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

FIRST SECTION

CASE OF NACHOVA AND OTHERS v. BULGARIA

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

JUDGMENT

STRASBOURG

26 February 2004

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 Nachova and Others v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 4 September and 16 December 2003,

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

PROCEDURE

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

2. The applicants were represented by Ms N. Vidorova and Mr Y. Grozev, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs G. Samaras, of the Ministry of Justice.

3. The applicants alleged that their respective close relatives, Mr Kuncho Angelov and Mr Kiril Petkov, who were shot by military police trying to arrest them, were deprived of their lives in violation of Article 2 of the Convention, that the investigation into the events was ineffective and thus in breach of that provision and of Article 13 of the Convention and that the respondent State had failed in its obligation to protect life by law. They also alleged that the events complained of were the result of discriminatory attitudes towards persons of Roma origin and entailed a violation of Article 14 of the Convention.

4. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11). Following the former Fourth Section's decision of 22 March 2001 to join the applications (Rule 43 § 1) and the Court's decision of 1 November 2001 to change the composition of its Sections

(Rule 25 § 1), the present case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. The applications were declared partly admissible on 28 February 2002. The applicants and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the European Roma Rights Centre, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3)

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

7. All the applicants are Bulgarian nationals who describe themselves as being of Roma origin.

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

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

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

10. Early in 1996 Mr Angelov and Mr Petkov were arrested for repeated absences without leave. On 22 May 1996 Mr Angelov was sentenced to nine-months' imprisonment and Mr Petkov to five-month imprisonment. Both had previous convictions for theft.

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

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

13. At around twelve noon on 19 July 1996 the officer on duty in the Vratsa Military-Police Unit received an anonymous telephone message that Mr Angelov and Mr Petkov were hiding in the village of Lesura. On at least one of the previous occasions when he had been absent without leave, it was there that Mr Angelov had been found and arrested.

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

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

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

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

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

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

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

headed to the east side of the house. Sergeant S. remained with the car, together with the secretary who worked at the town hall and Mr T. M.

21. Sergeant N. later testified that, having noticed Mr Angelov and Mr Petkov escaping through the window and running towards a neighbour's yard, he had shouted: "Stop, military police!". He had pulled out his gun, but not fired any shots. The two men had carried on running. Sergeant N. had run out on to the street in an effort to intercept them by circumventing several houses. While running, he had heard Major G. shout: "Freeze, military police, freeze [or] I'll shoot!". It was then that the shooting had started.

22. Major G. stated in his testimony:

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

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

24. A neighbour, Mr Z., who lived opposite Mr Angelov's grandmother, also gave evidence. At about 1.00 or 1.30 p.m. he had seen a military jeep pull up in front of Ms Tonkova's house. Then he had heard somebody shout: "Don't run, I am using live cartridges". He had then heard shots. He had

looked into the next yard and seen Mr Angelov, whom he knew, and another man leap over the chain-link fence between Ms Tonkova's and another neighbour's yards. He had not seen the man who had been shouting as he was behind Ms Tonkova's house. Then he had seen Mr Angelov and Mr Petkov fall to the ground and the man who had shot them emerge, holding an automatic rifle. Mr Z. further stated:

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

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

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

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

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

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

30. Mr Angelov's grandmother, Ms Tonkova, gave the following version of the events: Her grandson and Mr Petkov had been in her house when they

had noticed a jeep approaching. She had gone outside and seen four men in uniform. They had all entered the yard, one of them had gone round the house and started shooting with an automatic rifle for a very long time. The other three men were also armed but had not fired any shots. She had been in the yard, pleading with the man who had been shooting to stop. However, he had walked towards the back of the house. Then she had heard shooting in the backyard. She had followed and then seen her grandson and Mr Petkov lying in the neighbours' yard with bullet wounds.

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

B. The investigation into the deaths

32. On 19 July 1996 all the officers involved made separate reports in connection with the deaths to the Vratsa Military-Police Unit. None of them was tested for alcohol.

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

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

35. Nine spent cartridge were retrieved. One cartridge was found in the street, in front of Ms Tonkova's house (apparently not far from where the jeep had stopped). Four cartridges were discovered in Ms Tonkova's yard, behind the house, close to the first chain-link fence separating her yard from the neighbour's yard. Three cartridges were found in the neighbour's (Mr M.M.'s) yard, close to the place where the bloodstains were found. Although the exact distance between those cartridges and the

bloodstains was not given, it appears from the other measurements on the sketch map to be between 5 and 10 metres. A ninth cartridge was found subsequently and handed in to the military police by Mr Angelov's uncle. There is no record of where it was found.

36. The bloodstains were a metre apart. They were marked on the sketch map as being slightly more than nine metres from the first chain-link fence. The distance between the bloodstains and the second fence that Mr Angelov and Mr Petkov were apparently trying to scale when they were shot was not indicated. Samples of the bloodstains were taken by the investigator.

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

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

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

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

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

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

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

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

42. A report by a forensic expert dated 29 August 1996 found an alcohol content of 0.55 per thousand in Mr Petkov's blood and 0.75 per thousand in Mr Angelov's blood (under Bulgarian law driving with alcohol content of more than 0.5 per thousand is an administrative offence).

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

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

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

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

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

48. When describing the victims' personal circumstances, including such matters as their family, education and previous convictions, in the decree, the prosecutor mentioned that they both originated from “minority families”, a euphemism mostly used to designate people from the Roma minority.

49. By an order of 11 June 1997 the prosecutor of the Armed Forces Prosecutor's Offices dismissed the applicants' subsequent appeal on the ground that Mr Angelov and Mr Petkov had provoked the shooting by trying to escape and that Major G. had taken the steps required by law in

such situations. Therefore, the use of arms had been lawful under Regulation 45 of the Military Police Regulations.

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

II. REPORTS OF INTERNATIONAL ORGANISATIONS ON ALLEGED DISCRIMINATION AGAINST ROMA

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

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

53. In its report of 2000 on Bulgaria, the European Commission against Racism and Intolerance (ECRI) stated, *inter alia*:

> "Of particular concern is the incidence of police discrimination and mistreatment of members of the Roma/Gypsy community. The Council of Europe's Committee for the Prevention of Torture (CPT) noted in March 1997 that 'criminal suspects deprived of their liberty by the police in Bulgaria run a significant risk of being ill-treated at the time of their apprehension and/or while in police custody, and ... on occasion resort may be had to severe ill-treatment/torture'... [T]he Human Rights Project documents in its Annual Report for 1998 numerous other cases of police misconduct towards members of the Roma/Gypsy community. It cites as the most common violations: use of excessive physical force during detention for the purposes of extorting evidence; unjustified use of firearms; home searches conducted without search warrants; destruction of private property; and threats to the personal security of individuals who had complained against the police to the competent authorities...
>
> The European Roma Rights Centre reports that [criminal proceedings against perpetrators of violent acts] have been used in recent years to protect Roma rights, but that convictions are isolated compared to the scale of the problem. The Human Rights Project notes in its Annual Report for 1998 that the majority of complaints filed by this non-governmental organisation on behalf of Roma victims of police violence have not been followed up by the authorities.

In the present situation, victims seem unwilling to come forward with complaints, particularly when they are awaiting court sentences: there may be a perception that bringing complaints may actually worsen the situation of the victim before the courts. A lack of confidence on the part of victims in the possibility of redress may be compounded by some unwillingness on the part of the authorities to admit that problems of police misconduct do exist. A first step would therefore seem to be the need to acknowledge on a public level that problems exist in this area, and for police and political leaders to express their strong commitment to ensuring that any allegations of misbehaviour or criminal acts on the part of the police are promptly and stringently investigated and dealt with.

ECRI in its first report recommends that an independent body be set up – acting at central and local level – to investigate police, investigative and penitentiary practices for overt and covert racial discrimination and to ensure that any discrimination perpetrated be severely punished. ECRI would wish to reiterate this proposal. A specialised body to combat racism and discrimination, as advocated above, could also play an important role in this respect...

It is reported that Roma/Gypsies in Bulgarian prisons are also subject to physical abuse by prison guards and other officials: to date; no prosecution of abuses by prison officials has been initiated...

ECRI is concerned at the persistence of widespread discrimination against members of the Roma/Gypsy community in Bulgaria... It is reported that local authorities are sometimes involved in the illegal administration of justice as regards Roma/Gypsy communities, often with the silent collusion of local police. ECRI stresses that such forms of discrimination practised by local authorities should not be tolerated by the national authorities. In this respect, it is particularly important to ensure that national policies and legislation against discrimination are understood and applied at a local level. Training for officials working within local administrations, to raise awareness and combat prejudices, would also be most desirable.

ECRI welcomes signs that the Bulgarian government is willing to address such issues of discrimination. This attitude has been demonstrated by the adoption in April 1999 of the 'Framework Programme for Equal Integration of Roma in Bulgarian Society'. This programme was prepared on the initiative of Roma/Gypsy organisations and in discussion with representatives of all the Roma associations in Bulgaria... This document contains strategies for achieving equality for Roma in Bulgaria, and poses as the main issue the discriminatory treatment of Roma."

54. The applicants in their submissions referred also to the findings of specialised bodies of the United Nations (see paragraph 153 below).

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

III. RELEVANT DOMESTIC LAW AND PRACTICE

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

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

> "(1) Military police officers may use firearms ... under the following circumstances:...
>
> 2. to arrest a person serving in the army who has committed or is about to commit a publicly prosecuted offence and who does not surrender after being warned ...
>
> (2) The use of force shall be preceded by an oral warning and a shot fired in the air ...
>
> (3) When using firearms military police officers shall be under a duty, as far as possible, to protect the life of the person against whom they use force and to assist the wounded...
>
> (5) Whenever firearms have been used, a report shall be prepared describing the circumstances which provoked their use; [the report] shall be transmitted to the superiors of the officer concerned."

57. In December 2000 Regulation 45 was superseded by Decree No. 7 of 6 December 2000 on the use of force and firearms by military police (published in State Gazette No. 102/2000, amended in 2001). According to section 21 of the Decree, firearms may be used, *inter alia*, for the arrest of any person who has committed an offence of the category of publicly prosecuted offences. The vast majority of offences under the Criminal Code fall within that category, except offences prosecuted privately, such as light bodily injury and certain types of criminal libel. Nevertheless, according to sections 2, 4(1) and 21 of the Decree, the nature of the offence committed by the person against whom the force and firearms are used and the character of the offender are factors to be taken into consideration. Also, force and firearms may only be used in the last resort, where the aims pursued cannot be achieved by any other means.

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

58. Article 12 of the Criminal Code regulates the degree of force that may be used in self-defence. It requires essentially that any action in self-defence or defence of another be proportionate to the nature and intensity of the attack and reasonable in the circumstances. The provision does not regulate, however, cases where force has been used by a police officer or another person in order to effect an arrest, without there being an attack on the arresting officer or any third party. Until 1997 no other provision

regulated that matter. It appears, nevertheless, that on some occasions the courts applied Article 12 by analogy.

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

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

> "... [Causing harm to an offender in order to effect an arrest] is an act of last resort. If the offender does not attempt to escape or ... does attempt to escape, but to a known hiding-place, causing harm will not be justified...
>
> The harm caused must be proportionate to the seriousness ... of the offence. If the offender has committed an offence representing insignificant danger to the public, his life and health cannot be put at risk. Putting his life or health at risk could be justified, however, where a person is in hiding after committing a serious offence (such as murder, rape or robbery).
>
> The means used to effect the arrest (and the harm caused) must be reasonable in the circumstances. This is the most important condition for lawfulness...
>
> Where the harm caused exceeds what was necessary ..., that is to say, where it does not correspond to the seriousness of the offence and the circumstances obtaining during the arrest, ... the person inflicting it will be liable to prosecution..."

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

3. Code of Criminal Procedure

62. Article 192 provides that proceedings concerning publicly prosecuted crimes may only be initiated by a prosecutor or an investigator, acting on a complaint or *ex officio*. Under Article 237 § 6, as worded until 1 January 2000, the victim had a right of appeal to a higher ranking

prosecutor against a decision not to proceed with pending criminal proceedings. The victim had no other means of challenging a refusal to prosecute.

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

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

4. The new Protection against Discrimination Act

65. The Protection against Discrimination Act was passed in September 2003 and entered into force on 1 January 2004. It is a comprehensive piece of legislation designed to create machinery providing effective protection against unlawful discrimination. It applies mainly in the spheres of labour relations, State administration and the provision of services.

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

IV. RELEVANT INTERNATIONAL AND COMPARATIVE LAW

A. United Nations principles

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

68. Paragraph 9 provides:

> "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these

objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

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

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

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

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

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

Paragraph 17 states:

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

B. Jurisprudence of the UN Committee against Torture (CAT)

72. In its decision of 21 November 2002, the Committee, examining Complaint No. 161/2000 submitted by Hajrizi Dzemajl and others against Yugoslavia, found that a mob action by non-Roma residents of Danilovgrad, Montenegro, who destroyed a Roma settlement on 14 April 1995 in the presence of police officers, was "committed with a significant level of racial motivation". That fact aggravated the violation of Article 16 § 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment found in the case.

73. In assessing the evidence, the CAT noted that it had not received a written explanation from the State party concerned and decided to rely on "the detailed submissions made by the complainants".

C. European Union Directives on discrimination

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

> "1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
>
> 2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.
>
> 3. Paragraph 1 shall not apply to criminal procedures.
>
> ...
>
> 5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case."

75. The preambles to the directives state, *inter alia*, that national rules for the appreciation of the facts may provide for indirect discrimination to be established by any means including on the basis of statistical evidence.

D. Article 132-76 of the French Penal Code

76. This provision, which was introduced in February 2003, provides:

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

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

77. The Government submitted that the application should be declared inadmissible as the applicants had not exhausted all domestic remedies, since they had not made a request for further evidence to be obtained at the conclusion of the investigation and had not brought a civil action in damages.

78. The Court notes that this objection was not raised at the admissibility stage of the proceedings (see the admissibility decision in the present case). The Government are, therefore, estopped from raising it now.

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

79. The applicants complained that Mr Angelov and Mr Petkov were deprived of their life in violation of Article 2 § 2 of the Convention. They had died – so it was alleged – as a result of deficient law and practice which permitted the use of lethal force without absolute necessity and thus violated Article 2 § 1 *per se*. The applicants also complained that the authorities had failed to conduct an effective investigation into the deaths.

80. Article 2 of the Convention, in so far as it is relevant, 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

1. The applicants

81. The applicants alleged that the law as in force at the relevant time – which consisted of regulations issued by the Ministry of Defence – did not explicitly require any kind of necessity for the use of lethal force by military police, let alone "absolute necessity" or any similar standard. Firearms could be used to arrest even a petty offender who had never committed a violent crime and was not armed or otherwise dangerous. All that the regulations required was the fulfilment of formal, "procedural" conditions for the use of firearms, such as giving a warning. The applicants submitted that the relevant law therefore fell short of the requirements of Article 2 of the Convention and constituted in itself a violation of the State's positive obligation to protect life. In their view, that violation was a continuing one as the new provisions enacted in 2000 also fell short of the required standard. The applicants referred to a number of incidents between 1992 and 2002 in which firearms had allegedly been resorted to unnecessarily.

82. In respect of the concrete events in the present case, the applicants maintained that the use of lethal force against Mr Angelov and Mr Petkov had not been strictly necessary. The operation had not been planned and prepared with due regard to the victims' right to life. In particular, the plan had been far from thorough or complete and allowed the officers to use any means or methods the circumstances dictated, there being no instructions on what to do if the two men attempted to escape or in what circumstances firearms should be used. Further, the force used by Major G. had been excessive: it was obviously unnecessary to fire an automatic rifle at two unarmed, non-violent men. There had been other means available to effect the arrest. Moreover, there was evidence that Major G. had fired his rifle with the intention of hitting the two men, one of whom was wounded in the chest. The fact that the two men had allowed Major G. to approach them demonstrated that they had been hesitating about whether or not to surrender. Also, both men had been shot, although injuring one would have sufficed to dissuade the other from escaping.

83. As to the effectiveness of the investigation, the applicants submitted that the question whether or not lethal force had been "absolutely necessary" had never been examined, since the relevant regulations did not

lay down any such requirement. Furthermore, no investigation had been carried out into the planning of the operation or the alternative means that could have been used to arrest Mr Angelov and Mr Petkov.

84. In the applicants' view, the investigation had been ineffective even judged by the allegedly low standards of Regulation 45. In particular, the charges against Major G. had been dropped even though he had clearly violated military-police regulations, there being evidence – such as the fact that Mr Petkov had been wounded in the chest – to suggest that the men might have been trying to surrender when they were shot, and evidence that Major G. had used an automatic rifle, thus substantially reducing his ability to take precise aim, in breach of his duty to "protect, as far as possible, the life of any person" against whom he used a firearm. As a whole, the prosecutors and the investigators had relied heavily on the submissions of Major G. and other officers, despite obvious inconsistencies. In particular, no attention had been paid to the contradiction between Major G.'s statement that he had shot the victims while they were running away and the fact that Mr Petkov had been wounded in the chest.

85. The applicants also stated that the investigation report did not contain a description of the area or of the gradient of the slope on which Ms Tonkova's yard was situated (which might have permitted an assessment of whether alternatives to lethal force had been available). The investigator had also failed to perform gunpowder tests on the victims' clothes, notwithstanding the lack of reliable evidence regarding the range from which the shots had been fired and the presence of three spent cartridges in the yard of the neighbour where had been shot. In the applicants' view, the reported location of those three cartridges was irreconcilable with Major G.'s assertion that he had fired from a position in Ms Tonkova's yard. In particular, an automatic gun of the type used by Major G. would normally eject spent cartridges at a distance of three or four metres. Therefore, the fact that spent cartridges had been found in Mr M.M.'s yard allegedly demonstrated that they had been fired from there. The applicants also stated that evidence from the scene of the incident had not been properly preserved and that Major G.'s blood-alcohol level had not been tested, despite that being standard investigation procedure.

2. The Government

86. The Government stated that the law applicable at the time of the deaths of Mr Angelov and Mr Petkov was in conformity with Article 2 of the Convention. Although Regulation 45 did not expressly mention that force must be "absolutely necessary", that requirement was inherent in its paragraph 3 which stated that "[w]hen using firearms military police officers shall be under a duty, as far as possible, to protect the life of the person against whom they use force and to assist the wounded...": The

Government also submitted that the new regulations adopted in December 2000 fully complied with all relevant requirements.

87. As regards the actual events in the present case, the Government maintained that the urgency of the police operation had made it impossible to plan it in greater detail. In particular, there had been no time to study from a distance the area around the house, as it was probable that someone might inform the fugitives of the police's arrival. The operation itself had taken less than a minute and the police officers had acted in accordance with the circumstances. Mr Angelov and Mr Petkov had persisted in their effort to escape despite several warnings. Major G. had fired at them only because they had been in the process of climbing over a second fence: had they succeeded, Major G. would have lost them from sight as the terrain dipped at that point. When firing, Major G. had aimed at the victims' legs but owing to the gradient and their movements the bullets had hit vital organs. In the Government's submission, the fact that Mr Petkov had been shot in the chest did not necessarily mean that he had turned to surrender: another possible explanation was that he had been in the process of jumping over the fence. Furthermore, it was noteworthy that each of the victims was injured by one bullet only despite the fact that an automatic rifle was used. That allegedly demonstrated that Major G. had exercised care.

88. The Government stated that there would have been no fatal outcome but for the reckless behaviour of Mr Angelov and Mr Petkov. In particular, the evidence showed that they were under the influence of alcohol.

89. Turning to the complaints concerning the effectiveness of the investigation, the Government stated that all necessary investigative steps had been taken rapidly. All the witnesses had been heard, expert reports had been ordered and the work completed within a few months. The conclusions of the investigator and prosecutors were duly reasoned: they found that Major G.'s use of his firearm had been in compliance with the law, as Mr Angelov and Mr Petkov had committed a publicly prosecuted offence, received numerous warnings – including shots fired in the air – to stop and surrender and Major G. had tried to aim at their legs when the two men were about to escape from his sight.

90. The Government admitted that Major G. had not been tested for alcohol but stated that there was no legal requirement for him to be tested and there had been no particular reason to suspect that he had consumed alcohol. Also, analysing the victims' clothes for powder traces had been unnecessary as there had been sufficient evidence to demonstrate that Major G. had fired from a distance.

91. Finally, the Government stressed that the applicants had had a full opportunity to take part in the investigation and their requests for the examination of witnesses had been granted.

B. The Court's assessment

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

(a) General principles

92. 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, to which in peacetime no derogation is permitted under Article 15. Together with Article 3, it also 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 so as to make its safeguards practical and effective.

93. Article 2 covers not only intentional killing but also the 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). 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. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims.

94. 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.

95. In particular, it is necessary to examine whether the operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force. The authorities must take appropriate care to ensure that any risk to life is minimised. The Court must also examine whether the authorities were not negligent in their choice of action (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-50 and p. 57, § 194, *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, pp. 2097-98, § 171, p. 2102, § 181, p. 2104, § 186, p. 2107, § 192 and p. 2108, § 193 and *Hugh Jordan v. the United Kingdom*, no. 24746/95, ECHR 2001-III).

(b) Application of those principles to the facts of the present case

96. It is undisputed that Mr Angelov and Mr Petkov had committed offences and were shot and fatally wounded in an operation to effect their lawful arrest.

97. It follows that the complaints must be examined under Article 2 § 2 (b) of the Convention.

(i) Surrounding circumstances

98. Mr Angelov and Mr Petkov, who were serving sentences for being absent without leave from compulsory military service, had escaped from detention. Both had served in the Construction Force, a special army institution in which conscripts discharged their duties as construction workers on non-military sites.

99. Furthermore, Mr Angelov and Mr Petkov were serving short sentences for non-violent offences. They had escaped without using violence, simply by leaving their place of work, which was outside the detention facility. Neither man was armed or represented a danger to the arresting officers or third parties. While they had previous convictions for theft and had repeatedly been absent without leave, they had no record of violence (see paragraphs 9-11 above).

100. It follows that their escape did not entail any particular risk of irreversible harm.

101. Further, the behaviour of Mr Angelov and Mr Petkov must have appeared to the authorities as predictable, since, following a previous escape Mr Angelov had been found at the same address in Lesura (see paragraphs 13 and 19 above).

(ii) The actions of the arresting officers

102. The evidence shows that the arresting officers were fully aware that Mr Angelov and Mr Petkov were not armed or dangerous. Firstly, the officers knew that they were detainees and conscripts in the Construction Force who had escaped from their place of work. Furthermore, at least two of the officers knew one or both of the men from a previous arrest. Nothing in the information available to the officers could reasonably make them fear violence on the part of Mr Angelov and Mr Petkov. In any event, on encountering the men in the village of Lesura, the officers, or at least Major G., observed that they were unarmed and not showing any signs of threatening behaviour (see paragraphs 9-14 and 19-27 above). However, Major G. disregarded the above circumstances and, in an attempt to prevent their escape, fired at them, fatally wounding them.

103. The Court considers that, balanced against the imperative need to preserve life as a fundamental value, the legitimate aim of effecting a lawful arrest cannot justify putting human life at risk where the fugitive has

committed a non-violent offence and does not pose a threat to anyone. Any other approach would be incompatible with the basic principles of democratic societies, as universally accepted today (see the relevant provisions of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in paragraphs 67-70 above and, *mutatis mutandis*, the Court's reasoning in *Öcalan v. Turkey*, no. 46221/99, § 196, 12 March 2003).

104. It is only in subparagraphs (a) and (c) of Article 2 § 2 that violence (in the form of unlawful violence, a riot or an insurrection) is expressly made a condition that will justify the use of potentially lethal force. However, the principle of strict proportionality as enshrined in Article 2 of the Convention cannot be read in dissociation from the purpose of that provision: the protection of the right to life. This implies that a similar condition applies to cases under subparagraph (b).

105. The use of potentially lethal firearms inevitably exposes human life to danger even when there are rules designed to minimise the risks. Accordingly, the Court considers that it can in no circumstances be "absolutely necessary" within the meaning of Article 2 § 2 of the Convention to use such firearms to arrest a person suspected of a non-violent offence who is known not to pose a threat to life or limb, even where a failure to do so may result in the opportunity to arrest the fugitive being lost (see the following cases in which the use of firearms was found to have been justified – all of them concerned situations where the State agents involved acted in the belief that there was a threat of violence or in order to apprehend fugitives suspected of violent offences: *W. v. Germany*, no. 11257/84, Commission decision of 6 October 1986, Decisions and Reports (DR) 49, p. 213; *Kelly v. the United Kingdom*, no. 17579/90, Commission decision of 13 January 1993, DR 74, p. 139; *M.D. v. Turkey*, no. 28518/95, Commission decision of 30 June 1997, unreported, *Laginha de Matos v. Portugal*, no. 28955/95, Commission decision of 7 April 1997, DR 89, p. 98; *Andronicou and Constantinou*, cited above and *Caraher v. the United Kingdom* (dec.), no. 24520/94, ECHR 2000-I; see also the Court's approach in *McCann and Others*, cited above, pp. 45-46, §§ 146-50 and pp. 56-62, §§ 192-214; see also the Court's condemnation of the use of firearms against unarmed and non-violent persons trying to leave the former German Democratic Republic in *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, §§ 87, 96 and 97, ECHR 2001-II).

106. It follows that in the circumstances that obtained in the present case (see paragraphs 98-100 above) the use of firearms could not possibly have been "absolutely necessary" and was prohibited by Article 2 of the Convention.

107. Furthermore, the Court finds that unnecessarily excessive force was used in the present case. In particular:

(i) Major G. decided to open fire at a moment when another officer was trying to head the fugitives off and other options for effecting the arrest were open: some of the officers knew the village of Lesura, Mr Angelov had already been arrested there on a previous occasion, he was known to some of the officers, the officers had a jeep and the operation took place in a small village in the middle of the day;

(ii) Major G. was also carrying a handgun but chose to use his automatic rifle and switched it to automatic mode. His assertion that he took care to aim at the victims' feet is incompatible with the manner in which he fired: he could not possibly have aimed with any reasonable degree of precision using automatic fire (see paragraphs 13, 14, 16 and 18-24 above);

(iii) Since spent cartridges were found in Mr M.M.'s yard, only a few metres from the spot where Mr Angelov and Mr Petkov fell, it is unlikely that Major G. fired from a distance of about 20 metres, as he claimed (see paragraphs 22 and 35 above);

(iv) Mr Petkov was wounded in the chest, which may suggest that he had turned to surrender at the last minute (see paragraph 37 above). The Government's explanation was that Mr Petkov must have been in the process of jumping over the fence and had therefore turned to face Major G. for a moment (see paragraph 86 above). That suggestion, which was not investigated but was formulated for the first time in the proceedings before the Court, appears implausible given that after the shooting both victims fell in front of the fence they had allegedly been trying to scale and not on the other side. The Government's allegation that Mr Angelov and Mr Petkov had acted recklessly as they were probably drunk is groundless, since the alcohol content found in their blood was very low (see paragraphs 23, 42 and 46-50 above).

108. On the basis of the above, the applicants alleged that there had been an intention to kill on the part of Major G. They also claimed that prejudice against Roma had been a decisive factor in the deaths of Mr Angelov and Mr Petkov and made detailed submissions in that respect, relying on Article 14 of the Convention (see paragraphs 153-155 below).

109. It is not the Court's task to determine whether Major G. had an intention to kill, as it does not fulfil the functions of a criminal court as regards the allocation of degree of individual fault (see *Gül v. Turkey*, no. 22676/93, § 80, 14 December 2000). The allegation that the use of excessive force revealed a racial motive on the part of Major G. is to be assessed in the light of the applicant's complaint under Article 14 of the Convention.

(iii) Planning and control of the operation

110. The Court considers that, in keeping with the State's obligation to protect life, a crucial element in the planning of an arrest operation that may potentially result in the use of firearms must be the analysis of all the available information about the surrounding circumstances, including, as an absolute minimum, the nature of the offence committed by the person to be arrested and the degree of danger – if any – posed by that person. The question whether and in what circumstances, recourse to firearms should be envisaged if the person to be arrested tries to escape must be decided on the basis of clear legal rules, adequate training and in the light of that information (see *McCann and Others*, cited above, pp. 59-62, §§ 202-14, analysing in detail whether or not all circumstances relevant to the use of force were taken into account in the planning of the operation).

111. In the present case the Government essentially maintained that the rules governing the use of force were laid down by law and, hence, known to the arresting officers.

112. The Court observes that the relevant regulations on the use of firearms by military police were not published, did not make use of firearms dependent on an assessment of the surrounding circumstances, and, most importantly, did not require an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed. The regulations permitted use of firearms for the arrest of every petty offender (see paragraph 56 above). Although the Supreme Court has stated that a proportionality requirement existed under criminal law as interpreted by legal commentators, the matter was not clearly regulated (see paragraphs 58-61 above) and the Supreme Court's interpretation was apparently not applied in practice, as evidenced by the conclusions of the investigator and the prosecutors in the present case (see paragraphs 46-50 above). The Government did not submit any information on the military-police officers' training.

113. Further, although they took the time necessary to discuss a plan, the officers never touched upon the question whether Mr Angelov and Mr Petkov posed a threat. Colonel D. found it sufficient to inform the arresting officers that the fugitives were "criminally active" – a euphemism which conveyed no information on the nature of the offences they had committed – and at the same time gave instructions that the arresting officers should carry automatic rifles and handguns, "in accordance with the rules", and that all means should be used to effect the arrest. The scene was thus set for an unjustified use of firearms. The summary plan outlined by Major G. on the way to Lesura did no more than assign the positions the officers were to take up in order to encircle the house. The risk of two men trying to escape, the strategies for pursuing them and the central question whether use of firearms would be justified were never discussed (see paragraphs 14-17 above).

114. The Court finds that as regards the planning and control of the arrest operation the authorities failed to comply with their obligation to minimise the risk of loss of life, as the nature of the offence committed by Mr Angelov and Mr Petkov and the fact that they did not pose a danger were not taken into account and the circumstances in which recourse to firearms should be envisaged - if at all - were not discussed apparently owing to deficient rules and lack of adequate training.

(iv) The Court's conclusion as regards the deaths of Mr Angelov and Mr Petkov

115. The Court thus finds that respondent State is responsible for deprivation of life in violation of Article 2 of the Convention, as firearms were used to arrest persons who were suspected of non-violent offences, were not armed and did not pose any threat to the arresting officers or others. The violation of Article 2 is further aggravated by the fact that excessive firepower was used. The respondent State is also responsible for the failure to plan and control the operation for the arrest of Mr Angelov and Mr Petkov in a manner compatible with Article 2 of the Convention.

2. The effectiveness of the investigation

(a) General principles

116. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The investigation must be, *inter alia*, thorough, impartial and careful (see *McCann and Others,* cited above, p. 49, §§ 161-63; *Kaya v. Turkey,* judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105 and *Çakici v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV).

117. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII). The investigation must be capable of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of the required effectiveness standard (see *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV).

118. Also, for an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, p. 1733, §§ 81-82 and *Öğur v. Turkey* [GC], no. 21954/93, §§ 91-92, ECHR 1999-III). This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Ergı v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, pp. 1778-79, §§ 83-84).

119. 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, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts (see *McKerr v. the United Kingdom*, no. 28883/95, §§ 111-15, ECHR 2001-III).

(b) Application of those principles to the present case

120. The applicants relied on two groups of arguments. They stated that there had been omissions in the collection of evidence and inconsistencies in its assessment and that the investigation's approach had been flawed as the "absolutely necessary" standard for the use of lethal force had not been applied.

(i) Alleged defective approach in that the "absolutely necessary" standard was not applied

121. The Court reiterates that while it is for the Contracting Parties to choose the means necessary to give full effect to the rights protected by the Convention, the required result is the effective enjoyment thereof. With respect to the right to life, the authorities' duty to secure its effective protection will not be discharged unless the investigation in cases of death implicating agents of the State applies standards comparable to those required by Article 2 of the Convention.

122. In the present case, the authorities did not bring charges as they considered that the relevant regulations on the use of force had been complied with. That conclusion was based essentially on the findings that: (i) Mr Angelov and Mr Petkov were fugitives who had to be arrested; (ii) Major G. had given all required warnings but the two men had continued to make their escape; (iii) Major G. would probably have lost sight of them had he not fired; and (iv) Major G. had aimed at their feet, thus trying to avoid fatal injury (see paragraphs 46-50 above).

123. The Court has already found above that some of these findings are questionable (see paragraph 107 above).

124. Even if they are accepted, however, they cannot be seen as grounds for concluding that the force used against Mr Angelov and Mr Petkov was "no more than absolutely necessary".

125. In order to assess whether or not the force used was "absolutely necessary", it was indispensable to have regard to the fact that Mr Angelov and Mr Petkov did not pose any threat to the arresting officers or third parties and had committed non-violent offences. On that basis alone, the authorities should have concluded that the use of firearms was not justified.

126. Furthermore, it was necessary to investigate the planning of the operation and its control, including the question whether the commanders had acted adequately so as to minimise the risk of loss of life.

127. In the present case, none of the above was seen by the authorities as being relevant to the question whether or not the requirements of domestic law on the use of force had been complied with (see paragraphs 46-50 above).

128. The Court thus considers that the investigation into the deaths of Mr Angelov and Mr Petkov was flawed in that it did not apply a standard comparable to the "no more than absolutely necessary" standard required by Article 2 § 2 of the Convention.

(ii) The collection and assessment of evidence

129. The Court notes that all the witnesses were heard, including those called by the applicants. Autopsies were performed and a number of expert reports were commissioned (see paragraphs 37-45 above).

130. On that basis, and noting that the applicants had not requested the collection of other evidence despite having been given every opportunity to do so, the Government considered that all possible investigative steps had been undertaken.

131. The Court considers that the State's obligation under Article 2 § 1 of the Convention to carry out an effective investigation arises independently of the position taken by the victim's relatives. The fact that there has been no request for particular lines of inquiry to be pursued or items of evidence obtained cannot relieve the authorities of their duty to take all possible steps to establish the truth and ensure accountability for deaths caused by agents of the State. Furthermore, an investigation will not be effective unless all the evidence is properly analysed and the conclusions are consistent and reasoned.

132. The Court notes that important initial steps, such as preserving evidence at the scene and taking all relevant measurements, were neglected (see paragraphs 32-36 above).

133. Further, the sketch map relied upon by the authorities was insufficiently detailed, as it did not indicate the characteristics of the terrain and only covered a limited area. Not all relevant measurements were noted and no reconstruction of the events was staged.

134. However, the information that could have been obtained through a reconstruction of the events and detailed descriptions was crucial, in particular, in order to establish whether Major G. had committed a criminal offence. It would have enabled the investigators to check the arresting officers' accounts and to form an opinion on, *inter alia*, the exact position from which Major G. had fired and the possible explanations for the fact that Mr Petkov was shot in the chest. The authorities at no stage sought to collect evidence on these issues (see paragraphs 32-50 above).

135. It is further highly significant that the investigator and the prosecutors failed to comment on a number of facts which appeared to contradict Major G.'s statements. In particular, there was no attempt to draw conclusions from the location of the spent cartridges or the fact that Mr Petkov was hit in the chest. Without any proper explanation, the authorities merely accepted Major G.'s statements (see paragraphs 46-50 above).

136. The Court thus finds that the investigation was characterised by a number of serious and unexplained omissions. It ended with decisions which contained inconsistencies and conclusions unsupported by a careful analysis of the facts.

137. The Court has held that it regards as particularly serious cases where indispensable and obvious investigative steps that could have elucidated acts of deprivation of life by State agents were not taken and the respondent Government failed to provide a plausible explanation about the reasons why that was not done (*Velikova v. Bulgaria*, no. 41488/98, § 82, ECHR 2000-VI).

138. In the present case, the investigator and prosecutors at all levels ignored certain facts, failed to collect all the evidence that could have clarified the sequence of events and omitted reference in their decisions to troubling facts. As a result, the killing of Mr Angelov and Mr Petkov was labelled lawful on dubious grounds and the police officers involved and their superiors were cleared of potential charges and spared criticism despite there being obvious grounds for prosecuting at least one of them.

139. The Court considers that such conduct on the part of the authorities – which has already been remarked on by the Court in previous cases against Bulgaria (see *Velikova* and *Anguelova*, cited above) – is a matter of particular concern, as it casts serious doubts on the objectivity and impartiality of the investigators and prosecutors involved.

(iii) The Court's conclusion on the effectiveness of the investigation

140. The Court finds that the investigation in the present case and the conclusions of the prosecutors were characterised by serious unexplained omissions and inconsistencies, and that the approach was flawed.

141. There has been, therefore, a violation of the respondent State's obligation under Article 2 § 1 of the Convention to investigate deprivations of life effectively.

3. Alleged violation of the obligation to protect life by law

142. In the applicants' view, the domestic law on the use of potentially lethal force by military police was deficient, even after the entry into force of the new regulations in 2000. On that basis they claimed that there had been a failure by the respondent State to abide by its general obligation to protect life by law. The Government disputed that allegation.

143. In the present case, the Court has already found, in the context of the applicants' complaints concerning the deaths of Mr Angelov and Mr Petkov and the investigation that followed, that the relevant regulations and practice revealed flaws in that the "absolutely necessary" standard under Article 2 of the Convention was not applied. The Court's ruling above provides sufficient clarification about the meaning of that standard in general and, more particularly, about the ensuing requirements that States must enshrine in legislation and implement in practice (see paragraphs 98-115 above). In these circumstances, the Court finds that it is not necessary to examine separately the complaint that there has been a violation of the State's general obligation to protect life by law.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

144. Article 13 of the Convention provides:

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

145. The parties referred to their submissions on the effectiveness of the investigation from the standpoint of Article 2 of the Convention (see paragraphs 83-85 and 89-91 above). The Government added that since April 2001 prosecutors' decisions to terminate criminal proceedings are amenable to judicial review.

146. In view of its findings above (see paragraphs 115 and 141), the Court considers that no separate issue arises under Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

147. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

1. The applicants

148. The applicants alleged that prejudice and hostile attitudes towards persons of Roma origin had played a decisive role in the events leading up to the deaths of Mr Angelov and Mr Petkov and the fact that no meaningful investigation was carried out.

149. They submitted that popular prejudice against Roma in Bulgaria was widespread and had frequently manifested itself in acts of racially motivated violence, to which the authorities reacted by inadequate investigations that resulted in impunity. The applicants stated that the phenomenon had been documented by human-rights monitoring organisations and acknowledged by the Bulgarian Government. They referred to the Fourteenth Periodic Report of States parties (Addendum-Republic of Bulgaria) of 26 June 1996, issued by the United Nations Committee on the Elimination of Racial Discrimination; the Reports of 25 January and 24 December 1996 (E/CN.4/1996/4 and E/CN.4/1997/60) by Mr Bacre Waly Ndiaye, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Commissioned by the United Nations Commission on Human Rights; the Report of the European Committee for the Prevention of Torture of 6 March 1997; and reports of non-governmental organisations.

150. Analysing the events in the present case, the applicants referred to the fact that the victims' ethnic origin was known to the officers who tried to apprehend them. In their view, Major G. would not have fired an automatic rifle in a populated area had he not been in the Roma part of the village. His attitude towards the Roma community was confirmed by the offensive words he had used when addressing one of the neighbours, Mr M.M. In the applicants' view based on their personal experience with law-enforcement and investigation authorities in Bulgaria, the victims' ethnic origin had been a decisive factor in the events.

2. The Government

151. The Government stated that proof beyond a reasonable doubt was required and that the allegation of discrimination was unsubstantiated and ill-founded.

3. Submissions of the European Roma Rights Centre

152. The European Roma Rights Centre, which was given leave to intervene pursuant to Rule 61 § 3 of the Rules of Court, submitted that there was a pressing need for the Court to re-evaluate its approach to interpreting Article 14 of the Convention in cases of alleged discrimination on the basis of race or ethnicity and, in particular, to revise its stand on the applicable standard and burden of proof in such cases.

153. The intervener relied on the following arguments:

(i) Nothing in the Convention or Rules of Court mandates a particular standard of proof – international courts set the most appropriate standards based on their experience;

(ii) The currently employed beyond-a-reasonable-doubt standard of proof, characterised by some as a 95% or more probability of fact, is more appropriate in criminal proceedings;

(iii) Applied in the context of discrimination complaints in cases of deprivation of life, torture, inhuman or degrading treatment, this standard of proof was impossible to meet for the applicant: short of documented instructions or specific admissions from a state official that someone's ethnicity was a factor in treatment violating Articles 2 or 3, it was difficult to imagine what kind of evidence would meet the beyond-a-reasonable-doubt standard;

(iv) Differential treatment on the basis of race and ethnicity was a singular evil and the protection against it was of special importance;

(v) There was a close relationship between the effective protection of substantive rights and the required allocation and standard of proof, hence, the pressing need for a change of practice;

(vi) International and comparative legislation and case-law with respect to discrimination claims, notably in the European Union and its member states, as well as in the United States, reflected a clear and growing trend of shifting the burden of proof to the perpetrator; although most of that legislation and case-law related to discrimination in the employment context, its rationale – stemming from the fact that the employer was in a stronger position than the employee – should be applied *a fortiori* in the more serious context of a discrimination claim on the part of an individual against the State;

(vii) The Strasbourg Court had not hesitated to shift the burden of proof when needed to secure adequate protection, as in the context of complaints under Articles 2 and 3 concerning death or injury in custody and complaints under Article 4 of Protocol No. 4, or to lighten it, through presumptions and inferences. It had also had resort to other innovative approaches, such as spelling out procedural obligations of the State, inherent in substantive provisions of the Convention. Similar measures were needed with respect to Article 14.

154. On the basis of the above, the intervener considered that where a claim was made that a person's race or ethnicity was a factor with respect to a violation of the Convention and it was supported by "convincing evidence", a standard seen by some as requiring 75% probability of fact, then the Court should impose an obligation on the respondent State to conduct an investigation capable of proving or disproving the discrimination complaint. The State's failure to do so would support an inference that Article 14 had been violated.

B. The Court's assessment

155. The right to life under Article 2 of the Convention and the prohibition of discrimination in general, and of racial and ethnic discrimination in particular, under Article 14 reflect basic values of the democratic societies that make up the Council of Europe. Acts motivated by ethnic hatred that lead to deprivation of life undermine the foundations of those societies and require particular vigilance and an effective response by the authorities.

156. As stated above (see paragraphs 116-19 above), States have a general obligation under Article 2 of the Convention to conduct an effective investigation in cases of deprivation of life.

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

158. The Court considers that when investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see,

mutatis mutandis, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). In order to maintain public confidence in their law enforcement machinery, contracting States must ensure that in the investigation of incidents involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing.

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

160. In the present case, certain facts which should have alerted the authorities and led them to be especially vigilant and investigate possible racist motives were not examined. No attention was paid by the investigation to the fact that Major G. had fired an automatic burst in a populated area – the Roma neighbourhood of Lesura – against two unarmed, non-violent fugitives and one of the victims had wounds to the chest, not the back (suggesting that he may have turned to surrender). The force used was in any event disproportionate and unnecessary. Indeed, as stated by one witness, immediately after the incident the other military police officers had started remonstrating with Major G. telling him that he should not have fired (see paragraphs 13, 14, 16, 18-24, 37, 42 and 46-50 above).

161. Furthermore, despite information that Major G. knew some of the villagers and the village where the shooting took place, no effort was made to investigate whether or not personal hostility might have played a role in the events (see paragraphs 14 and 24 above). Evidence by one of the witnesses, Mr M.M., a neighbour of the victims, that Major G. had shouted: "You damn Gypsies" while pointing a gun at him moments after the shooting, was disregarded, although it had not been contradicted (see paragraphs 31 and 46-50).

162. The Court considers that any evidence of racist verbal abuse by law enforcement agents during an operation involving the use of force against persons from an ethnic or other minority is highly relevant to the question whether or not unlawful, hatred-induced violence has taken place. Where such evidence comes to light in the investigation, it must be verified and – if confirmed – trigger a thorough examination of all the facts in order to uncover any possible racist motives. This was not done in the present case.

163. On the basis of the above the Court finds that the authorities failed in their duty under Article 14 of the Convention, taken together with

Article 2, to take all possible steps to establish whether or not discriminatory attitudes may have played a role in events.

164. The Court considers, furthermore, that the domestic authorities' failure to discharge that duty should have an incidence on its approach in the present case in the examination of the allegation of a "substantive" violation of Article 14.

165. In cases where it is alleged that a violent act was motivated by prejudice and hatred on the basis of ethnic origin – as here – an assessment is required of such subjective inner factors as intent and state of mind. However, the Court is particularly ill-equipped to play the role of a primary tribunal of fact for establishing intent or state of mind, which is better dealt with in the context of a criminal investigation. For these reasons, the duty of Contracting States under Articles 2 and 14 of the Convention, to investigate suspicious deaths and possible discriminatory motives takes on particular importance.

166. The Court has held on many occasions that the standard of proof it applies is that of "proof beyond reasonable doubt", but it has made it clear that that standard should not be interpreted as requiring such a high degree of probability as in criminal trials. It has ruled that proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. It has been the Court's practice to allow flexibility, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved. It has resisted suggestions to establish rigid evidentiary rules and has adhered to the principle of free assessment of all evidence. The Court has also acknowledged that its task is to rule on State responsibility under international law and not on guilt under criminal law. In its approach to questions of evidence and proof, it will have regard to its task under Article 19 of the Convention to "ensure the observance of the engagements undertaken by the High Contracting Parties", but without losing sight of the fact that it is a serious matter for a Contracting State to be found to be in breach of a fundamental right (see, among others, the following judgments: *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 64-65, § 161; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 24, § 32; *Tanli v. Turkey*, no. 26129/95, §§ 109-11, ECHR 2001-III; *Aktaş v. Turkey*, no. 24351/94, § 272, ECHR 2003-V (extracts)).

167. The Court has already recognised that specific approaches to the issue of proof may be needed in cases of alleged discriminatory acts of violence. In one such case, it held that it is not excluded that a measure may be considered as discriminatory on the basis of evidence of its impact (disproportionately prejudicial effects on a particular group), notwithstanding that the measure is not specifically aimed or directed at that group (see *Hugh Jordan*, cited above, § 154).

168. In addition, it has become an established view in Europe that effective implementation of the prohibition of discrimination requires the use of specific measures that take into account the difficulties involved in proving discrimination (see paragraphs 74-76 above concerning anti-discrimination legislation, including evidentiary rules tailored to deal with the specific difficulties inherent in proving discrimination). The Court has also emphasised the need for a broad interpretation of the protection provided by Article 14 of the Convention (see *Thlimmenos*, cited above, § 44). Member States have expressed their resolve to secure better protection against discrimination by opening for ratification Protocol No. 12 to the Convention.

169. In the light of the above, the Court considers that in cases where the authorities have not pursued lines of inquiry that were clearly warranted in their investigation into acts of violence by State agents and have disregarded evidence of possible discrimination, it may, when examining complaints under Article 14 of the Convention, draw negative inferences or shift the burden of proof to the respondent Government, as it has previously done in situations involving evidential difficulties (see *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V and *Čonka v. Belgium*, no. 51564/99, § 61, ECHR 2002-I).

170. In the present case, as the Court found above, the investigator and prosecutors at all levels ignored certain facts, failed to collect all the evidence that could have clarified the sequence of events and omitted reference in their decisions to troubling facts. As a result, the killing of Mr Angelov and Mr Petkov was labelled lawful on dubious grounds and the State agents involved were cleared of potential charges and spared criticism despite there being obvious grounds for prosecuting at least one of them. That conduct on the part of the authorities was seen by the Court as a matter of particular concern (see paragraphs 138 and 139 above). The authorities made no attempt to investigate whether discriminatory attitudes had played a role, despite having evidence before them that should have prompted them to carry out such an investigation (see paragraphs 160-164 above).

171. In these circumstances, the Court considers that the burden of proof shifts to the respondent Government, which must satisfy the Court, on the basis of additional evidence or a convincing explanation of the facts, that the events complained of were not shaped by any prohibited discriminatory attitude on the part of State agents.

172. The Government have not, however, offered any convincing explanation for the facts that may be seen as pointing to the shooting having been induced by discriminatory attitudes.

173. The Court considers it highly relevant that this is not the first case against Bulgaria in which it has found that law enforcement officers had subjected Roma to violence resulting in death. In its *Velikova* and

Anguelova judgments, the Court noted that the complaints of racial motivation in the killing of two Roma in police custody in separate incidents were based on "serious arguments" (see *Velikova*, cited above, § 94 and *Anguelova*, cited above, § 168).

174. Many other incidents of alleged police brutality against Roma in Bulgaria have been reported by the European Commission against Racism and Intolerance, the European Committee for the Prevention of Torture, United Nations bodies and non-governmental organisations. It appears that some of those reports have not been contested by the Bulgarian authorities. They have apparently acknowledged the need to adopt measures to combat discrimination against Roma and are working in that direction (see paragraphs 53-55, 65 and 66 above).

175. In sum, having regard to the inferences of possible discrimination by Major G., the failure of the authorities to pursue lines of inquiry – in particular into possible racist motives – that were clearly warranted in their investigation, the general context and the fact that this is not the first case against Bulgaria in which Roma have been alleged to be the victims of racial violence at the hands of State agents, and noting that no satisfactory explanation for the events has been provided by the respondent Government, the Court finds that there has been a violation of Article 14, taken together with Article 2, of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

176. 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

177. Ms Nachova, Mr Angelov's daughter, and Ms Hristova, his partner and the mother of Ms Nachova, claimed jointly 25,000 euros ("EUR") in respect of the death of Mr Angelov and the ensuing violations of the Convention. That amount included EUR 20,000 in non-pecuniary damage and EUR 5,000 for pecuniary loss.

178. Ms Rangelova and Mr Rangelov claimed jointly the same amounts in respect of the death of their son, Mr Kiril Petkov, and all violations of the Convention in the case.

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

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

181. The Government stated that the claims were excessive in view of the standard of living in Bulgaria.

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

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

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

B. Costs and expenses

185. The applicants also made a joint claim for EUR 3,740 for costs and expenses. These included lawyers' fees for 81 hours of work on the Strasbourg proceedings at the rate of EUR 40 per hour and EUR 500 for work on the domestic proceedings. The applicants submitted an agreement on fees and the lawyers' time-sheet.

186. The Government stated that the amounts were exorbitant if compared with the minimum wage in Bulgaria and that there was a tendency of turning the Convention mechanism into a profitable business for lawyers.

187. The Court considers that the claim is not excessive and awards it in full.

C. Default interest

188. 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 UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the deaths of Mr Angelov and Mr Petkov;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation;

4. *Holds* that it is not necessary to examine separately the complaint that there has been a violation of the State's general obligation under Article 2 of the Convention to protect the right to life by law;

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

6. *Holds* that there have been violations of the procedural and substantive aspects of Article 14, taken together with Article 2, of the Convention;

7. *Holds*:
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) jointly to Ms Nachova and Ms Hristova, EUR 25,000 (twenty-five thousand euros) in respect of pecuniary and non-pecuniary damage,
      (ii) jointly to Ms Rangelova and Mr Rangelov, EUR 22,000 (twenty-two thousand euros) in respect of pecuniary and non-pecuniary damage,
      (iii) jointly to all the applicants, EUR 3,740 (three thousand seven hundred and forty euros) in respect of costs and expenses, and
      (iv) any tax that may be chargeable on the above amounts;
   (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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Bonello is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE BONELLO

1. I welcome the fact that, in this case, the Court has, for the first time in its history, found a violation of the guarantee against racist discrimination contained in Article 14, together with Article 2, which protects the right to life. This judgement goes a long way to meet the concerns raised in my partly dissenting opinions in *Anguelova v. Bulgaria* (no. 38361/97, ECHR 2002-IV) and *Sevtap Veznedaroğlu v. Turkey* (no. 32357/96, 11 April 2000). I greet it as a giant step forward that does the Court proud.

2. It is manifest from the wording of the judgement that the Court, in finding a violation of Article 14 taken together with Article 2, recognised a violation of both the procedural guarantee (failure to conduct a proper investigation into the death of the two Romas, because they were Romas) and of the substantive guarantee (failure by the Government to establish to the satisfaction of the Court, non-racist motives in the killings).

3. I voted with the Court without reservation on that finding; but I believe that the logic and cogency of the judgement would have benefited had the procedural and the substantive aspects been segregated and determined separately, with distinct findings of violation (or otherwise).

4. That is precisely what the Court does when dealing with Article 2 and 3 issues, and I believe the same template should equally be used when the analysis goes to Article 14 taken together with Articles 2 or 3. In those cases the Court investigates the state's responsibility in the death or inhuman treatment etc, and, separately, whether the state has discharged its responsibility in investigating properly a death or an allegation of conduct contrary to Article 3 (vide, e.g., *Aktaş v. Turkey*, no. 24351/94, ECHR 2003-V (extracts), §§ 294, 295, 307, 308, 319, 320, 322 and 323).

5. Like the Court, I find that in this case the state's responsibility is engaged both by the fact that no proper investigations were carried out following the two deaths, as also by the failure of the state to satisfy the Court of the absence of racist concomitants in the killings. The Court ought, in my view, to have expressed this double judgement in separate findings of two violations: procedural and substantive.