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EUROPEAN COURT OF HUMAN RIGHTS

649
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Press release issued by the Registrar

GRAND CHAMBER JUDGMENT MAKARATZIS v. GREECE

The European Court of Human Rights has today delivered at a public hearing a Grand Chamber judgment¹ in the case of *Makaratzis v. Greece* (application no. 50385/99).

The Court held

- by twelve votes to five that there had been a **violation of Article 2** (right to life) of the European Convention on Human Rights in respect of the respondent State's obligation to protect the applicant's right to life by law;
- unanimously that there had been a **violation of Article 2** of the Convention in respect of the respondent State's obligation to conduct an effective investigation into the circumstances of the incident which had put the applicant's life at risk;
- by fifteen votes to two that no separate issue arose under **Article 3** (prohibition of inhuman or degrading treatment) of the Convention;
- by sixteen votes to one that no separate issue arose under **Article 13** (right to an effective remedy) of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant, by fifteen votes to two, 15,000 euros (EUR) for non-pecuniary damage.

(The judgment is available in English and French.)

1. Principal facts

The case concerns an application brought by a Greek national, Christos Makaratzis, who was born in 1967 and lives in Athens. The facts are in dispute between the parties.

On 13 September 1995 the police tried to stop the applicant, an unarmed civilian, after he had driven through a red traffic light in the centre of Athens. The applicant did not stop, but accelerated. He was pursued by several police officers in cars and on motorcycles and his car collided with several other vehicles. Two drivers were injured. After the applicant had broken through five police roadblocks, the police officers started firing at his car. Eventually, he stopped his car at a petrol station, but locked the doors and refused to get out. The police officers continued firing. The applicant alleges that they were firing at his car; the Government claim that they were firing into the air. One police officer threw a pot at the car windscreen. Finally, the applicant was arrested by a police officer who managed to break into the car. The applicant was immediately driven to the hospital, where he remained for nine days. He sustained injury to his right arm, his right foot, his left buttock and the right side of his chest. He claims that he was shot in the sole of his foot while being dragged out of his car. The Government contest this allegation. The applicant's mental health has deteriorated considerably since the accident.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

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A political organisation set up in 1949, the Council of Europe works to promote democracy and human rights continent-wide. It also develops common responses to social, cultural and legal challenges in its 46 member states.

Some of the police officers left the scene without revealing their identity and disclosing all necessary information concerning the weapons used. The public prosecutor instituted criminal proceedings against seven officers, which ended in their acquittal. Given that not all the officers involved in the incident had been identified, the criminal court was unable to establish beyond reasonable doubt that the seven accused were the ones who had fired at the applicant.

2. Procedure and composition of the Court

The application which was lodged with the European Commission of Human Rights on 2 June 1998 was transmitted to the European Court of Human Rights on 1 November 1998. It was declared partly admissible on 18 October 2001 and a Chamber hearing was held in Strasbourg on 3 April 2003.

On 5 February 2004 jurisdiction was relinquished in favour of the Grand Chamber. The *Institut de Formation en Droits de l'Homme du Barreau de Paris* was given leave to submit written observations. A Grand Chamber hearing took place in Strasbourg on 30 June 2004.

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

Luzius **Wildhaber** (Swiss), *President*,
 Christos **Rozakis** (Greek),
 Jean-Paul **Costa** (French),
 Georg **Ress** (German),
 Nicolas **Bratza** (British),
 Giovanni **Bonello** (Maltese),
 Riza **Türmen** (Turkish)
 Françoise **Tulkens** (Belgian),
 Viera **Stráznická** (Slovakian),
 Peer **Lorenzen** (Danish),
 Nina **Vajić** (Croatian),
 Margarita **Tsatsa-Nikolovska** (Citizen of “the Former Yugoslav Republic of Macedonia”),
 Hanne Sophie **Greve** (Norwegian),
 Anatoli **Kovler** (Russian),
 Vladimiro **Zagrebelsky** (Italian),
 Antonella **Mularoni** (San Marinense),
 Khanlar **Hajiyev** (Azerbaijani), *judges*,

and also Paul **Mahoney**, *Registrar*.

3. Summary of the judgment²

Complaints

The applicant complained, under Articles 2, 3 and 13 of the Convention, that the police officers had used excessive fire-power against him, putting his life at risk. He also complained of the lack of an adequate investigation into the incident.

Decision of the Court

Article 2 of the Convention

Having regard to the circumstances of the case and in particular to the degree and type of force used, the Court concluded that, irrespective of whether or not the police had actually intended to kill him, the applicant had been the victim of conduct which, by its very nature, had put his life at risk, even though, in the event, he had survived. Article 2 was thus applicable.

Regarding the authorities' obligation to protect the applicant's right to life by law

Although the Greek State had since passed a new law in 2003 regulating the use of firearms by the police, at the relevant time the applicable legislation dated from the Second World War when Greece had been occupied by the German armed forces. Greek law did not contain any other provisions regulating the use of weapons during police actions or laying down guidelines on planning and control of police operations.

Having regard to the criminal conduct of the applicant and to the climate at the time, marked by terrorist actions against foreign interests, the Court accepted that the use of force against him had been based on an honest belief which had been

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

perceived, for good reasons, to be valid at the time. However, the Court was struck by the chaotic way in which the firearms had actually been used by the police and serious questions arose as to the conduct and the organisation of the operation.

While accepting that the police officers who had been involved in the incident had not had sufficient time to evaluate all the parameters of the situation and carefully organise their operation, the Court considered that the degeneration of the situation had largely been due to the fact that at that time neither the individual police officers nor the chase, seen as a collective police operation, had had the benefit of the appropriate structure which should have been provided by the domestic law and practice.

At the time the use of weapons by State officials had still been regulated by an obsolete and incomplete law for a modern democratic society. The system in place had not afforded to law-enforcement officials clear guidelines and criteria governing the use of force in peacetime. The police officers concerned had thus enjoyed a greater autonomy of action and had been able to take unconsidered initiatives, which would probably not have been the case had they had the benefit of proper training and instructions.

Consequently, the Court found that the Greek authorities had failed to comply with the positive obligation to put in place an adequate legislative and administrative framework and had not done all that could be reasonably expected of them to afford to citizens the level of safeguards required by Article 2. Accordingly, the Court held that there had been a violation of Article 2 of the Convention.

The inadequacy of the investigation

Even though an administrative investigation had been carried out following the incident the Court observed that there had been striking omissions in its conduct. In particular, the Court attached significant weight to the fact that the domestic authorities had failed to identify all the policemen who had taken part in the chase. Some policemen had left the spot without identifying themselves and without handing over their weapons so that some of the firearms which were used had never been reported. It also appeared that nothing had been done to identify the policemen who had been on duty in the area when the incident had taken place. Moreover, it was remarkable that only three bullets had been collected and that other, than the bullet which had been removed from Mr Makaratzis's foot and the one which was still in his buttock, the police had never found or identified the other bullets which had injured the applicant.

Those omissions had prevented the Greek court from making as full a finding of fact as it might otherwise have done and had resulted in the acquittal of the police officers on the ground that it had not been shown beyond reasonable doubt that it was they who had injured the applicant, since many other shots had been fired from unidentified weapons.

In those circumstances the Court concluded that the authorities had failed to carry out an effective investigation into the incident. The incomplete and inadequate character of the investigation was highlighted by the fact that, even before the Court, the Government had been unable to identify all the officers who had been involved in the shooting and wounding of the applicant. The Court concluded that there had accordingly been a violation of Article 2 of the Convention in that respect. Having regard to that conclusion, it did not find it necessary to determine whether the failings identified in this case were part of a practice adopted by the authorities, as asserted by the applicant.

Articles 3 and 13 of the Convention

The Court considered that no separate issue arose under Articles 3 and 13 of the Convention.

Judges Costa, Bratza, Lorenzen and Vajić expressed a joint concurring opinion. Judge Wildhaber expressed a partly dissenting opinion, joined by Judges Kovler and Mularoni. Judge Tsatsa-Nikolovska expressed a partly dissenting opinion, joined by Judge Strážnická. These separate opinions are annexed to this judgment.

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

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