

Press release issued by the Registrar

**CHAMBER JUDGMENT IN THE CASE OF  
NACHOVA AND OTHERS v. BULGARIA**

The European Court of Human Rights has today notified in writing a judgment<sup>1</sup> in the case of *Nachova and Others v. Bulgaria* (application nos. 43577/98 and 43579/98). (The judgment is available only in English.)

The Court held unanimously that there had been:

- **a violation of Article 2** (right to life) of the European Convention on Human Rights concerning the shooting of the applicants' relatives;
- **a violation of Article 2** of the Convention concerning the lack of an effective investigation into their deaths;
- **violations of Article 14** (prohibition of discrimination), taken together with Article 2, concerning the lack of an investigation into whether discriminatory attitudes played a role in the shootings; and, concerning the shootings themselves.

The Court also held, unanimously, that it was not necessary to examine separately the complaint that there had been a violation of Bulgaria's general obligation under Article 2 to protect life by law and that no separate issues arose under Article 13 (right to an effective remedy).

Under Article 41 (just satisfaction) of the Convention, the Court awarded: jointly to Ms Nachova and Ms Hristova, 25,000 euros (EUR) for pecuniary and non-pecuniary damage; jointly to Ms Rangelova and Mr Rangelov, EUR 22,000 for pecuniary and non-pecuniary damage; and, jointly to all the applicants, EUR 3,740 for costs and expenses.

## **1. Principal facts**

The applicants, Anelia Kunchova Nachova, Aksiniya Hristova, Todorka Petrova Rangelova and Rangel Petkov Rangelov, are all Bulgarian nationals who describe themselves as being of Roma origin. They were born in 1995, 1978, 1955 and 1954 respectively. Ms Nachova and Ms Hristova both live in Dobrolevo and Ms Rangelova and Mr Rangelov live in Lom (Bulgaria).

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

The case concerns the killing on 19 July 1996 of the applicants' relatives, Kuncho Angelov and Kiril Petkov, both aged 21, by a military policeman who was trying to arrest them.

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

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

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

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

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

A criminal investigation into the deaths was opened the same day. The autopsy report found that both men had died from chest wounds, fired from an automatic rifle from a distance, the direction of the shot having been from front to back, in the case of Mr Petkov, and from back to front, in the case of Mr Angelov. The investigation concluded that Major G. had followed Regulation 45 of the Military Police Regulations. He had warned the two men several times and fired shots in the air. He had shot them only because they had not surrendered, as there had been a danger they might escape, and he had tried to avoid inflicting fatal injuries. No one else had been hurt.

The applicants appealed unsuccessfully.

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

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

Third-party comments were received from the European Roma Rights Centre, which submitted that there was a pressing need for the Court to re-evaluate its approach to interpreting Article 14 of the Convention in cases of alleged discrimination on the basis of

race or ethnicity and, in particular, to revise its stand on the applicable standard and burden of proof in such cases.

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

Christos **Rozakis** (Greek), *President*,  
Peer **Lorenzen** (Danish),  
Giovanni **Bonello** (Maltese),  
Françoise **Tulkens** (Belgian),  
Nina **Vajić** (Croatian),  
Snejana **Botoucharova** (Bulgarian),  
Vladimiro **Zagrebelky** (Italian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

### 3. Summary of the judgment<sup>1</sup>

#### Complaints

The applicants alleged that their relatives were deprived of their lives in violation of Article 2 (right to life) of the Convention, as a result of deficient law and practice which permitted the use of lethal force without absolute necessity. They also complained that the authorities had failed to conduct an effective investigation into the deaths, in violation of Article 2 and Article 13 (right to an effective remedy).

The applicants further alleged that prejudice and hostile attitudes towards people of Roma origin had played a decisive role in the events leading up to the shootings and the fact that no meaningful investigation was carried out, relying on Article 14 (prohibition of discrimination) in conjunction with Article 2.

#### Decision of the Court

##### Article 2

##### Deprivation of life

The Court noted that: Mr Angelov and Mr Petkov were serving short sentences for non-violent offences, they had escaped without using violence, neither was armed, and, that they had no record of violence. Their behaviour must also have appeared predictable to the authorities, since, following a previous escape Mr Angelov had been found at the same address in Lesura. The evidence showed that the arresting officers were fully aware that Mr Angelov and Mr Petkov were not armed or dangerous. Nonetheless, Major G. fired at and fatally wounded them. The Court considered that the legitimate aim of effecting a lawful arrest could not justify putting human life at risk where the fugitive had committed a non-violent offence and did not pose a threat to anyone.

The use of potentially lethal firearms inevitably exposed human life to danger even when there were rules designed to minimise the risks. Accordingly, the Court considered that it

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<sup>1</sup> This summary by the Registry does not bind the Court.

could in no circumstances be absolutely necessary to use such firearms to arrest a person suspected of a non-violent offence who was known not to pose a threat, even where a failure to do so might result in the opportunity to arrest the fugitive being lost. It followed that the use of firearms in the case could not possibly have been “absolutely necessary” and was therefore prohibited by Article 2 of the Convention.

The Court also found that unnecessarily excessive force was used.

Regarding the planning and control of the arrest, the authorities had failed to comply with their obligation to minimise the risk of loss of life, as the nature of the offence and the fact that the two men did not pose a danger were not taken into account. Likewise, the circumstances in which recourse to firearms should be envisaged - if at all - were not discussed, apparently owing to deficient rules and lack of adequate training.

The Court therefore found that Bulgaria was responsible for deprivation of life, in violation of Article 2, because firearms were used to arrest two men suspected of non-violent offences, who were unarmed and did not pose any threat to the arresting officers or others. The violation of Article 2 was aggravated by the fact that excessive firepower was used. Bulgaria was also responsible for the failure to plan and control the operation for the mens’ arrest in a manner compatible with Article 2.

#### Effectiveness of the investigation

The Court noted that the Bulgarian authorities did not bring charges as they considered that the relevant regulations on the use of force had been complied with. The Court found that this conclusion was based on questionable findings which, even if accepted, could not be seen as grounds for concluding that the force used against the two men was “no more than absolutely necessary”. The authorities should have concluded that the use of firearms was not justified on the basis that the men did not pose any threat to the arresting officers or third parties and had committed non-violent offences. It was also necessary to investigate the planning of the operation and its control, including the question whether the commanders had acted adequately so as to minimise the risk of loss of life. None of these issues were seen by the authorities as being relevant. The Court therefore considered that the investigation into the mens’ deaths was flawed in that it did not apply a standard comparable to the “no more than absolutely necessary” standard required by Article 2 § 2.

Concerning the collection and assessment of the evidence, the Court noted that important initial steps, such as preserving evidence at the scene and taking all relevant measurements, were neglected. The sketch map relied upon by the authorities was also insufficiently detailed. The information that could have been obtained through a reconstruction of the events and detailed descriptions was crucial, in particular, in order to establish whether Major G. had committed a criminal offence. It was also highly significant that the investigator and the prosecutors failed to comment on a number of facts which appeared to contradict Major G.’s statements. Without any proper explanation, the authorities merely accepted Major G.’s statements. The Court therefore found that the investigation was characterised by a number of serious and unexplained omissions. It ended with decisions which contained inconsistencies and conclusions unsupported by a careful analysis of the facts.

The investigator and prosecutors at all levels ignored certain facts, failed to collect all the evidence that could have clarified the sequence of events and omitted reference in their decisions to troubling facts. As a result, the killing of Mr Angelov and Mr Petkov was

labelled lawful on dubious grounds and the police officers involved and their superiors were cleared of potential charges and spared criticism despite there being obvious grounds for prosecuting at least one of them. The Court considered that such conduct on the part of the authorities – which had already been remarked on by the Court in previous cases against Bulgaria (see *Velikova v. Bulgaria* and *Anguelova v. Bulgaria*) – was a matter of particular concern, as it cast serious doubts on the objectivity and impartiality of the investigators and prosecutors involved.

The Court found that the investigation and the conclusions reached by the prosecutors were characterised by serious unexplained omissions and inconsistencies, and that the approach was flawed. There had, therefore, been a violation of Bulgaria's obligation under Article 2 § 1 to investigate deprivations of life effectively.

#### Obligation to protect life by law

The Court found that it was not necessary to examine separately the complaint that there had been a violation of Bulgaria's general obligation to protect life by law.

#### Article 13

The Court found that no separate issue arose under Article 13.

#### Article 14

##### Failure to investigate whether discrimination played a role in the shootings

The Court observed that certain facts which should have alerted the authorities and led them to be especially vigilant and investigate possible racist motives were not examined. No attention was paid by the investigation to the fact that Major G. had fired an automatic burst in a populated area – the Roma neighbourhood of Lesura – against two unarmed, non-violent fugitives and one of the victims had wounds to the chest, not the back (suggesting that he might have turned to surrender). The force used was in any event disproportionate and unnecessary.

Furthermore, despite information that Major G. knew some of the villagers and the village where the shooting took place, no effort was made to investigate whether or not personal hostility might have played a role in the events. Witness evidence that Major G. had shouted: "You damn Gypsies" while pointing a gun at him moments after the shooting, was disregarded, although it had not been contradicted.

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

The Court therefore found that the authorities had failed in their duty under Article 14, taken together with Article 2, to take all possible steps to establish whether or not discriminatory attitudes might have played a role in events.

Whether discrimination played a role in the shootings

The Court reiterated that the Bulgarian authorities had made no attempt to investigate whether discriminatory attitudes had played a role in the killings, despite having evidence before them that should have prompted them to carry out such an investigation. The Court therefore considered that the Bulgarian Government had to satisfy the Court, on the basis of additional evidence or a convincing explanation of the facts, that the events complained of were not shaped by any prohibited discriminatory attitude on the part of the Bulgarian authorities. They had failed to do so.

The Court considered it highly relevant that this was not the first case against Bulgaria in which it had found that law enforcement officers had subjected Roma to violence resulting in death. In its *Velikova* and *Anguelova* judgments, the Court noted that the complaints of racial motivation in the killing of two Roma in police custody in separate incidents were based on “serious arguments”. Other incidents of alleged police brutality against Roma in Bulgaria had been reported by the European Commission against Racism and Intolerance, the European Committee for the Prevention of Torture, United Nations bodies and non-governmental organisations. It appeared that some of those reports had not been contested by the Bulgarian authorities. They had apparently acknowledged the need to adopt measures to combat discrimination against Roma.

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

Judge Bonello expressed a concurring opinion, which is annexed to the judgment.

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

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