

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT  
NACHOVA AND OTHERS v. BULGARIA**

The European Court of Human Rights has today delivered at a public hearing a Grand Chamber judgment<sup>1</sup> in the case of *Nachova and Others v. Bulgaria* (application no. 43577/98).

The Court held:

- unanimously that there had been **a violation of Article 2** (right to life) of the European Convention on Human Rights in respect of the deaths of Kuncho Angelov and Kiril Petkov;
- unanimously that there had been **a violation of Article 2** of the Convention in that the authorities had failed to conduct an effective investigation into the deaths of Mr Angelov and Mr Petkov;
- by eleven votes to six that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention taken in conjunction with Article 2 of the Convention in respect of the allegation that the events leading to the deaths of Mr Angelov and Mr Petkov constituted an act of racial violence.
- unanimously that there had been **a violation of Article 14** of the Convention taken in conjunction with Article 2 of the Convention in that the authorities had failed to investigate possible racist motives behind the events that had led to the deaths of Mr Angelov and Mr Petkov;
- unanimously that no separate issue arose under Article 13 (right to an effective remedy) of the Convention.

Under Article 41 of the Convention (just satisfaction) the Court awarded Anelia Nachova and Aksiniya Hristova 25,000 euros (EUR) jointly for pecuniary and non-pecuniary damage and Todorka Rangelova and Rangel Rangelov EUR 22,000 jointly. It also made a joint award of EUR 11,000 for the costs and expenses of all the applicants.

(The judgment is available in English and in French.)

## **1. Principal facts**

The applicants, Anelia Nachova and her mother Aksiniya Hristova, Todorka Rangelova and Rangel Rangelov, are Bulgarian nationals of Roma origin. They were born in 1995, 1978, 1955 and 1954 respectively. Ms Nachova and Ms Hristova live in Dobrolevo and Ms Rangelova and Mr Rangelov live in Lom (Bulgaria).

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<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

The case concerns the killing on 19 July 1996 of the applicants' relatives, Kuncho Angelov (father of Ms Nachova) and Kiril Petkov (son of Ms Rangelova and Mr Rangelov), both aged 21, by a military policeman who was trying to arrest them.

Mr Angelov and Mr Petkov were both conscripts in a division of the army dealing with the construction of apartment blocks and other civilian projects. Early in 1996 they had been arrested for repeated absences without leave. On 22 May 1996 Mr Angelov was sentenced to nine months' imprisonment and Mr Petkov to five months' imprisonment. Both had previous convictions for theft.

On 15 July 1996 they escaped from a construction site where they were working and went to the home of Mr Angelov's grandmother in Lesura. Neither was armed.

On 19 July 1996 the commanding officer in the Vratsa Military-Police Unit, Colonel D., sent four military police officers, under the command of Major G., to arrest the two men. At least two of the officers knew one or both of the men. Colonel D. told the officers that "in accordance with the rules" they should carry their handguns and automatic rifles and wear bullet-proof vests. He informed them that Mr Angelov and Mr Petkov were "criminally active" (криминално проявени) – an expression used to describe people with previous convictions or those suspected of committing offences – and that they had escaped from detention. The officers were instructed to use all necessary means to arrest them.

When the police arrived at Mr Angelov's grandmother's house, the two men tried to escape. After warning them that he would shoot if they did not surrender, Major G. shot them down using his automatic rifle. They were taken to Vratsa Hospital, where they were pronounced dead on arrival.

An eyewitness claimed that, because his grandson – a young boy – had been in the area where the shooting occurred, he had asked Major G. for permission to approach and remove him from danger. Major G. had pointed his gun at him, saying: "You damn Gypsies!".

A criminal investigation into the deaths was opened the same day. The autopsy report found that both men had died from gunfire wounds, fired from an automatic rifle from a distance. Mr Petkov had been shot in the chest and Mr Angelov in the back. The investigation concluded that Major G. had followed 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 they might escape, and he had tried to avoid inflicting fatal injuries. No one else had been hurt. On those grounds the authorities refused to prosecute the military police officers.

The applicants appealed unsuccessfully.

## **2. Procedure and composition of the Court**

The applications were lodged with the European Commission of Human Rights on 15 May 1998 and transmitted to the Court on 1 November 1998. They were joined on 22 March 2001 and declared partly admissible on 28 February 2002.

In its Chamber judgment of 26 February 2004 the Court held unanimously that there had been violations of Article 2 on account of the shooting of Mr Angelov and Mr Petkov and the

failure to conduct an effective investigation into their deaths. It also found violations of Article 14 taken together with Article 2 on account of both the shootings and the failure to investigate whether they had been racially motivated.

On 21 May 2004 the Bulgarian Government requested that the case be referred to the Grand Chamber<sup>1</sup>. The panel of the Grand Chamber accepted the request on 7 July 2004. A hearing was held in public at the Human Rights Building, Strasbourg, on 23 February 2005.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,  
Christos **Rozakis** (Greek),  
Jean-Paul **Costa** (French),  
Nicolas **Bratza** (British),  
Boštjan M. **Zupančič** (Slovenian),  
Corneliu **Bîrsan** (Romanian),  
Karel **Jungwiert** (Czech)  
Josep **Casadevall** (Andorran),  
John **Hedigan** (Irish),  
Snejana **Botoucharova** (Bulgarian),  
Mindia **Ugrekheldze** (Georgian),  
Antonella **Mularoni** (San Marinese),  
Elisabet **Fura-Sandström** (Swedish),  
Alvina **Gyulumyan** (Armenian),  
Ljiljana **Mijović** (Citizen of Bosnia and Herzegovina),  
Dean **Spielmann** (Luxemburger),  
David Thór **Björgvinsson** (Icelandic), *judges*,

and also Lawrence **Early**, *Deputy Registrar to the Grand Chamber*.

### 3. Summary of the judgment<sup>2</sup>

#### Complaints

The applicants alleged that their relatives had been killed in violation of Article 2 of the Convention, as a result of deficient law and practice which permitted the use of lethal force without absolute necessity. They also complained that the authorities had failed to conduct an effective investigation into the deaths, in violation of Article 2 and Article 13. The applicants further alleged that prejudice and hostile attitudes towards people of Roma origin had played a decisive role in the events leading up to the shootings and the failure to carry out a meaningful investigation. They relied on Article 14 in conjunction with Article 2.

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

<sup>2</sup> This summary by the Registry does not bind the Court.

## **Decision of the Court**

### Article 2 of the Convention

#### *The deaths of Mr Angelov and Mr Petkov*

The Court noted as a matter of grave concern that the regulations on the use of firearms by the military police effectively permitted lethal force to be used when arresting a member of the armed forces for even the most minor offence. Not only were the regulations not published, they contained no clear safeguards to prevent the arbitrary deprivation of life.

Such a legal framework was fundamentally deficient and fell well short of the level of protection “by law” of the right to life that was required by the Convention in present-day democratic societies in Europe. The Court thus found that there had been a general failure by Bulgaria to comply with its obligation under Article 2 of the Convention to secure the right to life by putting in place an appropriate legal and administrative framework on the use of force and firearms by military police.

As regards the planning and control of the operation, the Grand Chamber endorsed the Chamber’s finding that the authorities had failed to comply with their obligation to minimise the risk of loss of life since the arresting officers had been instructed to use all available means to arrest Mr Angelov and Mr Petkov, despite the fact that they were unarmed and posed no danger to life or limb. On this subject, the Grand Chamber said that the absence of a clear legal and regulatory framework had permitted a team of heavily armed officers to be dispatched to arrest the two men without any prior discussion of the threat, if any, they posed or clear warnings on the need to minimise any risk to life. In short, the manner in which the operation had been planned and controlled betrayed a deplorable disregard for the pre-eminence of the right to life.

As to the actions of the arresting officers, the Court considered that in the circumstances of the case any resort to potentially lethal force was prohibited by Article 2 of the Convention, regardless of any risk that Mr Angelov and Mr Petkov might escape. In addition, the conduct of Major G., the officer who shot the victims, called for serious criticism in that he had used grossly excessive force. Other means could have been used to arrest the men. Although he also carried a handgun, Major G. had chosen to use his automatic rifle and switched it to automatic mode making it impossible to take aim with any reasonable degree of precision. Lastly, there was no plausible explanation for the fact that Mr Petkov had been wounded in the chest, and the possibility that he had turned to surrender at the last minute but had nevertheless been shot could not be excluded.

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

#### *Whether the investigation was effective*

The Grand Chamber agreed with the Chamber that the fact that the investigation had validated the use of force in the circumstances of the case only served to confirm the fundamentally defective nature of the regulations and their disregard of the right to life. The

investigating authorities' failure to examine relevant matters in the file meant that there had not been any strict scrutiny of all the material circumstances.

A number of indispensable and obvious investigative steps had not been taken and the investigating authorities had ignored significant facts without seeking any proper explanation, preferring instead to accept Major G.'s statements and terminate the investigation. The investigator and the prosecutors had thus effectively shielded Major G. from prosecution.

The Grand Chamber endorsed the Chamber's view that such conduct on the part of the authorities – which had already been remarked on by the Court in previous cases against Bulgaria – was a matter of grave concern, as it cast serious doubt on the objectivity and impartiality of the investigators and prosecutors involved.

The Court consequently held that there had been a violation by Bulgaria of its obligation under Article 2 of the Convention to investigate the deprivation of life effectively.

#### Article 13 of the Convention

Like the Chamber, the Grand Chamber found that no separate issue arose under Article 13 of the Convention.

#### Article 14 of the Convention

##### *Whether the killings were racially motivated*

The Court said that its task was to establish whether or not racism had been a causal factor in the shooting that had led to the deaths of Mr Angelov and Mr Petkov. It noted in that connection that in assessing evidence, it had adopted the standard of proof "beyond reasonable doubt" and that, in accordance with its established case-law, proof could follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

The applicants had advanced various arguments which they maintained showed that the killings had been racially motivated. The Court did not, however, find them convincing. It noted that the use of firearms in circumstances such as those at issue had regrettably not been prohibited by the relevant domestic regulations. The military police officers carried their automatic rifles "in accordance with the rules" and had been instructed to use all necessary means to effect the arrest. The possibility that Major G. had simply been adhering strictly to the regulations and would have acted as he did in any similar context, regardless of the ethnicity of the fugitives, could not therefore be excluded. While the relevant regulations were fundamentally flawed and fell well short of the Convention requirements on the protection of the right to life, there was nothing to suggest that Major G. would not have used his weapon in a non-Roma neighbourhood.

Departing from the Chamber's approach, the Grand Chamber did not consider that the authorities' alleged failure to carry out an effective investigation into the alleged racist motive for the killing should shift the burden of proof to the respondent Government with regard to the alleged violation of Article 14 taken in conjunction with the substantive aspect of Article 2 of the Convention.

The Court did not consider that it had been established that racist attitudes had played a role in Mr Angelov's and Mr Petkov's deaths. It thus found that there had been no violation of Article 14 of the Convention taken together with Article 2 in its substantive aspect.

*Whether the respondent State complied with its obligation to investigate possible racist motives*

The investigating authorities had before them the statement of a neighbour of the victims who said that immediately after the shooting Major G. had shouted: "You damn Gypsies" while pointing a gun at him. That statement, seen against the background of the many published accounts of the existence in Bulgaria of prejudice and hostility against Roma, called for verification.

The Grand Chamber considered that any evidence of racist verbal abuse having been uttered by law-enforcement agents in an operation involving the use of force against persons from an ethnic or other minority was highly relevant to the question whether or not unlawful, hatred-induced violence had taken place. Where such evidence came to light in the investigation, it had to be verified and – if confirmed – a thorough examination of all the facts had to be undertaken in order to uncover any possible racist motives.

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

In sum, the investigator and the prosecutors involved in the case had had before them plausible information sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible racist overtones in the events that had led to the death of the two men. However, they had done nothing to verify the neighbour's statement, or the reasons it had been considered necessary to use such a degree of force. They had disregarded relevant facts and terminated the investigation, thereby shielding Major G. from prosecution.

The Court thus found that the authorities had failed in their duty under Article 14 of the Convention taken together with Article 2 to take all possible steps to investigate whether or not discrimination may have played a role in the events. It followed that there had been a violation of Article 14 of the Convention taken together with Article 2 in its procedural aspect.

Judge Bratza expressed a concurring opinion and Judges Casadevall, Hedigan, Mularoni, Fura-Sandström, Gyulumyan and Spielmann a joint partly dissenting opinion, and these are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.*