



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF GIULIANI AND GAGGIO v. ITALY

(Application no. 23458/02)

JUDGMENT

STRASBOURG

25 August 2009

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
24/03/2011**

This judgment may be subject to editorial revision.

In the case of Giuliani and Gaggio v. Italy,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Lech Garlicki,

Giovanni Bonello,

Vladimiro Zagrebelsky,

Ljiljana Mijović,

Ján Šikuta, *judges*,

and Lawrence Early, *Section Registrar*,

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

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

PROCEDURE

1. The case originated in an application (no. 23458/02) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Italian nationals, Mr Giuliano Giuliani, Mrs Adelaide Gaggio (married name Giuliani) and Ms Elena Giuliani (“the applicants”), on 18 June 2002.

2. The applicants were represented by Mr N. Paoletti and Mr G. Pisapia, lawyers practising in Rome. The applicants are the father, mother and sister respectively of Carlo Giuliani. The Italian Government (“the Government”) were represented by their Agent, Mrs E. Spatafora, and by their co-Agent, Mr F. Crisafulli.

3. The applicants alleged, in particular, that Carlo Giuliani had died as a result of the excessive use of force by the law-enforcement agencies.

4. A hearing on admissibility and the merits (Rule 54 § 3 of the Rules of Court) took place in public in the Human Rights Building, Strasbourg, on 5 December 2006 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr F. Crisafulli,

Co-Agent;

(b) *for the applicants*

Mr N. Paoletti, of the Rome Bar,

Mrs A. Mari, of the Rome Bar,

Mrs G. Paoletti, of the Rome Bar,

Counsel.

5. By a decision of 6 February 2007, the Chamber declared the application admissible.

6. The applicants and the Government each filed further written observations (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

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

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

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

10. The service order of 19 July 2001 is the one issued the day before the events. It sums up the priorities of the law-enforcement agencies as follows: establishing a line of defence within the “red zone”, with the task of repelling rapidly any attempt to break through; establishing a line of defence within the “yellow zone” to deal with any incidents, taking account of the position of the demonstrators in various locations and of actions perpetrated by more extremist elements; finally, putting in place

public-order measures on the streets concerned by the demonstrations, in view of the risk of violence encouraged by the presence of crowds of people.

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

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

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

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

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

14. The same judgment noted that on the morning of 20 July groups of particularly aggressive demonstrators, wearing balaclavas and masks (the “Black Bloc”) had sparked numerous incidents and clashes with law-enforcement officers. At around 1.30 p.m. the *Tute bianche* march was ready to set off from the Carlini stadium. This was a demonstration involving several organisations: representatives of the “No Global” movement and of community centres, and young communists from the

Rifondazione comunista party. While they believed in non-violent protest (civil disobedience), they had announced a strategic objective, namely to try to penetrate the red zone. For that reason the Genoa police chief (*questore*) had decided on 19 July 2001 to prohibit the *Tute bianche* procession from entering the red zone or the zone adjacent to it, and had deployed law-enforcement officers to halt the procession at Piazza Verdi. Consequently, the demonstrators were able to march from the Carlini stadium and all the way along Via Tolemaide to Piazza Verdi, that is to say, well beyond the junction of Via Tolemaide and Corso Torino, where the events dealt with below took place. At around 1.30 p.m. the procession set off and headed slowly westwards. As they proceeded, the demonstrators appeared calm and in good spirits, at least until they saw columns of smoke coming from the direction of Via Canevari and a burnt-out car on Via Montevideo, at which point some tension set in. There were signs of earlier disorder in the area around Via Tolemaide. The procession was headed by a contact group made up of politicians and a group of journalists carrying video recorders and cameras. The procession slowed down and made a number of stops. Further down, around Via Tolemaide, there were incidents involving persons wearing masks and balaclavas and law-enforcement officers. The procession reached the railway tunnel at the junction with Corso Torino. Suddenly, tear gas was fired on the demonstrators by *carabinieri* under the command of Mr Mondelli.

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

Armoured vehicles belonging to the *carabinieri* drove up Via Casaregis and Via Invrea at high speed, knocking down the barriers erected by the demonstrators using containers, and forcing the demonstrators at the scene to leave. At 3.22"52' p.m. the control room ordered Mondelli to move away and allow the *Tute bianche* to pass. Once the attack was over, the *carabinieri* withdrew to Via Casaregis and then Via Invrea, to the north, before heading west along Via Tolemaide.

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

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

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

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

B. The death of Carlo Giuliani

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

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

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

23. One of them, Mario Placanica ("M.P."), was a twenty-year-old *carabiniere* trained in the use of grenades. Suffering from the effects of the tear-gas grenades he had thrown during earlier clashes, he had been given permission by Captain Cappello (commander of the ECHO contingent

within the CCIR – *contingente di contenzione e intervento risolutivo*) to get into the jeep in order to get away from the scene of the earlier clash. Crouched down in the back of the jeep, injured and panicking, defending himself on one side with a riot shield (according to the statement of a demonstrator named Predonzani) and shouting at the demonstrators to leave “or he would kill them”, M.P. drew his Beretta 9 mm pistol, pointed it in the direction of the smashed rear window of the vehicle and, after some tens of seconds, fired two shots.

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

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

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

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

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

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

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

30. The moments leading up to the death of Carlo Giuliani were reconstructed as follows in the Interior Ministry memorandum added to the file by the Government:

“At 6 a.m. the sector received the service order and three detachments took up positions close to the *questura*. After a few hours the contingent was dissolved; two detachments remained.

Towards the end of the morning the contingent was sent to Piazza Tommaseo, arriving after the clashes with demonstrators had ended. Police officer Lauro took over command of the contingent.

The men were stationed on Via Rimassa, near the King gardens, and had a variety of objects thrown at them. From 3 p.m. onwards the contingent, following the demonstrators, went along Via Ivrea and arrived on Piazza Alimonda, where the situation was relatively calm; as a result, the contingent was reorganised. There were about fifty *carabinieri* present.

The two Defender jeeps used to liaise between the contingents were at the scene. Officer Lauro and Captain Cappello decided to deploy the contingent on Via Caffa, in the direction of Via Tolemaide, in order to deal with a group of demonstrators who had built a barricade using waste containers. The *carabinieri* were subjected to a barrage of stones and bottles. Fearing that other demonstrators coming from Via Odessa would join in, the *carabinieri* retreated on foot, leaving the two jeeps which were at the rear of the contingent exposed.

In the momentary confusion the drivers of the two jeeps attempted to withdraw as quickly as possible by reversing towards Piazza Tommaseo. In trying to turn around, the two jeeps got in each other's way; the jeep driven by Filippo Cavataio (F.C.) was unable to complete the manoeuvre and found its way forward blocked by a waste container. A few moments later demonstrators coming from Via Tolemaide and Via Odessa reached the jeep."

31. Relying, *inter alia*, on evidence given by law-enforcement officers during the "trial of the twenty-five", the applicants described the circumstances surrounding the death of Carlo Giuliani as follows:

"The procession of *Tute bianche* ("White overalls") demonstrators arrived in Via Tolemaide at around 2.50 p.m. At 2.53 p.m. the law-enforcement agencies (the company of *carabinieri* from the Lombardia battalion) attacked them. The demonstrators were attacked eight times, with nineteen armoured vehicles, fire engines, tear gas and truncheons being used. The last attack took place at 5.15 p.m.

In the meantime the ECHO company – which had assisted the Lombardia battalion during some of the attacks – had taken up position at the intersection of Piazza Alimonda and Via Caffa, under the orders of police officer Lauro. Two Defender jeeps joined them. The *carabinieri* were able to take off their gas masks, eat and rest.

At the same time the police took up positions on Via Caffa, under the orders of police officer Fiorillo.

With the situation calm, Captain Cappello ordered M.P. and D.R. to board one of the two jeeps. He thought it wise to allow the two *carabinieri* to board, as they were mentally exhausted (*'a terra'*) and were no longer physically fit for duty. Cappello also considered that M.P. should stop firing tear gas and took away his tear-gas gun and the pouch containing the tear-gas grenades.

At 5.20 p.m. the ECHO company, comprising about one hundred men at that point, following an order from police officer Lauro, donned their gas masks and riot shields again and set off on foot along Via Caffa towards Via Tolemaide. A decision was taken in the presence of Lieutenant-Colonel Truglio to attack the procession. The two jeeps followed the detachment. Several waste containers were being used as a barrier by the demonstrators. The ECHO company began to withdraw along Via Caffa, towards Piazza Alimonda, accompanied by the two jeeps travelling in reverse. About seventy demonstrators followed the *carabinieri*. When it arrived on Piazza Alimonda,

the jeep in which M.P. was travelling found its path blocked by a waste container. Demonstrators threw stones at the vehicle, and then a fire extinguisher, which fell to the ground.

Carlo Giuliani moved towards an extinguisher which was lying on the ground. At that point one of the *carabinieri* in the jeep already had a pistol in his hand and was ready to fire. Carlo Giuliani took hold of the extinguisher and raised it up. It was 5.27 p.m. In the same instant he was struck by the fatal bullet.”

32. With regard to the pistol, the applicants referred to the photographs in the investigation file, and stressed that it was being held horizontally and pointing downwards.

33. The Interior Ministry asserted that it was impossible to indicate the exact number of *carabinieri* and police officers at the scene at the moment of Carlo Giuliani's death; there had been approximately fifty *carabinieri*, some 150 metres from the jeep. In addition, 200 metres away, near Piazza Tommaseo, there had been a group of police officers (*reparto mobile della polizia di stato*).

34. The applicants, for their part, referred to the statements made by Lieutenant-Colonel Truglio (see below), who said that he had been ten metres or so from Piazza Alimonda and thirty to forty metres away from the jeep. The *carabinieri* (around a hundred of them) had been some tens of metres from the jeep. The police officers had been at the end of Via Caffa, towards Piazza Tommaseo. The applicants further submitted that the photographs in the investigation file clearly showed some *carabinieri* a few metres from the jeep in question.

2. Information supplied by the applicants concerning the immediate aftermath of the jeep's departure

35. A film submitted by the applicants based on images in the investigation file shows several individuals and law-enforcement officers approaching the body of the victim. A bloodstained stone which does not appear at the beginning of the sequence of images can be seen at the end, close to the victim's head. In addition, a police officer (Mr Lauro) near to Carlo Giuliani's body is shown pointing at a demonstrator and shouting “*Sei stato tu, sei stato tu*” (“It was you! It was you!”), after which law-enforcement officers are seen chasing after the demonstrator, to no avail.

36. Captain Cappello, who gave evidence at the “trial of the twenty-five” (hearing of 20 September 2005), stated that a young woman had approached Carlo Giuliani's body and lifted up the balaclava he was wearing. A star-shaped wound was visible on the victim's forehead. The young woman said that Carlo Giuliani was dead and that, in her view, he had not been killed by a stone. About two minutes after she had said this, police officer Lauro had begun to “give vent to his feelings”, as Captain Cappello put it; this was later shown on television.

C. The investigation by the domestic authorities

1. *The first steps in the investigation*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Statements taken during the investigation

(a) Statements by other carabinieri

52. Sergeant-Major Amatori, who was in the other jeep which was stuck momentarily on Piazza Alimonda, said that he had observed that the jeep in which M.P. was travelling had its path blocked by a waste container and was surrounded by a large number of demonstrators, "certainly more than twenty of them". The demonstrators were throwing objects at the jeep. He saw in particular that one protestor had already thrown a fire extinguisher at the rear window. The sergeant-major said that he had heard shots and seen Carlo Giuliani fall down. He had also seen the jeep drive twice over Carlo Giuliani's body. Once the jeep had succeeded in leaving Piazza Alimonda, he went over to it and saw that F.C., the driver, had got out of the jeep and, visibly shaken, was asking for help. The sergeant-major took over the driving seat and, observing that M.P. had a pistol in his hand, ordered him to replace the safety catch. He said that he had immediately thought that this was the weapon that had just fired the two shots, but had said nothing to M.P., since the latter was injured and his head was bleeding. The driver (F.C.) told him that he had heard shots while he was manoeuvring the jeep. The sergeant-major was not offered any explanation as to the circumstances surrounding the decision to shoot and did not ask any questions on the subject.

53. *Carabiniere* Rando said that he had gone over to the jeep on foot. He had seen that M.P.'s pistol was drawn and had asked M.P. if he had fired. M.P. said that he had, without specifying whether he had fired into the air or in the direction of one of the demonstrators. Mr Rando said that M.P. kept saying: "They wanted to kill me, I don't want to die".

54. On 11 September 2001 the public prosecutor heard evidence from Captain Cappello, who had been in command of the company of *carabinieri* to which M.P. was assigned during the G8 summit, under the orders of Lieutenant-Colonel Truglio. Captain Cappello stated that he had given M.P. permission to get into the jeep and had taken his tear-gas gun as M.P. was experiencing difficulties. He stated subsequently (at the "trial of the twenty-five", hearing of 20 September 2005) that M.P. had been physically unfit to continue on account of his mental state and nervous tension. Captain Cappello had then moved with his men – about fifty in number – to the corner of Piazza Alimonda and Via Caffa. Cappello stated that he was requested by police officer Lauro to proceed up Via Caffa in the direction of

Via Tolemaide to assist the men engaged there in trying to push back the demonstrators. He said he had been puzzled by the request, given the number of men with him and their state of tiredness. Nevertheless, Cappello and his men had taken up positions on Via Caffa. The *carabinieri* were forced back by the demonstrators coming from Via Tolemaide; they initially withdrew in an orderly manner, and then in disorderly fashion. Cappello stated that he had not realised that, when the *carabinieri* withdrew, they were being followed by two Defender jeeps, as there had been no “operational reason” for the vehicles to be there. He further stated that the demonstrators had dispersed only when the mobile police units stationed on the other side of Piazza Alimonda had intervened, and that only then had he observed a man wearing a balaclava lying on the ground, apparently seriously injured. Finally, Captain Cappello said that some of his men had been wearing helmets equipped with video cameras, which would help to shed light on the sequence of events, and that the video recordings had been handed over to Colonel Leso, who was in charge of the CCIR.

55. Lieutenant-Colonel Truglio stated that he had stopped some tens of metres from Piazza Alimonda and thirty to forty metres from the jeep, and had seen the jeep drive over a body lying on the ground.

(b) Statements made by police officer Lauro

56. On 21 December 2001 Mr Lauro gave evidence to the public prosecutor. He stated that on 20 July 2001 he had reported at 6 a.m. to the location where he was due to commence duty in charge of two hundred men. Two hours later, as no one had turned up, he made inquiries of the *questura* and was told that the service orders had been changed. Mr Lauro later stated (during the “trial of the twenty-five”, hearing of 26 April 2005) that he had been informed on 19 July that no march was authorised for the following day. On 20 July he had been unaware that an authorised march was due to take place. He was requested to go to near the fairground and join a contingent of a hundred *carabinieri* in order to patrol the area. Lauro was not able to make contact with the contingent and its captain – Captain Cappello – until 12.30 p.m. He went to Piazza Tommaseo, where clashes were taking place with demonstrators. At 3.30 p.m., in a moment of calm, Lieutenant-Colonel Truglio and the two jeeps joined the contingent. Lunch was eaten. The contingent was involved in clashes on Corso Torino between 4 p.m. and 4.45 p.m. It then arrived at Piazza Tommaseo and Piazza Alimonda. Lieutenant-Colonel Truglio and the two jeeps came back. The contingent was reorganised. Lauro stated that he had observed a group of demonstrators at the end of Via Caffa who had formed a barrier using wheeled waste containers and were advancing towards the law-enforcement officers. He said that he had asked Captain Cappello whether his men were in a position to deal with the situation and that Cappello had replied in the affirmative. Lauro and the contingent therefore took up positions close to

Via Caffa. He heard an order to withdraw and took part in the disorderly withdrawal of the contingent.

(c) Statements made by demonstrators to the public prosecutor

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

(d) Other statements to the public prosecutor

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

4. Audiovisual material

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

5. The expert reports

(a) The autopsy

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

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

The mandate issued to the experts read as follows: “The experts must indicate the cause of Carlo Giuliani's death and state whether the determining factors in that regard included external factors such as toxic chemical substances. If death was caused by one or more shots from a

firearm, the experts should indicate the number of shots fired, the point of impact, the route taken by the bullet or bullets in the body, the position of the victim relative to the person who fired the shots and, if possible, the distance from which the shots were fired and whether there was a lethal struggle before the fatal wounding.”

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

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

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

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

64. After leaving Piazza Alimonda the three *carabinieri* who had been in the jeep went to the casualty department of Galliera hospital in Genoa. M.P. complained of diffuse bruising in his right leg and an injury to the skull with open wounds; against the advice of the doctors, who wished to admit him, M.P. signed a discharge and left the hospital at around 9.30 p.m. He had an injury to the skull which, he said, had been caused by a blow to the head with a hard object while he had been in the jeep. According to the doctors, M.P.'s condition was not life-threatening.

65. D.R. presented with bruising and abrasions to the nose and the right cheekbone and bruises on the left shoulder and left foot. F.C. had a post-traumatic psychological disorder expected to be cured within fifteen days.

66. The forensic medical reports drawn up to establish the exact nature of the injuries and their connection with the attack on the jeep's occupants concluded that the injuries sustained by D.R. and M.P. had not been life-threatening. The report found that M.P.'s head injuries could have been caused by a stone thrown at him, whereas it was not possible to determine the origin of his other injuries. As to D.R., the injury to his face could have

been caused by a stone being thrown at him, and his shoulder injury by a blow from a wooden plank.

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

(i) The first expert report

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

(ii) The second expert report

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

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

69. On 12 February 2002 the public prosecutor's office instructed a panel of experts, made up of Nello Balossino, Pietro Benedetti, Paolo Romanini and Carlo Torre, "after examining the video and photographic material and the detailed maps in the file, the items seized and the expert reports already carried out, to reconstruct, if only in virtual form, the actions of M.P. and Carlo Giuliani in the moments immediately before and after the bullet struck the victim's body. In particular, [the experts were instructed] to ascertain the distance between M.P. and Carlo Giuliani, their respective angles of view and M.P.'s field of vision inside the jeep at the moment the shots were fired". It appears from the file that Mr Romanini had published an editorial article in September 2001 in a specialist review (*TAC Armi*), in which he had expressed the view that M.P. had acted in self-defence.

The experts were given permission to consult all the documents, audiovisual material and expert reports held by the public prosecutor's

office. Representatives and experts appointed by the applicants attended the expert examinations. According to the minutes, the applicants were represented by Mr Vinci, who said he did not wish to make an application for the immediate production of evidence (*incidente probatorio*).

70. An on-site inspection was conducted on 20 April 2002. On that occasion, traces of the impact of the second pistol shot were found on the wall of a building on Piazza Alimonda, at a height of about five metres.

71. On 10 June 2002 the expert report (entitled: “Study of the dynamic of events leading to the death of Carlo Giuliani based on analysis of the images”) was submitted to the public prosecutor's office. The report was aimed at determining the position of the two persons concerned and the distance between them when the shot was fired, in order to establish the angle of view. The experts stated at the outset that the fact that they had not had access to Carlo Giuliani's body (because it had been cremated) had been a major obstacle which had prevented them from producing an exhaustive report, as they had been unable to re-examine parts of the body and search for micro-traces.

72. First of all, on the basis of the “little material available” the experts attempted to establish what the impact of the bullet had been on Carlo Giuliani's body. According to the experts, the injuries to the skull were very serious and had resulted in death “within a short space of time”. They further found that the bullet had not exited whole from Carlo Giuliani's head; the scan performed before the autopsy showed an opaque piece of metal which looked like a fragment of bullet casing. As to the entry wound on the face, its appearance did not permit an unequivocal interpretation; its irregular shape was explained chiefly by the type of tissue in that part of the body. However, one possible explanation was that the bullet had not struck Carlo Giuliani directly, but had encountered an intermediate object which could have distorted it and slowed it down before it reached the victim's body. That hypothesis tallied with the small dimensions of the exit wound and the fact that the bullet had fragmented inside Carlo Giuliani's skull.

73. On the basis of this hypothesis, the experts then searched for traces and reported finding a small fragment of lead, probably from the bullet. As it had come off Carlo Giuliani's balaclava when the latter was being handled, it was impossible to ascertain whether the fragment had come from the front, side or back of the balaclava. That said, the experts observed traces of a substance which was not part of the bullet as such, but came from material used in the construction industry. In addition, micro-fragments of lead were found on the front and back of the balaclava, apparently confirming the hypothesis that the bullet had lost part of its casing at the moment of impact.

As to the nature of the “intermediate object”, the experts stated that it had not been possible to establish what it might have been, but ruled out the

possibility that it was the fire extinguisher which Carlo Giuliani had been holding in his outstretched hand.

74. Finally, as to the distance from which the shot had been fired, the experts estimated it at no less than 50-100 cm.

75. In order to reconstruct the events based on the “hypothesis of a collision with an object”, the experts then had some test shots fired and conducted video and computer simulations. Their conclusions were as follows: if the bullet had struck another object, they could not establish its trajectory, which would undoubtedly have been altered as a result. On the basis of video footage showing a stone disintegrating in the air and of the shot that could be heard on the soundtrack, the experts concluded that the stone had shattered immediately after the shot had been fired.

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

6. The applicants' investigations

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

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

77. Lastly, the applicants submitted two expert reports drawn up by experts they themselves had appointed. According to one of the experts, Mr Gentile, the bullet had already been in fragments when it struck the victim's body. The fact that it had fragmented could be explained by a defect in the bullet or by its having been manipulated to make it more likely to break up. Mr Gentile considered that this occurred in a limited number of cases; accordingly, it was a less likely hypothesis than the one put forward by the prosecuting authorities' experts (namely that the bullet had struck an object during its trajectory).

The other experts instructed by the applicants to reconstruct the events ruled out the possibility that “the stone” had shattered after colliding with the bullet fired by M.P.; in their view it had shattered against the jeep. According to the experts, in order to reconstruct the events on the basis of

the audiovisual material, and especially of the photographs, it was necessary to establish the exact position of the photographer, and in particular his or her angle of vision, taking into account also the type of equipment used (focal length, type of camera body or video camera). In addition, it was necessary to establish the timing of the images and how they fitted in with the sound. The experts also challenged the method used by the prosecution authorities' experts, who had based their analysis on "video and computer simulations" and had not analysed the available images rigorously and in depth. Similar criticisms were made of the method used to perform the test shooting, which, in the view of the applicants' experts, was not reliable.

78. The applicants' experts concluded that Carlo Giuliani had been about three metres away from the jeep when the shot was fired and that, while it was undeniable that the fatal bullet had been in fragments when it struck Carlo Giuliani, the possibility of its having collided with the stone which could be seen in the picture in question should be ruled out, in particular because a stone would have distorted the bullet in a different way and left different marks on Carlo Giuliani's body. Moreover, M.P. had not fired in an upward direction.

7. The request to discontinue the proceedings

79. The public prosecutor noted first of all that far-reaching changes had been made to the organisation of the public-order operation on the night of 19 July 2001, and took the view that this partly explained the problems that had arisen on 20 July. However, he did not detail the changes or the problems that had resulted.

On the basis of the evidence in the file, the public prosecutor reconstructed the events leading up to the death of Carlo Giuliani. As to the decision to position men in Via Caffa in order to block the path of the demonstrators in Via Tolemaide, the public prosecutor noted that Mr Lauro's version of events was at variance in some respects with that of Captain Cappello: whereas Mr Lauro spoke of a decision taken by mutual agreement, Captain Cappello maintained that the men had taken up position on the basis of a unilateral decision by Mr Lauro, in spite of the potential risks involved (on account of the small size of the detachment and the fact that the men were tired).

80. The public prosecutor then examined the expert reports and noted that the different experts agreed in particular on the fact that two shots had been fired from M.P.'s pistol, the first of which had fatally wounded Carlo Giuliani; that the bullet in question had not fragmented merely as a result of striking Carlo Giuliani's body; and that the photograph of Carlo Giuliani holding the fire extinguisher had been taken when he was approximately three metres away from the jeep.

However, the experts differed on the following points in particular:

(a) according to the experts appointed by the public prosecutor's office, Carlo Giuliani had been 1.75 metres away from the jeep at the moment he was wounded (approximately three metres away according to the Giuliani family's experts);

(b) the relative timing of the image of the stone and the sound of the gunshot (according to the Giuliani family's experts, the shot had been fired before the stone could be seen, contrary to the view of the prosecution authorities' experts).

81. Given that the parties agreed that the bullet had fragmented before striking the victim's body, the public prosecutor concluded that they also agreed as to the causes of the bullet's fragmentation, and that the applicants subscribed to the "theory of the bullet having been deflected by a solid object". The relevant parts of the request for the proceedings to be discontinued read as follows:

"The points on which there is no substantial disagreement are outlined below:

...

Before striking Giuliani, the bullet encountered an object in its path which caused it to fragment partially.

The footnote reads as follows. On page 13 of the expert report of 10 June 2002 the expert, Mr Torre, states: 'In short, all the available evidence points to the fact that the bullet, before striking the face of Carlo Giuliani, made contact with a hard object (intermediate target) capable of slowing down its trajectory significantly and damaging its casing, making it likely to break up, and of leaving traces on the lead core.' The Giuliani family's expert, Mr Gentile, for his part, stated as follows on page 2 of the expert report which he submitted on 9 August 2002: 'We cannot but share the assessment of Professor Torre that a bullet of that calibre, which conformed to NATO standards, would not (the negative was added by Mr Gentile by hand on 5 October 2002 during the confrontation between the experts) have fragmented as the sole result of the final impact with the victim.'

Other possible explanations for the fragmentation of the bullet advanced by the applicants – such as the manipulation of the bullet in order to make it more likely to fragment, or a manufacturing defect – were considered by the applicants themselves as "much less likely". Given the lower degree of probability, these hypotheses could not – according to the public prosecutor – be regarded as valid explanations.

82. Before moving on to legal considerations, the public prosecutor observed that the investigation had been lengthy, owing in particular to delays with some of the expert reports, the "superficial nature" of the autopsy report and the errors made by one of the experts, Mr Cantarella. The public prosecutor then observed that the investigation had been completed and that all the relevant issues had been addressed in detail. In conclusion, he said that the hypothesis of the bullet having been fired upwards and deflected by a stone thrown into the air was "the most

convincing”. However, the public prosecutor considered that there was insufficient evidence in the file to determine whether M.P. had fired the shots with the sole intention of dispersing the demonstrators or had knowingly run the risk of injuring or killing one or more of them. Three possibilities had been considered, and “the matter would never be resolved with certainty”:

- the first possibility was that the shots had been designed to intimidate the demonstrators and that it was therefore a case of causing death by negligence;
- the second possibility was that M.P. had fired the shots in order to put a stop to the attack and had accepted the risk of killing someone; that would mean that it was a case of intentional homicide;
- the third possibility was that M.P. had aimed at Carlo Giuliani; this would also be intentional homicide.

In the view of the public prosecutor, the evidence in the file was sufficient to rule out the third possibility.

83. The public prosecutor further considered that the bullet's having collided with the stone was not capable of severing the causal link between M.P.'s actions and Carlo Giuliani's death. That link remained; the question was whether M.P. had acted in self-defence.

84. In the public prosecutor's view, it had been proven that the physical integrity of the jeep's occupants had been under threat and that M.P. had been “responding” in the face of danger. That said, M.P.'s response had to be examined in terms of both its necessity and its proportionality, “the latter aspect being the more delicate”.

As to whether M.P. had had any other option and could have been expected to act differently, the public prosecutor replied in the negative, giving the following reasons: “... the jeep was surrounded by demonstrators and the physical aggression against the occupants was patent and virulent...”. M.P. had been justified in perceiving his life to be in danger. The pistol had been an instrument capable of putting a stop to the attack, and M.P. could not be criticised for the choice of the equipment issued to him. From a legal viewpoint, M.P. could not be expected to refrain from using his firearm and submit to an attack liable to endanger his physical integrity.

85. In the light of these considerations, the public prosecutor requested that the proceedings be discontinued.

8. The applicants' objection

86. On 10 December 2002 the applicants lodged an objection against the request for the proceedings to be discontinued. Referring to the fact that the prosecution authorities themselves had acknowledged that the investigation had been flawed and raised doubts which had not been resolved with

certainty, they argued that adversarial proceedings were essential in order to arrive at the truth.

87. As to M.P., the applicants disputed the theory that the bullet had been deflected by a stone. In their view, it was impossible to argue simultaneously that M.P. had fired into the air and that he had acted in self-defence, particularly since M.P. had said he could not see Carlo Giuliani when he had fired the shot.

The applicants further observed that the theory that the bullet had been deflected by an object had been put forward one year after the events by an expert appointed by the public prosecutor's office, and was based on pure supposition not backed up by objective evidence. The applicants' expert had stated that a collision with a stone would have distorted the bullet in a different manner. In addition, the applicants referred to the statement reporting the practice of modifying bullets in order to make them more likely to expand and hence to fragment.

88. With regard to F.C., the applicants observed that the file showed that Carlo Giuliani had still been alive after the jeep had driven over his body. In that connection they pointed out that the autopsy report, which found that no appreciable injuries had been caused by the jeep driving over the body, had been described as superficial by the public prosecutor.

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

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

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

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

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

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

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

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

9. The hearing before the investigating judge

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

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

10. The decision of the investigating judge

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

94. In seeking to reconstruct the events the judge referred to an anonymous account posted on an anarchist website (www.anarchy99.net), which the judge considered to be credible given that it concurred with the audiovisual material and with the witness statements.

"[I]t is particularly interesting to study the description, which is included in the file, posted by an anonymous participant in the demonstrations on an Internet site with possible links to French anarchists (www.anarchy99.net). This provides a detailed and clearly accurate account, as testified by the details emerging from the videos and photographs and from the testimonies in the file, and can therefore be used as a basis for a precise reconstruction of the events as regards both the movements of the demonstrators at the location where Carlo Giuliani died and the assessment of the number and conduct of the demonstrators and the law-enforcement agencies in the moments leading up to the young man's death."

The website in question described the situation on Piazza Alimonda and a charge by demonstrators against the *carabinieri*. The charge was led by demonstrators throwing anything that came to hand, followed by others carrying containers, rubbish bins, etc. for use as mobile barricades. The atmosphere on the square was described as "frenetic". The following passage was reproduced in the judge's decision:

“... I really don't think that many of us on that march went as far as the centre of the area where the clashes were taking place, where Corso Gastaldi narrows and becomes Via Tolemaide...”

There were thousands of people in the area close to the clashes who were resting, watching or getting some air after having tear gas fired at them. I kept on going towards Via Tolemaide. There were still a lot of people and I could see the first signs of clashes... There really were lots of people carrying equipment or parts of equipment in the style of the *Tute bianche*...

I carried on further. There were still a lot of people. There were hundreds of people in the front lines of rioters ... Not long after I joined the front lines, the demonstrators began a major counter-attack ... Hundreds of people started to advance towards the cops. Gradually, more and more missiles were being thrown at the police lines. Stones were starting to rain down. More and more were hitting them ... They were getting them right in their faces and they could all see that behind the hundreds of people attacking them there were another one or two thousand further up the street who were starting to follow the front lines, coming thicker and faster, heading straight for them. People were shouting “*Avanti! Avanti!*”.

Then the police ranks began to break up ... Everyone charged, shouting and throwing anything they could find ... People grabbed all the missiles lying on the ground. Every twenty metres, the things thrown at the cops were picked up and re-used straight away. The stone throwers were now moving forward strongly and quickly. A little way behind, dozens of people were running along carrying bins, containers, railings, etc., so that they were moving the barricade while charging forward in a series of short bursts. The atmosphere was frenetic. The level of violence was really high. Tear gas was being fired frantically from the back of what was left of the police lines. That slowed us down. The vehicles managed to find a way out. The cops started to re-form their lines. I think we pushed them back about 200 metres. It must have taken them a long time to gain that much ground, and we made them lose it again in ten minutes. People started to gather ammunition for a fresh attack (picking up and making piles of missiles and parts for mobile barricades, forming large groups behind the front lines...). The cops had just taken a hammering and were destabilised, on the defensive. That must have been why they sent thirty or forty cops down the small side street, to the left of the front lines of demonstrators. They must have thought that the front lines would be afraid of a charge from the side that would cut them off from the rest of the demo (and which would have been followed immediately by a head-on charge) and were going to withdraw slightly to ease the pressure on the police in the Via Tolemaide. Or maybe they were trying to deter us from spreading out into the little streets on the left and widening the circle of the clashes. I don't know why they did it but, in any case, it wasn't a good idea because there were a lot of overexcited people arriving to support the front lines and fill the space gained during the charge of demonstrators, and the few dozen cops were very quickly charged by at least sixty or seventy people. The cops withdrew to a small street at right angles. The charge continued. The more they pulled back, the more we charged. We followed them into the street at right angles and caught up with them where the street runs into a small square with a church. The cops were still retreating under the hail of missiles. Quite a few demonstrators had iron bars or axe handles. There were more of us than them and they were trying to avoid contact. The cops entered a street off the square to re-form their lines. When they withdrew, they left two small *carabinieri* jeeps twenty to thirty metres behind them. The situation was violent and confused, things were happening quickly, so I'll be careful what I say. The two jeeps tried to reverse but, for

some reason I don't understand, the second one at least wasn't able to. It then found itself cut off from the rest of the police and in direct contact with the demonstrators, who started to throw stones at it and to hit it with bars and wooden handles. The back window of the jeep was smashed, I don't know how it happened but it was missing. I was about ten metres from the jeep, slightly higher than it (it was to my left) because I was on the steps of the little church. That's when I heard the first shot, quite loud, sharp and close by. I instinctively bent down, thinking that it was a gunshot. I looked straight ahead at the police ranks at the entrance to the side street to see what was happening, whether they had fired the shot and if they were charging. They were about thirty metres away, there was gas, I couldn't see much. I think there was another shot. I turned round, still bent, and went back down two or three steps, went a few paces and crouched down for cover behind something or other. I raised myself up slightly. Straight in front of me, still about ten metres away I'd say, was the back of the *carabinieri* jeep with its back window smashed in. I could see some movement inside. I lowered myself again and almost immediately got up again slightly. I think (but I can't be certain, it's all a bit confused) that I saw, through the smashed rear window, fairly clearly, two cops wearing helmets, bent over or crouching, holding on to each other. I saw the outline of a hand, at chest height, and extending from it, a glinting black shape. I realised at once that it could only be a hand weapon and that it had been the source of the shots. I thought they had fired into the air in order to extricate themselves. The cops (I think there were two of them) seemed nervous and had turned round slightly to look through the broken window for any demonstrators approaching. I couldn't see what was happening on the ground. Then I looked behind me to see what was going on, whether the demonstrators were going forward or retreating. When I looked in front of me again, the *carabinieri* jeep had gone. I got up and moved forward. There were very few people in front of me. I had the feeling that it was much quieter for a few seconds. Then there were some shouts. I thought to myself that there was a problem and that something serious had happened. I saw a few people running and stopping about six or seven metres to my left. I went over. There were four or five people in a circle. I walked round them. I saw someone on the ground. A tear-gas grenade had rolled over to near the group of people. I kicked it back towards the cops, who were not moving and were still thirty metres or so away ... His feet were close to mine. I remember his white t-shirt and his black balaclava, which was sticky and glistening with blood. I saw a pool of blood spreading out from his head. I noticed blood spurting out of his left eye. I realised it was a bullet that had done that and that the shots hadn't been fired into the air. I took a few steps backwards holding my head. When I turned round I saw two or three journalists with videos and cameras taking close-ups of the guy on the ground. The cops started to come over slowly. A group of six or seven cops moved away from their ranks and, staying behind three or four riot shields, they walked straight up to us, quite slowly and calmly it seemed to me. Two youths began to lift up the guy on the ground. I moved closer to help them but another demonstrator came up saying that the guy was seriously injured and shouldn't be moved. The two youths put him down again. Actually, no one thought he was dead. The little group of six or seven cops had moved closer. They were perhaps ten metres away from us. We moved back and the line of cops following the leading group at a distance began to charge, so we cleared off altogether. We didn't know what to do because we thought the guy on the ground was badly hurt, but not dead. We didn't check his heart or his pulse. If we'd realised he was already dead, obviously we'd never have left his body to the cops; we would have taken it to Via Tolemaide and found an ambulance there (I dread to think what effect that would have had on the hundreds and hundreds of people there.) Anyway, the cops charged and the square emptied, the last of the demonstrators caught up with the rest and said that a guy had been shot and might be dead. People started shouting angrily.

The cops, after clearing the square, started off down the side street along which people had started to head back towards Via Tolemaide. When they saw the cops coming, the people hurled themselves at them, shouting “*Assassini*” and forced them back on to the little square. Opposite me was the street where people were charging towards the square and, on my right, the street leading to Via Tolemaide. At the end of that street I noticed a light armoured vehicle which was heading up Via Tolemaide at speed, sweeping aside all obstacles. I hope there was no one in its way because the vehicle was driving straight through at full throttle. I bumped into one of the journalists who had been there when the demonstrator died. He spoke French and said to me and another French guy who was hanging around that we shouldn't get our hopes up, because the guy was dead. He said he was dashing off to send the pictures. I went back to Via Tolemaide by a side street, further up from the one where I had seen the armoured vehicle pass by. The news was starting to get round in the front lines of the demonstrators and people were attacking the cops frantically. I started to head back slowly in the opposite direction. The bad news was spreading through the demonstrators. Then I sped up and kept shouting out in several languages, while I walked quickly along, that someone had been killed by a bullet to the head. I told the news to the SO of the LCR. Then I walked back up the lines of demonstrators for a while announcing it ... The rioters in the front lines were very angry at the news, whereas most of the demonstrators were sickened and left. End of account. An anarchist somewhere in France, late July 2001.”

95. According to the judge, the description by the anonymous demonstrator tallied completely with the content of the statements made in relation to the notification of the offence and with the conclusions of the investigation, which had been launched immediately and according to which “at around 5 p.m., a group of demonstrators gathered in Via Caffa at the junction with Via Tolemaide, erecting barricades using rubbish bins, supermarket trolleys and anything they could find in the vicinity. From behind this barricade, the group began throwing large numbers of stones and hard objects at a contingent of *carabinieri* who, having been stationed originally on Piazza Alimonda at the corner of Via Caffa, had begun to move forward in a bid to stop the demonstrators, whose numbers had increased in the meantime following the arrival of other demonstrators coming from Via Tolemaide.”

96. The judge pieced together the subsequent events as follows:

“That was why two Defender jeeps, one of them driven by *carabinieri* officer Cavataio and with officers Raffone and Placanica on board, had arrived as reinforcements for the contingent that was blocked.

Wholly unexpectedly, the demonstrators had launched an extremely violent charge which forced the contingent of *carabinieri* to withdraw into the relative safety of Via Caffa. Consequently, the two jeeps reversed as far as Piazza Alimonda. Whereas one of them managed from there to move off in the direction of Piazza Tommaseo, the other, driven by officer Cavataio, in trying to turn round, ran into a rubbish bin with its front bumper and was unable to reverse immediately. In an instant the vehicle was surrounded by large numbers of demonstrators who formed a circle round it, attacking it and hitting it with anything that came to hand (pipes, poles from road signs, planks, etc.) while the demonstrators next to and further away from the vehicle continued their barrage of stones. The extensive footage filmed at the scene shows the violence

of the attack on the contingent of *carabinieri*. In particular, the film made by Luna Rossa Cinematografica clearly shows that the attack on the jeep hemmed in at the corner of Piazza Alimonda was extremely violent, with demonstrators hurling themselves at the vehicle and smashing the windows with stones, iron bars and sticks. The film extracts and photographs taken during the events and assembled in the album of the mobile unit, which contains thirty-four images indicating the precise sequence of events, show the foot patrol of *carabinieri* on the part of Via Caffa which links Piazza Alimonda and Via Tolemaide, confronted by large numbers of demonstrators brandishing iron bars and sticks and throwing stones from behind a barricade erected at the junction with Via Tolemaide. Behind the barrier, on photograph 1, we can see Carlo Giuliani himself throwing a stone at the *carabinieri*.

Photographs 3 to 7 show the demonstrators advancing on the contingent of *carabinieri* followed by the jeep. The demonstrators are armed with iron bars and sticks and with numerous stones which they are throwing at the *carabinieri*, as shown clearly by photograph 4.

The next pictures show the withdrawal of the contingent, preceded by the jeeps travelling in reverse, "followed" by very large numbers of demonstrators (including, on photograph 10, Massimiliano Monai, running along clutching a beam), with the demonstrators already on Via Caffa having been joined in the meantime by numerous others coming from Via Tolemaide. The foot patrol manages to cross the square running, withdrawing in the direction of Piazza Tommaseo, still pursued by the demonstrators. The jeeps try to do a rapid U-turn but the demonstrators move over to them and launch an attack, as clearly shown by photographs 13 and 14. One of the vehicles succeeds in completing the manoeuvre and leaving the square; the other, trying to turn round, runs into a waste container at the front and is unable to extricate itself, in particular, as we shall see, because its engine stalls several times.

While some demonstrators continue to throw stones even at the foot patrol, which has moved away, and against the parting jeep, the vehicle driven by officer Cavataio, with officers Raffone and Placanica now on board, is immediately encircled by demonstrators who hurl themselves at it, smashing the windows and hitting the occupants repeatedly with stones and iron bars through the windows. The ferocity with which the demonstrators attack the vehicle, as shown by the video and photographic material in the file, is striking: the vehicle is coming under a barrage of stones some of which, as we shall see, hit the *carabinieri* in the face and head. Massimiliano Monai can be seen clearly, still armed with the long wooden beam, which he thrusts in through the right-side window, inflicting on Dario Raffone, among other injuries, 'bruises and grazing in the area of the right shoulder blade' which, according to the findings of the forensic expert report ordered by the public prosecutor's office, are compatible with a blow struck in precisely that manner (photographs 16 to 22). Photograph 18 shows the foot of one of the *carabinieri* in the jeep protruding through the shattered rear window, repelling a fire extinguisher thrown at the inside of the vehicle. This could be the object that caused 'severe bruising to the right leg with diffuse swelling throughout the leg' reported by officer Placanica, who mentioned during questioning that he had also been hit in the leg by an 'extremely heavy metal object'.

While objects continue to be thrown at the Defender jeep and its assailants are still crowding around the vehicle, one of the *carabinieri* inside the vehicle takes a gun in his right hand; this is clearly visible in photographs 18, 19, 20, 21 and 22, which show a hand on the inside clutching a pistol at the level of the upper edge of the line formed

on the photograph by the shape of the spare wheel on the back door; while the attack is continuing, a young man bends down and picks up a fire extinguisher which he raises in the direction of the back window of the jeep as if to throw it.

Two shots are fired in quick succession from the inside of the vehicle. The young man with the fire extinguisher falls and his body rolls on the ground, coming to a stop against the left rear wheel of the vehicle; the extinguisher has rolled next to the wheel, in front of the body.

A few moments later the Defender jeep manages to reverse, driving over the body of the young man with its left rear wheel and then touching it again as it moves forward and turns into Via Caffa in the direction of Piazza Tommaseo, stopping almost immediately on the corner of a side street. The inanimate body of a young man with a balaclava on his head, later identified as Carlo Giuliani, remains lying in the roadway.”

97. With regard to F.C., the judge took the view that the evidence in the file excluded any criminal responsibility on his part, given that Carlo Giuliani's death had certainly been caused within minutes by the pistol shot and that the jeep's driving over his body had caused only bruising. In addition, F.C. had not been able to see Carlo Giuliani, owing to the confused situation around the jeep. This ruled out any responsibility for homicide on the part of the driver.

98. As to M.P., the judge noted that the evidence in the file showed that the first bullet had struck and killed Carlo Giuliani. It was an encased 9 mm parabellum bullet, and therefore very powerful. In the judge's opinion this fact, together with the low resistance of the body tissue through which the bullet had travelled, supported the hypothesis advanced by the prosecution authorities' experts to the effect that the bullet had struck an object before hitting Carlo Giuliani. The intermediate object could have been one of the numerous stones which had been thrown at the jeep by demonstrators. This appeared to be borne out by the video footage showing a stone disintegrating in the air at the same time that a shot was heard.

99. As to the initial trajectory of the bullet (*“l'originaria direzione del colpo”*), the investigating judge noted that the ballistic expert examination had been unable to establish it. However, she took the view that, assuming that the jeep was 1.96 m high and that the stone visible on the film had been at a height of around 1.9 m when the picture was taken, it made sense to consider that the shot had been fired upwards, in line with the conclusions of the experts appointed by the public prosecutor's office.

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

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

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

“The death of Carlo Giuliani from a bullet fired by a *carabiniere* who, in the course of a demonstration, made use of his weapon, requires above all that we establish whether Placanica's conduct was justified under Article 53 of the Criminal Code, which provides that 'a State agent who uses or orders the use of weapons or any other means of physical force in the exercise of his or her official duties shall not be liable to punishment where he or she is obliged to do so in order to repel an act of violence or thwart an attempt to resist official authority'. This is not the same as self-defence, but confers wider powers whereby the legitimacy of the response is not dependent on its proportionality to the threat, provided it does not exceed the bounds of 'necessity'; should this be the case, Article 55 of the Criminal Code, which makes unintentional excess punishable, is applicable, it being understood that even for State agents the use of a weapon is an extreme measure and that the least harmful option must therefore always be chosen. But where the use of a weapon is considered legitimate, provided the proportionality principle has been complied with, the State agent concerned cannot be held responsible for the fact that something more serious occurs unintentionally, in so far as the foreseeability of such an event is intrinsically linked to the risk inherent in the use of a firearm issued to a State agent, and that risk could be eliminated only by his refraining from using the firearm, the use of which is authorised by law (see case-law acknowledging the legitimate use by *carabinieri* of their weapons: as the officers had aimed at the tyres of a car in order to stop it escaping, they could not be held responsible under Article 55 of the Criminal Code for the unintentional killing of the vehicle's occupants – Court of Cassation, 22 September 2000, *Brancaatelli*). The use of weapons or any other form of physical force (consisting therefore in physical violence against the person) is not punishable:

- where the act is committed in the performance of an official duty and stems from the need for the perpetrator to repel an act of violence or thwart an attempt to resist official authority;

- where it is specifically authorised by statute;

- in a general sense, and hence without the need to rely on a specific statute, responsibility for the act is excluded where it stems from the need to repel violence or thwart an attempt to resist official authority, whether or not the violence or resistance amounts to one of the offences contemplated in Articles 336 et seq. of the Criminal Code.

However, Article 53 provides for an exception to the provisions of Articles 51 and 52, which applies also to State agents and provides justification for the State agent's conduct even where he is not responding to the threat of an unjust offence against him. This specific exception also applies in the event of an obligation to perform a duty linked to his functions.

This provision, then, supplements Articles 51 and 52 of the Criminal Code by laying down autonomous rules governing the use of weapons and eliminating any uncertainty as to the conditions required by law in order for the State agent or individual not to be subject to punishment.

As already stated, the justification is broader than that of self-defence, and is more frequently applied in cases involving resistance than in cases of direct violence against the State agent; however, there is no doubt that the distinction between the two legal scenarios, precisely if the perpetrator of the offence is a State agent, can become difficult to define.

There can be no doubt, following the painstakingly conducted reconstruction of events, that Placanica, who was under orders to enforce public order, could quite legitimately make use of his weapon once the preconditions of the need to repel violence or thwart an attempt to resist official authority were met. Equally, there is no doubt that the situation with which Placanica found himself confronted was one of extreme violence designed to disturb public order and oppose the law-enforcement officers themselves, whose safety was directly threatened.

In the instant case, it was not a question of a need to repel an act of violence on the basis of a generic concept encompassing failure to comply with authority, but of a need to ward off the real threat of an unjust act of aggression directly targeting Placanica and the persons who were with him.

It is certain that, owing to the number of demonstrators and the very nature of the violent action being taken against Placanica and the crew of the Land Rover in which he was travelling, he faced the threat of serious physical injury, as clearly demonstrated by the injuries reported by Placanica and officer Raffone, since they were struck in the head and the face with large stones and elsewhere on their bodies by blows administered by planks of wood, beams and sticks which were thrust violently through the broken windows of the jeep.

The situation, then, was one of grave danger; this is established beyond dispute not just by the video and photographic evidence in the file, but also by the statements of those who participated in the attack.

We need only recall the description of the moments in question by the anonymous anarchist and the words of some of those directly involved in attacking the jeep:

'... I tried to escape down a side street and found myself, with about 400 people, in the bit of street leading to Piazza Alimonda, where I hoped the situation would be calmer and I'd be able to catch my breath ... almost as soon as we entered the side street we found ourselves facing fifty or so *carabinieri* who, seeing me running towards them, took fright and fled after spraying us using small tear-gas canisters.

We kept running, the *carabinieri* in front and us behind, until we reached Piazza Alimonda. That was where the two *carabinieri* jeeps drove between us and them, stopping us and allowing the officers to run off.

Of the two jeeps that arrived, one quickly took up position with the cordon of police and *carabinieri* stationed in the part of Via Caffa close to Piazza Alimonda; the other, for some reason I couldn't understand, drove, with its back window smashed in, into a rubbish bin which became wedged between the jeep and the wall.

At that point I was beside the jeep; I could see several demonstrators crowding around the vehicle, needing to get four hours of fear and frustration out of their systems ...

I was watching what was happening around the jeep and realised that the *carabiniere* sitting inside was brandishing his pistol. I heard him shout "Pigs, bastards, I'll kill the lot of you!". I turned round and called out that he had a gun, trying to warn the others of the danger. At that moment Carlo Giuliani, whom I didn't know at the time, was near me and looking down at the ground. As I ran towards the street where I wanted to go, I heard shots. I turned round and saw the body of a young man on the ground, the others who had been next to the vehicle stopped and moved away ... I think that several seconds went by between the moment when I saw the pistol and when I heard the shots, during which the *carabiniere* kept shouting "I'll kill the lot of you!". I would add that, before shooting at the man I later knew to be Carlo Giuliani, the *carabiniere* had pointed the weapon at other people, in particular at the young man wearing a scarf and a black helmet who, realising like me that there was a gun, ran away out of the line of fire'. Later on, during the same interview, he changed his story, saying that 'we were trying to get to a place where some people said there was no one; in Via Caffa, in fact, there were forty *carabinieri*, it was strange, they seemed to be lost ... It must have been fifty metres to Piazza Alimonda; there were forty of them, between 400 and 500 of us. Almost as soon as they saw us they sprayed us with tear gas, firing in threes into the air ... At that moment they fled, we were fifteen or twenty metres away ... I didn't throw any stones or hit the jeep ... I fired a pebble from about fifty metres ... I might have kicked the jeep a few times, but to say that I picked up something, a piece of iron, and hit the jeep, I didn't do that ... I might have thrown a stone, I don't know, in any case without intending to hurt anyone, more than anything I was afraid ... You know, if someone came at me pointing a gun, I could imagine that I'd pick up the fire extinguisher to get the weapon off him, for instance, I can understand it, I can imagine ... I didn't go there with the intention of attacking a jeep ... I don't think I stayed around the jeep for more than fifteen or twenty seconds, just long enough to see this *carabiniere* on the side who then turned, yes, before this photo, he turned, I was looking in the direction of this young guy with the purple scarf who spoke English. While I was looking I took off my scarf and started calling out that we should run, and fifteen seconds after the photo was taken I heard the shots ... Fifteen or so people ran with me, the others stayed around ... The

jeep collided front-on with a rubbish bin, with a window already smashed in and this person stretched out inside with his arm holding up the shield against the side window – as we're looking at the jeep, it's the left window – and with the gun in his hand ... I'm telling you that we saw the jeep and probably, I say probably because I can't remember what went through my head at that moment, I can't remember. Today, I say 'I was running away', in my state of mind at that moment, probably – also because all the others were there – I thought there were far fewer people, I saw the enemy in the jeep, in the *carabinieri* jeep, and I may have thrown two stones at it ... If I'd wanted to hurt someone, I would have used the wooden beams I found, sticks, a sledgehammer, whatever, and I'd have gone behind to hit the jeep where the *carabiniere* was at the window, like the guy who tried to throw a stone at his face, and I didn't do that ... If I'd been planning, since I arrived in the street at one o'clock, to hurt someone, in this case one of the law-enforcement officers, I'd have had a very good opportunity, I'd have had a fantastic opportunity to hurt someone, and I didn't ...'. (Interview of Predonzani by the public prosecutor dated 6 September 2001).

In order to understand what really happened on Piazza Alimonda, it is also useful to study the statements made by Massimiliano Monai, who reported to the public prosecutor's office of his own accord on 30 August 2001, and stated as follows:

'... During the clashes, during the chaos, when they were charging us again, at one point we were close to Carlo Giuliani, anyway I was near Ottavio Barbieri ... I was trying to do something, to retreat backwards or go forwards, but I couldn't go anywhere: they were in front of us. Behind, there was a crowd of people throwing stones. At that point, something was happening, we were all there with a few people I don't know, some of them had balaclavas, some were like me, others had headscarves, we saw the *carabinieri* retreating ... I saw some people throwing small stones at the *carabinieri*. The *carabinieri* were running back; there was one group moving forward and a group trying to surround them; we pulled back, throwing stones ... The *carabinieri* were running back and people were throwing stones at them ... Well, they definitely got closer to us, we were running away ... At that moment the *carabinieri* left, we stopped and these two jeeps arrived at top speed, I don't know why. Anyway, they drove towards us, so obviously we ran off; of the two jeeps, one reversed from the church and managed to get away, the other did a U-turn and got stuck. We all threw ourselves on it, as you can see; there, twenty metres away, I saw this wooden beam, I picked it up and hit the jeep three times, but not the window, because it was already smashed when I arrived. I hit the arriving jeep three times, then I took the stick, the window was already broken and the *carabiniere* was there looking at me ... The one who didn't shoot, the one who saw me with the beam ... I didn't see anything, not even the gun, nothing, then, leaving the stick and turning round, I heard someone say 'Come on, we might be able to save him, come on' and 'Murderers, murderers, they've killed him'. I hit the van three times, I pulled back, there were two *carabinieri*, the one who hadn't fired who was looking at me, I swiped at him with the beam, I don't even know if I got him, I might have hit him in the side. He ducked down to take cover, I stopped, I let go of the beam; in the meantime, people carried on throwing stones. He fired and I was still there, when I threw the beam, I didn't run away ... When I threw myself against him, that's when the guy fired ... It was they who attacked us with the Land Rovers, that's different. The security forces were retreating on foot and we were running, we were practically nose to nose, they went back as far as possible, we stopped and the two jeeps came towards us. Then they reversed and the jeep stopped, next we had the ten seconds of madness, with all the people who were there. I wouldn't have killed anyone, I'm not a criminal ... With all the stones that were being thrown, I didn't hear the shots being fired ... Someone shouted 'Bastards,

go away!” for about ten seconds...’ When asked how many people had been close to the jeep, he replied ‘Lots’.

The photographs in the file provide ample evidence of the violence described by the demonstrators themselves.

Photographs 16 to 20 clearly show a fire extinguisher which, having been thrown at the smashed rear window of the jeep, hits Placanica's right foot. The latter is clearly leaning over the spare wheel in an attempt to prevent the fire extinguisher from reaching the inside of the jeep. This is the same fire extinguisher which, a few seconds later, Carlo Giuliani picks up off the ground, raising it above his head in order to throw it once more at the inside of the jeep, as someone, possibly even Giuliani himself, had tried to do moments earlier, according to the statement made to the police on 23 July 2001 by Ernesta Neri, manager of the Q8 petrol station in Via Tolemaide. Ms Neri stated that, shortly after 4 p.m., she had observed from her home a young man wearing a dark balaclava, a white t-shirt and dark trousers, leaving the petrol station with a fire extinguisher whose contents he emptied, and then turning down Via Caffa. She later recognised the portable extinguisher found next to the body of Carlo Giuliani as being the same one.

The violence of the attack by large numbers of demonstrators, the constant barrage of stones to which the vehicle was subjected and which caused physical harm to its passengers, as noted by the forensic medical reports, the aggression towards the passengers by the demonstrators, who continued to surround the vehicle at very close quarters while thrusting hard objects inside, and the consequent persistence of a dangerous situation, undeniably amounted to a real and unjust threat to the personal integrity of Placanica and his colleagues, one which certainly called for a defensive reaction that was bound to culminate in his using the only means at his disposal: his weapon.

Giuliani's action was not an isolated act of aggression, as suggested by the family's lawyers, but simply one phase in a violent attack on the jeep by the large numbers of persons who had surrounded it and were trying to turn it over and, probably, to open the door, as stated by some of those present at the time of the events, at the risk of causing direct and more serious injuries to the vehicle's occupants.

On the basis of the hypothesis, now proven, that the shot fired by Placanica was fired upwards, there can be no doubt that the latter's conduct, which resulted in the death of Carlo Giuliani, is covered by the provisions of Article 53 of the Criminal Code, as the *carabiniere* fired two shots directly upwards, after numerous unsuccessful warnings to end the violence, and one of the objects thrown deflected the bullet, as the result of a wholly unforeseeable event, causing the death of Carlo Giuliani.

All the evidence produced by the investigation, which was undoubtedly conducted thoroughly, therefore enables us to rule out with certainty the possibility that Placanica deliberately aimed his shots at Carlo Giuliani. However, even had that proved to be the case, there can be no doubt that the *carabiniere*, who was authorised to use firearms, with the risks inherent in the use of such instruments, found himself facing a genuine threat to his life or physical integrity and those of his colleagues, a threat which had already materialised in the form of actions threatening officers' physical integrity and which were becoming more and more violent. Hence, he could legitimately have aimed his weapon at the attackers in order to prevent them from

continuing their actions, and even sought to inflict limited injury (for instance, by firing shots designed not to hit any vital organs), since it was not a case of passive resistance, nor had the assailant taken a hostage as a human shield – the only cases in which legal commentators and the case-law are united in excluding the legitimate use of a weapon directly against the aggressor.

On the basis of the above considerations we can therefore conclude that Placanica's action was justified under Article 53 of the Criminal Code, particularly since the use of his weapon, which was absolutely essential, was adapted in order to present the minimum danger possible, given that the shots were certainly fired upwards and that it was only as the result of an unforeseeable change in trajectory that one of them struck Carlo Giuliani.”

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

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

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

In that connection the judge said that there was no doubt that, had M.P. not taken out his weapon and fired two shots, the attack would have continued. She further stated that if the fire extinguisher – which M.P. had already kicked away once – had landed in the jeep, it would have caused serious injury to the occupants. The judge said that M.P. had had only one means of countering the attack: his firearm. She took the view in that connection that M.P. had made proportionate use of the weapon since, before shooting, he had shouted to the demonstrators to leave in an attempt to put a stop to their behaviour; he had then fired upwards. The judge concluded that M.P. had acted in self-defence. She added that the fact that M.P. could see Carlo Giuliani – as asserted by the prosecution authorities' experts and by the applicants – and that he had taken the risk of killing someone did nothing to alter that conclusion, given that M.P.'s action had been prompted by the need to defend the physical integrity of the jeep's

occupants and had been proportionate to the importance of what was being defended and the means available to him in order to defend it.

103. The decision to discontinue the proceedings read as follows:

“Placanica's conduct has to be assessed also in the light of the persistence of the most restrictive conditions laid down by Article 52 of the Criminal Code in order to ascertain whether, with regard to the factual circumstances and the response to them, it is possible also to invoke the elements needed to satisfy the more stringent conditions for claiming self-defence. The factual circumstances and the context in which Placanica had to act have been described at length. There can be no doubt that in such a situation, comparable to the situation in the nearby Corso Torino which had led shortly beforehand to an armoured vehicle being set on fire after a Molotov cocktail was thrown inside it, Placanica was under the firm impression that there was a threat to his safety and that of his colleagues, a threat which had already materialised in the form of injuries (as revealed by the documents in the file and the injuries reported by the jeep's occupants), and that the danger continued despite his having issued repeated warnings while displaying his weapon. One has only to observe the numerous photographs showing the jeep still surrounded by demonstrators smashing in the windows with sticks and iron bars which they are thrusting inside the vehicle with the clear aim not just of damaging the vehicle by way of protest, but of hurting the crew, and throwing a huge number of stones at the vehicle, most of which reached the inside and hit the occupants, in order to gain some idea of the very real violence being unleashed and the subsequent injury which could have been caused to the vehicle's occupants. It is not possible either to support the hypothesis, put forward by the injured party's lawyers during the hearing, that Placanica's head injuries could have been caused by his having knocked against the internal levers of the flashing light on top of the jeep rather than by the demonstrators' actions. Quite apart from the objective fact that numerous bloodstained stones were found inside the jeep, the lever of the flashing light on the roof is covered in plastic and inserted in a ball-and-socket joint covered with a protective cap which is used to direct the light. The very fact that the lever is connected to a ball-and-socket joint means that the whole structure lacks the necessary rigidity to cause injuries to passengers' heads, still less injuries with abrasions of the kind reported by Placanica. Coming back to the actual situation, there can be no doubt that the response was necessary in view of all the surrounding circumstances and in particular the number of assailants, the means they were using to attack individuals, the length of time for which the violence continued despite repeated warnings from the *carabinieri*, the injuries already sustained by the latter and, lastly, the difficulty of leaving the scene given that the jeep's engine had stalled (a move that was not required but was nevertheless attempted). It follows that even if we assess whether the defensive reaction was commensurate with the attack being perpetrated in terms of the substantial equivalence of the interests under threat, our conclusion cannot but be positive, as the attack on the *carabinieri* jeep took the form of actions which were not only dangerous, but in themselves amounted to a violation of the rights and, in particular, the physical integrity of the vehicle's occupants. Furthermore, it is beyond dispute, in the light of the factual circumstances, that had Placanica not drawn his weapon, threatening the demonstrators and then firing the two shots, the attack would have continued and would have had further, undoubtedly more serious, consequences; similarly, if the fire extinguisher which Placanica had already kicked away once had landed inside the jeep and hit the already injured *carabinieri*, it would have caused very serious injury, or worse. The presence of real danger and of an unjust attack was therefore borne out not just by the level of risk but by the fact that the attack was already in progress, and it must next be ascertained whether the requirement of proportionality was met, in terms also of the means available to the

person under attack and the manner in which those means were deployed. As to whether the means of defence were proportionate to the attack, the Court of Cassation has specified on a number of occasions that, for the purposes of determining whether an individual acted in self-defence, the decision as to proportionality, which must be taken by reference to the means available to the person under attack and the interests being protected, cannot be qualitative and is by its nature relative. It is invariably a question of balancing the interests of the assailant and those of the person under attack who, in defending himself, is not in a position, in the specific situation, to make a precise assessment of the real danger and the effects of his response, with the result that the principle of proportionality is not infringed even if the harm to the assailant would be slightly in excess of the threatened harm to the person being attacked. (In the case in question, with regard to the plea that was accepted, the accused had defended himself using a shotgun, the only instrument to hand at that moment, in order to counter the unexpected attack which the victim, armed with an iron bar approximately one metre in length, had previously unleashed on the accused's father and then on the accused himself, inflicting various injuries. Court of Cassation, First Section, judgment no. 08204 of 13 April 1987 – *Catane*). The Court of Cassation further found that, as regards the notion of self-defence, the expressions 'need to defend' and 'provided that the defensive response is proportionate to the attack', contained in Article 52 of the Criminal Code, should be taken to mean that the response must be, in the circumstances, the only one possible in the sense that it could not be replaced by another, less damaging response equally capable of protecting the right under attack (whether of the person in question or another person) (Court of Cassation, First Section, judgment no. 02554 of 1 December 1995 – *M.P. and Vellino*). These principles, on which the established case-law and most legal commentators are in agreement, when applied to the factual circumstances surrounding the tragic death of Carlo Giuliani, also enable us to conclude that the requirement of proportionality between the means of attack available to the assailants and the means available to the persons under attack was met. This conclusion is justified in view of the fact that the concept of proportionality must make reference not just to the competing interests at stake, as already mentioned, but also to the means used to defend them. Mario Placanica had only one means of dealing with the violence against him and the attack on his physical integrity, not to say his life, and that of his colleagues: his weapon. In this respect also the factual findings suggest that in using that means of defence, he adapted it in order to cause the minimum harm to his assailants while attempting to deter them from taking action and make them desist. The Court of Cassation has even stated that, 'for the purposes of determining whether the individual acted in self-defence, an assessment must be made of the proportionality between the defensive means available to the person under attack and the means actually deployed – where only one means is available but it can be used in a varying and calibrated manner – in order to compare the different deployment options available and the option actually chosen in the light of the method of attack or its foreseeable consequences. Such a situation is in every respect identical to a situation in which a comparison has to be made between a variety of means available and the means actually deployed. That is why the use of a firearm as a means of defence should be confined, where the attack is aimed at causing maximum harm to the person's physical integrity, to displaying the weapon and one's resolve to make use of it, while firing only into the air and on the ground, or in the direction of the assailant but taking care not to hit him or, at most, to hit him only in parts of the body not containing vital organs, and hence with the sole aim of deterring or wounding, but not of causing death' or, to put it another way, 'with the sole aim of offering resistance or damaging the assailant's physical integrity' (Cass. 20 September 1982 – *Tosani*). Notwithstanding the fact that numerous photographs show the jeep surrounded by

demonstrators, with Placanica's arm sticking out and brandishing the weapon, and the fact that the statements in the file made by the person under investigation and also by the assailants themselves testify to the *carabiniere's* repeated warnings to the demonstrators to disperse, the same photographic material clearly shows that these attempts to deter the assailants had no effect on the demonstrators, who continued to display extreme violence, eventually prompting Placanica to make use of his weapon, his only available means of countering the violence. What is more, Placanica's conduct appears to have complied fully with the proportionality requirement as regards the manner in which he deployed the means at his disposal bearing in mind that, had he wished to be sure of injuring one or other of his assailants, he could have pointed the weapon at the side windows outside which numerous demonstrators had gathered, whereas the complex technical findings show that the shots were certainly fired upwards; only as the result of a tragic turn of events did the first shot cause the death of the young Mr Giuliani. Consequently, whether Placanica had a partial view of Giuliani, as the injured party's lawyers maintain (a hypothesis also entertained by the prosecution authorities' experts), or whether, as seems more likely, he really did not see him and fired from the highest point which his position would allow, possibly accepting the risk that the shot might hit somebody, his action appears justified on grounds of self-defence, given that the intentional element of what occurred, whether it was planned or simply anticipated, was undoubtedly determined by the need to defend rights that were being unjustly violated, and that the defensive response remained within the bounds of proportionality, in terms of both the value of the interests at stake and the means available to protect them."

104. The requests for additional investigation made by counsel for the applicants were rejected by the judge in their entirety for the reasons set out below.

105. As to the request concerning the forensic medical report on the causes of Carlo Giuliani's death, seeking in particular to ascertain whether the latter had still been alive when the jeep drove over him and, accordingly, whether the investigative methods used had been scientifically sound:

"It has already been stated that there is no evidence in the file capable of raising doubts as to whether the checks were carried out thoroughly and the investigative methods used by the experts were sound; accordingly, the additional checks requested are unnecessary. It is further observed that the injured parties were offered the opportunity of participating in the autopsy on the young man's body with their own experts, and hence of satisfying themselves that the investigative methods used were correct, but chose not to avail themselves of that possibility or to carry out their own examination of the young man's remains. On the contrary, the body was cremated scarcely three days after his death, thereby rendering any subsequent examination impossible, even assuming that it would have served any purpose (which was not the case)."

106. As to the request for police chief De Gennaro and *carabinieri* second lieutenant Zappia to be examined on the subject of the directives issued with a view to maintaining public order, and the lawfulness of the use of "thigh holsters" of the kind from which M.P. had drawn the weapon that fired the fatal shot:

"This examination too seems wholly inappropriate in terms of investigating the tragic events leading to the death of Carlo Giuliani, given that the directives issued

with a view to the maintenance of public order cannot but be of a general nature and certainly do not encompass instructions governing unforeseeable situations involving direct attacks on officers of the kind to which officer Placanica was responding. The latter's conduct, as stated on several occasions, was justified both on the basis of legitimate use of a weapon and the more stringent conditions for claiming self-defence. As to the request to investigate the lawfulness of the use of "thigh holsters" and the detailed arrangements governing their use by *carabinieri*, it is not clear what this information would add to the investigation, as the manner in which Placanica was wearing the pistol is of no relevance given that, in the situation described, he could legitimately make use of the weapon irrespective of where he was wearing it or where he drew it from."

107. Regarding the request to trace the person who threw the stone that may have deflected the bullet, with a view to obtaining evidence from him or her concerning the trajectory of the stone:

"This is impossible to verify in practice, even were it to be considered necessary, as it is unrealistic to imagine that a demonstrator would follow the trajectory of a stone after throwing it in order to make sure that it had reached its target; the demonstrators were more concerned with finding new hard objects to throw at the law-enforcement officers."

In addition, even allowing for the possibility of such evidence being taken from an unknown demonstrator who, paradoxically and unintentionally, caused the death of a fellow demonstrator, it would be impossible to identify the person concerned and his or her statements would in any event be irrelevant in relation to the existing technical findings."

108. Regarding the request for further examination of the demonstrator M. Monai concerning the conduct of the *carabinieri* inside the Defender jeep, the number of demonstrators around the vehicle and the person inside the jeep who actually seized the weapon, in the light of the statements made by Monai during an earlier interview; also regarding further examination of E. Predonzani concerning the same circumstances, Carlo Giuliani's position before he was struck by the fatal bullet and the number of the jeep's windows that were broken:

"Any further examination would serve no purpose whatsoever, given the statements made by Monai and Predonzani very shortly after the events – while those events were fresher in their minds than would be the case today – when they reported of their own accord to the public prosecutor's office in order to give evidence, to the best of their knowledge, concerning the events in which they had played a part and the tragic death of Carlo Giuliani. These statements contain extremely precise details which have been confirmed by the video footage and photographs in the file, with the result that they provide important confirmation of the findings of the technical investigations. The various statements made by Predonzani and, in particular, Monai, to the press and on television, on the other hand, have no legal value and it is not necessary in any case to shed further light on their content in view of the precise reconstruction conducted immediately after the events, which was confirmed by objective data such as photographs and film footage. It does not appear relevant either to establish how many of the jeep's windows were broken, as it is beyond dispute that some of the right-side windows and the rear window were smashed."

109. Regarding the request for evidence to be taken from Marco D'Auria, supposedly to confirm that no Molotov cocktails were thrown on Piazza Alimonda, contrary to what was suggested by M.P., and to determine how far away D'Auria was when he took the photograph on which the prosecution authorities' experts based their findings in conducting the ballistics reconstruction:

“This request does not appear capable, either, of making any contribution to the investigation, as the photograph taken by D'Auria was just one of the elements used to determine Giuliani's position when he was struck by the bullet. The distance between the victim and the jeep was calculated taking account of the presumed position of the persons shown in the photographs in relation to fixed elements such as street furniture and road signs, on the basis of which specific measurements were taken; this distance is confirmed by the statements of the persons who were next to Giuliani.

The assertion made in the request for further investigation that Placanica suggested that Molotov cocktails had been thrown on Piazza Alimonda is inaccurate. Placanica never maintained that Molotov cocktails had been thrown on Piazza Alimonda – he simply stated that he had been afraid they might be.”

110. With regard to the request for evidence to be heard from Sergeant-Major Primavera as to when the hatchback window of the jeep had been smashed:

“There is no doubt that the window was not broken by Placanica's shot, as it is clear from the photos which show Placanica's hand brandishing the pistol in order to intimidate the demonstrators that it had already been broken – probably by a stone being thrown – well before Placanica fired the shot that killed Giuliani. The differing perception of one of the occupants of another jeep did not influence the reconstruction of the events, which were established in an indisputable and wholly objective manner.”

111. As to the request concerning access to the footage filmed on Piazza Alimonda by two *carabinieri* whose helmets were equipped with video cameras, “labelled and handed over to Colonel Leso”:

“The material in question is already in the file, as made clear by the communication from the Genoa *carabinieri* dated 13 September 2001 which records the handing-over to the public prosecutor's office of seventeen video cassettes, fifteen of which contain footage shot in various locations around the city – including Via Caffa – using video cameras attached to the helmets of certain *carabinieri*; the other two video cassettes contain images taken from the army helicopter.”

112. With regard to the request for *carabiniere* V.M. to be examined on the reasons why the bullet had lost its casing:

“The request from the injured party's lawyers is based on the unsolicited statements made by Mattioli in which he said that 'cutting the tips of bullets in order to make them fragment more easily [was] common practice' and that this automatically ruled out 'any intention to use firearms to intimidate. They [were] designed to kill on first impact'.

While the existence of this practice as it emerges from Mattioli's statement is noted, it is not clear what purpose would be served if Mattioli were to be examined by the public prosecutor's office, given that we already have the findings of the ballistics expert reports based on objective examinations. Since the possibility raised by Mattioli can only be considered as a reference to an improper practice which is not widespread, it is hard to see for what reason and on the basis of what objective information officer Placanica should be thought to have engaged in it, given, moreover, that the other bullets found in the magazine of his pistol were perfectly normal."

113. Regarding the request for forensic examination of the jeep in order to determine the cause of the damage to the top part of its upright, above the second 'i' of the word '*Carabinieri*':

"The inspection carried out to determine the origin of the damage caused to the hatchback, which was certainly caused by the large number of stones and hard objects thrown at the vehicle, has already been dealt with at length. There can be no doubt that the damage in question here came from the same source.

The additional examination requested would not therefore serve to dispel the doubts of counsel for the requesting party concerning the collision of the bullet with a stone, as it is not reasonable to assume that a single stone could have been thrown at the vehicle and dented it in several places, given that large numbers of objects were thrown at the scene and at the vehicles of the law-enforcement agencies and caused not only personal injury but also visible damage to the bodywork of the jeep."

114. As to the request concerning the panel's examination of the spent cartridges seized with a view to checking which weapon they were fired from, seeking to extend the examination to include the weapons of all the law-enforcement officers present on Piazza Alimonda at the moment when Carlo Giuliani was struck by the bullet:

"This examination clearly serves no real purpose. It is beyond doubt, by Placanica's own admission and according to the findings of the expert reports, that the shot which killed Carlo Giuliani was indeed fired from Placanica's weapon.

The investigations conducted at the time by the public prosecutor's office in order to establish whether other law-enforcement officers had used their firearms in or around Piazza Alimonda on 20 July 2001 produced a negative response, except as regards the shots fired in Via Tolemaide, at the junction with Via Armenia, by the *carabiniere* Massimiliano Errichiello in order to intimidate and disperse some demonstrators armed with bars, stones and pickaxes who had surrounded another armoured vehicle and were throwing stones at it."

115. As to the criticism by the applicants' lawyers concerning the fact that numerous steps in the investigation had been delegated to the *carabinieri* and that a considerable amount of evidence had been taken in the presence of members of the *carabinieri*, the judge found as follows:

"While such considerations may at first sight appear justified, they have no bearing on the events actually found to have occurred on Piazza Alimonda, resulting in the tragic death of young Giuliani, and whose dramatic unfolding has been reconstructed with the aid of the large volume of video footage and photographs in the file and the

statements of the participants themselves. The wealth of these resources and details is such that no further attention can – or should – be devoted to other wholly irrelevant considerations.”

116. In the light of these findings, the investigating judge concluded that “it [had] been proven that the *carabiniere* M.P. [had] acted in circumstances justifying a decision not to prosecute and that there [were] no grounds for holding F.C. responsible in relation to the death of Carlo Giuliani”. The judge therefore issued a decision to discontinue the proceedings.

D. The parliamentary commission of inquiry

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

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

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

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

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

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

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

E. The judgment of the Genoa District Court in the “trial of the twenty-five”

120. On 13 March 2008 the Genoa District Court made public its judgment following the trial of twenty-five demonstrators on a number of charges (including criminal damage, theft, destroying property, looting and

acts of violence against law-enforcement officers) in relation to the events of 20 July 2001. The Ministries of the Interior, Defence and Justice, and the government, had joined the proceedings as civil parties seeking damages. An appeal has been lodged against the judgment in question and the proceedings are pending.

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

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

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

124. The District Court went on to find that the subsequent charge had also been unlawful and arbitrary. It had not been preceded by a warning to disperse, nor had it been ordered by the officer authorised to do so. It had been unnecessary: the footage showed that the demonstrators had been standing motionless behind Plexiglas shields and that no objects were being thrown by the participants in the march, apart from three objects fired from outside the crowd. In addition, the law-enforcement officers had had enough time (approximately one and a half minutes) to request instructions, but had not done so. Lastly, the march had been lawful and the demonstrators had not attacked the *carabinieri*.

125. The methods deployed had also been unlawful. The *carabinieri* had fired tear gas at chest height, a large number of demonstrators had sustained injuries caused by truncheons which did not conform to the regulations, and the armoured vehicles had knocked down the barricades and pursued members of the crowd on to the pavement with the clear intention of hurting them.

126. Accordingly, the District Court considered that the unlawful and arbitrary nature of the *carabinieri's* actions had justified the resistance shown by the demonstrators while tear gas was being used and during the charge on the procession. It had also justified the clashes which occurred in the side streets, Via Casaregis and Via Invrea, prior to 3.30 p.m., that is, prior to the point at which the *carabinieri* had acted on the order to stop and to allow the march to proceed. In conclusion, the court held that the accused's actions had been a "necessary response" to the arbitrary actions of

the law-enforcement officers for the purposes of Article 4 of Legislative Decree no. 288 of 1944.

127. The court also forwarded the file to the public prosecutor's office on the ground that the statements by Mr Mondelli and two other law-enforcement officers to the effect that the attack had been necessary to counter the aggression shown by the demonstrators did not match the facts.

128. As to the demonstrators' conduct after 3.30 p.m., on the other hand, the District Court considered that it had no longer been justified by the actions of the law-enforcement officers, as the unlawful and arbitrary attack had come to an end. Consequently, although the demonstrators may have still felt a sense of abuse and injustice, their conduct at that stage had no longer been defensive but had been driven by a desire for revenge, making it unjustified and punishable.

129. With specific reference to the events on Piazza Alimonda, the Genoa District Court considered that the attack ordered by police officer Lauro against the group of demonstrators had been neither unlawful nor arbitrary. As a result, the ensuing violent reaction by the demonstrators, consisting in pursuing the *carabinieri* and attacking the jeep, could not be regarded as a defensive response to arbitrary conduct on the part of the law-enforcement agencies.

130. As to the conduct of the *carabinieri* in the jeep, the persons concerned might well have imagined that they were being subjected to an attempted lynching. The fact that the demonstrators in question – unlike the Black Bloc groups – did not have Molotov cocktails and had therefore not been in a position to set the vehicle on fire was a factor that could be appreciated with hindsight. The District Court found that the occupants of the jeep could not be blamed for not having followed that line of reasoning and having panicked.

131. In the District Court's view, Carlo Giuliani had been four metres from the jeep when he was shot and killed. In his statements, F.C. said that his gas mask had allowed him only a partial view. M.P. said that he did not understand why the vehicle he had boarded had not taken him to hospital but had followed the contingent. He had only been able to see what was happening inside the vehicle. When the shot was fired, he had been lying down with his feet pointing towards the rear door of the vehicle. He had pulled Raffone down on top of him and could not see his own hand; he was unable to say whether it had been inside or outside the jeep. In any event, he had fired upwards. The District Court judgment mentions that the expert Marco Salvi, who performed the autopsy on Carlo Giuliani's body, stated for his part that the trajectory of the fatal bullet indicated a direct shot (*“la traiettoria rimandava ad uno sparo diretto”*). As to the metal fragment lodged in the victim's body, Mr Salvi stated it had been very difficult to find.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. *Legitimate use of weapons*

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

2. *Self-defence*

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

3. *Unintentional excess*

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

4. *Provisions governing public safety*

135. Articles 18-24 of the Public Safety Code (*Testo Unico*) of 18 June 1931 govern public meetings and gatherings in public places. Where a meeting or gathering in a public place or which is open to the public is liable to endanger public order or safety, or where offences are committed, the meeting may be dissolved. Before such a meeting is dissolved, the participants are requested by the law-enforcement agencies to disperse. If the request is not complied with, the crowd is given three formal warnings to disperse. If these are not complied with or cannot be issued because of revolt or opposition, the police officers or *carabinieri* order the meeting or gathering to be broken up by force. The order is carried out by the police and the armed forces under the command of their respective senior officers. Refusal to comply with the order to disperse is punishable by a term of

imprisonment of between one month and one year and by a fine of between 30 and 413 euros (EUR).

5. Rules governing the use of weapons

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

6. Preliminary investigation and injured parties

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

Article 79

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

Article 90

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

Article 101

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

Article 359 § 1

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

Article 360

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

...

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

Article 392

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

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

Article 394

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

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

Article 409

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

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

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

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

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

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

Article 410

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

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

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

6. *Burial and cremation*

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

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

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

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

III. RELEVANT INTERNATIONAL MATERIALS

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

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

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

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons

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

...

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

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

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

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

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

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

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

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

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

...

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions

and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

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

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

...”

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

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

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

The CPT wishes to be kept regularly informed of the progress of the above-mentioned proceedings. In addition, it wishes to receive detailed information on the measures taken by the Italian authorities to prevent the recurrence of similar episodes in the future (relating, for instance, to the management of large-scale public-order operations, training of supervisory and operational personnel and monitoring and inspection systems).¹

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

¹ Original in bold type.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

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

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

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

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

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

A. The parties' submissions

1. The applicants

(a) The substantive aspect of Article 2 of the Convention

143. Referring to the Court's case-law (in particular, *Simsek v. Turkey*, nos. 35072/97 and 37194/97, 26 July 2005; *Sergey Shevchenko v. Ukraine*, no. 32478/02, 4 April 2006; and *Erdogan and Others v. Turkey*, no. 19807/92, 25 April 2006), the applicants submitted that the Court had the power to take into consideration all the material in the case file in assessing whether there had been a violation of Article 2 of the Convention. Accordingly, it could arrive at conclusions which differed from those of the domestic decisions. The applicants therefore requested the Court not to confine its examination to the findings of the domestic criminal investigation.

144. The applicants considered that M.P.'s actions engaged the responsibility of the State, and asserted the existence of a causal link between the shot fired by M.P. and the death of Carlo Giuliani. In their view, the Court should base its findings on the conclusions of the autopsy, according to which M.P. had fired downwards and had struck the victim.

145. As to the “stone theory”, the applicants observed that they had never subscribed to it. They referred in that regard to the objection they had lodged against the request to discontinue the proceedings and to the record of the hearing before the investigating judge. They also referred to the opinion of their expert, Mr Gentile, who had stated in his expert report that the bullet had not fragmented on contact with the victim's body; however, without having the bullet and without knowing the shape, dimensions or mass of the “intermediate target”, it was impossible, in his view, to put forward a scientific theory as to the nature of the “accident” sustained by the bullet during its trajectory and to maintain that it had been deflected. Furthermore, the other experts instructed by the applicants to reconstruct the events had ruled out the possibility that “the stone” had broken up after colliding with the bullet fired by M.P.; in their view, it had fragmented on hitting the jeep.

146. The applicants further alleged that the lives of the jeep's occupants had not been in danger, since the vehicle in question had been a Defender jeep which, although not armoured, was sufficiently robust. Furthermore, the number of demonstrators seen on the images was not more than a dozen or so. The demonstrators had not had lethal weapons. In addition, the images showed clearly that the demonstrators had not surrounded the jeep; there were no demonstrators to the left of the vehicle or in front of it. The photographs proved that there had been a riot shield on board the jeep. M.P. had been wearing a bullet-proof vest and had two helmets at his disposal. Finally, there had been other law-enforcement officers nearby. As to the injuries sustained by M.P. and D.R., the applicants contended that there was no proof that they had been sustained during the events.

147. In the applicants' view, there had been disproportionate use of force in the instant case. This was borne out by the following elements: M.P. had fired downwards according to the autopsy report and what could be deduced from his own statements. He had never claimed to have fired upwards and had said that he could not see Carlo Giuliani when he had fired the shot. In the applicants' submission, that meant that he had admitted firing at chest height and that he had not fired in order to counter an unlawful attack by Carlo Giuliani. Furthermore, M.P. had not issued a clear warning of his intention to use the firearm. The images in the file showed that the pistol was being held horizontally and pointing downwards. The applicants next observed that some of the photographs taken at the time of the events showed a *carabinieri* shield being used as protection in place of one of the jeep's broken windows. Lastly, the fact that the *carabinieri* had been issued with live ammunition lent support to the argument that excessive force had been used. The responsibility of the State was therefore engaged in respect of M.P.'s actions.

148. The applicants considered that the responsibility of the State was also engaged on account of the shortcomings in the planning, organisation

and management of the public-order operation and failings in the regulatory framework.

149. In the applicants' submission, a first problem arose by virtue of the fact that the law-enforcement agencies had not had the benefit of an appropriate set of rules established by domestic law and practice. The domestic law had made the use of a firearm inevitable, as demonstrated by the fact that the proceedings had been discontinued because M.P.'s actions came within the scope of Articles 52 and 53 of the Criminal Code. The applicants alleged that the domestic law on the use of weapons by the law-enforcement agencies was inappropriate and outdated and did not conform to international standards. They argued that, in the light of the Court's case-law (they referred to *Erdogan and Others*, cited above; *Tzekov v. Bulgaria*, no. 45500/99, 23 February 2006; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, ECHR 2005-VII; and *Makaratzis v. Greece* [GC], no. 50385/99, ECHR 2004-XI), an inadequate set of rules (both legislative and administrative) lowered the level of statutory protection of the right to life afforded as a requirement of a democratic society; in the instant case, there had been insufficient preventive measures and neither a clear policy nor criteria governing the use of force and firearms. With regard to the domestic-law provisions, the applicants observed that Article 53 of the Criminal Code and Article 24 of the Public Safety Code were incompatible with Article 2 of the Convention and with international standards, given that they had been adopted during the Fascist era and also on account of their content, which reflected that context. In that connection the applicants were of the opinion that the concept of "necessity" as a justification for the use of weapons and that of "use of force" did not correspond to the principles established by the Court's case-law regarding the use of weapons, which had to be "absolutely necessary". Furthermore, Article 52 of the Criminal Code stated that self-defence came into play when "the defensive response [was] proportionate to the attack". This was not equivalent to the terms "strictly unavoidable in order to protect life" and "strictly proportionate [in the circumstances]" used in the Court's case-law.

150. Furthermore, there had been no clear regulations conforming to international standards concerning the use of firearms; none of the service orders from the Genoa *questore* submitted by the Government had regulated the use of firearms. The applicants referred to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana (Cuba) from 27 August to 7 September 1990. They referred in particular to the obligation for governments and law enforcement agencies to adopt and implement rules and regulations on the use of force and firearms by law enforcement officials (paragraph 1). They further referred to paragraph 11, which stated

that rules and regulations on the use of firearms by law enforcement officials should include guidelines that specified the circumstances under which law enforcement officials were authorised to carry firearms and prescribed the types of firearms and ammunition permitted, ensured that firearms were used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm, and prohibited the use of those firearms and ammunition that caused unwarranted injury or presented an unwarranted risk.

151. A further problem lay with the selection and training of personnel. In that connection the applicants alleged that the CCIR company of *carabinieri* had been led by persons experienced in conducting international military police operations abroad, but who had no experience in maintaining and restoring public order. The officers Leso, Truglio and Cappello had previously served abroad (for instance, in Somalia). As to the experience of the personnel in general, the applicants observed that at the material time there had been no regulations laying down criteria for recruiting and selecting personnel to work on public-order operations, in breach of paragraphs 18 and 19 of the UN Principles. Moreover, the Government had not specified the minimum requirements to be met by *carabinieri* being deployed on large-scale public-order operations. As to the experience of the troops deployed in Genoa, the applicants argued that three quarters of them had been young officers performing military service in the *carabinieri* or had just been appointed as auxiliary officers (*carabinieri di leva*, *carabinieri ausiliari*). That gave some idea of their inexperience. With particular reference to the three *carabinieri* in the jeep: D.R. had been nineteen and a half at the material time and had been performing military service for four months; M.P. had been under twenty and had been serving for less than ten months; and F.C. had been under twenty-four and had been serving for twenty-two months. As to the week-long training course in Velletri mentioned by the Government, the applicants observed that it had not been aimed at familiarising personnel with international standards with a view to minimising the risk to demonstrators' lives, but had been more akin to combat training, given that the instructors – for instance, Captain Cappello – had an international military background. This was incompatible with paragraph 20 of the UN Principles. Lastly, the applicants pointed to the observations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the report on its visit to Italy published on 17 April 2006 (see “Relevant international materials” above).

152. The equipment issued to the *carabinieri* was also a source of problems, as it had not conformed to paragraph 2 of the UN Principles, given that the *carabinieri* had been equipped only with live ammunition and not with rubber bullets. Furthermore, some of the *carabinieri*, according to

the applicants, had used weapons such as metal truncheons which did not comply with the regulations.

153. The applicants turned next to the service order of 19 July 2001, observing that it had substantially amended the previous instructions by giving the *carabinieri* a “roving brief” for their defensive operations, which entailed their moving around, whereas previously they had been meant to remain in one location. In addition, the service order of 19 July had authorised the *Tute bianche* march as well as stationary demonstrations. Moreover, the service order had not been circulated properly. This was clear from the statements made during the “trial of the twenty-five” by police officer Lauro and *carabinieri* officer Zappia; the former stated that he had been informed of the changes by radio on the morning of 20 July, while the latter said that the service order had reached him at 3 a.m. that day. Mr Lauro also stated that on 19 July he had been told that no march had been authorised for the following day, and that he was to commence duty at 6 a.m. in a specified location; on 20 July he had received different instructions by radio during the course of the morning, telling him to report for duty at 10 a.m. in another location. Lastly, he stated that he had not known that there was going to be a march (statement by Mr Lauro at the hearing of 26 April 2005 in the “trial of the twenty-five”; statement by Mr Zappia at the hearing of 3 May 2005 in the same trial). Finally, the applicants alleged that the law-enforcement officers chosen and deployed in Genoa had not been familiar with the city and its streets. They referred in that regard to several statements made at the “trial of the twenty-five” (Mr Mondelli, hearing of 16 November 2004; Mr Bruno, same hearing; Mr Fiorillo, hearing of 8 February 2005; Mr Lauro, hearing of 26 April 2005; and Mr Mirante, 15 March 2005).

154. The applicants further contended that the Italian authorities had not taken the necessary measures to safeguard lives in managing the public-order operation and had not been capable of assessing the risks adequately. In that regard they observed that M.P. had been considered by his superior officer, Captain Cappello, to be mentally and physically unfit to continue on duty. As a result, his tear-gas gun and grenades had been taken from him. The applicants therefore wondered why the pistol loaded with live ammunition had not also been taken. In their view, this factor was in itself sufficient to justify finding a violation of Article 2 of the Convention.

155. The applicants also observed that the jeep in which M.P. had been travelling was not an armoured vehicle, but had nonetheless been left unprotected. It was not clear from the investigation file why the jeeps had been bringing up the rear of the detachment when it moved off to attack a group of demonstrators. Officers Lauro and Cappello, who had been in charge, had stated at the “trial of the twenty-five” that they had not noticed the two jeeps following behind. The latter had said that “the jeep following behind must be armoured, anything else is suicide” (hearings of 26 April

and 20 September 2005). In any event, the applicants considered that the fact that there was no surveillance of the two jeeps following the company, with the result that they were able to follow the detachment when it moved off to attack the demonstrators, showed the level of disorganisation and the lack of a clear chain of command.

156. The applicants observed that there had also been problems with the communications system due to the way it was structured, with large numbers of police officers and *carabinieri* having to communicate with the control room, and with the police and the *carabinieri* being unable to communicate by radio among themselves.

157. Finally, the applicants could not understand why, despite being close by, the law-enforcement officers present at the scene had not intervened. In their view, the police officers standing not far away must have been able to see what was happening.

158. The applicants further alleged that the fact that Carlo Giuliani had not received assistance immediately after falling to the ground and being driven over by the jeep had contributed to his death.

(b) The procedural aspect of Article 2 of the Convention

159. The applicants contended that the investigation had not been effective within the meaning of Article 2 of the Convention. Accordingly, they requested the Court to treat the findings of the national judicial authority with caution (they referred to *Erdogan and Others*, cited above). In their submission, there had been shortcomings in the investigation carried out by the national authorities in terms of its scope and on account of numerous problems and a lack of impartiality.

160. With regard to the scope of the investigation, the applicants observed that at no point had an assessment been made of the authorities' overall responsibility for the shortcomings in the conduct of the operations and for their inability to ensure a proportionate use of force in order to disperse the demonstrators (they referred to *Simsek and Others*, cited above). The investigation had not covered the planning and coordination of the operations (the applicants referred to *Erdogan and Others*, cited above), nor had it examined the instructions issued to the law-enforcement officers or the reasons why the latter had been issued only with live ammunition (*ibid.*). The public prosecutor seemed to have accepted the version of events provided by the law-enforcement officers without asking further questions about the factual circumstances. The public prosecutor had never considered whether M.P.'s superior officers could be held responsible for having left a lethal weapon in the hands of a *carabiniere* who was mentally and physically unfit to remain on duty.

161. The applicants pointed out that the Government had pleaded in their defence that the scope of the investigation could not be widened because the public prosecutor's office could act only in relation to the

person suspected of having committed the offence. An investigation into the political and organisational decisions taken had been ruled out, as the public prosecutor could not examine whether the operational choices made during the G8 summit had been well-founded.

In the applicants' submission, if this were true it meant that the domestic law was incompatible with Article 2 of the Convention, in not allowing the investigation to be extended to establishing responsibility for the planning, organisation and management of the operations and to the circumstances surrounding the victim's death.

However, given that the public prosecutor, in requesting that the proceedings be discontinued, had referred to problems (without specifying what they were), and that this finding had not prompted an investigation into the causes of the problems and who was responsible for them, the violation of Article 2 was also linked to the public prosecutor's choice to conduct an incomplete investigation.

162. The applicants stressed that they had objected to the request to discontinue the proceedings and had requested that the investigation be intensified and widened, to no avail. They criticised the investigators for not hearing evidence from J.M., the witness who had seen Carlo Giuliani alive after the shot; for not attempting to identify the person who had thrown "the stone"; for not investigating whether M.P.'s weapon had complied with the regulations; for not hearing evidence from the person who had taken the photograph showing Carlo Giuliani carrying the fire extinguisher, with the result that the distance between the latter and the jeep had been assumed and not confirmed; for not considering the possibility that the fatal bullet had been modified before the shot was fired (the "dum-dum" effect), in line with the practice in the law-enforcement agencies; and for not taking evidence from high-ranking police officers.

163. As to the possibility of participating in the investigation conducted by the prosecution authorities, the applicants observed at the outset that they had at no point been "parties" to the proceedings, since under Italian law it was only possible to join the proceedings as a civil party seeking damages once the case had been referred for trial. As injured parties in the absence of a referral for trial, the applicants had had limited rights to participate in the investigation. Those rights were even more restricted when the public prosecutor proceeded on the basis of Article 360 of the Code of Criminal Procedure (one-off technical investigations), as in that case the law made no provision for the injured party to request the public prosecutor to apply to the judge for the immediate production of evidence (and only where such an application was made could the injured party request the judge to put questions to the experts appointed by the public prosecutor's office).

164. The applicants had found themselves faced with "one-off technical investigations" in relation to the autopsy and the expert examination by the panel.

With specific reference to the autopsy, the applicants also remarked that the public prosecutor's office had informed them at the end of the morning that the autopsy would begin at 3 p.m. The notice given was so short that the applicants and their lawyer had not had a chance to grasp the situation and study it.

With regard to the first and second ballistics examinations, the applicants admitted that they had had the possibility in theory of requesting the public prosecutor to apply to the judge for the immediate production of evidence. However, as the public prosecutor himself had made such an application and it had been refused, the applicants had seen no point in making the request.

165. Lastly, the applicants observed that they had been unable to intervene during the initial steps in the investigation entrusted to the *carabinieri* (seizure of M.P.'s weapon; finding that the weapon had been equipped with a magazine; initial technical examination of the body in the hospital mortuary; technical inspection of the jeep in which M.P. had been travelling; photos of M.P.'s equipment at the moment of Carlo Giuliani's death; check carried out in relation to the shutter of M.P.'s weapon, which was not the original; seizure of the vehicle), as the law made no provision for them to intervene.

166. The applicants went on to list a number of shortcomings in the investigation:

- the bullets had never been found, with the result that no proper ballistics expert examination had been possible. Only two spent cartridges had been found, and it was not certain that they matched the bullets fired by M.P. (the applicants referred to the first and second ballistics reports);
- a scan had shown a metal fragment lodged in Carlo Giuliani's skull. This had never been recovered and added to the file;
- the judicial authority had not intervened rapidly at the scene and had not managed to preserve the scene;
- the weapon, the equipment and the jeep had remained in the possession of the *carabinieri*;
- M.P., D.R. and F.C. had been interviewed by their superior officers before giving evidence to the public prosecutor, and had been able to communicate among themselves. Moreover, D.R. had not given evidence until the day after the events;
- some of the law-enforcement officers present at the scene had given evidence only after a considerable delay (Captain Cappello had given evidence on 11 September 2001 and his deputy, Zappia, on 21 December 2001);
- the investigating judge had based her decision to discontinue the proceedings in part on material taken from an anonymous website;
- the decision to discontinue the case meant that there had been no adversarial proceedings.

167. The applicants questioned the impartiality of the investigation on account of the role played by the Genoa *carabinieri* (*comando provinciale di Genova*), as evidence could potentially have been taken from those *carabinieri* had the investigation been in conformity with Article 2 of the Convention. They observed that:

- immediately after the death of Carlo Giuliani, the three *carabinieri* had left (with the jeep and the weapons) and had been absent until the public prosecutor had begun examining witnesses hours later. Hence, M.P., F.C. and D.R. had been interviewed by their superior officers before giving evidence to the public prosecutor;
- the *carabinieri* had been the first to take possession of M.P.'s weapon and had seized it; they had stated that the magazine had fewer than fifteen bullets;
- the initial technical inspection of the body had been conducted by the *carabinieri*;
- the *carabinieri* had conducted the technical inspection of the jeep and had been left in possession of the vehicle and the equipment on board, including a spent cartridge;
- they had taken the photographs of M.P.'s equipment;
- they had been given the task of finding and handing over to the judicial authority all the films and photographs (taken from the air and the ground) taken by the *carabinieri* and others relating to the events occurring on Piazza Alimonda on 20 July between 12 noon and 6 p.m.;
- they had been given the task of verifying the audiovisual material;
- they had recorded the statements made to the public prosecutor.

168. The applicants also questioned the impartiality of the investigation on the ground that it should have covered the Genoa police (*squadra mobile di Genova*) had it been conducted in conformity with Article 2. In that regard the applicants observed that the Genoa *questore* had been the most senior law-enforcement officer during the G8 summit, that the operations control room for the G8 had been in the headquarters of the Genoa police and that the orders to attack the demonstrators had been given by police officers.

169. Finally, the applicants questioned the impartiality of the expert Mr Romanini, who had been chosen by the public prosecutor's office to coordinate the third ballistics expert examination. They observed that the expert in question had published an article in September 2001 in a specialist review (*TAC Armi*) claiming that M.P. had acted in self-defence. Questions regarding Mr Romanini's suitability had been raised by the daily newspaper *Il Manifesto* on 19 March 2003, that is to say, before the decision to discontinue the proceedings was taken on 5 May 2003. The applicants had not had an opportunity to request the exclusion of the prosecution authorities' appointee, since the case had not gone beyond the preliminary investigation stage.

The applicants stressed the impact that Mr Romanini's report had had on the judicial authority, which had accepted his theory of the “bullet having been deflected by a stone”.

170. In the light of these considerations, the applicants requested the Court to find that there had been a violation of Article 2 of the Convention in its procedural aspect.

2. *The Government*

(a) *The substantive aspect of Article 2 of the Convention*

171. Arguing that the investigation conducted at national level had been effective, the Government observed at the outset that it was not the Court's task to call into question the findings of the investigation and the conclusions of the national judges. Accordingly, the reply – in the negative – to the question whether the domestic authorities had failed in their duty to protect the life of Carlo Giuliani could be found in the request for the proceedings to be discontinued, as could the facts on which the Court should base its findings. In support of their assertions the Government referred to the partly dissenting opinion of Judges Thomassen and Zagrebelsky in *Ramsahai and Others v. the Netherlands* (no. 52391/99, 10 November 2005), and requested the Court to follow that approach.

172. In the Government's submission, there had been no intentional taking of life in the instant case. Furthermore, there had been no “excessive use of force” either on the part of M.P. or in terms of the organisation and management of the public-order operation. In its memorandum included in the Government's observations, the Ministry of the Interior observed that, at the close of the criminal investigation, it had been concluded that M.P. had made legitimate use of his weapon, and that it was on that basis that the proceedings had been discontinued.

173. The Government submitted that there was no causal link between the shot fired by M.P. and the death of Carlo Giuliani; the bullet had struck the victim only as the result of a highly unusual and unforeseeable occurrence. In their view, this emerged from the decision to discontinue the proceedings. In that connection they pointed out that the decision to discontinue the proceedings had been based not on a finding that M.P. had not been objectively responsible (it had been beyond doubt, from a very early stage in the investigation, that Carlo Giuliani had been killed by a bullet fired by M.P.), but on legal grounds (self-defence) combined with certain factual elements relating to the direction in which the shot had been fired, the degree of visibility and the abnormal trajectory of the bullet. While it was true that the investigating judge had applied the rules which excluded responsibility in the cases of legitimate use of a weapon and self-defence, she had not overlooked the unusual and unforeseeable circumstance that the shot had been deflected after colliding with a stone, a

circumstance which she had assessed from the standpoint of proportionality. The Government inferred from this that the decision to discontinue the proceedings had ruled out any responsibility on M.P.'s part on the ground that the causal link between the shot fired and Carlo Giuliani's death had been severed as a result of the bullet's collision with the stone and its deflection. This "also formed part of the reasons for his acquittal, but ultimately this procedural detail was of little significance".

174. The Government pointed to the findings of the investigating judge, according to which M.P. had acted on his own initiative, in a state of panic and in a situation where he had valid reasons for believing that there was a serious and imminent threat to his life or physical integrity and those of his colleagues. Furthermore, M.P. had not aimed at Carlo Giuliani or at anyone else. He had fired upwards, in a direction that entailed no risk of striking someone. It would therefore be inappropriate to hold M.P. responsible for the death of Carlo Giuliani, as the causal link between his action and its effects had been severed by the intervention of an unforeseeable and uncontrollable external factor. Carlo Giuliani's death had not been the intended and direct consequence of the use of force, and the force used had not been potentially lethal (the Government referred to *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, §§ 58 and 60, 7 February 2006, and *Kathleen Stewart v. the United Kingdom*, Commission decision of 10 July 1984, Decisions and Reports (DR) 39, p. 162). As to the trajectory of the bullet, the Government stressed "the low probability and unforeseeability of the bullet colliding with a solid object and being deflected by it". The applicants had subscribed to this theory of "deflection of the bullet", as indicated by the public prosecutor in the request for the proceedings to be discontinued, since the experts of both parties had agreed that the bullet had already fragmented before striking the victim's body, implying that they had also been in agreement as to the causes of fragmentation. The other possibilities advanced by the applicants to explain why the bullet had fragmented – such as its having been manipulated in order to make it more likely to fragment, or the presence of a manufacturing defect – had been said by the applicants themselves to be "much less likely". Given their lower degree of probability, these hypotheses could not be regarded as valid explanations. Finally, as to the impossibility of identifying the object which might have collided with the bullet, damaging it and deflecting it, the Government – like the public prosecutor – considered this to be a detail which did not appear capable of having a decisive impact on the investigation's findings.

175. In the alternative, and "just to be sure", if the Court were to find that there was a legally significant causal link between the shot fired and the death of Carlo Giuliani, and the responsibility of the State was engaged accordingly, the Government argued that the use of "lethal" force had been "absolutely necessary" and "proportionate" (the Government referred to

Andronicou and Constantinou v. Cyprus, 9 October 1997, *Reports of Judgments and Decisions* 1997-VI; *Brady v. the United Kingdom* (dec.), no. 55151/00, 3 April 2001; and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, 6 April 2004). In support of their argument, the Government proceeded to analyse the decision to discontinue the proceedings, taking into consideration the following elements arising from it: the level and widespread nature of the violence which had marked the demonstrations from the outset; the force of the assault by demonstrators on the contingent of *carabinieri* immediately prior to the events in question and the peak of violence at that moment; the physical and mental state of the individual *carabinieri* concerned, especially M.P.; the extremely brief period in which the events had occurred, from the assault on the vehicle until the fatal shot was fired (on this point the Government referred to two video cassettes they had submitted); the fact that M.P. had fired only two shots and had directed them upwards; the likelihood that M.P. had been unable to see the victim when he fired the shot or, at most, could see him only indistinctly within the limits of his field of vision; the injuries sustained by M.P. and D.R. while on duty on 20 July.

176. With particular reference to the height at which M.P. had fired the shots, the Government observed that it had not been proven that the photograph showing the pistol protruding from the rear window of the jeep – which had been added to the file – represented the position of the weapon at the moment the shots were fired. It should be borne in mind that M.P. had drawn his weapon a few seconds at least before shooting, and that only a fraction of a second was needed in order to move the hand by a few centimetres or alter its angle by a few degrees. The photograph in question, therefore, did not provide proof of M.P.'s responsibility in relation to the death of Carlo Giuliani and did not serve to refute the hypothesis of an unforeseeable accident.

177. The Government went on to emphasise “the objective impossibility, noted by the public prosecutor's office, of establishing M.P.'s psychological state and his precise intentions, on account of his confusion and panic at the time of the events and his inability to provide answers to his own questions”. However, “one [had] only to look at the video footage and consider the injuries already sustained by the *carabinieri* in order to realise that they [had] indeed [been] in immediate and serious danger of losing their lives or being seriously injured. At the very least they had legitimate reason to think that they ran such a risk”. M.P.'s equipment had consisted of the clothing issued for public-order duties, two helmets fitted with a visor, a rucksack, six large tear-gas grenades, a Dirin 500 Sekur gas mask filter, and a Beretta pistol and magazine. The Ministry of the Interior stated that it could not be established whether there had been a riot shield in the jeep at the material time.

178. The Government observed that M.P. had not at any point received an order to fire and had acted on his own initiative, in a state of panic and in a situation where he had valid reasons for believing that there was a serious threat to his life or physical integrity and those of his colleagues. The use of firearms had not been advocated at any point in the planning of the operations. Carlo Giuliani's death had to be seen in an overall context of violence; this excluded the possibility that there had been any excess in the use of the weapon or any disproportionate conduct. In the Government's submission, M.P. had had no other option than to fire his weapon, as the vehicle's position made escape impossible. Furthermore, the *carabinieri* in the jeep had been unable to summon help given their state of panic, the violent intentions of the demonstrators and the speed of events. Moreover, there would have been no time for help to arrive, given the distance involved and the fact that the law-enforcement agencies needed to regroup and had themselves been engaged in a clash with demonstrators.

179. The public prosecutor's request for the proceedings to be discontinued had been based on all these factors and on the *favor rei* principle: where there were doubts and it appeared impossible to prosecute the case in court with any prospect of success on the basis of the evidence gathered, and a trial was not likely to add anything significant to the evidence, the proceedings should be discontinued.

180. The Government therefore concluded that the State's responsibility was not in any sense engaged in respect of the actions of M.P. and F.C.

181. As to whether the authorities could be held responsible for having indirectly brought about the dangerous situation which had made it necessary for M.P. to shoot, the Government observed that Carlo Giuliani's death had resulted from individual action taken by M.P., which had not been ordered or authorised by his superior officers and had therefore been an unforeseen and unforeseeable reaction. The conclusions of the investigation – that the shot had been fired upwards and intercepted and deflected by a stone – ruled out any responsibility on the part of the State, including indirect responsibility on account of supposed shortcomings in the organisation or management of the public-order operation as a whole. With regard to the “problems” referred to by the public prosecutor in the request for the proceedings to be discontinued, in particular on account of the organisational changes made the night before the events, the Government observed that no details had been given, nor had the existence of such problems been established. For their part, the Government denied that the conduct of the operation had been adversely affected by any inappropriate changes of plan or, in any event, that any problems there might have been were at the root of the events in issue.

182. Referring to the *Andronicou and Constantinou* judgment, cited above, the Government called on the Court to show similar restraint and confine itself to a simple expression of “regret” in relation to the death of

Carlo Giuliani. There was no justification for the Court to substitute its assessment for that of the officers and officials who, in their offices or on the ground, had planned and carried out the operation.

183. As to the overall organisation of the public-order operation, the Government observed that there was nothing to suggest that there had been an error of assessment which could be linked to the events at issue. They observed that there was no causal link between the death of Carlo Giuliani and the attack on the *Tute bianche* march. Nor were there any grounds for asserting that the contingent of *carabinieri* should not have been taken to Piazza Alimonda, given time to regroup and been deployed to deal with the demonstrators.

184. What distinguished the present case from *Ergi v. Turkey* (28 July 1998, *Reports* 1998-IV); *Oğur v. Turkey* ([GC], no. 21594/93, ECHR 1999-III); and *Makaratzis* (cited above), was the fact that, in the instant case, the planning of the operation could only be partial and approximate, given that the demonstrators might either have remained peaceful or have engaged in violence. As a result, the demonstrators had “so to speak, inevitably called the tune with regard to how events unfolded, and the authorities [had been] unable to predict in detail what would happen and had to ensure that they could intervene in a flexible manner, which was difficult to plan for”.

185. The Government further observed that a second element distinguished the present case from those referred to above. In those cases, the victims had been struck by a bullet fired at chest height as part of a round of several shots. In sum, “in none of the cases concerned had chance played the same role as in the situation in issue”.

186. The Government observed that the demonstrations in Genoa should have been peaceful and been conducted lawfully. The video footage showed that a majority of demonstrators had remained within the law and had not engaged in violence. The authorities had done everything in their power – through the intelligence services – to prevent disruptive elements (anarchists, *provocateurs*, violent and aggressive individuals and even terrorists) from joining in with the demonstrators and causing the demonstrations to degenerate. In that connection the Government alleged that “a considerable number of violent individuals (including Carlo Giuliani) had managed to travel to Genoa and lay waste to the city”. Substantial precautions had been taken in case the situation degenerated. However, no one “without the aid of a clairvoyant” could have foreseen exactly when, where and how violence would break out, and in which direction it would spread. When the *carabinieri* had arrived at Piazza Alimonda the situation had been calm and the officers in charge had used the opportunity to reorganise their men and allow M.P. and D.R., the two *carabinieri* who were suffering the effects of tear gas, to get into the jeep. Only when attacked by the demonstrators (who were throwing hard objects

and were starting to surround the jeep with the clear intention of launching a serious attack on the *carabinieri*) had the latter been forced to withdraw. During the withdrawal, the two jeeps had become cut off. In the Government's view, if the events had not been precipitated, the jeep in question would have left straight away with the injured men.

187. As to why an unarmoured jeep of the kind in which M.P. was travelling had been used at the G8 summit, the Government contended that the jeep in question had not been intended to play an operational role in maintaining public order and had been there simply to provide logistical back-up. The Government further stated that the Defender jeep had been equipped with metal bars to protect the windscreen and the front side windows. The rear side windows and the rear window had not had metal bars. The jeep had also been equipped with a Gamma 400 radio system.

188. As to the fact that the law-enforcement agencies had been issued with live ammunition rather than rubber bullets, the Government observed that Italian law did not permit the use of the latter. In any event, carrying "non-lethal" weapons, whatever the rules in force, encouraged officers to make use of them in the mistaken belief that they would not cause serious harm. The rule in Italy was that firearms were not used in public-order operations: the police did not fire at crowds, whether with lead bullets or rubber bullets. Furthermore, the experiments conducted in the 1980s with "non-lethal" weapons and ammunition had been suspended following incidents which demonstrated that they could cause death or very serious injuries. Non-lethal weapons were designed for use against large crowds in order to counter a mass attack by demonstrators or disperse them. In the instant case, the law-enforcement agencies had at no point been ordered to fire: their equipment had been intended, as in M.P.'s case, for their personal protection.

189. No specific provisions concerning the use of firearms had been adopted with a view to the G8 summit. However, reference had been made to the circulars issued by the senior command of the *carabinieri* setting forth the provisions of the Criminal Code in force (Articles 52, 53 and 54).

190. With regard to the professional experience of the *carabinieri* deployed at the G8 summit in Genoa, the Government stated that F.C. (the driver) had been a serving officer since 16 September 1999; D.R. an auxiliary, had served since 16 March 2001 and M.P., also an auxiliary, since 14 September 2000. Their training had included basic technical training when they were recruited and further courses on public-order operations and use of the equipment issued. In addition, they had acquired significant experience at sporting and other events.

191. Lastly, ahead of the G8 summit all the personnel deployed in Genoa, including the three above-mentioned *carabinieri*, had taken part in training sessions in Velletri at which experienced instructors had dispensed advanced training in techniques for use in public-order operations.

192. As to why the law-enforcement officers who had been close to the jeep had not intervened, the Government observed that the *carabinieri* at the scene had just withdrawn under an attack by demonstrators and needed time to regroup. As to the police officers, who had been “a relatively short distance away, but not in the immediate vicinity”, they had intervened as rapidly as possible. In that connection the Government emphasised the speed with which the tragic events had occurred (some tens of seconds in all).

193. Finally, the Government pointed out that the autopsy report had observed that the fact that the vehicle had driven over Carlo Giuliani's body had not entailed any serious consequences for the latter. Moreover, the emergency services had arrived quickly at the scene.

(b) The procedural aspect of Article 2 of the Convention

194. The Government observed that the procedural aspect of the complaint should be taken as the starting point, and requested the Court to find that the investigation had been in conformity with Article 2. On the basis of that finding, it would then be possible to examine the substantive limb of the complaint without calling into question the conclusions of the national judge.

195. As to the effectiveness requirement, the Government stressed that this was an obligation of means rather than of result. Consequently, the fact that the means deployed, despite being adequate, had not been capable of clarifying fully all aspects of the instant case should not in itself lead the Court to conclude that the investigation had been inadequate. The Government conceded that “certain documents noted difficulties in reconstructing the events, on account, *inter alia*, of the unavailability of some elements, but those difficulties were not in any way attributable to the authorities or to negligence on their part, but rather resulted from objective circumstances beyond their control. Given that no lack of diligence ha[d] been established, the grey areas concerning the reconstruction of events [could] not therefore be attributed to the investigators, who [had] fulfilled their obligation as to means”. In the instant case the factual evidence had been thoroughly verified. In any event, even assuming that any doubts persisted with regard to some of the factual elements, it was the accused rather than the victim who had to be given the benefit of the doubt in criminal matters (*in dubio pro reo*). This principle could not be called into question by a strained interpretation of Article 2. In any case, it was not for the Court to take the place of the national courts in assessing whether or not particular items of evidence were conclusive.

196. As to the requirement of promptness in instituting proceedings and gathering evidence, this too had been complied with, particularly in view of the following considerations: the two suspects had been placed under investigation the day after the events; immediately after the events, Piazza

Alimonda had been sealed off and the scene had been preserved; relevant objects had been immediately identified and seized; the autopsy had been conducted within 24 hours; evidence had been taken straight away from the chief protagonists and witnesses (M.P. and F.C. the same evening and D.R. on the following day); the other witnesses who could be tracked down readily had also given evidence within a very short time; only those demonstrators whom it had been harder to identify had been summoned later, but even they had been summoned within a time-frame that was fully compatible with the requirement of promptness.

197. As far as the scope and thoroughness of the investigation were concerned, the Government observed that the judicial authority had left no stone unturned in establishing the facts and had deployed the most advanced technologies towards that end, as well as more traditional methods. Hence, the public prosecutor's office and the investigators had carried out further questioning of persons who had already given evidence once, where this was deemed necessary, and had also taken evidence from other persons (local residents who might have witnessed the events) who had no links to the demonstrators or the law-enforcement agencies. A reconstruction of the events and test shootings had been carried out at the scene. A large body of audiovisual material had been included in the case file. In addition to the images filmed by the law-enforcement agencies (which, it was pointed out, could not be deemed to be unreliable merely on that account), this also included material recorded by individuals (journalists in particular). Three ballistics expert examinations had been ordered by the public prosecutor's office, the third of which had been entrusted to a panel of four experts who were well known for having performed delicate forensic examinations in other cases. Finally, the Government pointed out that the investigating judge had also relied in her decision on material from sources close to the demonstrators themselves (the material taken from an anarchist website). That proved "the care and impartiality with which any potentially useful evidence [had been] gathered and analysed, even where its existence and content [had] not [been] obvious beforehand".

198. With reference to the fact that the investigation had concerned only M.P. and F.C., the Government observed that criminal responsibility was strictly personal and presupposed a causal relationship whereby the offence concerned was the direct and immediate consequence of the act complained of. Any errors or problems there might have been in the organisation, management and conduct of the public-order operation could in no sense be considered to have been the direct cause of the tragic events on Piazza Alimonda. It would therefore have been superfluous, and beyond the remit and powers of the judicial authority, to extend the investigation to include high-ranking police officers or to try to identify other persons responsible, "since it was not the aim of criminal proceedings to find a scapegoat at all costs". In particular, the provision of the Criminal Code which referred to

“omitting to perform an official duty” was not applicable in the instant case, as it had never been suggested that any officials, *carabinieri* or police officers had refused or omitted to perform their official duties.

199. As to the transparency requirement in respect of the investigation – which had been opened automatically, in accordance with the legal principle of mandatory criminal proceedings – the Government observed that the applicants had had the opportunity, from the outset, of participating fully in the investigation by being represented by lawyers. They could also have participated in the technical procedures by sending experts. The applicants had taken part, via their own experts, in the third ballistics expert examination and in the reconstruction of the events. This had been made possible by the public prosecutor's office, which had “even strained the interpretation and application of Article 360 of the Code of Criminal Procedure”. Furthermore, the applicants had not taken advantage of the opportunity to participate in the autopsy. In that connection the Government observed that notice of the autopsy had been served on the first applicant at 12.10 p.m. on 21 July 2001, that is, three hours before it began. In view of the need for promptness in cases of this kind that period could not be said to have been too short. Finally, the Government remarked that the applicants had been able to make criticisms and requests when objecting to the request for the proceedings to be discontinued; the decision by the judge to discontinue the proceedings had provided them with sufficiently detailed reasons why their requests for further investigation had been refused. While it was true that the applicants had not had an opportunity of requesting the immediate production of evidence under Article 394 of the Code of Criminal Procedure in relation to the first steps in the investigation, checks of that kind were a matter exclusively for the police. As to the possibility of applying to the public prosecutor's office for the immediate production of evidence in relation to the autopsy and the expert panel's reconstruction of events, the Government maintained that the law provided for such a possibility, even though it was not enshrined in Article 360 of the CCP. However, the public prosecutor's office would not have been obliged to comply with such a request. In any event, when it came to the panel's expert examination, the public prosecutor had asked the parties whether they had any objections to the use of the procedure under Article 360, and there had been no objections. As to the two ballistics expert examinations conducted prior to the panel's examination, the Government conceded that they had been carried out unilaterally. However, they had been aimed solely at establishing whether the two spent cartridges found belonged to M.P.'s weapon. Given that the latter had already admitted firing two shots, they had not had a decisive impact on the reconstruction of the events and the subsequent course of the investigation. They had been no more than routine checks. In any case the weapon had been examined again by the panel of experts.

200. With regard to the requirement that the investigation be impartial, the Government submitted that within moments of the tragedy the Genoa police (*squadra mobile della questura di Genova*) had intervened and taken the investigation in hand. The *carabinieri* had been instructed only “in relation to tasks of lesser importance and objects in their possession – for example, the seizure of the vehicle and the weapon – or to members of the *carabinieri* – for example, when it came to summoning (not taking evidence from) their officers.” In addition, the prosecuting authorities had kept the number of measures delegated to a minimum, preferring to perform them themselves. This was true in particular of the most important interviews and those which might have been influenced by the fact that the person asking the questions was a member of the police force or another officer. “In view of the level of autonomy and independence of the judiciary in Italy, which is among the highest in Europe, and which (unlike in some other countries) applies equally to judges and representatives of the public prosecution service, and the fact that the investigation has to be entrusted to a police authority (short of having recourse to private detectives for Article 2 cases), the investigation or the investigators could not be said to have lacked impartiality in any sense (from either a subjective or an objective standpoint). Furthermore, the fact that such a suggestion belongs in the realm of pure fantasy is confirmed by two circumstantial factors. At an internal level, it is confirmed by the findings of the investigation, which gave no reason to suppose that attempts were being made to hide anything, and by the reasons given for the decision to discontinue the proceedings; externally, it is confirmed by the results of a different investigation – relating to certain incidents which occurred after the episode on Piazza Alimonda – at the conclusion of which several law-enforcement officers accused of raiding a school where some demonstrators were staying overnight were committed for trial”.

201. The Government further observed that all the experts appointed by the public prosecutor's office had been civilians with the exception of the second ballistics expert, who was a police officer. As to Mr Romanini, when they had instructed him to prepare the expert report the prosecuting authorities had been unaware that he had published an editorial article in September 2001 in which he had expressed the view that M.P. had acted in self-defence, given the obvious danger of the situation and his own fear. The Government maintained that the aim of the article in question had been simply to propound a political theory based on a comparison between the episode in question and a previous tragedy in Naples which Mr Romanini considered to be more serious in objective terms, but which in his view had caused much less stir in the media because it had not lent itself to exploitation for political ends. In the Government's view, the fact that he had written the article did not render Mr Romanini unfit to carry out his task as an expert in an objective and impartial manner, given that he had not

been asked to examine whether M.P. had acted in self-defence or to ascertain whether the events supported the thesis of self-defence. The panel of experts had been asked in particular to give its views on the trajectory of the bullet. Mr Romanini's specific role had been confined to carrying out test shootings in the presence of the other experts, the applicants and their experts. That activity, which had been “purely technical and essentially physical”, had not afforded scope for preconceived assessments which might have influenced the outcome of the investigation. Moreover, the Government observed that the applicants had not raised any objections to the choice of Mr Romanini.

202. In conclusion, the Government took the view that the investigation had been effective and that the procedural obligations flowing from Article 2 of the Convention had been complied with.

203. The Government also stated that no administrative or disciplinary proceedings had been instituted against the *carabinieri*. As to the police officers, the Government observed that two sets of proceedings were pending against several officers for acts of violence allegedly committed against demonstrators on 21 and 22 July 2001 following the death of Carlo Giuliani.

B. The Court's assessment

1. General principles

204. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, and one from which no derogation is permitted. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324). The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor, however, to be taken into account in assessing its necessity. Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) of the second paragraph of Article 2. This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State

action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the permitted aims (see *McCann and Others*, cited above, §§ 148-149). In that connection the Court reiterates that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others (*ibid.*, § 200).

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

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

207. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to “secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I). Such investigations should take place in every case of a killing resulting from the use of force, regardless of whether the

alleged perpetrators are State agents or third persons (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 220, ECHR 2004-III). The investigation must be, *inter alia*, thorough, impartial and rigorous (see *McCann and Others*, cited above, §§ 161-163, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV).

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

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

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

211. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports* 1998-VI; *Çakıcı*, cited above, §§ 80, 87 and 106; *Tanrıkulu*, cited above, § 109; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). While there may be obstacles or difficulties which prevent

progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

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

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

2. Application of these principles to the instant case

(a) The allegedly excessive use of force

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

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

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

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

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

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

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

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

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

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

222. As to the question of self-defence, the investigating judge considered that this too was a factor excluding criminal responsibility on the part of M.P., given that the latter had rightly perceived a threat to his physical safety and that of his colleagues. M.P.'s response had been necessary in view of the number of assailants, the means used, the sustained nature of the violence, the injuries to the jeep's occupants and the vehicle's difficulty in leaving the scene. His response had been appropriate given that, had he not taken out his weapon and fired two shots, the attack would have continued. If the fire extinguisher had landed in the jeep it would have caused serious injury to the occupants. Furthermore, M.P.'s response had been proportionate given the fact that, before shooting, he had shouted to

the demonstrators to leave and given that he had fired upwards (see paragraphs 102-03 above). In conclusion, the action taken by M.P., who had taken the risk of killing someone by using his firearm, had been prompted by the need to defend the physical integrity of the jeep's occupants and had been proportionate to the importance of what was being defended and the means available to defend it.

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

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

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

226. The Court has not overlooked the fact that the person who fired the shot did so on his own initiative, in a state of panic. Accordingly, the Court does not deem it necessary to examine *in abstracto* the compatibility with

Article 2 of the applicable legislative provisions on the use of weapons by law-enforcement officers during public-order operations (see *McCann and Others*, cited above, § 153), as the situation under consideration concerns the defence of a member of the armed forces who had been taken off duty and was in an unarmoured vehicle, and falls within the scope of Articles 52 and 53 of the Criminal Code.

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

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

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

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

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

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

232. In the instant case the Italian authorities were dealing with a G8 summit during which they had to ensure the safety of the Heads of State and accompanying officials, the inhabitants of Genoa and the thousands of

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

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

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

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

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

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

themselves to be in grave danger, with the result that M.P. made use of his firearm.

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

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

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

It further notes that the events in issue took place at the end of a long day of public-order operations during which the law-enforcement agencies had been confronted with rapidly unfolding and dangerous situations and had been required to make crucial operational decisions. The Court is therefore satisfied that the law-enforcement agencies were operating under enormous strain, a fact confirmed by M.P.'s mental state.

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

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

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

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

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

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

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

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

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

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

246. The Court lays emphasis on the following aspects.

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

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

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

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

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

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

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

impartial and rigorous and must encompass the circumstances surrounding the death.

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

253. In the Court's view, the investigation should have examined these aspects at least of the organisation and management of the public-order operation, as it regards the fatal shot as being closely linked to the situation in which M.P. and F.C. found themselves. In other words, the investigation was not adequate in that it did not seek to determine who had been responsible for that situation.

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

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

257. Article 3 of the Convention provides:

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

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

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

260. The Court considers that it cannot be inferred from the law-enforcements officers' conduct that they had the intention to inflict pain or suffering on Carlo Giuliani (see *Makaratzis*, cited above, § 53). Having regard to the circumstances of the present case, the Court considers that the

facts alleged fall to be examined under Article 2 of the Convention, as it has just done (see paragraphs 214-44 above).

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

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

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

Article 6, in its relevant parts, provides:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

Article 13 of the Convention provides:

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

263. The applicants submitted that, in view of the contradictory and incomplete findings of the investigation, the case had required more detailed examination within a framework of genuine adversarial proceedings. However, they had had no remedy available to them by which to obtain such an investigation.

264. The Government called on the Court to find that no separate issue arose under Articles 6 and 13 of the Convention or that there had been no breach of those provisions, in view of the way in which the investigation had been conducted and the fact that the applicants had participated in it.

265. The Court notes that the applicants' grievance under Article 6 § 1 of the Convention is inextricably bound up with their complaint concerning the manner in which the investigating authorities treated the death of Carlo Giuliani and the repercussions which this had on access to effective remedies which would have helped redress the wrong they had suffered as a result of the killing. The applicants' complaint under Article 6 should therefore be considered in relation to the more general obligation on the Contracting States under Article 13 of the Convention to provide an effective remedy in respect of violations of the Convention, including of Article 2 (see, *mutatis mutandis*, *Aksoy v. Turkey*, 18 December 1996, §§ 93-94, *Reports* 1996-VI).

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

IV. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

267. The applicants criticised the Government's attitude during the proceedings before the Court and alleged that they had not cooperated sufficiently for the purposes of Article 38 of the Convention. Firstly, they had given false or incomplete replies (for instance, regarding the professional experience of the *carabinieri* in the jeep and the presence of a shield in the vehicle). Secondly, the Government had omitted to give details of some essential circumstances (in particular, by not providing a breakdown of the command structure from the officers on the ground up to the top of the structure; not detailing the criteria for selecting officers to be deployed on public-order operations; not producing the documents showing the professional history of the *carabinieri* concerned (*fogli matricolari*); not submitting the orders which police officer Lauro and the officers in charge of the company had received from their superior officers; not providing any indication as to the identity of the person who had ordered the attack on the *Tute bianche* march preceding the events on Piazza Alimonda; and not producing transcripts of the relevant radio conversations).

268. The Government observed that their right to defend their case was “sacrosanct” and that, in any case, they had made all the relevant information available to the Court. As to the information concerning the attack on the *Tute bianche* march, they submitted that this had no bearing on the events at the centre of the application.

269. The Court reiterates that it is essential to the effective operation of the system of individual petition under Article 34 of the Convention that States should furnish all necessary assistance to make possible an effective examination of applications (see *Tanrikulu*, cited above, § 70). A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also result in a finding of a violation of Article 38 § 1 (a) of the Convention. The same applies to delays by the State in submitting information (see *Bazorkina v. Russia*, no. 69481/01, § 171, 27 July 2006).

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

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

272. 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

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

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

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

B. Costs and expenses

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

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

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

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 2 of the Convention in its substantive aspect as regards the excessive use of force;
2. *Holds* by five votes to two that there has been no violation of Article 2 of the Convention in its substantive aspect as regards the positive obligation to protect life;
3. *Holds* by four votes to three that there has been a violation of Article 2 of the Convention in its procedural aspect;
4. *Holds* unanimously that it is not necessary to examine the case under Article 3 of the Convention;
5. *Holds* unanimously that it is not necessary to examine the case under Articles 6 and 13 of the Convention;
6. *Holds* unanimously that there has been no violation of Article 38 of the Convention;
7. *Holds* unanimously
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) to the applicants Giuliano Giuliani and Adelaide Gaggio:
 - EUR 15,000 (fifteen thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) to the applicant Elena Giuliani:
 - EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

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

Lawrence Early
Registrar

Nicolas Bratza
President

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

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

N.B.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE BRATZA JOINED BY JUDGE ŠIKUTA

1. I share the view of the majority of the Chamber that there was in the present case a breach of the procedural obligations of the respondent State under Article 2 of the Convention for the reasons given in the judgment. However, I am unable to agree with the majority's view that the substantive obligations of the State under that Article were not also violated. In my view the death of Carlo Giuliani was the result of a failure on the part of the national authorities to protect his right to life as required by that Article.

(i) The substantive obligation under Article 2

2. The general principles governing the interpretation and application of Article 2 have been accurately set out in paragraphs 204-213 of the Chamber's judgment. I would supplement that summary by underlining two points. First, Article 2 contains, in addition to the prohibition on the use of force which is not absolutely necessary for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c) of paragraph 2 of the Article, a positive obligation on the part of the State under the first sentence of that Article to safeguard life. Where lethal force is used in the course of a police or military operation, it is necessary to examine not merely whether the use of force 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 the life of the persons involved (see eg, *Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97, § 106, 26 July 2005). Secondly, the Court is sensitive to the subsidiary nature of its function and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts. Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (*Şimşek and Others v. Turkey*, cited above, § 102).

3. The Government, relying on the factual findings of the public prosecutor and of the investigating judge, contend that no substantive breach of Article 2 has been made out. It is argued in the first place that there was no causal connection between the shot fired by M.P. and the death of Carlo Giuliani since it was as a result of a wholly exceptional and

unforeseeable circumstance that the bullet struck the victim. The death, it is said, was not the result of an intentional and direct use of potentially lethal force on the part of M.P.: M.P. had fired in the air and the chain of causation between the act and the effect was broken by the unforeseeable and uncontrollable impact of the bullet with a stone, which altered the trajectory of the bullet. It is argued, secondly, that even if there existed any causal link and the responsibility of the State was accordingly engaged, the use of lethal force was “absolutely necessary” and “proportionate” in the defence of the occupants of the jeep from unlawful violence. Thirdly, it is contended that there was no failure on the part of the national authorities to safeguard the right to life of Carlo Giuliani in consequence of a lack of adequate planning of the operations which culminated in his death, the authorities having done everything in their power to prevent the peaceful demonstration from degenerating into violence.

4. The question whether the chain of causation was broken was explicitly examined by the public prosecutor. He expressly rejected the theory, holding that the impact of the bullet on the stone was not such as to interrupt the causal link between M.P.'s act and Carlo Giuliani's death, the real question being whether M.P. acted in legitimate self-defence (judgment, § 83). The investigating judge did not address herself to this theory. Although she referred in her decision to the deflection of the bullet as being a “wholly unforeseeable event” and to the death of Carlo Giuliani as resulting from “a tragic turn of events”, it is clear from the context that the judge was not suggesting any break in the chain of causation but was rather addressing herself to the questions whether the requirements of Article 53 of the Criminal Code had been complied with and whether M.P.'s use of the firearm was in the particular circumstances of the case a necessary and proportionate response.

5. Whether or not the Government's submission finds support in the investigating judge's reasoning, I am wholly unable to accept the argument that the alteration of the trajectory of the bullet as a result of striking a stone or some other solid object was such as to break the chain of causation and thereby relieve the State of responsibility for the death. In order to break a chain of causation, the intervening cause must in my view be so powerful and so unexpected that the conduct of the person concerned cannot be seen as a cause at all but at most as part of the surrounding circumstances. Where the intervening factor could reasonably be foreseen, it cannot of itself be regarded as a *novus actus interveniens* breaking the chain of causation and isolating the initial act from the final result.

6. The circumstances of the present case are, in my view very far from those of a true *novus actus*. The act of M.P. in drawing and firing a loaded pistol was an inherently dangerous act. M.P. was crouched on the floor of the jeep; the jeep was encircled by a mob of protesters who were pelting the vehicle with stones and other missiles and who were sufficiently close to the

jeep to be able to thrust a plank and a fire-extinguisher through the broken rear window and to injure M.P.; M.P.'s visibility from the back of the jeep was obscured: according to his own account, M.P. was aware that “hundreds of protesters” were encircling the jeep but at the moment when he fired he had no one in sight and had not noticed the presence of Carlo Giuliani behind the jeep, either before or after firing; it is also clear from the contemporary photographs that at some stage M.P. was pointing the pistol horizontally towards the protesters to ward off the aggressors. Even if, as was found by the domestic tribunals, the gun was pointing upwards at the point when M.P. fired, there was as the investigating judge found at least a risk that the bullet would hit someone present at the scene. It was also in my view clearly foreseeable that, even if the bullet did not strike one of the protesters directly, it could ricochet off one of the missiles being thrown or brandished by the protesters and cause death or serious injury. The applicants continue to maintain that the bullet never struck a stone and that the photographic and other evidence shows that, so far from firing in the air, M.P. fired directly towards Carlo Giuliani and in a downward direction. However, even accepting the facts as found by the public prosecutor and the investigating judge, the deflection of the bullet as a result of striking a stone cannot in the circumstances be regarded as such an extraordinary and unforeseeable event as to break the chain of causation.

7. It was the view of the investigating judge not only that the use of a weapon by M.P. was justified under Article 53 of the Penal Code as being necessary to repel acts of violence but that the death of Carlo Giuliani resulted from a legitimate act of self-defence or the defence of another under Article 52 of the Code, the firing of the gun being both “necessary” and “proportionate” to the threat posed. The applicants argue that the findings of the investigating judge provide no solid basis on which to conclude that the requirements of Article 2 § 2 of the Convention were complied with: it is argued that the standards set for the use of firearms by Article 53 of the Criminal Code - a provision which dates back to the 1930s - do not correspond to the accepted modern international standards, in particular the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials to which the Court has referred in its previous case-law; nor, it is said, do the concepts of “necessity” and “proportionality” in Article 52 of the Code correspond to that of “no more than absolutely necessary” in Article 2 § 2 itself or to the terms “strictly unavoidable in order to protect life” or “strictly proportionate” used in the Court's case-law under that Article. Reliance is also placed on the deficiencies in the investigation itself which have been examined in the context of the procedural obligations of the State under Article 2. The applicants further challenge, in any event, the conclusion of the investigating judge that the action of M.P. was a legitimate act of self-defence, arguing that in the circumstances of the case the occupants of the

jeep were not in mortal danger so as to justify the use of lethal force. It is said that the occupants were in a sturdy vehicle and had the protection of a shield, bullet-proof vests and protective helmets, that there was a relatively small number of demonstrators who were not armed with lethal weapons, that the injuries to M.P. and D.R. were not serious and that numerous other police and *carabinieri* were in the immediate vicinity of the jeep and able to provide assistance if necessary.

8. I am not persuaded that the Court should reject or treat with caution the findings of the investigating judge on either of the grounds invoked by the applicants. As the Court has previously held, the Convention does not oblige Contracting Parties to incorporate its provisions into national law and it is not the role of the Court to examine *in abstracto* the compatibility of national legislative or constitutional provisions with the requirements of the Convention (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 153, Series A no. 324). While the relevant Convention standard of “no more than absolutely necessary” in Article 2 § 2 appears on its face to be stricter than the relevant national standard, I do not find the difference between the standards to be of significance in the present case. On a fair reading of the decision of the investigating judge, it is clear that a strict test of necessity was applied, the judge concluding not only that the use of a firearm was on the facts of the case “absolutely essential” but that firing the gun was proportionate in the circumstances of the case, being the only means available to M.P. to defend himself and his colleague against the acts of extreme violence directed against them and that, by firing in the air, he had endeavoured to reduce to the minimum any harm caused to the aggressors.

9. It is true that there were deficiencies in the measures of investigation which resulted in the decision to close the criminal inquiry involving M.P. and F.C. and which have been found by the majority of the Court to have given rise to a breach of the State's procedural obligations under Article 2. Despite these deficiencies, the examination by the public prosecutor and the investigating judge of the circumstances in which M.P. fired the gun appears to have been thorough. In particular, both the prosecutor and the judge examined in detail the evidence before them, both eyewitness and expert, before concluding that M.P. had acted in legitimate self-defence. Moreover, the investigating judge gave full reasons for rejecting not only the applicants' alternative account of how the bullet came to strike Carlo Giuliani but their request for supplementary evidence to be obtained.

10. The question remains whether the conclusion of the domestic judicial authorities that M.P. acted in legitimate self-defence is one which can be justified on the basis of the material before the Court. The applicants' argument that it has not been objectively shown that the occupants of the jeep were in mortal danger from the protesters, and that consequently M.P. cannot be said to have acted in legitimate self-defence, is in my view to

impose too strict a standard. It is well-established by the Court's case-law that the question whether the use of force was no more than absolutely necessary in defence of any person from unlawful violence must be judged in the light not just of the situation as a whole but of the subjective perception of the person using the lethal force at the time of its use. Thus, the use of force in pursuit of one of the aims delineated in Article 2 § 2 of the Convention may be justified under this provision where it is based on an honest belief, which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise “would be to impose an unrealistic burden on the State and its law enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others” (*McCann and Others*, cited above, § 200; *Bubbins v. the United Kingdom*, no. 50196/99, § 138 to 140, ECHR 2005-II). In the same vein, the Court has held that it cannot substitute its own assessment of the situation for that of a law-enforcement officer who is required to react in the heat of the moment to avert a danger to his own life or the lives of others.

11. Notwithstanding the various factors relied on by the applicants as casting doubt on the reality and gravity of the danger faced by the occupants of the jeep, I find no reason to question the finding of the domestic judicial authorities that M.P.'s perception that his life and that of D.R. were at risk was founded on good grounds and that his action in firing his weapon did not of itself give rise to a violation of Article 2. I can also accept the view of both the public prosecutor and the investigating judge, reached on the basis of the material before them, including the autopsy report, that the reversal of the jeep by F.C. over Carlo Giuliani's body did not cause any internal injuries and was not a factor in his death, which resulted exclusively from the bullet wound to his head.

12. There remains, however, the question whether the organisation and control of the operations which led to the situation of crisis in which MP found himself and in which he had resort to lethal force respected the requirements of Article 2 to protect the right to life (see *McCann and Others* as before, cited above, §§ 200 to 201). It is on this question that I part company with the majority of the Court. It is also a question on which the investigations by the public prosecutor and the investigating judge, confined as they were to an examination of the criminal liability of M.P. and F.C., offer little assistance. Neither examined in any detail either the overall planning of the security operations or the particular operation which more immediately led up to the stranding of M.P.'s jeep in the Piazza Alimonda which resulted in Carlo Giuliani's death. The applicants make strong criticisms of both aspects. Of the overall planning, particular criticism is directed at a number of elements: the modification of the plans made on 19 July 2001, the eve of the events, which appear to have replaced an essentially static role for the *carabinieri* with a dynamic role and which

were only communicated orally to the senior officers, including Mr Lauro, who only learned of the change on the morning of 20 July; the fact that the *carabinieri* had not been adequately informed of the further change in the service order of 19 July 2001 to authorise the procession of the *Tute bianche*; the selection and training of the personnel, it being argued that the *carabinieri* were commanded by persons experienced as international military police in foreign locations but with no experience of maintaining and restoring public order; the choice of weapons for the *carabinieri*, who were armed with firearms containing lead rather than rubber bullets; and the communication system chosen, which allowed communication only with the command centres of the police and the *carabinieri* and did not permit direct radio contact between the police and the *carabinieri* themselves. The Government argue that any errors or malfunctions which might have existed in the planning, direction or conduct of the security operations could not be regarded as having any direct effect on the origin of the dramatic events which unfolded in the Piazza Alimonda. I have considerable doubt whether this is so, at least as regards the failure adequately to inform the *carabinieri* on the ground of the authorisation of the *Tute bianche* procession. But even if it could be said that the overall planning of the security operation as a whole had no direct impact on the events leading to the death of Carlo Giuliani, the same cannot in my view be said of the direction and control of the events which immediately preceded the stranding of the jeep in the Piazza.

13. Light has been thrown on these events by the evidence given at “the trial of the twenty five” and by the judgment of the Genoa court of 13 March 2008 in that case. In summary, the following facts emerge from the material before the Court, including that judgment.

(i) At about 14.50 hours the *Tute bianche* procession arrived in Via Tolémaide. Shortly afterwards, the Lombardia battalion of the *carabinieri* attacked the procession, using tear-gas and truncheons, apparently unaware that the procession had been authorised by the modified service order of the previous day. The protesters reacted to the attack and began to throw glass bottles and refuse bins at the security forces. Armoured cars were driven at speed by the *carabinieri*, smashing down the barricades which had been erected by the protesters. Shortly before 15.30, the centre of operations ordered the *carabinieri* to withdraw and to let the *Tute bianche* procession pass. Certain protesters organised a violent counter-attack, setting fire to one of the armoured cars. In the judgment of the Genoa court, the conduct of the *carabinieri* until 15.30 had been both illegal and arbitrary and had justified the resistance shown by the protesters. However, once the *carabinieri* had withdrawn, the court found that the behaviour of the protesters could not be justified since the illegal and arbitrary attack by the *carabinieri* had ceased. Consequently, even if the protesters retained a sense of grievance at having been victims of abuse and injustice, their behaviour could in the view of the

court no longer be regarded as defensive but was to be seen as motivated by a desire for revenge.

(ii) During these events, a contingent of the Echo Unit to which M.P. belonged had, after confronting protesters, withdrawn to the comparative calm of Piazza Alimonda and had there regrouped. The contingent was at some stage joined by the two Defender jeeps, one assigned to the Echo Unit and one to Lieutenant-Colonel Truglio. Neither jeep was armour-plated or had a protective grille over the rear side windows or the rear windscreen. According to the Government, the Echo Unit jeep driven by F.C. was not employed in public order operations for which armoured cars of a different type were used but was employed solely to provide logistical support and, according to the submissions of the Government, had been sent to the Piazza to remove M.P. and D.R., who had become ill owing to their prolonged exposure to tear-gas fumes. Captain Cappello authorised M.P. and D.R. to climb into the Echo Unit jeep. According to the uncontested evidence, M.P. was not only young and inexperienced, having seen some 10 months of service as an auxiliary *carabiniere* but he was suffering from the effects of tear-gas, showed signs of intolerance of the tear-gas mask, had difficulty in breathing and was in a highly nervous state. He was, in the view of Captain Cappello, no longer in a fit state to carry on, “at rock bottom” psychologically and “burnt out”. Captain Cappello removed the tear-gas launcher and bag of tear-gas canisters from MP but did not remove his firearm or his ammunition. Despite his breathing difficulties and nervous state, M.P. was not taken for medical treatment even though, in the Government's submissions, this was the avowed purpose of sending the jeep to the Piazza. M.P. himself said that he could not understand why he had not been taken to hospital. Instead, he remained in the rear of the jeep with D.R., who was also found to be suffering from nervous tension and the effects of tear-gas.

(iii) At about 17.20 hours, the contingent of the Echo Unit, which was made up of between 50 and 100 men, was ordered by Mr Lauro to proceed up Via Caffa to Via Tolemaide to assist in confronting certain protesters who had taken up a very aggressive stance and who had placed refuse bins at the junction of Via Caffa. Captain Cappello subsequently stated that he had been perplexed by this order, having regard to the number and state of exhaustion of the men at his disposal and the total lack of armoured cars to provide protection for his men. This, as the applicants point out, is difficult to reconcile with Mr Lauro's statement that, before advancing towards Via Tolemaide, he had asked Captain Cappello if his men were in a fit state to face the situation and had received an affirmative response.

(iv) The two Defender jeeps, one still containing M.P. and D.R., followed the members of the Unit as they proceeded up Via Caffa on foot, wearing gas-masks and carrying riot shields. It is unclear who, if anyone, gave an order for this to occur. F.C., the driver of the Echo Unit jeep stated

at the trial of the twenty-five that his task had been to “close off the lines of their colleagues on foot”. Sub-Lieutenant Zappia, the deputy of Captain Cappello, gave evidence that the two Defenders had moved in unison to avoid being left alone and that instructions were taken from Captain Cappello and Mr Lauro who remained in front of the contingent. However both Mr Lauro and Captain Cappello denied having ever realised that the jeeps were following the Unit. Mr Lauro stated that the jeeps should not have been there. Captain Cappello stated that, if he had realised that the jeeps were following, he would have “sent them away in no uncertain terms”: they had, according to him, no instructions from him to follow the moving contingent “because... it would have been suicidal” since any vehicle moving with a contingent had to be an armoured vehicle to provide the necessary support. M.P. himself stated that he did not understand why the jeep had followed the contingent from the Echo Unit rather than taking him to hospital.

(v) The contingent came under heavy counter-attack from the protesters in Via Tolemaide who were behind a barrier of containers and who were hurling stones and other missiles at the *carabinieri*. The contingent was forced to retreat in a disorderly manner to Piazza Alimonda leaving the two jeeps exposed and without protection. The jeeps reversed and, when trying to effect a U-turn and make an escape, the jeep driven by F.C. collided with, and became trapped by, an overturned refuse container and the engine stalled. The jeep was immediately followed and surrounded by protesters who attacked the two occupants in the rear, armed with stones, sticks, iron bars and other implements. It is unclear where the remainder of members of the contingent were while the assault on the jeep which led to the death of Carlo Giuliani was taking place. The Government assert that at the time of the events in question there were approximately 50 carabinieri at a distance of some 150 metres from the jeep and a “flying squad” of the *Polizia dello Stato* positioned in Piazza Tommaseo at a distance of about 250 metres. It is also said that no calls for assistance had been made to the operations room. This information is disputed by the applicants, who claim that, according to the photographic evidence and the summary information report, Lieutenant Truglio was about 10 metres from Piazza Alimonda and the rest of the Echo Unit of about 100 men was slightly further away, a view supported by Lieutenant Mirante and Sub-Lieutenant Zappia at the trial of the twenty-five who estimated that the Defenders were 30 and 20 metres respectively away from them. What is clear and undisputed is that no steps were taken by the members of the Echo Unit or by the police to come to the aid of the Defender which was under a violent attack and which contained two disabled and vulnerable persons crouched in the rear and where there was a real risk of loss of life to the *carabinieri* themselves, or to the protesters if the *carabinieri* were compelled to have recourse to firearms in self-defence.

14. The majority of the Chamber accept that the handling of the operations by the national authorities gave rise to a number of questions, the answers to which were not provided by the inquiry at national level or by the other material before the Court. It is, however, the view of the majority that account must be taken of the fact that the events in question occurred within a short space of time and at the end of a long day of operations to maintain public order, during which the law-enforcement agencies had been confronted with rapidly unfolding and dangerous situations and had been operating under great strain. It is further said that the charge on the protesters ordered by Mr. Lauro resulted from an operational decision which was justified and was linked to a perception of the risks based on the way in which the situation was developing and that the events in Piazza Alimonda could not have been foreseen. More generally, it is argued that, given that no domestic investigation was conducted in this respect, it is not possible to establish the existence of a direct and immediate link between the shortcomings that may have affected the preparation and conduct of the public-order operation and the death of Carlo Giuliani.

15. I do not question whether the decision to use the Echo Unit to charge the protesters was operationally justified. What is, however, open to serious question is the fact that the two Defenders, one of which contained a *carabiniere* who was armed and physically and emotionally disabled, were permitted to follow the Unit and take part in an operation for which they were evidently not equipped. While the precise events which ensued in the Piazza Alimonda may not have been foreseen, it was in my view eminently foreseeable that, in the highly-charged situation which prevailed at that time and place, the life of the occupants of the jeep or of the protesters was put at risk. For the same reason, even though the Court has regrettably been deprived of the benefit of the findings of an effective domestic investigation into the events leading up to the death, I cannot accept that no link can be established between the shortcomings in the control and direction of the events which immediately preceded the stranding of the Defender and the death of Carlo Giuliani.

16. As to the first consideration relied on by the majority of the Court, I am very conscious of the acute difficulties faced by the national authorities in the planning and conduct of a major security operation at the G8 Summit, which was the scene of acts of serious disorder and extreme violence. I also bear well in mind the admonition of the Government against substituting one's own view as to the proper handling of the operation for that of the responsible officials on the spot, as well as the dangers of being guided by the wisdom of hindsight. Nevertheless, making every allowance for the problems faced by the authorities, the circumstances described reveal in my view a serious and disturbing lack of coordination and effective control over the security operations in the afternoon of 20 July 2001 which were the direct cause of the situation where M.P., a young and inexperienced

carabinieri, who was injured, unprotected and in a state of panic, had resort to lethal force resulting in the tragic loss of life. These failings on the part of those responsible for the planning and control of the operations amounted in my view to a failure to safeguard the right to life of Carlo Giuliani in violation of the substantive aspects of Article 2 of the Convention.

(ii) The procedural obligation under Article 2

17. The Government lay emphasis on the fact that, since any errors or failings in the planning and conduct of the operations had no direct impact on the origin of the events in Piazza Alimonda, it had been superfluous and outside the competence of the judicial authorities in Italy, when examining the criminal responsibility of M.P. and F.C., to extend their inquiries to the higher authorities of the police or to assess the responsibility of other persons. For the reasons given above, I am not persuaded that the errors and deficiencies in the conduct of the operations were not closely connected with the events which resulted in the death of Carlo Giuliani. The procedural obligations of the State under Article 2 require that the actions of agents of the State which have resulted in the use of lethal force should be subjected to some form of independent and public scrutiny capable of determining whether the force used was justified in a particular set of circumstances. Where necessary, the investigation must also be capable of considering any systemic failures that might have led to the death as, for example, in the planning of police operations (see *McCann and Others* and *Şimşek and Others*, both cited above). In the particular context of the present case, I consider that Article 2 required an effective investigation not merely into the potential criminal responsibility of M.P. or F.C. but into the planning and conduct of the operations leading up to the death, thereby ensuring the full accountability of the State officials for the circumstances which resulted in the loss of life. Since no such investigation was conducted there was, as the majority of the Court has held, a violation of the procedural requirements of Article 2 on this additional ground.

18. Having reached this view, I have not found it necessary to examine separately the complaint of the applicants under Articles 6 and 13 of the Convention. Moreover, I share the view of the Chamber as a whole that there has not been a failure on the part of the respondent State to comply with its obligations under Article 38 of the Convention.

JOINT PARTLY DISSENTING OPINION OF JUDGES
CASADEVALL AND GARLICKI

(*Translation*)

1. In this undoubtedly appalling case, the majority concluded that there had been a violation of Article 2 of the Convention in its procedural aspect. We cannot subscribe to this conclusion.

2. At the outset, we wish to state our partial agreement with the general observation made by our colleague Judge Zagrebelsky as regards the summary of facts in the judgment. This is excessively long and contains background details which are unnecessary, not to say pointless, in terms of the core issues to be resolved in this case.

3. We agree also with the facts and conclusions set forth by the investigating judge on 5 May 2003, in particular as regards the causal link between M.P.'s shot and the death of Carlo Giuliani and the situation of extreme violence faced by the *carabinieri* at the scene and in the circumstances of the case, which ruled out any criminal responsibility on M.P.'s part. The latter made legitimate use of his weapon in order to repel an act of violence or thwart an attempt to resist official authority (the cases contemplated by Article 53 of the Criminal Code); in any event, faced with a situation of extreme violence which directly threatened his physical integrity, he was acting in self-defence (Article 2 § 2 (a) of the Convention).

4. Once it has been accepted that there was no disproportionate use of force (see paragraph 227 of the judgment) or failure to comply with the positive obligation to protect the life of Carlo Giuliani (see paragraph 243), the only remaining question concerns the State's procedural obligations. The majority held that there had been a violation of Article 2 in its procedural aspect, basing their conclusion essentially on the following two elements:

(a) the supposedly “superficial” nature of the autopsy report, combined with the finding of a metal fragment lodged in the victim's skull and the return of the body to the family for cremation (see paragraphs 247 to 251);

(b) the fact that no investigation at domestic level examined the overall context in order to determine whether the public-order operations had been planned in such a way as to prevent the incident (see paragraphs 252 and 253).

5. On the first point we are of the view that, once it had been established that there was a causal link between the action of the person firing the shot and the effect produced, and that the victim had in fact been killed, no further autopsy was really necessary in order to determine the truth (except possibly as a matter of forensic interest). Carlo Giuliani was killed by M.P., who admitted having fired two shots, in circumstances generated by the sequence of events.

In deciding on the question before us, whatever additional information might have been obtained concerning the metal fragment, the distance from which the shot was fired, its trajectory, the angle of fire or the possible collision with a stone or other intermediate object is of little relevance. Such information, in our view, would have done nothing to alter the key elements of the tragedy: the person who fired the shots, the victim and the cause of death. The victim's body was not released to the family until after the autopsy, and it was at their request that the public prosecutor, having no compelling actual or foreseeable reason to refuse such a request, and wishing to avoid prolonging the family's distress needlessly, authorised its cremation. The dead man's relatives knew that cremation would destroy the body irreversibly and that no further autopsy would be possible.

6. On the second point, we see no connection between a “domestic” investigation aimed at exploring the organisation and management of all the public-order operations surrounding the G8 summit in Genoa and the specific, one-off incident of short duration which took place on Piazza Alimonda on 20 July 2001. The majority acknowledge that the charge ordered by police officer Lauro “resulted from an operational decision which was justified and was linked to a perception of the risks based on the way in which the situation was developing”, adding that “[t]he events that took place ... could not therefore have been foreseen ... Finally, it should be borne in mind that the incident which led to the death of Carlo Giuliani was of relatively short duration” (see paragraph 238). Indeed, the incident took place between 5 p.m. and 5.27 p.m. (see paragraphs 17 and 29) and “the circumstances surrounding the death” (see paragraph 252) leave no room for doubt.

7. Accordingly, with the benefit of hindsight, we are of the view that the investigation conducted by the Italian authorities in this regrettable case was adequate and effective and involved the participation of the parties, in line with the State's positive obligations, and that no procedural violation of Article 2 of the Convention can be imputed to the respondent State.

PARTLY DISSENTING OPINION OF JUDGE ZAGREBELSKY

(Translation)

I regret that I am unable to share the opinion of the majority of the Chamber in finding a violation of Article 2 of the Convention in its procedural aspect.

1. I will explain my dissenting opinion below; however, one general preliminary remark needs to be made concerning the judgment as a whole and the facts part in particular. In my view, the summary of facts enters into details of the background to the case which, as the Court itself is aware, serve no purpose in terms of the issues to be addressed (see paragraph 235). It describes and assesses events which are highly controversial at the national level and on which the domestic courts have not yet given final judgment. The risk that the Court's judgment will be read in a partisan manner in order to fuel the tensions which still surround the events in question in Italy cannot be ruled out, and is indeed heightened by the delayed delivery of the Court's ruling (seven years after the application was lodged).

2. I share the opinion of the majority of the Chamber in finding that there has been no violation of Article 2 of the Convention in its substantive aspect. In my opinion, there is no reason to depart from the findings of the judgment given at the close of an investigation which did everything that could be done to shed light on the events in question.

The judge, on the basis of the report by the panel of experts and the other evidence at her disposal (video footage, witness statements), accepted that the shot had been fired upwards and that the bullet had been deflected following a collision with a stone or similar object.

It seems to me that, in the context of the violent attack to which he and his colleagues were being subjected, the person who fired the shot reacted in a manner justified in terms of Article 2 § 2 (a) of the Convention.

There can be no doubt but that the attack was very serious and must have appeared extremely serious to the occupants of the jeep, which was surrounded by several demonstrators who were armed with sticks, beams and stones and had broken the vehicle's windows. One of the assailants thrust a wooden plank into the jeep and injured the *carabiniere* next to the officer who fired the shots. The jeep's occupants were unable to move inside the vehicle. Shortly beforehand, an armoured vehicle belonging to the *carabinieri* had been set on fire by demonstrators. The fear of being lynched was, in the circumstances, entirely reasonable.

In this specific situation – which occurred suddenly and was extremely serious – the officer reacted by firing two shots in an upward direction; only an exceptional and unlikely twist of fate caused the bullet to be deflected.

We must of course take into consideration the unforeseeable anomaly in the bullet's trajectory (and the fatal consequences of the shot which ricocheted and hit the victim), while acknowledging that this anomaly does not negate the causal link.

Can shots fired in order to intimidate be assimilated with the use of force within the meaning of Article 2 § 2 (a) of the Convention? In any event, it is clear that the nature of the shots, viewed in terms of their necessity and the legitimate aim pursued, must be taken into account.

In its judgment in *Bakan v. Turkey* (no. 50939/99, §§ 55-56, 12 June 2007), the Court ruled out a violation of Article 2 of the Convention, taking account of the fact that the death of the victim, who was killed by a gendarme's bullet, “[had been] the result of a stroke of misfortune, as the bullet which caused the fatal injury ricocheted and hit the victim” (see also, *mutatis mutandis*, *Kathleen Stewart v. the United Kingdom*, no. 10044/82, Commission decision of 10 July 1984, Decisions and Reports 39).

Wisdom and caution normally lead the Court to adopt a realistic yardstick and to state that the legitimacy of the use of force must be assessed in the light of the situation as it appeared to the protagonists, who were reacting in the heat of the moment to avert an honestly perceived danger to their lives or the lives of others, even if the situation might subsequently be assessed differently. For the Court to hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others (see *Bubbins v. the United Kingdom*, no. 50196/99, §§ 138-40, ECHR 2005-II; *McCann and Others v. the United Kingdom*, 27 September 1995, § 200, Series A no. 324; *Makaratzis v. Greece* [GC], no. 50385/99, § 66, ECHR 2004-XI; and *Huohvanainen v. Finland*, no. 57389/00, §§ 96-97, 13 March 2007).

3. The G8 summit in Genoa witnessed on the one hand a peaceful and lawful demonstration on an impressive scale and, on the other hand, acts of extreme violence against persons and property organised by numerous groups armed with a wide variety of objects. The fact that the demonstrations and the violent acts became intermingled made it extremely difficult, if not impossible, to manage the public-order situation in an orderly and planned manner.

The majority themselves accept that “the charge ordered by police officer Lauro resulted from an operational decision which was justified and was linked to a perception of the risks based on the way in which the situation was developing”, that “the law-enforcement agencies had been confronted with rapidly unfolding and dangerous situations and had been required to make crucial operational decisions”, that “[t]he events that took place on Piazza Alimonda could not ... have been foreseen” and that “the incident which led to the death of Carlo Giuliani was of relatively short duration” (see paragraph 238 of the judgment). It is hard, therefore, to see the

relevance of questions relating to the organisation, planning and management of the public-order operations conducted prior to the events in issue (see paragraph 235). This is particularly true if we take into consideration, as we must, the congestion and violence in the area, the priorities established by those in charge of the operations and the unforeseeable nature of the sudden incident.

As far as the events as they occurred are concerned, what matters are the actions of the person who fired the shot in the context of the moment.

Furthermore, the Court has held on several occasions that “[b]earing 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, among other authorities, *Makaratzis*, cited above, § 69).

The Court's case-law provides a wealth of examples where the Court found shortcomings or errors in the planning and management of the actions of the law-enforcement agencies and found a violation of Article 2 for that reason alone. The case-law shows that the State's responsibility may be engaged even in cases where the ultimate action by the agent resulting in a loss of life is not open to criticism. That being said, it is perfectly clear that the particular circumstances of each case are different and that the relevant case-law must be applied discerningly. One needs only to compare the present case with those examined by the Court in *McCann and Others* (cited above); *Andronicou and Constantinou v. Cyprus* (9 October 1997, *Reports of Judgments and Decisions* 1997-VI); *Makaratzis* (cited above); *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, ECHR 2005-VII); *Şimşek and Others v. Turkey* (nos. 35072/97 and 37194/97, 26 July 2005); and *Erdoğan and Others v. Turkey* (no. 19807/92, 25 April 2006).

In the instant case, the background to and cause of the shots fired by the *carabinieri* lie solely in the attack perpetrated by the group of demonstrators, of whom the victim himself was one. This leads me to conclude that it would be unjustified to base a finding of a substantive violation of Article 2 on a critical assessment of the authorities' conduct at one or other point during the events which characterised the demonstrations against the G8 summit in Genoa. In the light of what has been accepted by the majority (see paragraph 238), the only factors which appear to me to be relevant in the present case are the context provided by the violent attack, the actions of the person who fired the shot and the consequences thereof.

4. The position I believe to be correct when it comes to examining the complaint concerning Article 2 in its substantive aspect leads into a parallel discussion on the question of the shortcoming in the domestic investigation found by the majority on account of the fact that “[a]t no point was any attempt made to examine the overall context and consider whether the

authorities had planned and managed the public-order operation in such a way as to prevent incidents of the kind that caused the death of Carlo Giuliani”. In particular, the majority found that the investigation “... made no attempt to establish why M.P. – whom his superior officers had considered unfit to continue on duty owing to his physical and mental state ... – had not been taken straight to hospital, had been left in possession of a loaded pistol and had been placed in a jeep which had no protection and which was cut off from the contingent it had been following” (see paragraph 252 of the judgment).

Firstly, it seems to me that the investigation conducted by the Genoa public prosecutor's office did indeed consider the factors leading up to the firing of the shots. Hence, the investigation extended well beyond the mere material fact of the pistol shots and the immediate context in which they were fired (a fact borne out by the documents gathered during the investigation, the content of the witness statements and the summary of facts set forth in the public prosecutor's request and in the judge's decision). This is even more true in the case of the “trial of the twenty-five”.

Secondly, for the reasons already expounded in relation to the substantive aspect of Article 2, the effectiveness of the investigation as regards Carlo Giuliani's death in no way suffered on this account, as the facts set out in paragraph 252 of the judgment do not concern the question whether the taking of the victim's life was justified in terms of the second paragraph of Article 2 of the Convention. The answer to that question is provided by the majority in paragraph 238.

5. According to the majority's reasoning, a further shortcoming in the investigation justified the finding that there had been a violation of Article 2 in its procedural aspect. This was the “superficial nature” of the autopsy, the untimely cremation of the body and the excessively short notice given to the applicants ahead of the autopsy examination.

As regards the last remark (see paragraph 248), it appears to me to overlook the fact that autopsy examinations are by their very nature urgent and thus leave the public prosecutor's office, the accused and the injured parties very little time to appoint experts. In any case, there was nothing to prevent the applicants from appointing an expert, making contact with the experts appointed by the public prosecutor and seeing the body in the hours that followed, before having the body cremated (the cremation was authorised on 23 July, that is, two days after the autopsy). Accordingly, it was not made unduly difficult or impossible for the applicants to attend the experts' examinations.

Following the autopsy the body was handed over to the family and, at the latter's request, the public prosecutor's office authorised its cremation. The majority are of the opinion that the public prosecutor should not have given such authorisation “well before the results of the autopsy examination were known, and despite the fact that on the previous day he had given the

experts sixty days in which to submit their report. This is particularly so since he himself described the autopsy report as 'superficial'" (see paragraph 250).

At the time when the public prosecutor released the body to the victim's family and authorised its cremation, none of the factors which became apparent subsequently was present or foreseeable (and certainly not the "superficial nature" of the experts' report, which had not yet been written). Moreover, if the experts do not indicate that they still need the body, it is the consistent and sensible practice to spare the family the added ordeal of a prolonged wait.

Whatever regrets one may have with hindsight, they do not provide sufficient basis, in my view, for criticising persons who at the time held the reasonable belief that they could and should respond favourably to the family's request. When it comes to assessing the material facts underlying an application, and also as regards judicial decisions on procedural matters, the context to be taken into consideration is that which prevailed at the moment the decision was (had to be) taken (see, *mutatis mutandis*, *R.K. and A.K. v. the United Kingdom*, no. 38000/05, § 36, 30 September 2008).

I will turn next to the question of the "superficial nature" of the autopsy and the autopsy report. The public prosecutor mentioned this in his request, without giving further details, in order to explain the time taken by the investigation (since the public prosecutor's office had to order another expert report by a panel of experts); it is clearly a reference to the fact that the experts had not recovered the piece of bullet casing which showed up on the scan, lodged in the victim's skull. The expert Mr Salvi provided an explanation in that regard, and the judgment of the Genoa District Court in the "trial of the twenty-five" took note of it (see p. 389). The expert saw the metal fragment on the scanned images and took the view that it was not the bullet itself but a very small fragment, which he considered would be very difficult to extract from the brain tissue and would serve no purpose in terms of the ballistic analysis. This explanation may appear unsatisfactory with hindsight, in view of the importance of the fact that the bullet's casing had fragmented and that some of the debris of the casing, found in the victim's balaclava, showed traces of a collision with an intermediate object, giving rise to the theory that the shot had been deflected. One can understand why the different sets of experts may have taken a cautious stance and expressed regret that the corpse had not been available for their examination; however, that does not mean that the investigation as a whole was impaired as a result. The piece of casing that was not recovered could merely have confirmed the theory that the bullet had collided with an intermediate object (had traces of such a collision been present); in no circumstances could it have disproved the theory (had no such traces been found).

All the evidence that was relevant and useful in order to assess the course of events and who may have been responsible for the victim's death was sought and examined, as far as this was possible, during the investigation. The investigation overall should therefore be deemed, in my view, to satisfy the procedural obligations arising out of Article 2 of the Convention.