Makaratzis*, cited above, § 53). Having regard to the circumstances of the present case, the Court considers that the facts alleged fall to be examined under Article 2 of the Convention, as it has just done (see paragraphs 214-44 above).

133. Accordingly, it is not necessary to examine the case under Article 3 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

134. The applicants complained that they had not had the benefit of an investigation that conformed to the procedural requirements arising out of Articles 6 and 13 of the Convention.

...

135. Having regard to the circumstances of the present case and the reasoning which led the Court to find a violation of Article 2 of the Convention in its procedural aspect (see paragraph 254 above), the Court considers that it is not necessary to consider the case under Article 13.

## IV. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

136. The applicants criticised the Government's attitude during the proceedings before the Court and alleged that they had not cooperated sufficiently for the purposes of Article 38 of the Convention. ...

137. In the instant case, although the information provided by the Government does not deal exhaustively with the points listed above, the Court considers that the incomplete nature of that information has not prevented it from examining the case.

138. In the circumstances, it concludes that the respondent State has not failed to fulfil its obligations under Article 38 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

139. 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

140. The applicants requested the Court to award them an equitable amount in respect of the non-pecuniary damage they had sustained. They left the amount to the Court's discretion. They stated that the award would go to a human rights foundation which they planned to create in memory of Carlo Giuliani.

141. The Government submitted that no amount was due to the applicants as they had not quantified their just satisfaction claims.

142. Ruling on an equitable basis, the Court awards 15,000 euros (EUR) to Mr Giuliano Giuliani, EUR 15,000 to Mrs Adelaide Gaggio (married name Giuliani) and EUR 10,000 to Ms Elena Giuliani.

### B. Costs and expenses

143. The applicants requested the Court to make an award on an equitable basis in respect of the costs they had incurred in the Strasbourg proceedings. This too would go to the human rights foundation.

144. The Government submitted that no amount was due to the applicants as they had not quantified their claims for costs and expenses.

145. In the absence of the relevant supporting documents, the Court rejects the claim for reimbursement of the costs incurred in the proceedings before it.

### C. Default interest

146. 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 no violation of Article 2 of the Convention in its substantive aspect as regards the excessive use of force;
2. *Holds* by five votes to two that there has been no violation of Article 2 of the Convention in its substantive aspect as regards the positive obligation to protect life;

3. *Holds* by four votes to three that there has been a violation of Article 2 of the Convention in its procedural aspect;
4. *Holds* unanimously that it is not necessary to examine the case under Article 3 of the Convention;
5. *Holds* unanimously that it is not necessary to examine the case under Articles 6 and 13 of the Convention;
6. *Holds* unanimously that there has been no violation of Article 38 of the Convention;
7. *Holds* unanimously
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    - (i) to the applicants Giuliano Giuliani and Adelaide Gaggio:
      - EUR 15,000 (fifteen thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) to the applicant Elena Giuliani:
      - EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (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;
8. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and notified in writing on 25 August 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President

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

- (a) partly dissenting opinion of Judge Bratza joined by Judge Šikuta;
- (b) joint partly dissenting opinion of Judges Casadevall and Garlicki;
- (c) partly dissenting opinion of Judge Zagrebelsky.

N.B.  
T.L.E.