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

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CHAMBER JUDGMENT
GIULIANI AND GAGGIO v. ITALY

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***Giuliani and Gaggio v. Italy*** (application no. 23458/02). The Court held

- unanimously that there had been **no violation of Article 2** (right to life) of the European Convention on Human Rights as regards the excessive use of force;
- by five votes to two that there had been **no violation of Article 2** as regards the State's positive obligations to protect life;
- by four votes to three that there had been **a violation of Article 2** as regards the procedural obligations under that Article; and
- unanimously that there had been **no violation of Article 38** (examination of the case).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the first two applicants 15,000 euros (EUR) each and the third applicant EUR 10,000 for non-pecuniary damage.

(The judgment is available in English and French).

1. Principal facts

The applicants, Giuliano Giuliani, his wife Adelaide Gaggio and their daughter Elena Giuliani, are Italian nationals who were born in 1938, 1944 and 1972 respectively and live in Genoa and Milan (Italy).

The application concerns the death of the applicants' son and brother, Carlo Giuliani, while he was taking part in clashes during the G8 summit in Genoa from 19 to 21 July 2001.

On 20 July, during an authorised demonstration, there were extremely violent clashes between anti-globalisation militants and law-enforcement officers. At around 5 p.m., under pressure from the demonstrators, a group of about 50 *carabinieri* withdrew on foot, leaving

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

two vehicles exposed. One of them, with three *carabinieri* inside, remained stuck on Piazza Alimonda. It was surrounded and violently attacked by a group of demonstrators, some of whom were armed with iron bars, pickaxes, stones and other blunt implements. One of the *carabinieri*, who had been injured, drew his firearm and, after giving a warning, fired two shots outside the vehicle. Carlo Giuliani, who was wearing a balaclava and playing an active part in the attack, was fatally wounded by a bullet in his face. In an attempt to move the vehicle away, the driver twice drove over the young man's unconscious body. When the demonstrators had been dispersed, a doctor arrived at the scene and pronounced Carlo Giuliani dead.

An investigation was opened immediately by the Italian authorities. Criminal proceedings were instituted against the officer who had fired the shots and the driver of the vehicle for intentional homicide. An autopsy performed within 24 hours of the death revealed that the death had been caused by the shot and not by the attempts to drive the vehicle away. The forensic expert found that the shot had been fired at a downward angle.

At the public prosecutor's request three expert reports were prepared. The authors of the third report, submitted in June 2002, deplored the fact that it had been impossible to examine the body, since the public prosecutor had in the meantime authorised the family to have it cremated. They concluded that the bullet had been fired upwards by the *carabiniere* but had been deflected by a stone thrown at the vehicle by another demonstrator.

On 5 May 2003 the investigating judge discontinued the proceedings. She found that the driver of the vehicle, whose actions had resulted only in bruising, could not be held responsible for the killing as he had been unable to see Carlo Giuliani, given the confusion prevailing around the vehicle. As to the officer who had fired the fatal shot, the judge took the view that he had fired into the air without intent to kill and that he had in any event acted in self-defence in response to the violent attack on him and his colleagues.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 June 2002. A hearing was held in the Human Rights Building, Strasbourg, on 5 December 2006 and the application was declared admissible on 6 February 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (the United Kingdom), ***President***,
Josep **Casadevall** (Andorra),
Giovanni **Bonello** (Malta),
Vladimiro **Zagrebelsky** (Italy),
Lech **Garlicki** (Poland),
Ljiljana **Mijović** (Bosnia and Herzegovina),
Ján **Šikuta** (Slovakia), ***judges***,

and also Lawrence **Early**, ***Section Registrar***.

3. Summary of the judgment[2]

[2] This summary by the Registry does not bind the Court.

Complaints

Relying on Article 2, the applicants alleged that Carlo Giuliani's death had been caused by excessive use of force and that the organisation of the operations to maintain and restore public order had been inadequate. In addition, they argued that the failure to provide immediate assistance amounted to a violation of Articles 2 and 3 (prohibition of inhuman treatment).

The applicants further complained, under Articles 2, 6 (right to a fair hearing) and 13 (right to an effective remedy), that there had not been an effective investigation into their close relative's death.

Lastly, they alleged that the Italian Government had breached Article 38 of the Convention (examination of the case) by omitting to provide information to the Court or by producing false information.

Decision of the Court

Article 2

Excessive use of force

The Court first reiterated the general principles established in its case-law concerning Article 2. Next, on the basis of the evidence produced by the parties, it analysed the reasons behind the investigating judge's decision to discontinue the proceedings. In this connection it noted that the *carabiniere* who had fired the shots had been confronted with a group of demonstrators carrying out a violent attack on the vehicle he was in, that he had issued warnings, holding his weapon in such a way that it was clearly visible, and that he had fired only when the attack had continued. The Court agreed with the investigating judge that the use of lethal force had not exceeded the limits of what was absolutely necessary in order to avert what the *carabiniere* had honestly perceived to be a real and imminent danger to his life and the lives of his colleagues. It further found that it was not necessary to examine *in abstracto* the compatibility with Article 2 of the applicable legislative provisions on the use of weapons by law-enforcement officers, as the situation under consideration had involved an individual decision taken in a state of panic. Accordingly, there had been no disproportionate use of force and thus no violation of Article 2 in this regard.

Compliance with positive obligation to protect life

In general terms, the Court observed that when a State hosted an international event entailing a very high level of risk, it had a duty to take all the appropriate security measures, while also safeguarding any demonstrators' rights to freedom of expression and assembly. In the present case the Court had to consider whether in planning and directing the public-order operation the Italian authorities had minimised the risk of lethal force being used. In that connection it noted that, according to the applicants, there had been a number of shortcomings in the organisation of the operation and that no investigation at domestic level had shed any light on those allegations. In the absence of such an investigation, and bearing in mind that the operation had been very broad-ranging and had placed the law-enforcement agencies under

enormous strain, the Court was unable to establish the existence of a direct and immediate link between any shortcomings in the planning of the operation and the death of Carlo Giuliani. In addition, the Court observed that after the shots had been fired, the police officers present on Piazza Alimonda had immediately called the emergency services. It was therefore not established that the Italian authorities had failed to comply with their positive obligations to protect Carlo Giuliani's life.

Compliance with procedural obligations under Article 2

The Court noted, firstly, that the autopsy performed on Carlo Giuliani's body had not led to the determination of the precise trajectory of the fatal bullet or to the recovery of a metal fragment which a scan had clearly shown to be lodged in the victim's skull. Moreover, even before he had received the results of the autopsy, the public prosecutor had authorised the Giuliani family to proceed prematurely with their close relative's cremation, thereby rendering it impossible to conduct any further analyses. The Court further considered that the domestic investigation had concerned only the precise circumstances of the incident, being confined to examining whether those directly involved should be held responsible, without seeking to identify any shortcomings in the planning and management of the public-order operations. Italy had therefore not complied with its procedural obligations in connection with the death of Carlo Giuliani.

Articles 3, 6 and 13

The applicants alleged that the act of driving the vehicle over Carlo Giuliani's body and the failure to provide immediate assistance had caused him suffering amounting to inhuman and degrading treatment. The Court considered that it could not be inferred from the law-enforcement officers' conduct that they had had any intention to inflict suffering, and found that, having regard to the circumstances of the present case, the complaint fell to be examined solely under Article 2. Furthermore, in view of its finding of a violation of Article 2 in its procedural aspect, the Court considered that it was not necessary to consider the case separately under Articles 6 and 13.

Article 38

Contrary to what the applicants had maintained, the Court considered that the Government had cooperated sufficiently, allowing it to conduct an appropriate examination of the case. Italy had therefore not failed to comply with its obligations under Article 38.

Judge Bratza, joined by Judge Šikuta, expressed a partly dissenting opinion. Judges Casadevall and Garlicki expressed a joint partly dissenting opinion. Judge Zagrebelsky also expressed a partly dissenting opinion. The opinions are annexed to the judgment.

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

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