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

CASE OF MAKARATZIS v. GREECE

(Application no. 50385/99)

JUDGMENT

STRASBOURG

20 December 2004

In the case of Makaratzis v. Greece,

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

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Mr G. RESS,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI,
Mr K. HAJIYEV, *judges*,
and Mr P.J. MAHONEY, *Registrar*,

Having deliberated in private on 30 June and 17 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 50385/99) against the Hellenic Republic 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 a Greek national, Mr Christos Makaratzis ("the applicant"), on 2 June 1998.

2. The applicant, who had been granted legal aid, complained, under Articles 2, 3 and 13 of the Convention, that the police officers who had tried to arrest him had used excessive firepower against him, putting his life at risk. He further complained of the absence of an adequate investigation into the incident.

3. The application was 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). It was registered on 18 August 1999.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. On 18 October 2001 the application was declared partly admissible by a Chamber of that Section, composed of Mr A.B. Baka, President, Mr C.L. Rozakis, Mrs V. Stráznická, Mr P. Lorenzen, Mr E. Levits, Mr A. Kovler, and Mr V. Zagrebelsky, judges, and Mr S. Nielsen, then Deputy Section Registrar.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. On 5 February 2004, following a hearing on the merits (Rule 59 § 3), a Chamber of that Section, composed of Mrs F. Tulkens, President, Mr C.L. Rozakis, Mr G. Bonello, Mr P. Lorenzen, Mrs N. Vajić, Mr E. Levits, and Mr A. Kovler, judges, and Mr S. Nielsen, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

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

8. On 9 June 2004 third-party comments were received from the *Institut de formation en droits de l'homme du barreau de Paris*, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 30 June 2004 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr M. Apessos, Senior Adviser,
State Legal Council, *Delegate of the Agent*,
Mr V. Kyriazopoulos, Adviser,
State Legal Council, *Counsel*,
Mr I. Bakopoulos, Legal Assistant,
State Legal Council, *Adviser*;

(b) *for the applicant*
Mr Y. Ktistakis,
Mrs I. Kourtovik, *Counsel*,
Mr E. Ktistakis, *Adviser*.

The Court heard addresses by Mr Ktistakis, Mrs Kourtovik and Mr Kyriazopoulos.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1967 and lives in Athens.

A. Outline of events

11. In the evening of 13 September 1995 the police tried to stop the applicant, who had driven through a red traffic light in the centre of Athens, near the American embassy. Instead of stopping, the applicant accelerated. He was chased by several police officers in cars and on motorcycles. During the pursuit, the applicant's car collided with several other vehicles. Two drivers were injured. After the applicant had broken through five police roadblocks, the police officers started firing at his car. The applicant alleged that the police were firing at the car's cab, whereas the Government maintained that they were aiming at the tyres.

12. Eventually, the applicant stopped at a petrol station, but did not get out. The police officers continued firing. The applicant alleged that the policemen knelt down and fired at him, whereas the Government maintained that they were firing in the air, in particular because there were petrol pumps in danger of exploding. One of the police officers threw a pot at the windscreen. Finally, the applicant was arrested by a police officer who managed to break into the car. The applicant claimed that he was shot on the sole of his foot while being dragged out of his car. The Government contested that claim, referring to the findings of the domestic court (see paragraph 19 below). The applicant was immediately driven to hospital, where he remained for nine days. He was injured on the right arm, the right foot, the left buttock and the right side of the chest. One bullet was removed from his foot and another one is still inside his buttock. The applicant's mental health, which had broken down in the past, has deteriorated considerably since the incident.

B. The administrative investigation

13. Following the incident, an administrative investigation was carried out by the police. Twenty-nine of the police officers who had taken part in the chase were identified. There were also other policemen who had participated in the incident of their own accord and who had left the scene without identifying themselves and without handing in their weapons. In total, thirty-five sworn witness statements were taken. Laboratory tests were

conducted in order to examine thirty-three police firearms, three bullets and four metal fragments. The applicant's car was also examined.

The laboratory's findings

14. On 12 January 1996 the police laboratory issued a report which contained the following findings:

(a) As regards the applicant's car

"... The car that has been examined is severely damaged due to collisions/crashes, but also to bullets ... At the front, there is damage to the car's windscreen, where there are three holes and a mark ... Bullets, directed from the inside of the car outwards, caused the three holes as well as the mark. From the general damage to the car (the rear window is broken and has collapsed), the location of the examined damage and the course (direction) of the bullets that caused it, it may be assumed that the bullets in question broke through the rear window and ended up hitting the windscreen, producing the holes and the mark.

... The rear window is broken and has collapsed. Because of its total destruction, it is not possible to determine exactly why it broke. From the rest of the findings (the damage to the windscreen, etc.) it may be assumed that bullets were responsible ... The trajectory of the bullets that caused the holes is from the rear of the car towards the front ... The shape and size of the holes suggest that the bullets were fired by a 9 mm calibre firearm.

... On the driver's side of the car, there is a mark on the rear wing, near the wheel; its dimensions are approximately 55 x 25 mm. From the shape of the mark it may be assumed that the bullet that caused it came from the rear of the car towards the front, with an upward trajectory. On the right-hand side of the car, the window of the front passenger's door is broken.

There is a bump on the roof of the car, and a corresponding hole in the upholstery inside. This has been caused by a bullet that travelled upwards from the rear of the car towards the front. It may be assumed that the bullet entered the car through the rear window ..."

(b) As regards the firearms

"In total, twenty-three revolvers, six pistols, four submachine guns and three bullets were sent to us ... Twenty-three of the weapons are revolvers of .357 Magnum calibre; six are pistols, five of which are of 9 mm Parabellum calibre and one of .45 ACP calibre; and four are HK MP 5 submachine guns of 9 mm Parabellum calibre. The serial numbers of the weapons, their make and the names of the police officers to whom they belong are indicated in the above-mentioned document as well as in the delivery and confiscation reports of 14 and 16 September 1995 of the Paleo Faliro police station, copies of which are attached to this report. We performed the same number of trial shots with the twenty-three weapons, using three cartridges in each case. All the weapons functioned properly. The spent cartridges and bullets for each weapon were put into plastic envelopes for identification purposes, and each envelope was marked with the distinctive characteristics of the weapon.

... Two of the three bullets were found in the car and the third was surgically removed from the first metatarsal of the injured driver's right foot. For identification purposes, the bullets were marked 'PB1/4722' (for the bullet from the injured person's body) and 'PB2 and PB3/4722' (for the bullets found in the car). They will be regarded as evidence ... The heads and cylindrical surfaces of all three bullets are more or less deformed as a result of hitting hard surfaces, and have broken sabots and parts missing. The average diameter of the bullet bases is 9 mm. From the measurements and their characteristics it is surmised that the bullets come from 9 mm Parabellum cartridges (9 x 19). These kinds of cartridges are fired mainly by pistols and submachine guns of the same calibre ..."

(c) Conclusions

"... Sixteen holes were found on the car, caused by the direct impact of the same number of bullets. It is assumed that the bullets that caused the holes were fired by 9 mm calibre weapons. Inside the car, there are holes due to secondary impact and ricochets from some of the above bullets.

... The exhibit bullet 'PB2' and the bullets the metal sabots 'PP1' and 'PP2' come from were fired by the HK MP 5 submachine gun no. C273917.

... The exhibit the metal sabot 'PP3' comes from was fired by the Sphinx pistol no. A038275.

... The exhibit bullet 'PB1' that was removed from the injured driver's body and the bullet 'PB3' that was found in the car have a 9 mm Parabellum (9 x 19) calibre and were fired by the same weapon of the same calibre. Despite being deformed, the two bullets exhibit sufficient and reliable traces from the inner part of the weapon barrel from which they were fired; comparison of these traces has led to the conclusion that they are identical. Comparative tests of the traces on these two bullets and those on the sample bullets fired with the examined 9 mm calibre weapons (see above) have not disclosed any similarities, which leads to the conclusion that the bullets in question were not fired by any of these weapons ..."

C. Proceedings before the Athens First-Instance Criminal Court

15. Following the administrative investigation, the public prosecutor instituted criminal proceedings against seven police officers (Mr Manoliadis, Mr Netis, Mr Markou, Mr Souliotis, Mr Mahairas, Mr Ntinas and Mr Kiriazis) for causing serious bodily harm (Articles 308 § 1 (a) and 309 of the Criminal Code) and unauthorised use of weapons (section 14 of Law no. 2168/1993). At a later stage, the applicant joined the proceedings as a civil party claiming a specific amount by way of damages.

16. The trial of the seven police officers took place on 5 December 1997 before the Athens First-Instance Criminal Court. The applicant's statement was taken down as follows:

"I was on Dinokratous Street. I turned right at the traffic lights, and saw two police officers in front of me on Vassilissis Sofias Street. I was driving at a high speed and I

couldn't stop immediately. I moved a little to the left, and they immediately started firing at me. I was afraid, I thought they wanted to kill me, so I accelerated and drove off. They chased me and fired constantly. I moved into the oncoming lane and hit some cars. I was very scared. I had recently been in hospital for depression. I stopped at a petrol station and, while I was taking off my seat belt, I opened the door a little and they injured my arm and chest. They pulled me out of the car; a police officer injured me again, on the leg, and put handcuffs on me. I heard banging noises on the car, but I don't know what they were. There were gunshots coming from everywhere, also from above. I don't know exactly who injured me. I didn't have a weapon. I never carry a weapon. They took me to the General State Hospital. A chief officer of police came and brought me a document to sign, but I didn't sign it because I didn't know what they had written in it. This happened at the same place where they took 3.5 litres of blood from me. They removed the bullet from my leg without anaesthetic. It was very painful; I don't know why they did this. I had internal bleeding and the doctors said it was from my teeth. My father obtained a paper from the public prosecutor so that he could take me from the General State Hospital to the KAT (centre for rehabilitation following injury). A bullet has remained in my lung and the other bullet has caused an internal wound below my waist. The first gunshot was on Vassilissis Sofias Street. Perhaps they were looking for something; perhaps they thought I was someone else. I drove towards Sintagma. They fired at me during the entire chase. When they pulled me out of the car, they made me lie on the ground, shot at me and then put handcuffs on me. It was then that they shot me in the foot. After the incident I suffered from psychological shock and was admitted to the State Hospital. I am still receiving medical attention from [another hospital] and I take medication. Before the incident I worked as a plasterer. Since then I haven't been able to work. I have never in my life held a gun, apart from when I was in the army, where I served normally. There was no roadblock on Vassilissis Sofias Street. I saw two police officers. One of them waved at me to stop and the other pointed his weapon at me. I was frightened because of the weapon and I didn't stop immediately. After some time they started firing at me. I don't remember whether I noticed a police car or not near the War Museum. When I reached Parliament, they had their sirens on and they were following me and firing at me. I moved into the oncoming lane. I wanted to get home quickly. In Siggrou Avenue there was a police roadblock. I didn't take any notice of it. On Flisvos Street there was another roadblock. I didn't take any notice of that one either. Further down, at some traffic lights, I wove my way through the traffic in order to get away. I remember colliding sideways with someone, not head on. I don't remember causing a car to turn over. I don't remember a seeing a roadblock on Kalamakiou Street. I don't remember if they were shooting at me there. I stopped at the petrol station because I had already been hit by a bullet and I was in pain. Besides, there were a lot people there and I wasn't so scared. I stopped and tried to unbuckle my seat belt. Right then, I felt bullets in my back. The windows were broken. A police officer came, pulled me out and, while I was lying on my side, face down, they shot me in the foot. I don't know which one of them shot me. I didn't see who shot me because I was lying face down. Before the incident I had been in hospital once only, for minor depression. After the incident I developed persecution mania. Before the incident I had only had minor depression. When I was at the petrol station I did not make any movements that could make the police officers think I was carrying a weapon."

17. The defendants' statements were taken down as follows:

1. Mr Manoliadis

"I was in police car no. A62. We were in the Paleo Faliro area. We heard about the chase on the radio. We arranged with the control centre to create traffic congestion at the beginning of the road close to Trokadero. We positioned the police car sideways across the road, facing the sea. I also stopped some civilian cars in order to block the road. Suddenly I saw flashing lights, sirens and a car at a distance of 30 metres coming towards me. The driver moved to the right of the street that leads to the marina and drove past me at a distance of 1 metre; I even jumped out of the way so that he wouldn't run me over. Motorcycles and police cars drove past, following at a distance of 30 to 40 metres. There were no gunshots fired by anyone there. We got in the car and followed the other police cars at a distance of about 300 metres. I remember seeing a red car that had skidded on to the barrier. We lost control briefly, then continued driving. I heard gunshots after seeing the car that was turned upside down on Kalamakiou Street. I used my weapon later. We followed the fugitive's course. When we reached Kalamakiou Street, we heard gunshots again. We went towards the petrol station. I got out of the car, there was chaos everywhere, and I heard gunshots. Some colleagues had ducked, others were on the ground, others were taking cover. I didn't know where the gunshots were coming from. They could also have been coming from the Skoda [the applicant's car]. I saw some of my colleagues firing in the air. Then I fired two shots in the air and threw myself to the ground. I was 50 metres away from the car. I didn't get close to fire the shots, because there was a block of flats nearby. I heard the shouts of the colleagues who were telling the driver to get out of the car. Finally, I saw the police officers who were at the front walking freely and I realised the incident was over. I believe that the weapons of the colleagues who were summoned, or who had notified the control centre, were checked. From where I was standing, I couldn't see the victim in the car."

2. Mr Netis

"Since 9 p.m., we had been on duty at the B department of the Flying Squad. We heard on the radio that a chase was in progress, starting from the American embassy, of a car which had almost run over two pedestrians and a traffic warden. We followed the car. Near Trokadero we saw that the police had formed a roadblock. Manoliadis was using his whistle to stop the cars. The Skoda drove over to the right, to the side street, and then suddenly turned left. Manoliadis jumped out of the way instinctively, and the Skoda passed very near him. At Rodeo there was a roadblock similar to the one where Mr Manoliadis was. The victim hit a red car and caused it to turn upside down. The radio of the first police car informed us of the course the Skoda was taking. As we approached the junction of Posidonos and Kalamakiou Streets and we were 50 to 60 metres behind, I heard the first gunshots. We continued driving and entered Kalamakiou Street. There were some police cars ahead of us. Among them, there may have been some that had not been called but had come on their own initiative. When we arrived, I got out of the police car and went towards the vehicle that was being chased. Other colleagues kept calling to the driver to get out of the car. He didn't get out. I heard someone say, 'Let's fire some shots to intimidate him', and I took my weapon out and shot twice in the air. One of my colleagues took advantage of a break in the shooting to pull the driver out of the car. I was 10 to 15 metres away from the Skoda, or 8; I don't remember exactly. The control centre issued a warning that the man was carrying a weapon. I have been in many chases, and this particular individual gave me the impression that he was familiar with this kind of thing."

3. Mr Markou

"I ride a motorcycle. On Posidonos Street we heard on the radio that a chase was in progress from the American embassy. Very soon afterwards we heard that the driver had reached Onassio Hospital. I tried to get on to the central reservation to take up my position and wait for him. I saw the car coming. Risking my life, I got down from the high pavement and followed it. A police car and two motorcycles were in pursuit. I heard on the radio that the individual was dangerous and possibly carrying a weapon; he was driving very dangerously. At the traffic lights on Posidonos Street, close to Edem, as we reached the marina of Amfithea and Posidonos, I was struck by his ability to weave in and out of the other cars. I had never seen a chase like this one, although I had spent fifteen years in the service. At the junction of Amfitheas and Posidonos Streets, he collided with a taxi. At the traffic lights at that junction there was a police roadblock. Makaratzis turned right and entered the side street. He was driving into the oncoming traffic and, having gone past the traffic lights, he turned left and created confusion, because the lights changed and the cars were moving off. I didn't know whether anyone had been killed, or what was happening. I was still in the right side street. The Skoda had been blocked by the other cars, and I shot three times in the air to intimidate him. It was impossible to aim at the Skoda because it was between other cars. Makaratzis drove off, continued down Kalamakiou Street, drove uphill and, as I was approaching at a distance of 30 metres, I saw the car at the petrol station. I got off my motorcycle and entered the petrol station from the right. I went into the workshop and shouted 'Everyone move out of the way!'. I climbed up a staircase and on to the veranda. While I was climbing up the stairs, I heard gunshots. I didn't know where they were coming from. When I got up there I heard the others calling to the driver to get out of the car. I saw him leaning over to the side and opening the glove compartment, and I assumed that he was going to take out a weapon and shoot. I shouted at the others to be careful because he might have a weapon. I picked up a big pot and threw it at the car. I was watching the driver's hands, so as to be able to shout and warn my colleagues if I saw him taking something out to throw."

4. Mr Souliotis

"Mahairas and I set off together. At 9.15 p.m. I was standing in front of the police car. I saw the Skoda coming from the Naval Hospital, going through a red light and almost hitting a couple. I waved to the driver to stop. He drove straight towards me and almost hit me. I jumped aside. No one took out their weapons. I got in the car and we chased him, not only for contravening traffic regulations, but also because he had almost hit me. At Vassilissis Sofias Street we crossed into the oncoming lane and turned right at a red light. We had the flashing lights on and we were driving very fast, but we couldn't locate him. Suddenly, we saw the Skoda in front of the War Museum. We turned on the flashing lights and the siren, and we flashed our lights at him. He saw us from his car, braked and turned on his hazard lights, and suddenly he drove off again at high speed, sounding his horn. He reached Sintagma, crossed into the oncoming lane near the flower shops and drove into Amalias Street against the traffic. We turned the flashing lights on again and followed him. We continued driving and notified the control centre. On Kallirois Street he almost collided with another police car. At the traffic lights at Diogenis Palace he went through a red light, crossed into the oncoming lane, hit a car and continued driving. Two motorcycles came close to him. At Trokadero, a police car, two motorcycles and fifteen civilian cars had formed a roadblock. He drove towards the right, mounted the pavement and went past them. At Flisvos he caused a Daihatsu to turn upside down. We thought that whoever was in

it must be dead. The control centre told the officers on motorcycles to follow him from a distance because of the danger. At Amfithea he collided with a taxi driver, causing him a neck injury; he later had to wear a collar. He continued down Posidonos Street and Kalamakiou Street. He entered the side street and drove against the traffic. He drove past the other cars and crossed over to Kalamakiou. That was where the first gunshots were fired. I leaned out of the left window at the back and shot at the back left tyre of the Skoda. The tyre burst. I was certain about the direction of the bullet. I knew that no one was in danger. When a bullet hits a tyre, it does not ricochet. I fired from a distance of 5 metres. After firing, I saw that the tyre had been punctured. Mahairas fired at the right tyre at the back. With his tyres burst, Makaratzis stopped at the petrol station. We were almost level with him. I acted as a traffic controller. I stopped the oncoming cars, and once the arrest had been made I saw how many police cars there were. There were more than nine. When all the police cars were at the petrol station, shots were fired in the air, not at the car. The car had been hit at the junction. There were a lot of policemen. They occupied both lanes of the street. The Skoda had to slow down, and they fired at him. I was stopping the cars. If they had aimed at the car when we were at the petrol station, they would have shot me too. I believe all the gunshots, even the ones that hit the windows, were aimed at the tyres."

5. Mr Mahairas

"I was at the American embassy with Markou. We saw a Skoda going through a red light. The traffic warden waved to him to stop. The Skoda continued driving towards our colleague, at the risk of hitting him. We got in our car and followed him. He crossed into the oncoming lane and went through a red light at Vassilissis Sofias Street. We lost him and then we suddenly saw him at the War Museum. We followed him, turned on the flashing lights and waved to him to stop. At the flower shops he turned on his hazard lights as if he were going to stop. Suddenly, he increased his speed and crossed into the oncoming lane on Amalias Street and continued towards Sintagma and Siggrou. We followed him. Other police cars arrived. At Trokadero he bypassed a roadblock by driving around the side. At Flisvos he caused a Daihatsu to turn upside down and continued on his way. Further down the road there was a roadblock. He collided with a taxi driver and continued on. At the junction of Kalamakiou and Posidonos Streets there was another roadblock. He turned right into a side street and then turned left, crossing Posidonos Street. I heard some gunshots there. We drove to the top of the side street, followed him and, when we reached Posidonos Street, we were 5 metres away from him. I took my weapon out and aimed at his right rear tyre. When you fire shot after shot it is difficult to aim. I put my weapon on to automatic, which makes it fire three or four times. The Skoda stopped 70 metres away, at the petrol station, and we followed. The entire course and his behaviour had seemed extremely dangerous to us, like that of a terrorist. Other police cars and motorcycles arrived. They called to him to get out of the car. He didn't, and some gunshots were fired. We were 10 metres behind him. If they did fire from the other police cars directly at him, we weren't in their line of fire. I heard some colleagues say, 'Let's fire some gunshots to intimidate him'. Someone got up on the veranda and threw a pot down. One of my colleagues, who was wearing a bullet-proof vest, and whom I did not know, along with someone else, got close, broke the window and called to him to get out. He didn't, so they pulled him out. One of them attempted to put handcuffs on him. Someone shouted 'Careful, he is injured' and they didn't put them on. The ambulance came. I didn't know whether he had been injured by a bullet or in a car accident. Neither my weapon nor Souliotis's fires Magnum bullets. The A-

45 is very powerful and has a great force of penetration. I don't know who said that he was armed and that we should fire in the air."

6. Mr Ntinas

"Kiriazis and I were on duty as instructed at Neos Kosmos. We received a message to go to Siggrou, where a car which had hit other cars and hadn't stopped when signalled to by a traffic warden, etc., was being chased. We went to Siggrou and followed the driver. At Interamerican he drove through a red light and continued towards the coastal avenue. At Trokadero we saw a lot of police cars and flashing lights. We remained behind him and, at Flisvos, we saw the car that had been turned upside down. We were left a bit behind. At the junction of Posidonos and Kalamakiou Streets we lost him completely. We asked a civilian, who told us that he had turned right and was heading towards Kalamakiou Street, and we headed that way. I heard some gunshots that I thought were coming from the junction of Kalamakiou and Posidonos Streets. Artificial traffic congestion had been created. The control centre issued a warning that the man was armed and dangerous. We stopped 100 metres to the right of the petrol station and heard gunshots. We didn't know whether they were coming from the victim or the police officers because we couldn't see the car. We took cover and heard him being called out of the car. We fired some intimidation shots in order to confuse him, because we knew that a police officer would try to arrest him."

7. Mr Kiriazis

"Ntinas was my chief of crew. We received a message and chased the car, getting close to it at the traffic lights at Amfitheas Street. At Trokadero we were falling behind. The driver went through the roadblock that had been set up. At Flisvos we saw the car that had been turned upside down. There was a problem with the traffic and we were left behind. At the junction of Amfitheas and Posidonos Streets a taxi had been damaged. Further down we heard gunshots. Some civilians told us that the driver had turned left. We followed him. When we got to the petrol station we heard gunshots. Some colleagues were heard shouting, 'Get out', 'Be careful', and someone else said, 'Shoot to intimidate him'. So I fired two shots to intimidate him. I have served for fifteen years. I have never seen anything like this. During the chase we heard from the control centre that the individual was extremely dangerous and possibly armed."

18. The witnesses' statements were taken down as follows:

1. Mr Ventouris

"I am the driver who chased the victim. Mahairas, Souliotis and I serve in the Flying Squad. The victim's car was considered suspicious. We consider suspicious anything that moves around the American embassy. One of my colleagues, who was not carrying a gun, signalled the driver to stop. My other colleague and I waited at a distance, outside the car. Instead of stopping, the driver continued towards my colleague and almost hit him. Then he drove off. We considered him dangerous, and had to chase after him. At first we lost him for a while, but then we spotted him again near the War Museum. We waved to him to stop. He hesitated for a while, looked as if he was about to stop, but then drove on. At this point we started chasing him with the sirens on. He reached Parliament, crossed into the oncoming lane and continued

towards Siggrou at full speed. We had notified other police cars that were going to Siggrou. At some stage he almost collided with a police car. When he reached the coastal avenue, we had already formed a roadblock. He collided with some civilian cars, got away, and drove on. Further down, at Flisvos, he collided with a red car and caused it to turn over, and then drove off at full speed. There was traffic in the area. There was a lot of traffic in Kalamakiou and he moved on to the hard shoulder. It was in that area, in Kalamakiou, that we heard gunshots for the first time. Until then we hadn't fired because there was a lot of traffic and we could have injured civilians. We didn't lose him at any point; we only almost lost him at the beginning of Kalamakiou, where there was an obstacle on the pavement. Mr Mahairas and Mr Souliotis were in the car with me and it was around that area that our colleagues fired at the tyres of the car. I maintain that, with our training, we can hit the target in 99% of cases, if not 100%. The driver stopped at the petrol station. We moved the civilians out of the way and some other colleagues who were wearing bullet-proof vests approached his car, broke the windows and pulled him out of the car, because they had called to him to get out several times but he hadn't. Gunshots were heard from a distance. I don't know where they were coming from. A colleague had gone up on to the veranda, but I don't think he fired. He threw a pot at the driver. When the gunshots were fired, the victim's car was parked sideways on the right of the petrol station. We were at the left of the petrol station and the others were behind me. I don't know if others fired at the car. We heard gunshots at the beginning of Kalamakiou, and at the end, when everything was over. The final shots were probably fired to intimidate the victim. [Officer] Boulketis was the one that pulled him out. I don't think he fired at him. There was no reason to do so. The victim made some movements in the car: he moved right and then left, as if looking for something, and it was conceivable that he had a weapon. That is why colleagues wearing bullet-proof vests went to pull him out of the car. I don't know about the ballistic investigation. The bullets found inside the car were from the weapons of Souliotis and Mahairas. However, my colleagues were aiming at the tyres. The speed of the chase was approximately 60 km/h in Vassilissis Sofias and Amalias Streets, because there was traffic. We were about 10 metres behind him. Near the columns [of the Temple of Olympian Zeus] motorcycles appeared both ahead of us and behind. At the beginning of Siggrou another police car came up in front of the victim and he almost collided with it. He was moving from left to right in Siggrou, racing at 160 km/h and changing lanes constantly. I can't say which police cars were behind us at the corner of Kalamakiou, because when we chase someone we don't see what is going on behind. We stopped at the petrol station; two motorcycles stopped behind us, and another car stopped behind them. The first gunshots were fired at the junction of Posidonos and Kalamakiou Streets. In Kalamakiou Street, before Posidonos Street, when we were 5 metres behind him, Mr Mahairas used his firearm and shot at the tyres of the car. Mr Souliotis must have used his weapon too at the same spot. When the driver reached the petrol station and stopped, I called from the car to the civilians to move out of the way and to the driver to get out, and a colleague who was wearing a bullet-proof vest went to pull him out. I don't know how many bullets were fired; the front windscreen broke because a pot was thrown at it. I do not know how the front passenger's window broke, or how the back window broke. I don't know how the victim's foot was injured. It couldn't have been when shots were fired around the car. Finally, we went to the police station to make a statement. Our lives weren't directly at risk during the incident. The driver had caused accidents, driven into the oncoming traffic and endangered many people. In total, he had been chased by thirty-three policemen, whose weapons were confiscated, but others had also got involved. We had never seen anything like it. They told us on the radio to be careful, that the individual was carrying a weapon and might be extremely dangerous. Souliotis is a traffic warden. Of course he was not carrying a

weapon when he waved to him to stop. The police roadblocks were set up because they had been ordered by the control centre. We also created artificial traffic congestion with civilian cars at the traffic lights. During the incident we noticed that civilians were injured, that cars were turned upside down; we didn't have any other way of stopping him, after the roadblocks and the artificial traffic congestion. The last roadblock was on Kalamakiou Street. There were police officers on foot in the side street. He drove straight at them. That was the moment when the first gunshots were fired. That was also the moment when my colleagues first fired from the car at his tyres. It is possible that other weapons were used besides the thirty-three that were confiscated. For that matter, the bullet that was taken from his leg did not belong to any of the thirty-three weapons that were confiscated. If someone had fired in the victim's direction at the petrol station, the petrol would have caught fire. At the petrol station they fired shots in the air. Probably in order to cover the colleague that went to pull him out. One of my colleagues climbed up on to the veranda and threw a pot at him to create confusion. Boulketis pulled him out and handcuffed him. We saw that he was bleeding and they took him to hospital. The investigation was carried out by our officers and some other department, not by those of us who had gone to the police station."

2. Mr Nomikos

"I was on the old coastal avenue in Agia Skepi. I saw a vehicle driving erratically. We got an order from the control centre and went after it. On the way we saw all the accidents, the cars that had been hit and someone who was injured. We reached Kalamakiou from Amfitheas. We were far behind. We didn't hear any gunshots. Even if there had been gunshots, we would not have heard them. Mr Boulketis, who was with me, had a bullet-proof vest. He put it on, while another colleague broke the window. Mr Boulketis pulled the driver out and put handcuffs on him, but when he saw that he had been injured he removed them. The victim was looking right and left; his hands were on the floor, we could not see them, and we assumed he had a gun. When we reached the petrol station, I heard one or two gunshots; I don't know where they came from. Boulketis and Xilogiannis were with me in the police car. Xilogiannis and I didn't have bullet-proof vests and we didn't move closer, as Boulketis did. There were a lot of police cars and motorcycles. There is no way any weapons could have been concealed or changed hands. Our weapons are given to each of us personally. We do not give them to other colleagues. At the petrol station, when we moved closer so that Boulketis could pull the driver out of the car, nobody fired. No colleague could have become involved in the incident without receiving an order, unless someone heard about it and came on his own initiative. If such a person had used his weapon, there is no way he would have left without handing it over."

3. Mr Xilogiannis

"I was the driver of the last police car, where Mr Boulketis was. We received an order from the centre and we followed the chase. We were the last to get to the petrol station where the Skoda was parked. There were a lot of police cars and motorcycles. Everybody was out of their cars; the Skoda was right next to the pump that is on the right-hand side when facing the petrol station. Everyone was out of their cars ... Mr Boulketis put on his bullet-proof vest and I covered him from the back, while behind me there were more officers covering him. When we got there, we heard some gunshots. When we got out of the car and were standing very close to the Skoda two

or three gunshots were fired; they were not fired in my direction, because we were very close to the Skoda ... Perhaps the car was hit in the process, I don't know. I am not in a position to know at which stage the victim was hit; probably during the chase ..."

4. Mr Davarias

"... The shots fired at the petrol station were for intimidation. I didn't see any shots fired at the car, the shots were fired towards the car but in the air, that is, the bullets went up in the air. I don't know the [police officers] who fired. I had never seen them before. I know Markou and Kasoris. The police officer who climbed up on to the veranda didn't shoot; he threw a pot. We are bound by our duty and have to follow orders when it comes to the areas we are patrolling, but we don't always follow them and often go on our own initiative to the scene of incidents like this one where colleagues are in danger and all manner of things have happened in the past. The entire operation at the petrol station lasted ten to fifteen minutes; the Skoda had stopped along the kerb at the petrol station. I parked on the right, I arrived almost at the same time as the men in the first police car, and the rest got there immediately afterwards, one after the other. All the men were holding weapons in their hands. Usually all police cars have a light machine gun. After I got there I took cover behind a column. We called to the driver to get out of the car, and then the shooting began. I don't remember even approximately how long afterwards the shooting began. The victim made some movements in the car. The movements he made while he was unlocking the car and all his other movements could have been seen by us as movements to get his weapon out from a holster under his arm, or to take out a hand grenade. At the junction of Kalamakiou and Posidonos Streets I didn't notice any shots being fired at the right-hand side of the Skoda, only the ones fired at the tyres on the left-hand side. The first photograph shows that the tyres on the left-hand side are burst, the second one shows that the ones on the right are burst. As to the injury to [the applicant's] right foot, it is possible that a bullet that was fired at the tyres ricocheted and penetrated through the metal plate of the car, which is only a few millimetres thick. There are bullets that can pierce metal plates of double thickness. In those cars there is no chassis. There are only plain metal plates, which can be pierced by a ricocheting bullet: the victim may have been hit in the buttock in this way. He may have been hit in the armpit area in the same way. At some point I saw him leaning towards the seat; I thought he might have been hit and I shouted."

5. Mr Mastrokostas

"I am the petrol station attendant. I was in front of the pump, filling up. Suddenly, I saw the Skoda slowly coming up and stopping next to me, with the front facing the street as you can see in the photograph. The driver was not moving. Then the police cars arrived; the policemen were shouting, 'Move out of the way, move out of the way!'. I left the pump and went inside, 4 to 5 metres away, and the owner and I moved to an area further at the back. There is a second door, and we went through to the workshop. When I went inside the store I heard gunshots. There was chaos. More gunshots were fired. They were firing, but I don't know in which direction. I couldn't see anything. The pumps were next to the store; if they had fired towards the car the bullets would also have hit the pumps. I think someone went up on to the veranda and threw a pot down. I saw it because I had gone out the back but I didn't go close. I couldn't see anything and I didn't witness the arrest or see whether they shot him.

When the car arrived I saw the tyres were burst, but I do not remember whether the windows were also broken. In the first photograph, I think the tyres are burst. It was the first statement I had ever made, I was still in a state of panic and I don't know whether I reported everything accurately. It's the same today, two years having passed since the incident. When I went to the back, I saw the police officer. He didn't shoot, he threw a pot, but I couldn't see the victim's car. Neither the Vespa, which was half a metre away, next to the car, nor the pumps, of course, had any bullet holes. The end of the veranda where the police officer went overlooked the car. The front of the car must have been protruding a bit under the veranda."

6. Mr Georgopoulos

"I am the owner of the petrol station. I was standing a bit further inside than Mastrokostas. I saw the Skoda coming up slowly. It stopped, and seconds later I heard gunshots. The boy heard the shouting, I didn't. When I heard the gunshots I left, I went up to the house, and then a police officer came and threw a large pot at the roof of the car. He didn't shoot. I came down when the shooting had stopped and I saw the victim as they were pulling him out of the car. I think the man who pulled him out was wearing civilian clothes. I am not sure. I saw him holding a big machine gun. I don't know if he fired. I don't remember. If he had fired, I would remember it. He may have fired; but I didn't see him do it. I don't remember whether the windows of the car were broken. I remember that he had crashed ... I didn't find any cartridge cases anywhere. I didn't find any bullet holes anywhere. When I saw the police officer who came from the back on to the veranda, I left and didn't see if he fired. I went downstairs and saw them pulling the driver out of the car. The police officer didn't shoot him. It may also have been the person that got off the motorcycle. The veranda is wide and it covered more than half of the car."

7. Mr Kiriazidis

"I was at the junction of Posidonos and Kalamakiou Streets ... Suddenly, I saw in my rear-view mirror a car coming from the side street at great speed; it drove over the curb, came from the right and crashed into me. It threw me a distance of 10 to 15 metres. There was a police car next to me. The police officers must have been out of the car, and were holding weapons. I heard gunshots and I was frightened. More police cars came and followed the Skoda to the left, towards Kalamakiou Street. He caused great damage to me. If someone had been sitting in the back seat, they would not have survived."

19. Having deliberated, the court acquitted the seven police officers on both the criminal charges brought against them (see paragraph 15 above). On the first count (causing serious bodily harm), the court found that it had not been established that the accused were the ones who had injured the applicant. A number of police officers who had taken part in the incident had left the scene after the applicant's arrest without revealing their identity or giving the necessary information concerning their weapons. The bullet that was removed from the body of the victim and a bullet that was found inside the car were fired from the same weapon but were unrelated to the traces from the thirty-three weapons that were examined. The other bullet

and some of the metal fragments found in the applicant's car had been fired from the weapons of two of the accused. However, it had not been shown beyond a reasonable doubt that these officers had injured the applicant, given that many other shots had been fired from unidentified weapons.

As regards the second charge (unauthorised use of weapons), the court held that the police officers had used their weapons for no other purpose than trying to stop a car whose driver they reasonably considered to be a dangerous criminal.

The relevant passages of the court's judgment read as follows:

> "On 13 September 1995 the victim, Christos Makaratzis, was driving a private vehicle with the number plate YIM 8837 in Athens in the area around the American embassy. At the junction of Telonos and Kokkali Streets, a unit of the special police control division of the Flying Squad of Attica was carrying out checks on passing cars. The accused Mahairas, Souliotis and Ventouris were part of this unit. The victim's vehicle was coming from the direction of the hospital; he drove through a red light and the accused Souliotis signalled to him to stop. Instead of stopping at the signal made by the traffic warden, however, he continued driving towards him and almost hit him. The police crew got into their car immediately and began chasing him. At Vassilissis Sofias Street he entered the oncoming lane and drove through a red light. Because of the traffic, the police officers lost the car, which they were chasing with their flashing lights on, and met with it again near the War Museum. They flashed their lights at the driver in order for him to stop; the siren and the flashing lights of the police car were on. Initially the victim turned his hazard lights on, as if he were going to stop the car. However, he suddenly accelerated and drove off. He reached Sintagma near the flower shops; he entered the oncoming lane at Amalias Street and continued towards Siggrou Avenue. The police car informed the Flying Squad control centre, and the control centre notified other units that were on duty in the area in which the victim was moving, in order for them to come and assist. At Siggrou Avenue the car was moving at a very high speed from one lane to the other. Near Kallirois Street the driver almost collided with a police car; at the traffic lights at Diogenis Palace he drove through a red light, entered the oncoming lane and collided with a car. At Trokadero there was a roadblock formed by a police car, two motorcycles and fifteen civilian cars, which he got past by driving on the pavement, and the crew of the police car were almost run over. At Flisvos he collided with a Daihatsu that was stationary, caused it to turn upside down, injuring the driver, and on Amfitheas Street he collided with a car and a taxi, whose driver was injured. At the junction of Posidonos and Kalamakiou Streets there was a police car in the side street, and the cars moving towards Glifada had been blocked. The victim drove over the central reservation towards the right, in order to head towards the side street, but then he noticed the police car and drove over the central reservation towards the left and collided with two cars that were crossing Posidonos Street and almost ran over Police Constable Stroumpoulis. The first gunshots directed at the pursued car, which were fired in order to stop the victim, were heard at the junction of Posidonos and Kalamakiou Streets. It was in that area that the accused Mahairas, who was riding in the police car and had been chasing the vehicle from the beginning, fired a burst of shots when the car was at a distance of approximately 5 metres, with his firearm no. MP 5 C273917, because the car was moving. He aimed at the rear right tyre. The accused Souliotis, who was riding in the same police car, fired from the left window, with his pistol no. AO 38275, aiming at the rear left tyre, which he punctured. Near that junction the victim had to slow down. Many police officers had reached that spot and occupied both lanes; other police

officers, besides those already mentioned, also fired at the car, as many gunshots were fired at that spot. It is also to be noted that, during the entire course, policemen, police cars and motorcycles joined the chase, without being able to stop the vehicle. It continued its course along Kalamakiou Avenue, despite the gunshots, and stopped at the junction of Kalamakiou and Artemidos Streets, at the entrance of a petrol station and near the petrol pumps, with the front facing the street. There, he was surrounded by the police units that were chasing him, and which the control centre knew had taken part in the operation, and also by other units that had come on their own initiative to help their colleagues when they heard about the incident from the control centre. In other words, there were units in the area that had gone to the scene of the incident, without being called. The police officers got out of their cars and off their motorcycles, holding their weapons. The victim made some movements in his car, which gave the police officers the impression that he had a weapon. The police officers asked him to get out of the car, but he did not, and the police officer who was wearing a bullet-proof vest, Nikolaos Boulketis, approached the car. Then, a lot of the police officers who were present began firing in order to intimidate the victim and cover their colleague; Nikolaos Boulketis took the opportunity to break the car window and arrest the victim. Earlier, the accused police officer Christos Markou had climbed on to the veranda which was above the petrol station and had thrown a pot down, which broke the windscreen without making it fall in. When the victim got out of the car, he was immobilised by the police officer who had arrested him, and by his colleagues, and then it became clear that he was injured. He had an exit wound on his right arm, another exit wound on the right of the thorax, with the entry from the back of the armpit. He had an exit wound at the end of his left foot, a wound high up on his left buttock and wounds on the outer surface of the kidney area. The windscreen of the car driven by the victim was broken, but had not fallen in; it had three bullet holes and a mark made by another. There were three bullet holes in the metal part of the left door at the back, and a bullet mark on the metal surface of the chassis. The back window was smashed and on its metal part there were two bullet holes and another one at the left rear lights. There was a bullet mark on the right rear wing above the wheel. The front passenger window was broken and there was a bullet mark on the outside of the roof. There were bullet holes inside the car under the glove compartment on the dashboard, on the radio, the top part of the dashboard, in the driver's seat, in the front passenger seat and in the back seat. Two bullets and four fragments were found inside the car. Of the police officers who took part in the operation, thirty-three handed over their weapons, that is, all those who had been ordered to take part in the chase or who had notified the control centre and whose departments knew that they had taken part in the operation. However, others had taken part of their own accord in order to help their colleagues, and it is not known who they are or why they left after the arrest of the victim without informing the control centre of their presence at the scene of the incident. Among the thirty-three weapons, there were twenty-three revolvers of .357 Magnum calibre; six pistols, five of which were of 9 mm Parabellum and one of .45 ACP calibre; and four HK MP 5 submachine guns of 9 mm Parabellum calibre. Of the thirty-three weapons, only the weapons of the accused had been fired. The three bullets that were found in the car and the one that was removed from the first metatarsal of the right foot of the driver came from cartridges of 9 mm Parabellum (9 x 19) calibre. Such cartridges are fired mainly from pistols and submachine guns with the same calibre. The four fragments found inside the car are sabot fragments of coated bullets of different calibre and it was not possible to identify the calibre of the bullets, although one of the fragments was assessed as a fragment of 9 mm Parabellum (9 x 19) calibre. The report by the laboratory expert confirmed that the three bullets, two of which were found in the car and one of which was found in the foot of the victim, came from cartridges of 9 mm Parabellum (9 x 19)

calibre. The bullet [PB2] and the two metal sabots [PP1 and PP2] found inside the car were fired by the HK MP 5 submachine gun number no. C273917 that belonged to the accused Mahairas. The bullet from which the other metal sabot [PP3] came, which was found inside the car, was fired by the Sphinx pistol no. A038275 that belonged to the accused Souliotis. The bullet that was removed from the body of the victim and a bullet that was found inside the car were fired by the same weapon, of Parabellum (9 x 19) calibre, but bear no relation to the traces left by the thirty-three weapons that were examined. The victim, Christos Makaratzis, was indeed injured by the submachine guns used by the police officers who took part in the chase and which were fired during the pursuit at the junction of Posidonos and Kalamakiou Streets where, apart from Souliotis, Mahairas and Markou [illegible] (third accused) other police officers fired who have not been identified, since there were many police officers who fired at that spot. This emerges indirectly from the fact that the bullet that was removed from the body of the victim and another one were fired by a weapon the owner of which was not identified and were not fired by the weapons of the accused. The fact that bullets and sabots that were found inside the car were fired by the weapons of the accused Souliotis and Mahairas leads to the conclusion that the physical injuries of the victim were caused by the weapons that belonged to the accused, apart from the one to his foot. In addition, since there were many bullet holes in his car that were caused by other, unidentified, weapons, the victim might have been injured by those bullets. As already stated, submachine guns and pistols are also of the same calibre. The first, second, third, sixth and seventh defendants fired shots for the purpose of intimidation in the area of the final operation (the petrol station). It is also to be noted that many others also fired shots there for intimidation purposes in order to assist their colleagues who were closer to the car to arrest the victim. They cannot have fired towards the car, because there was a danger of hitting the pumps of the petrol station, and there were no traces of gunshots in that area. The victim's foot injury was caused from above, since only the top of the shoe was hit and not the sole, but it cannot be said that the shot was fired by the accused Markou, who had climbed on to the veranda of the petrol station, because the car was parked in such a way that almost half of it was under the veranda and thus the direction of the shot would have to have been almost vertical in order to hit the top part of the foot. If that had been the case, the bullet would also have had to go through a part of the dashboard. There is no trace of this, the closest mark being on the radio. Besides, if this injury had been caused by the weapon of the accused, it would have been confirmed by the expert investigation ... The injury was indeed on the top part of the foot; but it could have been caused by a shot that was fired from behind the car while the victim was driving and his foot was almost vertical to the accelerator, by one of the weapons fired at him at the junction of Kalamakiou and Posidonos Streets. The victim's allegation that he was shot immediately after he was pulled out of the car must be considered groundless, since, as he stated, he was shot when he was 'lying on his side, face down'. If that had been the case, the injury would have been different. Having regard to the above, and taking into account the fact that other police officers who have not been identified took part in the operation, some of whom possibly used their weapons, the Court has doubts as to whether the accused caused the victim's injury. As a result, they should be declared innocent of the first act attributed to them. They should also be declared innocent of the second act because, although they used their weapons, they had attempted to stop the car by creating artificial traffic congestion and roadblocks and had failed, as the victim had continued driving while he was being chased by a large number of police officers, in a manner that was dangerous to the civilians that were in his way. Furthermore, the police officers did not know whether the civilians in the cars that had collided with the victim were killed, and they understandably considered him to be a dangerous criminal because of his behaviour

and because they had received that information from the control centre. The Court also doubts whether the accused could have avoided using their weapons, which they did in order to stop him and intimidate him, so that he would stop driving in a manner that was dangerous to other civilians, and to protect the latter, as was their duty. Therefore, the accused must be declared innocent of the acts attributed to them in the indictment."

20. The applicant, who was present when the judgment was pronounced, did not have the right to appeal under domestic law. The text of the judgment was finalised on 20 May 1999.

D. Criminal proceedings against the applicant

21. On 20 April 1997 the public prosecutor instituted criminal proceedings against the applicant. The indictment read as follows:

"[The applicant] is accused ... of committing a number of offences and more specifically:

A. While driving [his] car in Athens on 13 September 1995, he caused with his vehicle bodily injury and harm to others by his negligence, that is, by failing to take the care he should and could have taken in the circumstances and to anticipate the culpable consequences of his acts. More specifically: (a) while he was driving the vehicle referred to above in Posidonos Avenue, near Paleo Faliro, towards the airport, he did not keep enough distance between himself and the vehicles in front to be able to avoid a crash in case they reduced their speed or stopped, so that he crashed the front of his car into the back of the car with the private registration number IR-8628 that Iliostalakti Soumpasi was driving in the same direction, resulting in injuries to her neck; (b) after the above crash, the accused continued driving the vehicle referred to above and, while he was going along Posidonos Avenue near Kalamaki, he again failed to keep enough distance from the vehicles in front, thus crashing the front of his car into the back of the car with the taxi registration number E-3507 that Ioannis Goumas was driving and that had stopped at a red light in the left lane of Posidonos Avenue, the consequence of which was to cause injury to the aforementioned driver who suffered a cervical hernia and an injury to the head.

B. While he was driving [his] car at the time and place referred to above, he did not keep enough distance from the vehicles in front to avoid a crash in case they reduced their speed or stopped.

C. While he was driving [his] car at the time and place referred to above, he did not abide by the police officers' signal to stop and, specifically, while he was driving the vehicle referred to above in Athens, crossing Vassilissis Sofias Street, Amalias Avenue, Siggrou Avenue and Posidonos Avenue, he did not comply with a signal to stop made by police officer Sotirios Souliotis, who was using a car of the Hellenic Police, registration number EA-11000, in Vassilissis Sofias Street, but continued driving, crossing all the streets mentioned above, while the above-mentioned police car and other police cars of the Hellenic Police were chasing him ..."

22. By judgment no. 16111/2000, the Athens First-Instance Criminal Court sentenced the applicant to forty days' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The relevant provisions of the Criminal Code read as follows:

Article 308 § 1 (a)

"Intentional infliction of bodily harm on another person ... shall be punishable by up to three years' imprisonment ..."

Article 309

"Where the act punishable under Article 308 has been committed in a way which could have endangered the victim's life or caused him grievous bodily harm, imprisonment of at least three months shall be imposed."

24. Section 14 of Law no. 2168/1993 provides:

"Anyone who uses a gun ... while committing a serious crime or lesser offence of which he is subsequently convicted shall be punished by a term of imprisonment of at least three months to be added to the sentence imposed for that offence."

25. At the material time, the use of firearms by law-enforcement officials was regulated by Law no. 29/1943, which was enacted on 30 April 1943 when Greece was under German occupation. Section 1 of that statute listed a wide range of situations in which a police officer could use firearms (for example in order "to enforce the laws, decrees and decisions of the relevant authorities or to disperse public gatherings or suppress mutinies"), without being liable for the consequences. These provisions were modified by Article 133 of Presidential Decree no. 141/1991, which authorises the use of firearms in the situations set forth in Law no. 29/1943 "only when absolutely necessary and when all less extreme methods have been exhausted". Law no. 29/1943 was criticised as "defective" and "vague" by the Public Prosecutor of the Supreme Court (see Opinion no. 12/1992). Senior Greek police officers and trade unions have called for this legislation to be updated. In a letter to the Minister of Public Order dated April 2001, the National Commission for Human Rights (NCHR), an advisory body to the government, expressed the view that new legislation which would incorporate relevant international human rights law and guidelines was imperative (NCHR, 2001 Report, pp. 107-15). In February 2002 the Minister of Public Order announced that a new law would shortly be enacted, which would "safeguard citizens against the reckless use of police weapons, but also safeguard police officers who will be better informed as to when they can use them".

26. In the summer of 2002, a group called the "Revolutionary Organisation 17 November" was dismantled. That group, established in

1975, had committed numerous terrorist acts, including the assassination of United States officials in 1975, 1983, 1988 and 1991.

27. On 24 July 2003 Law no. 3169/2003, which is entitled "Carrying and use of firearms by police officers, training of police officers in the use of firearms and other provisions", came into force. Law no. 29/1943 was repealed (section 8). Further, in April 2004, the "Pocket Book on Human Rights for the Police", which was prepared by the United Nations Centre for Human Rights, was translated into Greek with a view to being distributed to Greek policemen.

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

28. Article 6 § 1 of the International Covenant on Civil and Political Rights provides:

> "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

29. In this connection, the Human Rights Committee of the United Nations noted the following (see General Comment no. 6, Article 6, 16th Session (1982), § 3):

> "The protection against arbitrary deprivation of life which is explicitly required by the third sentence of Article 6 § 1 is of paramount importance. The Committee considers that States Parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

30. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("United Nations 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. Paragraph 9 of the Principles 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."

31. Paragraph 5 of the Principles provides, *inter alia*, that law-enforcement officials shall "act in proportion to the seriousness of the offence and the legitimate objective to be achieved". Under the terms of paragraph 7, "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 11 (b) states that 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".

32. Other relevant provisions read as follows:

Paragraph 10

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

Paragraph 22

"... Governments and law-enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control."

Paragraph 23

"Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

33. The applicant complained that the police officers who chased him had used excessive firepower against him, putting his life at risk, and that the authorities had failed to carry out an adequate and effective investigation into the incident. He argued that there had been a breach of Article 2 of the Convention, which provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Arguments of those appearing before the Court

1. The applicant

34. The applicant submitted that Article 2 § 1 of the Convention imposed a positive duty on States to protect human life. In particular, national law must strictly control and limit the circumstances in which a person may be deprived of his life by agents of the State. The State must also give appropriate training and instructions to its agents who may carry weapons and use force. However, at the time of the event, the necessary regulatory framework was lacking. The law regulating the use of weapons by Greek police officers was enacted in 1943. It was commonly agreed that it was anachronistic and incomplete and did not afford general protection to society against unlawful and excessive use of force by the police. Therefore, the Greek State had not taken all the preventive measures that Article 2 demanded for the protection of human life.

35. Turning to the facts of the instant case, the applicant submitted that his serious injuries were the result of unnecessary and disproportionate use of force by the police. He emphasised that he had been unarmed and that he was neither a criminal nor a terrorist. He had simply been scared and had tried to escape. The police had opened fire on him without warning; all they had done was to use two private cars in an attempt to stop him. As a result, innocent civilians had been injured. The police had used neither their own cars to create roadblocks, nor tyre-traps in order to burst his car's tyres, nor smoke bombs or tear gas in order to intimidate him. They had fired at him in an uncontrolled and excessive way, putting his life at serious risk.

36. Further, the applicant claimed that the authorities had failed to fulfil their procedural obligation under Article 2 to carry out an effective investigation into the potentially lethal use of force. He identified a series of shortcomings in the investigation, including, *inter alia*, the failure of the authorities to identify all the police officers who had participated in the chase, and in particular those who were responsible for his injuries, and their failure to collect all the weapons used during the chase and all the bullets fired at him.

37. Relying on a joint report published in September 2002 by Amnesty International and by the International Helsinki Federation for Human Rights ("Greece in the shadow of impunity – Ill-treatment and the misuse of

firearms"), the applicant submitted lastly that the inadequate investigation into the incident was also evidence of official tolerance on the part of the State of the use of unlawful lethal force.

2. The Government

38. The Government contended that Article 2 did not come into play in the present case since the victim was still alive. Admittedly, the police officers who were involved in the chase had made use of their weapons; however, they had not intended to kill him, but only to force him to stop his car and arrest him. Referring to earlier judgments of the Court, the Government argued that the applicant's complaints fell to be examined under Article 3 of the Convention instead.

39. In any event, the Government emphasised that police facing dangerous situations should enjoy considerable discretion in making honest judgments on the use of force. In the instant case, the applicant had driven through a red traffic light in the centre of Athens, near the American embassy, where security measures were always strengthened since the embassy was considered a possible target of terrorist actions. Instead of stopping his car at the police's signal, the applicant had accelerated and continued driving in a frenzied, extremely dangerous way, putting his life and the lives of innocent people at risk. Thus, in the circumstances, the police had reason to suspect that the applicant was a dangerous criminal or even a terrorist. Even so, before opening fire, the police officers had tried to arrest him by using alternative methods, such as artificial traffic congestion, roadblocks, etc. It was only when they realised that these means were ineffective that they unavoidably resorted to the use of force. While doing so, they tried to minimise damage and injury and preserve the applicant's life. That was clearly demonstrated by the fact that the police officers had aimed only at the tyres of the applicant's car or fired warning shots in the air. There had been no element of negligence or oversight in the way in which the operation was conducted. After his arrest, the applicant suffered no harm at the hands of the police but was immediately driven to hospital.

40. The Government further contended that there had been no inadequacies in the domestic investigation, which had been prompt and thorough. They stressed that the day after the incident an administrative investigation had commenced. In total, thirty-five sworn witness statements had been taken. Moreover, complete laboratory tests had been conducted in order to examine thirty-three police firearms, three bullets and four metal fragments. The applicant's car had also been examined. In addition, a criminal investigation had been carried out and seven police officers had been charged with serious bodily harm and unauthorised use of weapons. Several witnesses and the applicant himself had been heard in court.

41. The Government concluded that the authorities had shown their adherence to the rule of law and had taken the reasonable steps available to

them to establish a full and circumstantial account of the events and to identify all the policemen who had taken part in the incident. It was impossible for them to do anything else. Therefore no violation could be found in the present case.

3. The third-party intervener

42. The *Institut de Formation en Droits de l'Homme du Barreau de Paris*, a human rights institute founded in 1979 (hereinafter "the Institute"), submitted written comments regarding the applicability of Article 2 of the Convention and the States' obligations under that provision, following the leave granted to it by the President of the Court to intervene as a third party (see paragraph 8 above). Its submissions may be summarised as follows.

43. As regards the applicability of Article 2, the Institute considered that it should be possible for that provision to apply in a case where the police had made use of potentially lethal force, even if that force did not cause the death of the person who was the target of the police actions. There should be no waiting for an irreversible violation of the right to life before reviewing the circumstances in which lethal force was used. The Court itself recognised that, in certain circumstances, a merely "potential" or "virtual" victim of a violation was entitled to take action under the Convention (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161). In that case, the Court had laid emphasis on "the serious and irreparable nature of the alleged suffering risked". It should thus be possible to transpose this reasoning to a virtual violation of Article 2, since use of lethal force by police officers could indeed, depending on the circumstances, pose a serious risk of violation of the right to life.

44. The Institute acknowledged that the Court had already extended the applicability of Article 2 to cases where the applicant was not killed, but regretted the fact that it had limited the scope of its scrutiny to "only exceptional circumstances" (see *Berktay v. Turkey*, no. 22493/93, 1 March 2001). Against this background, certain abuses of power by State agents would not fall foul of the Convention on the ground that they did not cause death and, at the same time, did not necessarily meet the applicability conditions of Article 3. Only an extension of the applicability of Article 2 to all cases where lethal force was used, irrespective of the outcome, could fill this loophole.

45. As regards the States' obligations under Article 2, the Institute stressed that, in addition to the "negative obligation" not to commit an intentional breach of the right to life, there were also a number of "positive obligations" incumbent on them. In particular, the public authorities had a duty to adopt very precise rules governing the use of firearms by law-enforcement officials; the latter should also have proper and regular training. The Institute also referred to the importance of the proportionality rule when making use of potentially lethal force. Lastly, the Institute

stressed that the domestic authorities were under an obligation to conduct an official, effective, speedy and independent investigation when individuals were killed as a result of the use of force. That approach should also be adopted in cases where no death occurred. That was a necessary requirement in view of the need to end any system allowing the impunity of those responsible for actual or virtual violations of rights as fundamental as the right to life.

B. The Court's assessment

1. Establishment of the facts

46. The Court is called on to determine whether the facts of the instant case disclose a failure by the respondent State to protect the applicant's right to life and to comply with the procedural obligation imposed by Article 2 of the Convention to carry out an adequate and effective investigation into the incident.

47. The Court notes at the outset that it is confronted with divergent accounts of the events, in particular as regards the conduct of the police during the applicant's chase and arrest. Further, it notes that the author or the authors of the gunshots which injured the applicant were not identified. Nonetheless, the Court does not consider it necessary to verify the facts itself in order to draw a complete picture of the factual circumstances surrounding the incident. It observes that there was a judicial determination of the facts of the instant case at domestic level (see paragraph 19 above) and that no material has been adduced in the course of the Strasbourg proceedings which could call into question the findings of fact of the Athens First-Instance Criminal Court and lead the Court to depart from them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30).

48. Therefore, even if certain facts remain unclear, the Court considers, in the light of all the material produced before it, that there is a sufficient factual and evidentiary basis on which to assess the case, taking as a starting-point, as mentioned above, the findings of the national court.

2. Applicability of Article 2 of the Convention

49. In the present case, the force used against the applicant was not in the event lethal. This, however, does not exclude in principle an examination of the applicant's complaints under Article 2, the text of which, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life (see *İlhan v. Turkey* [GC], no. 22277/93, § 75, ECHR 2000-VII). In fact, the Court has already

examined complaints under this provision where the alleged victim had not died as a result of the impugned conduct.

50. In this connection, it may be observed, on the one hand, that the Court has already recognised that there may be a positive obligation on the State under the first sentence of Article 2 § 1 to protect the life of the individual from third parties or from the risk of life-endangering illness (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, pp. 3159-63, §§ 115-22; *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2436-41, §§ 92-108; and *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, pp. 1403-04, §§ 36-41).

51. On the other hand, the case-law establishes that it is only in exceptional circumstances that physical ill-treatment by State agents which does not result in death may disclose a violation of Article 2 of the Convention. It is correct that in the proceedings brought under the Convention the criminal responsibility of those concerned in the use of the impugned force is not in issue. Nonetheless, the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case the State agents' actions in inflicting injury short of death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention, having regard to the object and purpose pursued by that Article. In almost all cases where a person is assaulted or ill-treated by the police or soldiers, their complaints will rather fall to be examined under Article 3 of the Convention (see *İlhan*, cited above, § 76).

52. What the Court must therefore determine in the present case, where State agents were implicated in the applicant's wounding, is whether the force used against him was potentially lethal and what kind of impact the conduct of the officials concerned had not only on his physical integrity but also on the interest the right to life is intended to protect.

53. It is common ground that the applicant was chased by a large number of police officers who made repeated use of revolvers, pistols and submachine guns.

It is clear from the evidence adduced before the Court that the police used their weapons in order to stop the applicant's car and effect his arrest, this being one of the instances contemplated by the second paragraph of Article 2 when the resort to lethal, or potentially lethal, force may be legitimate. As far as the ill-treatment proscribed by Article 3 is concerned, at no time could there be inferred from the police officers' conduct an intention to inflict pain, suffering, humiliation or debasement on him (see, as a recent authority, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 425-28, ECHR 2004-VII). In particular, on the material before it the Court cannot find that the applicant's allegation as to the

shooting of his foot after his removal from his car (see paragraph 12 above) has been substantiated.

54. The Court likewise accepts the Government's submission that the police did not intend to kill the applicant. It observes, however, that the fact that the latter was not killed was fortuitous. According to the findings of the ballistic report, there were sixteen holes in the car caused by bullets following a horizontal or an upward trajectory to the car driver's level. There were three holes and a mark on the car's front windscreen caused by bullets which came through the rear window; the latter was broken and had fallen in. In the end, the applicant was injured on the right arm, the right foot, the left buttock and the right side of the chest and was hospitalised for nine days (see paragraphs 12 and 14 above). The seriousness of his injuries is not in dispute between the parties.

55. In the light of the above circumstances, and in particular the degree and type of force used, the Court concludes that, irrespective of whether or not the police actually intended to kill him, the applicant was the victim of conduct which, by its very nature, put his life at risk, even though, in the event, he survived. Article 2 is thus applicable in the instant case. Furthermore, given the context in which his life was put at risk and the nature of the impugned conduct of the State agents concerned, the Court is satisfied that the facts call for examination under Article 2 of the Convention.

3. Alleged failure of the authorities to fulfil their positive obligation to protect the applicant's right to life by law

56. 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, from which no derogation is permitted (see *Velikova v. Bulgaria*, no. 41488/98, § 68, ECHR 2000-VI). 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 (see *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII). 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 (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-47).

57. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps within its internal legal order to safeguard the lives of those within its jurisdiction (see *Kılıç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III). This involves a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework to

deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.

58. As the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force (see, *mutatis mutandis*, *Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, § 56, 8 June 2004; see also Human Rights Committee, General Comment no. 6, Article 6, 16th Session (1982), § 3), and even against avoidable accident.

59. In view of the foregoing, in keeping with the importance of Article 2 in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, p. 46, § 150). In the latter connection, police officers should not be left in a vacuum when performing their duties, whether in the context of a prepared operation or a spontaneous chase of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect (see, for example, the "United Nations Force and Firearms Principles" – paragraphs 30-32 above).

60. Against this background, the Court must examine in the present case not only whether the use of potentially lethal force against the applicant was legitimate but also whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to his life.

61. In view of the recent enactment of Law no. 3169/2003, the Court notes that, since the facts giving rise to the present application, the Greek State has put in place a reviewed legal framework regulating the use of firearms by police officers and providing for police training, with the stated objective of complying with the international standards for human rights and policing (see paragraphs 25 and 27 above).

62. At the time of the events in issue, however, the applicable legislation was Law no. 29/1943, dating from the Second World War when Greece was occupied by the German armed forces (see paragraph 25 above). That statute listed a wide range of situations in which a police officer could use firearms without being liable for the consequences. In 1991 a presidential decree authorised the use of firearms in the circumstances set forth in the 1943 statute "only when absolutely necessary and when all less extreme

methods have been exhausted" (see paragraph 25 above). No other provisions regulating the use of weapons during police actions and laying down guidelines on the planning and control of police operations were contained in Greek law. On the face of it, the above – somewhat slender – legal framework would not appear sufficient to provide the level of protection "by law" of the right to life that is required in present-day democratic societies in Europe.

63. This conclusion as to the state of Greek law is confirmed by the evidence before the Court of the bearing which the legal and administrative framework at the material time had on the way in which the potentially lethal police operation culminating in the applicant's arrest was conducted.

64. Turning to the facts of the present case, and having regard to the findings of the domestic court (see paragraphs 19 and 48 above), the Court accepts that the applicant was driving his car in the centre of Athens at excessive speed in an uncontrolled and dangerous manner, thereby putting the lives of bystanders and police officers at risk; the police were thus entitled to react on the basis that he was in charge of a life-endangering object in a public place. Alternative means to stop him were tried but failed; this was accompanied by an escalation of the havoc that the applicant was causing and by the lethal threat that he posed by his criminal conduct to innocent people. Further, the police officers pursuing the applicant had been informed by the control centre that he might well be armed and dangerous; they also believed that the movements which they saw the applicant make when he stopped his car were consistent with his being armed (see the accused police officers' statements, paragraph 17 above, and Mr Ventouris's and Mr Davarias's statements, paragraph 18 above).

65. Another important factor must also be taken into consideration, namely the prevailing climate at that time in Greece, which was marked by terrorist activities against foreign interests. For example, a group called the "Revolutionary Organisation 17 November", established in 1975, had committed, until it was dismantled in 2002, numerous crimes, including the assassination of United States officials (see paragraph 26 above). This, coupled with the fact that the event took place at night, near the American embassy, contributed to the applicant being perceived as a greater threat in the eyes of the police.

66. Consequently, like the national court, the Court finds in the circumstances that the police could reasonably have considered that there was a need to resort to the use of their weapons in order to stop the car and neutralise the threat posed by its driver, and not merely a need to arrest a motorist who had driven through a red traffic light. Therefore, even though it was subsequently discovered that the applicant was unarmed and that he was not a terrorist, the Court accepts that the use of force against him was based on an honest belief which was perceived, for good reasons, to be valid at the time. To hold otherwise would be to impose an unrealistic burden on

the State and its law-enforcement personnel in the performance of their duty, perhaps to the detriment of their lives and those of others (see *McCann and Others*, cited above, pp. 58-59, § 200).

67. However, although the recourse as such to some potentially lethal force in the present case can be said to have been compatible with Article 2 of the Convention, the Court is struck by the chaotic way in which the firearms were actually used by the police in the circumstances. It may be recalled that an unspecified number of police officers fired a hail of shots at the applicant's car with revolvers, pistols and submachine guns. No less than sixteen gunshot impacts were found on the car, some of them attesting to a horizontal or even upward trajectory, and not a downward one as one would expect if the tyres, and only the tyres, of the vehicle were being shot at by the pursuing police. Three holes and a mark had damaged the car's windscreen and the rear window glass was broken and had fallen in (see paragraph 14 above). In sum, it appears from the evidence produced before the Court that large numbers of police officers took part in a largely uncontrolled chase.

68. Serious questions therefore arise as to the conduct and the organisation of the operation. Admittedly, some directions were given by the control centre to some police officers who had been expressly contacted, but others went of their own accord to their colleagues' assistance, without receiving any instructions. The absence of a clear chain of command is a factor which by its very nature must have increased the risk of some police officers shooting erratically.

69. The Court does not of course overlook the fact that the applicant was injured during an unplanned operation which gave rise to developments to which the police were called upon to react without prior preparation (see, *a contrario*, *Rehbock v. Slovenia*, no. 29462/95, §§ 71-72, ECHR 2000-XII). Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible burden on the authorities (see, *mutatis mutandis*, *Mahmut Kaya v. Turkey*, no. 22535/93, § 86, ECHR 2000-III).

70. Nonetheless, while accepting that the police officers who were involved in the incident did not have sufficient time to evaluate all the parameters of the situation and carefully organise their operation, the Court considers that the degeneration of the situation, which some of the police witnesses themselves described as chaotic (see, for example, Mr Manoliadis's statement – paragraph 17 above), was largely due to the fact that at that time neither the individual police officers nor the chase, seen as a collective police operation, had the benefit of the appropriate structure which should have been provided by the domestic law and practice. In fact, the Court points out that in 1995, when the event took place, a law

commonly acknowledged as obsolete and incomplete in a modern democratic society was still regulating the use of weapons by State agents. The system in place did not afford to law-enforcement officials clear guidelines and criteria governing the use of force in peacetime. It was thus unavoidable that the police officers who chased and eventually arrested the applicant should have enjoyed a greater autonomy of action and have been left with more opportunities to take unconsidered initiatives than would probably have been the case had they had the benefit of proper training and instructions. The absence of clear guidelines could further explain why a number of police officers took part in the operation spontaneously, without reporting to a central command.

71. In the light of the above, the Court considers that, as far as their positive obligation under the first sentence of Article 2 § 1 to put in place an adequate legislative and administrative framework was concerned, the Greek authorities had not, at the relevant time, done all that could be reasonably expected of them to afford to citizens, and in particular to those, such as the applicant, against whom potentially lethal force was used, the level of safeguards required and to avoid real and immediate risk to life which they knew was liable to arise, albeit only exceptionally, in hot-pursuit police operations (see, *mutatis mutandis*, *Osman*, cited above, p. 3160, § 116 *in fine*).

72. Accordingly, the applicant has been the victim of a violation of Article 2 of the Convention on this ground. In view of this conclusion, it is not necessary to examine the life-threatening conduct of the police under the second paragraph of Article 2.

4. Alleged inadequacy of the investigation

73. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Anguelova v. Bulgaria*, no. 38361/97, § 137, ECHR 2002-IV). Since often, in practice, the true circumstances of the death in such cases are largely confined within the knowledge of State officials or authorities, the bringing of appropriate domestic proceedings, such as a criminal prosecution, disciplinary proceedings and proceedings for the exercise of remedies available to victims and their families, will be conditioned by an adequate official investigation, which must be

independent and impartial. The same reasoning applies in the case under consideration, where the Court has found that the force used by the police against the applicant endangered his life (see paragraphs 53 to 55 above).

74. The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 96-97, 4 May 2001, and *Anguelova*, cited above, § 139).

75. In the instant case, following the incident, an administrative investigation was opened. A number of police officers and other witnesses were interviewed and laboratory tests were conducted. After the investigation a criminal prosecution was brought against seven police officers, who were eventually acquitted (see paragraphs 13 and 15 above).

76. However, the Court observes that there were striking omissions in the conduct of the investigation. In particular, the Court attaches significant weight to the fact that the domestic authorities failed to identify all the policemen who took part in the chase. In this connection, it may be recalled that some policemen left the scene without identifying themselves and without handing over their weapons; thus, some of the firearms which were used were never reported. This was also acknowledged by the domestic court. It also seems that the domestic authorities did not ask for the list of the policemen who were on duty in the area when the incident took place and that no other attempt was made to find out who these policemen were. Moreover, it is remarkable that only three bullets were collected and that, other than the bullet which was removed from the applicant's foot and the one which is still in his buttock, the police never found or identified the other bullets which injured the applicant.

77. The above omissions prevented the national court from making as full a finding of fact as it might otherwise have done. It will be recalled that the seven police officers were acquitted on the first charge (causing serious bodily harm), on the ground that it had not been shown beyond reasonable doubt that it was they who had injured the applicant, since many other shots had been fired from unidentified weapons (see paragraph 19 above). The Court is not convinced by the Government's assertion that the domestic authorities could not have done more to obtain evidence concerning the incident.

78. Having regard to the above considerations, the Court concludes that the authorities failed to carry out an effective investigation into the incident. The incomplete and inadequate character of the investigation is highlighted by the fact that, even before the Court, the Government were unable to identify all the officers who were involved in the shooting and wounding of the applicant.

79. There has accordingly been a violation of Article 2 of the Convention in that respect.

5. Alleged practice of the authorities of failing to comply with their procedural obligations under Article 2 of the Convention

80. Having regard to its findings above (see paragraphs 72 and 79), the Court does not find it necessary to determine whether the failings identified in this case are part of a practice adopted by the authorities, as asserted by the applicant (see paragraph 37 above).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

81. The applicant complained that he had been the victim of serious bodily harm, in breach of Article 3 of the Convention, which stipulates:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

82. The Government maintained that the applicant's injuries were accidental and regrettable consequences of a lawful arrest.

83. In view of the grounds on which it has found a dual violation of Article 2 of the Convention (see paragraphs 46 to 79 above), the Court considers that no separate issue arises under Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

84. The applicant complained that he had not had an effective remedy within the meaning of Article 13 of the Convention, which stipulates:

> "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."

85. The Government did not address this allegation other than to assert the availability of remedies at the domestic level to redress the applicant's grievances.

86. In view of the submissions of the applicant in the present case and of the grounds on which it has found a violation of Article 2 in relation to its procedural aspect (see paragraphs 73 to 79 above), the Court considers that no separate issue arises under Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

1. Pecuniary damage

88. The applicant claimed 60,000 euros (EUR) for loss of income over a period of twenty months after the incident and a reduction of his income for the next fifteen years.

89. The Government claimed that this amount was excessive and unjustified. They contended that even before the incident the applicant had been facing psychological problems which had prevented him from working.

90. The Court notes that the claim relates to loss of income which was allegedly incurred over a period of twenty months after the incident, and to alleged future loss of income. It observes, however, that no supporting details have been provided for these losses, which must therefore be regarded as largely speculative. For this reason, the Court makes no award under this head.

2. Non-pecuniary damage

91. The applicant claimed EUR 75,000 for non-pecuniary damage in respect of the anxiety, fear, pain and injury he suffered. He claimed that his life was ruined.

92. The Government reiterated that, by his dangerous behaviour, the applicant had put the lives of innocent people at risk. They contended that the finding of a violation of the Convention would constitute sufficient just satisfaction.

93. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the findings of violations. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 under this head.

B. Costs and expenses

94. The applicant, who was granted legal aid before the Court, made no claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* by twelve votes to five that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to protect the applicant's right to life by law;

2. *Holds* unanimously 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 into the circumstances of the incident which put the applicant's life at risk;

3. *Holds* by fifteen votes to two that no separate issue arises under Article 3 of the Convention;

4. *Holds* by sixteen votes to one that no separate issue arises under Article 13 of the Convention;

5. *Holds* by fifteen votes to two
   (a) that the respondent State is to pay the applicant, within three months, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, together with any tax that may be chargeable on the above amount;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 December 2004.

Luzius WILDHABER
President

Paul MAHONEY
Registrar

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

(a) joint concurring opinion of Mr Costa, Sir Nicolas Bratza, Mr Lorenzen and Mrs Vajić;

(b) partly dissenting opinion of Mr Wildhaber joined by Mr Kovler and Mrs Mularoni;

(c) partly dissenting opinion of Mrs Tsatsa-Nikolovska joined by Mrs Strážnická.

L.W.
P.J.M.

JOINT CONCURRING OPINION OF JUDGES COSTA, Sir Nicolas BRATZA, LORENZEN AND VAJIĆ

While we share the view of the majority of the Court that there has been a violation of both the substantive and procedural aspects of Article 2 in the present case, we cannot fully subscribe to the Court's reasoning as to the former.

That reasoning is founded principally on two factors – the inadequacy of the general legal framework in Greece at the time of the incident regulating the use of firearms by police officers and the chaotic way in which firearms were in the event used by the police during the course of the chase and eventual wounding of the applicant. In the view of the Court, the two factors are closely linked, "the autonomy of action and unconsidered initiatives" of the police officers concerned being, in the view of the majority, an unavoidable consequence of the lack of clear guidelines and criteria governing the use of force in peacetime.

We can readily agree that the way in which the operation was in fact carried out by the Athens police gave rise to a breach of the obligation to protect life within the meaning of the first sentence of Article 2. As is established by the case-law of the Court, the first sentence enjoins the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the life of those within its jurisdiction. This involves a primary duty on the part of the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. However, it also requires in our view that recourse to potentially lethal force by agents of the State should be regulated and controlled in such a way as to minimise to the greatest extent possible the risk to human life.

We accept that in the present case the authorities were faced with what appeared to be an emergency situation and one which developed with great rapidity and without any opportunity for pre-planning. We accept, too, that the obligation imposed by Article 2 should not be interpreted in such a way as to impose an impossible burden on the authorities and that the actions of those authorities should not be evaluated with the wisdom of hindsight. Nevertheless, we consider that the controls exercised by the authorities over the operation to stop and detain the applicant were manifestly inadequate. Like the majority of the Court, we are particularly struck by the number of police officers, armed with a variety of weapons, who took part in the chase without any effective centralised control over their actions or any clear chain of command. These included not only twenty-nine identified officers

but an unquantified number of additional officers who participated in the chase on their own initiative and without instructions and who left the scene

without identifying themselves and without handing in their weapons. Moreover, it is apparent that at least one of these unidentified officers opened fire on the car, the Athens First-Instance Criminal Court finding that a bullet recovered from the body of the applicant and a bullet found inside the car were unrelated to any of the thirty-three weapons which had been surrendered for examination following the incident.

In our view, the undisciplined and uncontrolled manner in which the operation was conducted, which carried with it a serious risk of fatal injury to the applicant, is in itself sufficient to give rise to the finding of a breach of the obligation to protect life under Article 2.

Where we part company with the majority is as to their further reliance on the claimed inadequacy of the legislative framework in Greece at the relevant time, governing the use of firearms. The majority emphasise that the applicable legislation, which dated from the occupation of Greece in the Second World War, listed a wide range of situations in which a police officer could use firearms without being liable for the consequences. While noting that these provisions had been qualified by the presidential decree of 1991, which authorised the use of firearms "only when absolutely necessary and when all less extreme methods have been exhausted", the majority have found this "somewhat slender legal framework" to be insufficient to provide the level of protection "by law" of the right to life that is required in present-day democratic societies in Europe.

Unlike the majority, we have found no clear evidence to suggest that the lack of control over the operation in the present case was attributable to any gap or deficiency in the level of protection provided by the relevant Greek law. In these circumstances, while we welcome the improvements in the law governing the carrying and use of firearms by police officers which were introduced in Greece in July 2003 (see paragraph 27 of the judgment), we have not found it to be either necessary or appropriate to examine in the abstract the compatibility with Article 2 of the legislative provisions in force at the relevant time (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 47, § 153) or to base our conclusion on any deficiency in those provisions.

PARTLY DISSENTING OPINION OF JUDGE WILDHABER JOINED BY JUDGES KOVLER[1] AND MULARONI

To my regret I am unable to subscribe to the finding of a substantive violation of Article 2 in the instant case.

This case is about a dangerous police chase in the centre of Athens. Dangerous, because the police shot at the applicant, but dangerous also because, before the police opened fire, the applicant had broken through several police roadblocks with his car, collided with several other vehicles, injured two drivers and caused a cervical hernia in one of them in the process (see paragraphs 11, 19, 21 and 64 of the judgment). It does not therefore necessarily help simply to state that the right to life is fundamental (see paragraph 56). The problem is: whose life? And how should the different lives at stake be protected?

Our Court's case-law asserts that a State may have a positive obligation to protect the life of individuals from third parties (see paragraph 50). Concretely, this may mean that the police had to protect the lives of pedestrians, car drivers and their colleagues from the applicant. The Court's case-law states at the same time that, in exceptional circumstances, physical ill-treatment by State agents that does not result in death may disclose a violation of Article 2 (see paragraphs 43-44 and 51-52 of the judgment; see also *Berktay v. Turkey*, no. 22493/93, 1 March 2001, and *İlhan v. Turkey* [GC], no. 22277/93, § 76, ECHR 2000-VII). Concretely, this may mean that the use of force by the police against the applicant could amount to a violation of Article 2, notwithstanding the fact that it was not in the end lethal.

If these two strands of case-law are over-extended, they may ultimately overlap and come into conflict. The State might then paradoxically violate both its positive duty to protect the life of individuals from third parties and its obligation to curb the use of force by the police. Obviously, such an overlap would be unfortunate. In extreme cases it can place the competent authorities in an impossible situation. In between there must be room for the unpredictability of life and the subsidiarity of the Convention system. Such difficult decisions, taken in the heat of the action, should properly be reviewed by the national courts and our Court should only depart from such findings with reluctance.

In the present case the Court's majority relies on some of the findings of the Greek court, which indeed appear in no way arbitrary (see paragraphs 19 and 66 of the judgment). It finds that the police could reasonably have considered that there was a need to resort to the use of their weapons. I see no grounds for finding otherwise.

[1]1. Judge Kovler does not share the conclusions in the opinion as regards Article 41 of the Convention since he voted with the majority on that issue.

However, the Court's majority then nevertheless concludes that Article 2 was violated. It declares itself struck by the "chaotic way" in which the police operation was carried out (see paragraph 67) and explains this by the "absence of a clear chain of command" (paragraph 68), the lack of "proper training and instructions" (paragraph 70) and the "obsolete and incomplete law" regulating police conduct (paragraph 70; see also paragraphs 25, 62, and 71).

The file of this case does not, in my view, establish the absence of a clear chain of command. On the contrary, several policemen referred to orders given to them and to instructions from the control centre (see paragraph 17, point 2 (Mr Netis), point 6 (Mr Ntinas), point 7 (Mr Kiriazis), paragraph 18, point 1 (Mr Ventouris), point 2 (Mr Nomikos), point 3 (Mr Xilogiannis), point 4 (Mr Davarias)), and the Athens First-Instance Criminal Court similarly accepts the existence of a chain of command (see paragraph 19). There is also reference in the file to the training that the police force receives (see paragraph 18, point 1 (Mr Ventouris)). If the Court's majority did not accept this testimony or if it relied on extraneous evidence, it should have explained why.

It is accepted that several off-duty policemen must have joined the chase and must have used their weapons. The subsequent administrative investigation did not establish adequately what had happened in that respect. That is why our Court found a procedural violation of Article 2. I joined the Court's majority on this point, which reflects well-established case-law. However, domestic law did not prohibit off-duty members of the police force from joining a police chase in an exceptional situation, and I see no reason why such a participation should *a priori* be considered to constitute a substantive violation of Article 2.

As I see it, the strongest argument advanced by the Court's majority is the over-broad discretion which Law no. 29/1943 left to the police. However, at the time of the police chase in the instant case (13 September 1995), Law no. 29/1943 had already been superseded by Article 133 of Presidential Decree no. 141/1991, which authorised the use of firearms in the situations set forth in Law no. 29/1943 "only when absolutely necessary and when all less extreme methods have been exhausted". This is admittedly not the same as an exhaustive modern police law, but it lays down an essential standard for the use of force by the police in an absolutely clear fashion.

I cannot agree that the Court should find a substantive violation of Article 2 in a case that stems from the irresponsible and dangerous behaviour of the applicant; where a national criminal court has looked carefully at the relevant facts and decided that the use of force by the police was justified in order to protect the life of third persons; where our Court itself accepts the national court's view that the use of weapons by the police was justifiable; where the applicant suffered injuries (as did some of his

victims), but did not lose his life; and where the domestic law restricts the use of police firearms to situations of absolute necessity.

Given my views on this case, I am opposed to the award of a substantial sum to the applicant in respect of non-pecuniary damage. The finding of a violation should have sufficed in terms of just satisfaction.

PARTLY DISSENTING OPINION OF JUDGE TSATSA-NIKOLOVSKA JOINED BY JUDGE STRÁŽNICKÁ[1]

I regret that I am unable to share the opinion of the majority of the Court regarding its finding of a violation of Article 2 in respect of the State's obligation to protect the applicant's right to life by law and that no separate issue arises under Article 3 and Article 13 of the Convention.

I consider that, given the actual circumstances of the incident which put the applicant's life at risk, it is impossible to conclude beyond reasonable doubt that there has been a violation of Article 2 in substance.

The case-law of the Court establishes that it is only in exceptional circumstances that physical ill-treatment by State agents which does not result in death may disclose a violation of Article 2 of the Convention.

I accept that there are exceptional circumstances in the present case which bring Article 2 into play, because the applicant's life was put at risk by the lethal means used by the police officers to stop his car and arrest him, but in the circumstances of the case I have some doubts that there are enough well-established facts to conclude beyond reasonable doubt that there has been a violation of Article 2 in substance.

I consider that in this case it is necessary to have a clear picture of the incident for the purpose of assessing whether there has been a possible violation of Article 2 in substance.

In the present case, I think that the Court should deal with the question of the police officers' conduct during the incident, namely their identification as participants in the chase, their use of firearms from beginning to end, including the actions of the operational units of patrol cars and motorcycles, the actions of the control centre, their instructions and coordination. It should also have regard to the implementation in practice of the national and international principles of legality, proportionality and necessity in the case, the outcome of the incident, all the applicant's injuries and his conduct during the incident in order to assess and evaluate whether there were irregularities and arbitrariness in the action of the police or an abuse of force. The Court should have relevant evidence and proof in this field.

It is true that the national law quoted in the judgment is the old one and that some provisions gave the police wide scope in the use of firearms, such as the use of force to enforce the laws, decrees and decisions of the relevant authorities or to disperse public gatherings or suppress mutinies, but this is not in issue in the instant case. Generally speaking, this fact does not mean that the police can use force without control. This is particularly true in this case, where there is no evidence justifying such use of force. On the other hand, that law was amended by the provisions authorising the use of

[1]1. Judge Strážnická does not share the conclusions in the opinion as regards Article 13 of the Convention since she voted with the majority on that issue.

firearms only when absolutely necessary and when all less extreme methods have been exhausted. Furthermore, all the relevant international principles in the international documents quoted in the judgment have been recognised by the Greek authorities. Criminal proceedings for causing serious bodily harm and for the unauthorised use of weapons were instituted against seven police officers, who were later acquitted, on the basis of the result of an administrative investigation which was carried out in respect of twenty-nine police officers, and it is difficult for me to accept that it would be possible for a police officer to use firearms without being liable for the consequences.

I must say that I do not have a clear picture of the incident because there is insufficient factual evidence owing to the inadequate, incomplete and ineffective investigation and information concerning police practice regarding the use of firearms. It is generally for the national authority to establish the facts. The Court made efforts to do this by itself but, in my opinion, unfortunately did so unsuccessfully in some respects.

In these circumstances, I consider that it is impossible to make a proper evaluation and conclude beyond reasonable doubt that there has been a violation of Article 2 in substance as a result of the incident. I think that in such a situation it is not necessary to consider the applicant's complaint under Article 2 of the Convention regarding the alleged lack of protection by national law of the right to life.

On the other hand, I think that there are elements which enable an assessment to be made under Article 3 of the Convention of the police officers' conduct during the incident.

The Court has reiterated in *Tekin v. Turkey*, ([GC], no. 22277/93, ECHR 2000-VII) and *İlhan v. Turkey* (judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV) that ill-treatment must attain a minimum level of severity and that this assessment depends on all the circumstances of the case, namely the duration of the treatment, its physical or moral effects and the state of health of the victim.

In the instant case, there are some indisputable circumstances. The applicant had driven through a red traffic light and was chased by thirty-three police officers in cars and on motorcycles, shooting from guns, revolvers and submachine guns, who used force to stop and arrest him. There was no intention or order given to kill him, and no one contests that the applicant felt fear and panic. The police lost him once during the chase. The applicant stopped at the entrance of a petrol station of his own free will, did not offer any resistance and did not get out of the car. The shots were numerous and the applicant was seriously injured. He underwent three operations, his health deteriorated considerably after the incident and he is now severely disabled.

All the points that I have mentioned above provide elements that enable an assessment to be made of the level of severity, that is, the duration of the

treatment, the physical and moral effects and the state of health of the victim. This leads me to conclude that there is a separate issue in this case to be considered under Article 3 of the Convention, especially as I consider that there are no elements on which this case can be assessed under Article 2 in substance or a conclusion reached beyond reasonable doubt under that provision.

The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106; *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 96, ECHR 2002-II; *Gül v. Turkey*, no. 22676/93, § 100, 14 December 2000; *İlhan*, cited above; and *McKerr v. the United Kingdom*, no. 28883/95, § 107, ECHR 2001-III).

Given the fundamental importance of the right to life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, and including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, p. 330, § 107, and *Gül*, cited above, § 100).

On the basis of the circumstances in the present case, in which there has been a finding of a violation of Article 2 in respect of the respondent State's obligation to protect the applicant's right to life by law and to conduct an effective investigation into the circumstances of the incident which put the applicant's life at risk, the authorities should make available to the victim a mechanism for establishing any liability of State agents or bodies for acts or omissions involving a breach of their rights protected by the Convention. Furthermore, in the case of a breach of Articles 2 and 3, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress (see *Paul and Audrey Edwards*, cited above).

The applicant complained that, before a civil case for compensation could be brought, the responsibility of the perpetrators had to be proved in order to establish liability on the part of the State. As a result of the acquittal of the accused, the applicant could not obtain compensation for the non-pecuniary damage resulting from his injuries. He has no right of appeal

against the above-mentioned decision acquitting the police officers. The applicant argued that, owing to the lack of an effective investigation, he had also been deprived of an effective remedy regarding the breach of Article 13 of the Convention.

The Government asserted that a remedy was available at domestic level, but did not submit evidence demonstrating the effectiveness of the available remedies for compensation in practice.

In the instant case, the national court acquitted the seven police officers on both criminal charges brought against them, firstly on the count of causing serious bodily harm and secondly on the count of unauthorised use of weapons. The court found that the accused police officers were not the ones who had injured the applicant and that they had used their weapons to stop the car, the driver of which they considered to be dangerous. An administrative investigation was carried out by the police in respect of the twenty-nine police officers who had taken part in the chase, but the applicant had no effective access to it. Following that administrative investigation, the public prosecutor instituted criminal proceedings against only seven police officers, who were later acquitted. The applicant was accused of committing offences and sentenced to forty days' imprisonment (see paragraphs 21-22 of the judgment).

In these circumstances, it is questionable whether the applicant could prove the responsibility of the perpetrators if he were to bring a civil action for appropriate compensation.

The mere fact that the applicant was able to join the proceedings as a civil party is insufficient for the purposes of Article 13. Moreover, the fact that he was unsuccessful is a further element proving that the effectiveness of this remedy is doubtful.

The question now arises whether it would be enough for the purposes of Article 13 to deal only with the question of the identification of all policemen who took part in the chase and who injured the applicant.

The answer for me would be "no" because another question arises in these circumstances, which is whether the authorities make available to the applicant, as a real victim, an effective mechanism for establishing the civil liability of the State agents or bodies – in this case the police officers – for the acts or omissions involving the breach of his rights under the Convention. I have in mind the majority's finding that the State did not fulfil its obligation to protect the applicant's right to life by law.

Moreover, a right to appropriate compensation as an effective remedy for redress is relevant in a situation where no effective investigation for the purpose of Article 2 was carried out, bearing in mind that misconduct, omissions, delays and all errors made during an investigation carried out by the police, especially when the police officers are involved in the incident, could raise problems in the criminal proceedings when establishing the relevant facts and possible redress later.

That is why I consider that in the instant case a separate issue arises under Article 13 of the Convention.