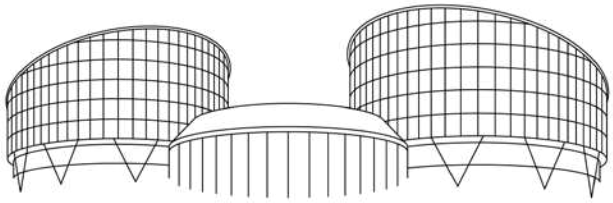

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF GIULIANI AND GAGGIO v. ITALY

(Application no. 23458/02)

JUDGMENT

STRASBOURG

24 March 2011

This judgment is final but may be subject to editorial revision.

In the case of Giuliani and Gaggio v. Italy,

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

Jean-Paul Costa, *President,*
Christos Rozakis,
Françoise Tulkens,
Ireneu Cabral Barreto,
Boštjan M. Zupančič,
Nina Vajić,
Elisabeth Steiner,
Alvina Gyulumyan,
Renate Jaeger,
David Thór Björgvinsson,
Ineta Ziemele,
Isabelle Berro-Lefèvre,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Işıl Karakaş,
Guido Raimondi, *judges,*

and Vincent Berger, *Jurisconsult,*

Having deliberated in private on 29 September 2010 and on 16 February 2011,

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, Ms 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 Italian Government ("the Government") were represented by their Agent, Mrs E. Spatafora, and by their co-Agent, Mr N. Lettieri.

3. The applicants complained of the death of their son and brother, Carlo Giuliani, which they considered to have been caused by excessive use of force. They further alleged that the respondent State had not taken the necessary legislative, administrative and regulatory measures to reduce as far as possible the adverse consequences of the use of force, that the organisation and planning of the policing operations had not been compatible with the obligation to protect life and that the investigation into the circumstances of their relative's death had not been effective.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 6 February 2007, following a hearing on admissibility and the merits (Rule 54 § 3), it was declared admissible by a Chamber of that Section composed of the following judges: Sir

Nicolas Bratza, Josep Casadevall, Giovanni Bonello, Kristaq Traja, Vladimiro Zagrebelsky, Stanislav Pavlovschi and Lech Garlicki, and also of Lawrence Early, Section Registrar.

5. On 25 August 2009 a Chamber of that Section, composed of the following judges: Sir Nicolas Bratza, Josep Casadevall, Lech Garlicki, Giovanni Bonello, Vladimiro Zagrebelsky, Ljiljana Mijović and Ján Šikuta, and also of Lawrence Early, Section Registrar, delivered a judgment in which it held as follows: unanimously, that there had been no violation of Article 2 of the Convention in its substantive aspect with regard to the excessive use of force; by five votes to two, that there had been no violation of Article 2 of the Convention in its substantive aspect with regard to the positive obligation to protect life; by four votes to three, that there had been a violation of Article 2 of the Convention in its procedural aspect; unanimously, that it was not necessary to examine the case under Articles 3, 6 and 13 of the Convention; and unanimously, that there had been no violation of Article 38 of the Convention. It also awarded, in respect of non-pecuniary damage, 15,000 euros (EUR) each to the applicants Giuliano Giuliani and Adelaide Gaggio and EUR 10,000 to the applicant Elena Giuliani.

6. On 24 November 2009 the Government and the applicants requested, in accordance with Article 43 of the Convention and Rule 73 of the Rules of Court, that the case be referred to the Grand Chamber. On 1 March 2010 a panel of the Grand Chamber granted the requests.

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.

8. The applicants and the Government each filed further written observations (Rule 59 § 1).

9. On 27 September 2010 the judges and substitute judges appointed to sit in the present case viewed the CD-ROMs submitted by the parties on 28 June and 9 July 2010 (see paragraph 139 below).

10. A hearing took place in public in the Human Rights Building, Strasbourg, on 29 September 2010 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr	N. LETTIERI,	*Co-Agent,*
Ms	P. ACCARDO,	*Co-Agent,*
Mr	G. ALBENZIO,	*Avvocato dello Stato;*

(b) *for the applicants*

Mr	N. PAOLETTI,	
Ms	G. PAOLETTI,	
Ms	N. PAOLETTI,	*Counsel,*
Ms	C. SARTORI,	*Assistant.*

The Court heard addresses by them.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicants were born in 1938, 1944 and 1972 respectively and live in Genoa and Milan. They are the father, mother and sister of Carlo Giuliani, who was shot and killed during the demonstrations on the fringes of the G8 summit in Genoa in July 2001.

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

12. 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 section 4(1) of Law no. 149 of 8 June 2000, the prefect of Genoa was authorised to deploy military personnel to ensure public safety in connection with the summit. 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 prohibited and the airport was closed to traffic. The red zone was contained within a yellow zone, which in turn was surrounded by a white (normal) zone.

13. The service instructions of 19 July 2001 were issued by the officer in command of the law-enforcement agencies the day before Carlo Giuliani's death. They sum 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; putting in place public-order measures on the streets concerned by the demonstrations, bearing in mind the risk of violence encouraged by the presence of crowds of people.

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

15. The applicants maintained that the service instructions of 19 July had given a detachment of *carabinieri* implicated in the death of Carlo Giuliani a dynamic role, whereas it had previously been supposed to remain in one location. The Government stated that the service instructions had been communicated orally to the officers on the ground.

16. A radio communications system had been put in place, with an operations control room located in the Genoa police headquarters (*questura*), 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.

17. On the morning of 20 July some groups of particularly aggressive demonstrators, wearing balaclavas and masks (the "Black Bloc") sparked numerous incidents and clashes with law-

enforcement officers. The *Tute Bianche* march was due 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. On 19 July 2001 the head of the Genoa police authority (*questore*) had prohibited the *Tute Bianche* march from entering the red zone or the zone adjacent to it, and had deployed law-enforcement officers to halt the march 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 clashes occurred, as detailed below.

18. At around 1.30 p.m. the march set off and headed slowly westwards. Around Via Tolemaide there were signs of earlier disturbances. The march was headed by a contact group made up of politicians and a group of journalists carrying video recorders and cameras. The marchers slowed down and made a number of stops. In the vicinity of Via Tolemaide there were incidents involving persons wearing masks and balaclavas and law-enforcement officers. The march 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. The *carabinieri* charged forward, making use of their batons. The march was pushed back eastwards as far as the junction with Via Invrea.

19. 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 responded to the attack by throwing hard objects such as glass bottles or rubbish bins 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 and forcing the demonstrators at the scene to leave. At 3.22 p.m. the control room ordered Mr Mondelli to move away and allow the marchers to pass.

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

B. The death of Carlo Giuliani

21. At approximately 5 p.m. the presence of a group of demonstrators who appeared very aggressive was observed by the Sicilia battalion, consisting of around fifty *carabinieri* stationed close to Piazza Alimonda. Two Defender jeeps were parked nearby. Police officer Lauro ordered the *carabinieri* to charge the demonstrators. The *carabinieri* charged on foot, followed by the two jeeps. The demonstrators succeeded in pushing back the charge, and the *carabinieri* were forced to withdraw in disorderly fashion near Piazza Alimonda. Pictures taken from a helicopter at 5.23 p.m. show the demonstrators running along Via Caffa in pursuit of the law-enforcement officers.

22. In view of the withdrawal of the *carabinieri* the jeeps attempted to reverse away from the scene. One succeeded in moving off while the other found its exit blocked by an overturned refuse container. Suddenly, several demonstrators wielding stones, sticks and iron bars surrounded it. 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 and a fire extinguisher at the vehicle.

23. There were three *carabinieri* on board the jeep: Filippo Cavataio ("F.C."), who was driving, Mario Placanica ("M.P.") and Dario Raffone ("D.R."). M.P., who was suffering from the effects of the tear-gas grenades he had thrown during the day, had been given permission by Captain Cappello, commander of a company of *carabinieri*, to get into the jeep in order to get away from the scene of the clashes. Crouched down in the back of the jeep, injured and panicking, he was protecting himself on one side with a riot shield (according to the statement of a demonstrator named Predonzani). 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. One of the shots struck Carlo Giuliani, a balaclava-clad demonstrator, in the face under the left eye. He had been close to the rear of the jeep and had just picked an empty fire extinguisher off the ground and raised it up. He fell to the ground near the left-side rear wheel of the vehicle.

25. Shortly afterwards, F.C. managed to restart the engine and in an attempt to move off, reversed, driving over Carlo Giuliani's body in the process. He then engaged first gear and drove over the body a second time as he left the scene. 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. Police forces stationed on the other side of Piazza Alimonda intervened and dispersed the demonstrators. They were joined by some *carabinieri*. At 5.27 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.

28. According to the Ministry of the Interior (*ministero dell'Interno*), 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.

29. Relying, *inter alia*, on witness evidence given by law-enforcement officers during a parallel set of proceedings (the "trial of the twenty-five", see paragraphs 121-138 below), the applicants stated in particular that, while on Piazza Alimonda, the *carabinieri* had been able to take off their gas masks, eat and rest. With the situation "calm", Captain Cappello had ordered M.P. and D.R. to board one of the two jeeps. He considered the two *carabinieri* to be mentally exhausted ("*a terra*") and 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.

30. Referring to the photographs taken shortly before the fatal shot, the applicants stressed that the weapon had been held at a downward angle from the horizontal. They also referred to the statements made by Lieutenant-Colonel Truglio (see paragraph 43 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 submitted that the photographs in the investigation file clearly showed some *carabinieri* not far from the jeep.

C. The investigation by the domestic authorities

1. The first steps in the investigation

31. A spent cartridge was found a few metres from Carlo Giuliani's body. No bullet was found. A fire extinguisher and a bloodstained stone, among other objects, were found beside the body and were seized by the police. It emerges from the file that the public prosecutor's office entrusted thirty-six investigative measures to the police. The jeep in which M.P. had been travelling, and also the weapon and equipment belonging to him, remained in the hands of the *carabinieri* and were subsequently seized under a court order. A spent cartridge was found inside the jeep.

32. During the night of 20 July 2001 the Genoa mobile police unit heard evidence from two police officers, Mr Martino and Mr Fiorillo. On 21 July Captain Cappello, who was 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. He said that he had heard no shots, probably because of his radio earpiece, his helmet and his gas mask, which reduced his hearing.

2. Placing under investigation of M.P. and F.C.

33. On the night of 20 July 2001 M.P. and F.C. were identified and examined by the Genoa public prosecutor's office on suspicion of intentional homicide. The interviews took place at the headquarters of the Genoa *carabinieri*.

(a) M.P.'s first statement

34. 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, a senior officer (*vice questore*) of the Rome police. Each of the five companies was divided into four detachments of fifty men. The overall commander of the companies was Colonel Leso.

35. M.P., who was born on 13 August 1980 and began serving as a *carabiniere* on 16 September 2000, was twenty years and eleven months old at the material time. He was trained in the use of grenades and had been deployed to fire tear gas. He stated that during the public-order operations 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 board a jeep. Shortly afterwards another *carabiniere* (D.R.), who was injured, had joined him.

36. 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 explained that he had grown more afraid after being injured in the leg by a metal object and in the head by a stone. 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 "panic-stricken". At some point he realised that his hand was gripping his pistol; he thrust the hand

carrying the weapon through the jeep's rear window and, after about a minute, fired two shots. He maintained that he had not noticed Carlo Giuliani behind the jeep either before or after firing.

(b) F.C.'s statement

37. F.C., the jeep's driver, was born on 3 September 1977 and had been serving as a *carabiniere* for twenty-two months. At the material time he was twenty-three years and ten months old. He stated that he had been in an alleyway near Piazza Alimonda and had attempted to reverse towards the square because the detachment was being pushed back by the demonstrators. However, he had found his path blocked by a refuse container and his engine had stalled. He had concentrated on trying to move the jeep out while his colleagues inside the vehicle were shouting. As a result, he had not heard the shots. Lastly, 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 refuse container had been overturned. The only thought in my head was how to get out of that mess."

(c) D.R.'s statement

38. D.R., who was born on 25 January 1982, had been performing military service since 16 March 2001. At the material time he was nineteen years and six months old. He 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, and M.P. for his part had 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 leave, and then heard two shots.

(d) M.P.'s second statement

39. On 11 September 2001 M.P., during questioning 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. Other statements taken during the investigation

(a) Statements by other *carabinieri*

40. Sergeant-Major Amatori, who was in the other jeep on Piazza Alimonda, said that he had noticed that the jeep in which M.P. was travelling had its path blocked by a refuse container and was surrounded by a large number of demonstrators, "certainly more than twenty". The latter were throwing objects at the jeep. In particular, he saw one demonstrator throw a fire extinguisher at the rear window. He heard shots and saw Carlo Giuliani fall down. The jeep then drove twice over Carlo Giuliani's body. Once the jeep had succeeded in leaving Piazza Alimonda, he went over to it and saw that the driver had got out and, visibly shaken, was asking for help. The sergeant-major took over the driving seat and, noticing that M.P. had a pistol in his hand, ordered him to replace the safety catch. He immediately thought that this was the weapon that had just fired the shots, but said nothing to M.P., who was injured and whose head was bleeding. The driver told him that he had heard shots while he was manoeuvring the jeep. The sergeant-major was not given any explanation

as to the circumstances surrounding the decision to shoot and did not ask any questions on the subject.

41. *Carabiniere* Rando had gone over to the jeep on foot. He said that he had seen that the pistol was drawn and 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 a particular demonstrator. M.P. kept saying: "They wanted to kill me, I don't want to die".

42. On 11 September 2001 the public prosecutor heard evidence from Captain Cappello, commander of the ECHO company (see paragraph 34 above). Captain Cappello stated that he had given M.P. permission to board 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 – towards the corner of Piazza Alimonda and Via Caffa. 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, but had nevertheless stationed them 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. Mr Cappello did not realise that, when the *carabinieri* withdrew, they were being followed by the two jeeps, as there was no "operational reason" for the vehicles to be there. The demonstrators dispersed only when the mobile police units stationed on the other side of Piazza Alimonda intervened. Only then did he observe a man wearing a balaclava lying on the ground, apparently seriously injured. Some of his men were wearing helmets equipped with video cameras which should make it possible to shed light on the sequence of events; the video recordings were handed over to Colonel Leso.

43. Lieutenant-Colonel Truglio, Captain Cappello's superior officer, stated that he had stopped around ten 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) Statement by police officer Lauro

44. On 21 December 2001 Mr Lauro gave evidence to the public prosecutor. He stated that he had learnt of the change to the service instructions on the morning of 20 July 2001. At the hearing of 26 April 2005 during the "trial of the twenty-five", he stated that he had been informed on 19 July 2001 that no march was authorised for the following day. On 20 July he had still been unaware that an authorised march was due to take place. During the day he went to Piazza Tommaseo, where clashes were taking place with demonstrators. At 3.30 p.m., while the situation was calm, Lieutenant-Colonel Truglio and the two jeeps joined the contingent. Between 4 p.m. and 4.45 p.m. the contingent was involved in clashes on Corso Torino. It then arrived in the vicinity of Piazza Tommaseo and Piazza Alimonda. Lieutenant-Colonel Truglio and the two jeeps came back and the contingent was reorganised. Mr Lauro observed a group of demonstrators at the end of Via Caffa who had formed a barrier using wheeled refuse containers and were advancing towards the law-enforcement officers. He asked Captain Cappello whether his men were in a position to deal with the situation and the latter replied in the affirmative. Mr 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) Other statements made to the public prosecutor

45. Some demonstrators present at the time of the events also gave statements to the public prosecutor. 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. According to one demonstrator, M.P. had cried: "Bastards, I'm going to kill the lot of you!". Another noticed that the *carabiniere* inside the jeep had taken out his pistol; the demonstrator then shouted to his friends to watch out and moved away. Another demonstrator said that M.P. had been protecting himself on one side with a riot shield.

46. 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

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

5. The forensic examinations

(a) The autopsy

48. Within twenty-four hours the public prosecutor's office ordered an autopsy to establish the cause of Carlo Giuliani's 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, Carlo Giuliani's father. At 3.15 p.m. Mr Canale and Mr Salvi, the experts appointed by the prosecuting authorities, were given their official brief and work commenced on the autopsy. The applicants did not send any representative or expert of their own.

49. The experts requested the public prosecutor's office to give them sixty days to prepare their report. The request was granted. On 23 July 2001 the public prosecutor's office authorised the cremation of Carlo Giuliani's body in accordance with the family's wishes.

50. The expert report was submitted on 6 November 2001. It found that Carlo Giuliani 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 fifty centimetres and had travelled from front to back, from right to left and in a downward direction. Carlo Giuliani had been 1.65 metres 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 had resulted in death within a few minutes; the jeep's being driven over the body had caused only insignificant minor injuries to the organs in the thorax and the abdomen.

(b) The expert medical examinations carried out on M.P. and D.R.

51. After leaving Piazza Alimonda the three *carabinieri* who had been in the jeep went to the casualty department of Genoa Hospital. M.P. complained of diffuse bruising to 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 blunt instrument while he had been in the jeep.

52. 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. was suffering from a post-traumatic psychological disorder and was expected to recover within fifteen days.

53. Medical examinations were carried out to establish the nature of the injuries and their connection with the attack on the jeep's occupants. The reports concluded that the injuries sustained by M.P. and D.R. had not been life-threatening. M.P.'s head injuries could have been caused by a stone thrown at him, but it was not possible to determine the origin of his other injuries. The injury to D.R.'s face could have been caused by a stone thrown at him and his shoulder injury by a blow from a wooden plank.

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

(i) The first set of tests

54. 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 – see paragraph 31 above) had come from the same weapon, and specifically 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 pistol, whereas there was only a 10% probability that the cartridge found close to Carlo Giuliani's body had issued from the same weapon. In accordance with Article 392 of the Code of Criminal Procedure ("the CCP"), these tests were carried out unilaterally, that is to say, without the injured party having an opportunity to participate.

(ii) The second set of tests

55. The public prosecutor's office appointed a second expert, police inspector Manetto. The latter, in a report submitted on 15 January 2002, stated 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 come from M.P.'s pistol, and estimated the distance between M.P. and Carlo Giuliani at the moment of impact at between 110 and 140 centimetres. The tests were conducted unilaterally.

(iii) The third set of tests

56. On 12 February 2002 the public prosecutor's office instructed a panel of experts (made up of Mr Balossino, Mr Benedetti, Mr Romanini and Mr Torre) "to reconstruct, even 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 asked to "establish the distance between M.P. and

Carlo Giuliani, their respective angles of vision 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 article in September 2001 in a specialist journal (*TAC Armi*), in which he expressed the view, among other things, that M.P.'s actions had constituted "a clear and wholly justified defensive reaction".

57. The representatives and experts appointed by the applicants attended the examinations by the panel of experts. The applicants' lawyer, Mr Vinci, stated that he did not wish to make an application for the immediate production of evidence (*incidente probatorio*). Article 392 §§ 1 (f) and 2 of the CCP allows the public prosecutor and the accused, among other things, to request the investigating judge (*giudice per le indagini preliminari*) to order a forensic examination where the latter concerns a person, object or place which is subject to unavoidable alteration or where, if ordered during the trial, the examination in question could entail suspension of the proceedings for a period exceeding sixty days. Under Article 394 of the CCP the injured party may request the public prosecutor to apply for the immediate production of evidence. If the public prosecutor refuses the request, he or she must issue an order giving reasons and must serve it on the injured party.

58. An on-site inspection was conducted on 20 April 2002. Traces of the impact of a shot were found on the wall of a building on Piazza Alimonda, at a height of about five metres.

59. On 10 June 2002 the experts submitted their report. 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. On the basis of the "little material available" the experts attempted to establish first of all what the impact of the bullet had been on Carlo Giuliani's body, setting out the following considerations.

60. The injuries to the skull had been very serious and had resulted in death "within a short space of time". The bullet had not exited whole from Carlo Giuliani's head; the report (*referto radiologico*) of the full body scan performed before the autopsy referred to a "subcutaneous fragment, probably metal" above the bones in the occipital region. This piece of opaque metal looked like a fragment of bullet casing. The appearance of the entry wound on the face did not lend itself to an unequivocal interpretation; its irregular shape was explained chiefly by the type of tissue in the part of the body struck by the bullet. However, one possible explanation was that the bullet had not hit 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 would explain the small dimensions of the exit wound and the fact that the bullet had fragmented inside Carlo Giuliani's head.

61. The experts reported finding a small fragment of lead, probably from the bullet, which 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. It bore traces of a substance which was not part of the bullet as such, but came from material used in the building 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. According to the experts, it was not possible to establish the nature of the "intermediate object" apparently hit by the bullet; however, they ruled out the possibility that it was the fire extinguisher which Carlo Giuliani had been holding in his outstretched hand. The distance from which the shot had been fired had been in excess of 50-100 centimetres.

62. In order to reconstruct the events on the basis of the "intermediate object theory", the experts then had some test shots fired and conducted video and computer simulations. They concluded that it was not possible to establish the bullet's trajectory as the latter had undoubtedly been altered as a result of the collision. 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. A computer simulation showed the bullet, fired upwards, hitting Carlo Giuliani after colliding with the stone in question, thrown at the jeep by another demonstrator. The experts estimated that the distance between Carlo Giuliani and the jeep had been approximately 1.75 metres and that M.P. had been able to see Carlo Giuliani at the moment the shot was fired.

6. The applicants' investigations

63. 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. The applicants also produced 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 increase their capacity to expand and hence fragment.

64. Lastly, the applicants submitted two reports drawn up by experts they themselves had chosen. According to one of the experts, Mr Gentile, the bullet had already been in fragments when it struck the victim. The fact that it had fragmented could be explained by a manufacturing defect or by its having been manipulated to make it more likely to break up. In the expert's view, however, these two scenarios occurred only rarely and were therefore less likely than the one advanced by the prosecuting authorities' experts (namely that the bullet had collided with an intermediate object).

65. The other experts appointed by the applicants to reconstruct the events concluded that the stone had shattered on impact with the jeep rather than with the bullet fired by M.P.. 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. In addition, it was necessary to establish the timing of the images and how they fitted in with the sound. The applicants' experts criticised the method used by the prosecuting authorities' experts, who had based their analysis on "video and computer simulations" and had not analysed the available images rigorously and in detail. The method used to perform the test shots was also criticised.

66. The applicants' experts concluded that Carlo Giuliani had been about three metres away from the jeep when the shot was fired. While it was undeniable that the fatal bullet had been in fragments when it struck the victim, the possibility of its having collided with the stone which could be seen in the video should be ruled out. A stone would have distorted the bullet differently and left different marks on Carlo Giuliani's body. Moreover, M.P. had not fired upwards.

D. The request to discontinue the proceedings and the applicants' objection

1. The request to discontinue the proceedings

67. On completion of the domestic investigation the Genoa public prosecutor decided to request that the case against M.P. and F.C. be discontinued. The public prosecutor noted first of all that far-reaching changes had been made to the organisation of the public-order operations 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.

68. The public prosecutor went on to observe that Mr Lauro's version of events and that of Captain Cappello differed on one specific point: whereas the former asserted that the decision to position law-enforcement personnel on Via Caffa in order to block the demonstrators had been taken by mutual agreement, the latter maintained that it had been a unilateral decision taken by Mr Lauro despite the risks entailed by the small size of the detachment and the fact that the men were tired.

69. The experts agreed on the following points: two shots had been fired from M.P.'s pistol, the first of which had killed Carlo Giuliani; the bullet in question had not fragmented solely as a result of striking the victim; and the photograph of Carlo Giuliani holding the fire extinguisher had been taken when he was approximately three metres away from the jeep.

70. However, they differed on the following points:

(a) according to the prosecuting authorities' experts, Carlo Giuliani had been 1.75 metres from the jeep when the bullet struck him (approximately three metres away according to the Giuliani family's experts);

(b) according to the Giuliani family's experts, the shot had been fired before the stone could be seen on the video, contrary to the view of the prosecuting authorities' experts.

71. As the parties agreed that the bullet had fragmented before striking the victim, the public prosecutor concluded that they were also in agreement as to the causes of the bullet's fragmentation, and that the applicants subscribed to the "intermediate object theory". Other possible explanations for the fragmentation of the bullet advanced by the applicants – such as the manipulation of the bullet or a manufacturing defect – had been considered by the applicants themselves to be much less likely. They could not therefore be regarded as valid explanations in the public prosecutor's view.

72. The investigation had been lengthy, in particular owing to delays with some of the forensic reports, the "superficial nature" of the autopsy report and the errors committed by one of the experts, Mr Cantarella. However, it had addressed all the relevant issues in detail and led to the conclusion that the hypothesis of the bullet having been fired upwards and deflected by a stone was "the most convincing". Nevertheless, there was insufficient evidence in the file to determine whether M.P. had fired with the sole intention of dispersing the demonstrators or had knowingly run the risk of injuring or killing one or more of them. There were three possibilities, and "the matter [would] never be resolved with certainty". The possibilities were as follows:

– the shots had been designed to intimidate the demonstrators and it was therefore a case of causing death by negligence;

– 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;

– M.P. had aimed at Carlo Giuliani; this would also be intentional homicide.

In the public prosecutor's view, the evidence in the file was such that the third possibility could be ruled out.

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

74. 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 response had to be examined in terms of both its necessity and its proportionality, "the latter aspect being the more delicate".

75. The public prosecutor took the view that M.P. had had no other option and could not have been expected to act differently, since "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 a tool capable of putting a stop to the attack, and M.P. could not be criticised for the equipment issued to him. He could not be expected to refrain from using his weapon and submit to an attack liable to endanger his physical integrity. These considerations justified a decision to discontinue the case.

2. The applicants' objection

76. On 10 December 2002 the applicants lodged an objection against the public prosecutor's request to discontinue the proceedings. They alleged that, since the prosecuting authorities themselves had acknowledged that the investigation had been flawed and raised questions which had not been answered with certainty, adversarial proceedings were essential in order to arrive at the truth. 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 he had said that he could not see Carlo Giuliani when he had fired the shots.

77. The applicants further remarked that the intermediate object theory, which they disputed, had been put forward one year after the events and was based on pure supposition not backed up by objective evidence. There were other possible explanations.

78. The applicants also observed that, according to the evidence in the file, Carlo Giuliani had still been alive after the jeep had driven over his body. They stressed that the autopsy report, which found that no appreciable injuries had been caused by the jeep driving over the body, had been described by the public prosecutor as superficial; they also criticised the decision to entrust a number of investigative measures to the *carabinieri*.

79. It followed that M.P. and F.C. should have been committed for trial. In the alternative, the applicants requested that further investigative measures be undertaken, in particular:

(a) that a forensic 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 which allegedly deflected the bullet 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 (see paragraph 63 above);

(f) that forensic tests 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.

3. The hearing before the investigating judge

80. The hearing before the investigating judge took place on 17 April 2003. The applicants maintained their argument that the fatal bullet had not been deflected but had struck the victim directly. However, they conceded that there was no evidence that M.P. had altered the bullet to increase its impact; that was simply one theory.

81. The representative of the public prosecutor's office said he had the impression that "certain points which [he had] believed to be the subject of 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. Furthermore, Mr Gentile 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 cause was less likely than the first.

E. The decision of the investigating judge

82. By an order lodged with the registry on 5 May 2003, the Genoa investigating judge granted the public prosecutor's request to discontinue the case[1].

1. Establishment of the facts

83. The investigating judge referred to an anonymous account of the events posted by a French person on an anarchist website (www.anarchy99.net), which she considered to be credible given that it concurred with the audiovisual material and with the witness statements. The account in question described the situation on Piazza Alimonda and a charge by demonstrators against the *carabinieri*. The charge had been led by demonstrators throwing anything that came to hand, followed by others carrying containers and rubbish bins for use as mobile barricades. The atmosphere on the square was described as "frenetic", with the law-enforcement agencies coming under attack from a crowd which was advancing, throwing missiles and immediately picking up new ones. The *carabinieri*, for their part, were firing tear gas, but a contingent was eventually forced to retreat towards Piazza Alimonda, where one of the two jeeps accompanying them found itself hemmed in and surrounded by demonstrators. The latter, brandishing iron bars and other objects, began hitting the jeep, and the rear window was soon smashed. The author of the account heard two shots and could see the hand of one of the two *carabinieri* inside the jeep, holding a firearm. When the jeep drove off and the noise died down, he saw a young man with serious head injuries lying on the ground. The author also described the anger of certain demonstrators on learning that a demonstrator had died.

[1] Several extracts from the investigating judge's order are cited extensively in paragraphs 94-116 of the Chamber judgment.

84. The investigating judge observed that the description by the anonymous demonstrator tallied with the findings of the investigation, according to which, at around 5 p.m., a group of demonstrators had gathered in Via Caffa at the junction with Via Tolemaide, erecting barricades using rubbish bins, supermarket trolleys and other objects. 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. Two jeeps, one of them driven by F.C. and with M.P. and D.R. on board, joined the contingent of *carabinieri*; however, the demonstrators charged violently, forcing the contingent to retreat. The jeeps reversed towards Piazza Alimonda, where one of them collided with a refuse container. In a matter of moments, the demonstrators surrounded the vehicle, hitting it using all available means and throwing stones. As the audiovisual material in the file showed, the jeep's windows were smashed with stones, iron bars and sticks. The unrelenting nature of the demonstrators' attack on the jeep was described as "impressive". Some stones struck members of the *carabinieri* in the face and the head and one demonstrator, Mr Monai, thrust a long wooden beam through one of the windows, with the result that D.R. sustained bruises and grazing to his right shoulder.

85. One of the photographs showed M.P. kicking a fire extinguisher away; this was very probably the metal object which had caused severe bruising to his leg. Successive photographs showed a hand holding a weapon above the jeep's spare wheel while a young man (Carlo Giuliani) reached down to the ground and picked up a fire extinguisher, in all likelihood with the intention of throwing it at the jeep's rear window. At that moment two shots were fired from inside the jeep and the young man fell to the ground. The jeep drove over his body twice before managing to leave the scene.

86. All the available evidence, including M.P.'s statement of 20 July 2001 (see paragraphs 34-36 above), indicated that Carlo Giuliani's death had been caused by one of the shots fired by M.P. The investigating judge cited virtually the whole of that statement, in which M.P. spoke of his state of panic, the injuries he and D.R. had sustained and the fact that at the moment he pointed his pistol he had not seen anyone but had been aware of the presence of attackers because of the continuous barrage of stones. That version matched the statements made by D.R. and F.C. and those of other armed forces personnel and witnesses. In addition, the case file showed that M.P. had bruising and injuries to his right leg, his arm and the top of his skull; D.R. had scratches on his face and bruising on his shoulder and foot, while F.C. had a post-traumatic disorder treatable within fifteen days (see paragraphs 51-53 above).

2. The "intermediate object" theory

87. The investigating judge noted that the evidence in the file showed that the first bullet fired by M.P. had killed Carlo Giuliani. In exiting through the occipital bone in the skull the bullet had lost a fragment of its casing, as shown by the scan performed before the autopsy. This fact, combined with the characteristics of the entry and exit wounds, had led the prosecuting authorities' experts to formulate the theory that the bullet had collided with an object before hitting Carlo Giuliani. The entry wound had been very irregular in shape and the exit wound had been small, as was the case when a bullet had lost momentum and/or fragmented.

88. The bullet in question was an encased 9 mm parabellum, and therefore very powerful. This fact, together with the low resistance of the body tissue through which the bullet had travelled, served to confirm the theory advanced by the prosecuting authorities' experts. Moreover, a "tiny fragment of lead", compatible with the bullets issued to M.P., had been found in the victim's balaclava with particles of bone attached to it. This suggested that the bullet had lost part of its casing before hitting the bone.

89. The simulated shots had revealed that the intermediate object which caused the bullet to fragment could not have been either the fire extinguisher carried by the victim or one of the bones through which the bullet had passed; on the other hand, it could have been one of the numerous stones thrown at the jeep by demonstrators. This appeared to be confirmed by the video footage showing a stone disintegrating in the air at the same time as a shot was heard. The fact that the sound and the disintegration of the object occurred simultaneously made the applicants' theory that the stone had smashed on impact with the roof of the jeep less convincing. Furthermore, the lead fragment in the victim's balaclava had borne traces of building materials. Lastly, the test shots had shown that, when they were hit by a bullet, objects made up of building materials "exploded" in a similar manner to that seen in the video footage and caused damage to the cartridge casing. The tests performed showed that disintegration occurred differently when such objects were thrown against a vehicle (the dust was produced after rather than simultaneously with fragmentation, and in smaller quantities).

90. The second shot fired by M.P. had left a mark on the wall of the church on Piazza Alimonda (at a height of 5.3 metres). The first shot had hit Carlo Giuliani. The ballistics tests had been unable to establish the original trajectory of that bullet. However, the experts appointed by the public prosecutor's office had taken into account the fact that the jeep was 1.96 metres high and that the stone seen on the video had been at a height of around 1.9 m when the image was recorded. They had therefore fired some test shots, positioning the weapon around 1.3 metres from a stone suspended 1.9 metres above the ground: the bullet had been deflected downwards and hit the "collecting tray" (located 1.75 metres from the weapon) at heights of between 1.1 and 1.8 metres. These data tallied with the statements of certain demonstrators who had been eyewitnesses to the events, according to whom Carlo Giuliani had been about two metres from the jeep when he was shot dead. The prosecuting authorities' experts had not had these statements available to them at the time they had carried out their work.

91. The foregoing considerations suggested that, as concluded by the prosecuting authorities' experts, the shot had been fired upwards, above Carlo Giuliani, who was 1.65 m tall. The stone had disintegrated 1.9 metres above the ground.

3. M.P.'s angle of vision

92. M.P.'s angle of vision had probably been restricted by the jeep's spare wheel. However, it was difficult to be certain on that point as M.P.'s face did not appear on any of the photographs in the file, whereas they clearly showed his hand holding the weapon. The pictures suggested, however, that he had been half-lying (*in posizione semidistesa*) or crouching on the floor, as confirmed by M.P.'s own statements and those of D.R. and the demonstrator Predonzani. That led to the conclusion that M.P. had been unable to see the persons close to the jeep's rear door below the spare wheel, and that he had fired the shots in an attempt to intimidate the demonstrators.

4. Legal characterisation of M.P.'s actions

93. Having thus reconstructed the facts, the investigating judge addressed the legal characterisation of M.P.'s actions. The prosecuting authorities had advanced two hypotheses in that regard (see paragraph 72 above): (a) that M.P. had fired as high in the air as possible with the sole aim of intimidating the jeep's assailants, in which case the charge should be one of causing death by negligence (*omicidio colposo*); (b) that M.P. had fired without aiming at anyone or anything, with the aim of halting the attack, in which case the charge should be one of intentional homicide on account of "reckless conduct", as he had accepted the risk that demonstrators might be hit.

94. The investigating judge took the view that the first hypothesis advanced by the public prosecutor was not correct. If M.P. had fired as high in the air as possible his actions would not have been punishable, by virtue of Article 53 of the Criminal Code ("the CC"), and the causal link would in any case have been severed by an unforeseeable factor beyond his control, namely the bullet's collision with an intermediate object.

95. If, on the other hand, the second hypothesis advanced by the prosecuting authorities was accepted, it had to be established whether any grounds of justification existed (the legitimate use of weapons and/or self-defence, under Articles 53 and 52 of the CC – see paragraphs 142-144 below) which would exempt M.P. from criminal responsibility and make his actions not punishable.

5. Whether M.P. made legitimate use of his weapon (Article 53 of the CC)

96. The investigating judge first addressed the question whether the use of a weapon had been necessary. Under Article 53 of the CC (see paragraph 143 below), State agents had wider powers than ordinary individuals in the context of self-defence; this ground of justification was not subject to the condition that the reaction was proportionate to the threat, but to the condition of "necessity". Even for State agents, the use of a weapon was a measure of last resort (*extrema ratio*); however, State agents could not be held responsible for the occurrence of a more serious event than that foreseen by them, as this risk was inherent in the use of firearms. In general terms, Article 53 of the CC permitted the use of force where it was necessary to repel violence or thwart an attempt to resist official authority.

97. M.P. had found himself in a situation of extreme violence designed to disturb public order and targeting the *carabinieri*, whose safety was directly threatened. In that connection the investigating judge cited extracts from the testimonies of two of the jeep's assailants (Mr Predonzani and Mr Monai), noting once again the violence of the assault, and referred to the photographs in the file. The victim's conduct had not been an isolated act of aggression, but one phase in a violent attack on the jeep by several persons, who had been tilting it sideways and probably trying to open the rear door.

98. The evidence in the file ruled out the possibility that M.P. had deliberately targeted Carlo Giuliani; however, even assuming that this had been the case, in the particular circumstances of the case his conduct would have been justified under Article 53 of the CC, as it was legitimate to fire in the direction of assailants in order to halt an attack while endeavouring to limit the damage, for instance by avoiding vital organs. In conclusion, the use of a firearm had been justified and had been likely not to cause serious harm, given that M.P. had "certainly fired upwards" and that the bullet had struck Carlo Giuliani only because it had been deflected in a manner that could not have been foreseen.

6. Whether M.P. acted in self-defence (Article 52 of the CC)

99. The investigating judge next considered it necessary to determine whether M.P. had acted in self-defence, which was a "more stringent" test for exemption from responsibility. She 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 violent attack on the jeep by a crowd of assailants and not just by Carlo Giuliani. In order to be assessed in its proper context, M.P.'s response had to be viewed in relation to that attack. The investigating judge rejected the hypothesis advanced by the victim's family that M.P.'s head injuries had been caused by the internal lever of the flashing light on the jeep's roof rather than by stones thrown by demonstrators.

100. 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 *carabinieri* in the jeep and the vehicle's difficulty in leaving the square because the engine had stalled. The response had been appropriate given the level of violence.

101. Had M.P. not taken out his weapon and fired two shots, the attack would have continued. If the fire extinguisher – which M.P. had already kicked away once – had landed in the jeep, it would have caused serious injury, or worse, to the occupants. As to the relationship of proportionality between the attack and the response, the Court of Cassation had held that the interests under threat had to be weighed against the means available to the accused, and that a plea of self-defence might be allowed even if the harm to the assailant was slightly greater than the threatened harm to the accused (see Court of Cassation, First Section, judgment no. 08204 of 13 April 1987, *Catania*). Furthermore, the response had to be the only one possible in the circumstances, in the sense that other responses less damaging to the assailant would not suffice to counter the danger (see Court of Cassation, First Section, judgment no. 02554 of 1 December 1995, *P.M. and Vellino*). Where a firearm was the only means of defence available to the person under attack, its use should be confined to displaying the person's resolve to make use of it, firing into the air or onto the ground or firing in the direction of the assailant but taking care not to hit vital organs, so as to inflict injury but not kill (see Court of Cassation judgment of 20 September 1982, *Tosani*).

102. In the instant case M.P. had had only one means of countering the attack: his firearm. He had made proportionate use of it, since before shooting he had called out to the demonstrators to leave, in an attempt to put a stop to their actions; he had then fired upwards and the bullet had hit the victim as the result of a tragic twist of fate (*per una tragica fatalità*). Had he wished to be sure of harming his assailants he would have fired through the side windows of the jeep, next to which numerous demonstrators had gathered. It followed that he had acted in self-defence. That being so, it was of little relevance whether M.P. had had a partial view of Carlo Giuliani (as the applicants' experts maintained and the prosecuting authorities' experts considered possible) or whether, as seemed more likely, he had not seen him and had fired as high in the air as his position would allow, accepting the risk that the shot might hit somebody.

7. The accusations against F.C.

103. The investigating judge also considered that the evidence in the file excluded any criminal responsibility on the part of F.C., given that, as indicated by the forensic experts, Carlo Giuliani's death had undoubtedly been caused within minutes by the pistol shot. The jeep's driving over the

victim's body had caused only bruising. In any event, owing to the confused situation around the jeep, F.C. had not been able to see Carlo Giuliani or observe that he had fallen to the ground.

8. Refusal of the applicants' requests for further investigation

104. The investigating judge refused all the applicants' requests for further investigative measures to be taken (see paragraph 79 above). The reasons for the refusal can be summarised as follows:

(a) with regard to the request for a forensic report to be prepared aimed at establishing whether Carlo Giuliani had still been alive when the jeep drove over his body (see paragraph 79(a) above), the checks already carried out had been thorough; furthermore, the injured parties had been offered the opportunity of appointing an expert of their choosing to attend the autopsy, but had not availed themselves of that possibility. In addition, the victim's body had been cremated scarcely three days after his death, thereby rendering any subsequent examination impossible;

(b) as to the request for police chief De Gennaro and *carabinieri* second lieutenant Zappia to be examined on the subject of the lawfulness of the use of "thigh holsters" of the kind from which M.P. had drawn the weapon (see paragraph 79(b) above), it was clear that the directives issued with a view to the maintenance of public order could only be of a general nature and did not include instructions applying to unforeseeable situations involving direct attacks on officers. Furthermore, the manner in which M.P. had been wearing the pistol was of no relevance in the present case given that he could legitimately make use of his weapon irrespective of where he was wearing it or where he drew it from;

(c) any attempt to identify the person who had thrown the stone which deflected the bullet (see paragraph 79(c) above) was bound to fail, as it was not realistic to imagine that a demonstrator would have followed the trajectory of a stone after throwing it. In any event, it would be impossible to identify the person concerned and his or her statements would have no bearing on the technical findings in the judge's possession;

(d) no purpose whatsoever would be served by further examining the demonstrators Monai and Predonzani concerning the conduct of the *carabinieri* inside the jeep, the number of demonstrators in the vicinity of the vehicle, the person inside the jeep who had actually seized the weapon, Carlo Giuliani's position or the number of the jeep's windows that were broken (see paragraph 79(d) above). Those witnesses had made statements very shortly after the events, while the latter were still fresh in their minds; the statements contained extremely precise details which were confirmed by the video footage and photographs in the file. Lastly, it was not relevant to establish how many of the jeep's windows had been broken as it was beyond dispute that some of the right-side windows and the rear window were smashed;

(e) it was unnecessary to take evidence from Mr D'Auria, supposedly to confirm that no Molotov cocktails had been thrown on Piazza Alimonda, contrary to M.P.'s assertion, or to determine how far away Mr D'Auria had been when he took the photograph which the prosecuting authorities' experts had used as a basis for the ballistics reconstruction. The photograph in question had been merely a starting point for determining Carlo Giuliani's position, which had been deduced from the position of the persons in relation to the fixed elements on the square. Furthermore, M.P. had never asserted that Molotov cocktails had been thrown on Piazza Alimonda; he had simply spoken of his fear that they might be;

(f) with regard to the request to hear evidence from Sergeant-Major Primavera as to when the hatchback window of the jeep had been smashed, the photographs showed clearly that it had happened well before the shots were fired and that the latter had not been the cause of the smashed window; even if the witness whom the applicants wished to see called perceived the matter differently, this would not alter those findings;

(g) the footage recorded on Piazza Alimonda by two *carabinieri* whose helmets were equipped with video cameras was already in the file;

(h) there was nothing to be gained by hearing evidence from *carabiniere* V.M. concerning the practice of cutting the tips of bullets (see paragraph 79(e) above). It could only be assumed that this improper practice was not widespread; in any event, the findings of the ballistics reports, based on objective tests, were already available. There was nothing to indicate that M.P. had adopted the practice in question in this case, given that the other bullets found in the magazine of his pistol had been perfectly normal;

(i) it was beyond dispute that the damage to the jeep had been caused by the stones and other hard objects thrown at it; it was therefore unnecessary to order a technical inspection of the vehicle;

(j) forensic tests on the spent cartridges seized, in order to establish which weapons they had come from (see paragraph 79(f) above), would "serve no actual purpose", as there was no doubt that the fatal bullet had been fired from M.P.'s weapon; this had been confirmed by M.P.'s statements and the findings of the forensic examinations.

9. The decision to delegate certain investigative steps to the carabinieri

105. The investigating judge dismissed the criticisms made by the applicants' lawyers to the effect that it had been inappropriate to entrust several aspects of the investigation to the *carabinieri* and to hear evidence from a large number of witnesses in the presence of members of the *carabinieri*. The judge observed that the events on Piazza Alimonda had been reconstructed with the aid of the large volume of video and photographic material in the file and the statements of the participants themselves, and that all plausible scenarios had been considered.

106. In the light of all the above considerations the Genoa investigating judge decided that the proceedings should be discontinued.

F. The parliamentary inquiry

107. On 2 August 2001 the Speakers of the Senate and the Chamber of Deputies decided that an inquiry (*indagine conoscitiva*) into the events which occurred during the G8 in Genoa should be carried out by the constitutional affairs committees of both houses of Parliament. To that end, a commission representing the different parliamentary groups was established, made up of eighteen members of Parliament and the same number of senators ("the parliamentary commission").

108. On 8 August 2001 the parliamentary commission heard evidence from the Commander-General of the *carabinieri*. The latter stated, in particular, that 4,673 additional troops and 375 specialised *carabinieri* had been drafted in to Genoa to assist the 1,200 members of the provincial command. Only 27% of the men present in Genoa had been auxiliary *carabinieri* performing military service (for public-order operations the figure was usually 70%). Most of the auxiliary *carabinieri* had performed nine or ten months' service and had already been deployed in similar settings. Beginning in April 2001 all the personnel to be deployed in Genoa had received training in

public-order operations and use of the standard equipment. Team exercises and seminars had been organised, the latter relating to the identification of potential threats and the layout of the city. All those deployed had protective helmets, riot shields, batons, gas masks and fire-resistant suits with protection for the most exposed parts of the body. Each *carabiniere* had a pistol (*pistola d'ordinanza*) and numerous tear-gas grenades had been issued to the detachments; there were also 100 armoured vehicles and 226 vehicles equipped with protective grilles, in addition to the special vehicles (for instance, vehicles fitted with mobile barriers to reinforce the fixed barriers protecting the red zone).

109. According to a memorandum from the senior command of the *carabinieri*, an elite force (*aliquota scelta*) of 928 men had undergone a programme of training in Velletri ahead of the G8 summit, covering both theory (the psychology of crowds and opposition groups, public-order techniques, handling emergencies) and practice (physical activity, use of resources, materials and equipment, final exercise with debriefing). The remaining troops had received three days' training in public-order techniques. Forty-eight officers had taken part in an information seminar covering topics such as the layout of the city of Genoa.

110. On 5 September 2001 the parliamentary commission heard evidence from Mr Lauro, an officer of the Rome police who had taken part in the public-order operations in Genoa (see paragraph 34 above).

111. 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 to 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.

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

113. On 20 September 2001 the parliamentary commission submitted a report setting out the conclusions of the majority of its members following the inquiry. The document dealt with the organisation of the G8 in Genoa, the political context and protest movements surrounding the summit and similar events worldwide, and the numerous contacts which had taken place between representatives of the institutions and associations making up the Genoa Social Forum, with the aim of preventing public-order disturbances and making arrangements to receive the demonstrators. Despite that dialogue, the protest movement had not succeeded in isolating the violent elements, numbering "around 10,000"; within the latter, a distinction had to be made between the Black Bloc and "opportunistic" individuals who had concealed themselves in the crowd.

114. Eighteen thousand law-enforcement officers had taken part in the operation. There had been about 2,000 delegates and 4,750 accredited journalists; the number of demonstrators ran into the tens of thousands (100,000 had taken part in the final demonstration). Seminars on the coordination and training of the law-enforcement agencies (with contributions by trainers from the Los Angeles police) had been held on 24 April and 18 and 19 June 2001. The agencies concerned had staged practical exercises, albeit after a deplorable delay. The administrative authorities had

conducted research into non-lethal ammunition (including rubber bullets), in particular by means of study visits to foreign police forces. The authorities had been informed that Black Bloc demonstrators from anarchist circles in Italy and abroad were likely to travel to Genoa. After contacts with police forces in other countries, a decision had been taken to suspend application of the Schengen Agreements between 13 and 21 July 2001. From 14 July onwards checks had been carried out at the Italian borders to allow certain demonstrators to enter the country and prevent violent elements from gaining access. In the meantime, by an order dated 12 July 2001, the Genoa *questore* had indicated the areas of the city where the summit and the demonstrations would take place and had given an analytical breakdown of the security measures in place in each area.

115. The parliamentary commission next examined the various violent incidents and clashes which had taken place between the law-enforcement agencies and demonstrators on 19, 20 and 21 July 2001 (in particular during a search conducted in a school, described by the commission as "perhaps the most notable example of organisational and operational failings"). With specific reference to the death of Carlo Giuliani, the commission observed that a *carabiniere* had fired the fatal shot while the victim had been preparing to throw a fire extinguisher in his direction; the *carabiniere* in question had previously sustained a blow to the head from another demonstrator. In view of the fact that a criminal investigation was in progress, the commission decided to focus its analysis on the "overall situation giving rise to the tragedy", examining in particular the communications system between the contingents of law-enforcement personnel, their commanding officers and the control centres, in order to study the coordination arrangements between the different areas. The commission also noted that the "fundamental cause" of the loss of a life had been "the mindless violence perpetrated by extremist groups which jeopardised the lives of the young people who became caught up in their criminal activities".

116. In the commission's view, the overall outcome of the G8 had been positive. While certain shortcomings had been identified in the coordination of the operations, it had to be borne in mind that the law-enforcement agencies had been confronted with between 6,000 and 9,000 violent individuals who had not been isolated by the peaceful demonstrators (the commission referred in that regard to the "double game" being played by the Genoa Social Forum). The parliamentary commission's report concluded as follows:

> "The commission ... reiterates that violence is not and must not be a tool for political action and that the rule of law is a fundamental value of democratic societies. At the same time it emphasises strongly the inviolability of the constitutional principles of freedom to express one's thoughts and respect for the individual even – not to say especially – where he or she is detained following arrest, and also the need to ensure the safety of citizens and public order; if acts constituting a criminal or disciplinary offence are established, [the commission] would like to see the judicial authority and the administrative bodies concerned identify those responsible and punish their actions."

117. The Government produced before the Court the verbatim records of the hearings at which the parliamentary commission had heard evidence from the Minister of the Interior, the Director-General of the Public Safety Department and the Commander-General of the Revenue Police.

118. 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 several occasions in other countries.

119. 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 cause very serious harm to the victim. Finally, he said that the possibility of introducing non-lethal weapons was currently being examined.

120. On 22 June 2006 the applicants applied to the Prime Minister's Office and to the Ministry of Defence for compensation in respect of the damage they had suffered as a result of the death of Carlo Giuliani. The Government explained that the application had been refused on the ground that it had been established in criminal proceedings that M.P. had acted in self-defence. For the same reason, no disciplinary proceedings were instituted against M.P.

G. The decisions given in the "trial of the twenty-five"

1. The first-instance judgment

121. On 13 March 2008 the Genoa District Court published its reasoning in the judgment adopted on 14 December 2007 following the trial of twenty-five demonstrators charged with a number of offences committed on 20 July 2001 (including criminal damage, theft, destroying property, looting and acts of violence against law-enforcement officers). During the trial, in which 144 hearings were held, the District Court, among other things, heard evidence from numerous witnesses and examined a wealth of audiovisual material.

122. The District Court held, *inter alia*, that the attack by *carabinieri* on the *Tute Bianche* marchers had been unlawful and arbitrary. The march had been authorised and the demonstrators had not committed any significant acts of violence against the *carabinieri*. The attack by the latter had been launched against hundreds of persons who were doing no harm, and no order to disperse had been given. The subsequent charge had also been unlawful and arbitrary. It had not been preceded by a warning to disperse, had not been ordered by the officer authorised to do so and had been unnecessary.

123. The methods deployed had also been unlawful. The *carabinieri* had fired tear-gas grenades at chest height, a large number of demonstrators had sustained injuries caused by non-regulation batons, and the armoured vehicles had knocked down the barricades and pursued members of the crowd along the pavement with the clear intention of causing harm.

124. 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 attack on the march. Their resistance had also been warranted during the clashes which occurred in the side streets prior to 3.30 p.m., that is, up to the point at which the *carabinieri* had acted on the order to stop and allow the march to proceed. According to the court, 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. Article 4 reads as follows:

> "Articles 336, 337, 338, 339, 341, 342 and 343 of the Criminal Code [making punishable various acts of resistance against law-enforcement officers] shall not apply where the State agent or person authorised to exercise public authority caused the offence contemplated in those Articles by overstepping the limits of his or her authority through arbitrary acts."

125. The District Court decided to forward the file to the public prosecutor's office on the ground that the statements made 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.

126. After 3.30 p.m., although the demonstrators may still have felt a sense of abuse and injustice, their conduct had no longer been defensive but had been driven by a desire for revenge; it was therefore unjustified and punishable.

127. The charge ordered by police officer Lauro, which had triggered the events on Piazza Alimonda, had been neither unlawful nor arbitrary. As a result, the violent reaction by the demonstrators, which had led to the *carabinieri* being pursued and the jeep being attacked, could not be regarded as a defensive response.

128. The *carabinieri* in the jeep might well have feared that they would be subjected to an attempted lynching. The fact that the demonstrators surrounding them did not have Molotov cocktails and were therefore not in a position to set the vehicle on fire was a factor that could be appreciated with hindsight. The occupants of the jeep could not be blamed for having panicked.

129. Carlo Giuliani had probably been four metres from the jeep when he was shot down. M.P. had stated that he could only 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 D.R. 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.

130. The District Court judgment mentions the statements made by the expert Marco Salvi, who performed the autopsy on Carlo Giuliani's body. Mr Salvi stated in particular that the trajectory of the fatal bullet indicated a direct shot and that the metal fragment lodged in the victim's body had been very difficult to find. The fragment, which had shown up on the scan (see paragraph 60 above), "must have been very small"; the experts had tried to locate it by going through the brain tissue section by section (*per piani*), although the latter had been damaged and engorged with blood. The more the experts worked, the more damaged the tissue had become. Given that the fragment was not a bullet and was of no use for ballistics purposes, the experts had considered it to be a minor detail (*un particolare irrilevante*) and had not pursued their search.

2. The appeal judgment

131. Twenty-four of the accused appealed against the first-instance judgment. In a judgment of 9 October 2009, deposited with the registry on 23 December 2009, the Genoa Court of Appeal partly upheld the convictions handed down by the District Court, increased some of the sentences and declared the prosecution of some of the offences time-barred.

132. Regarding the *carabinieri* attack on the *Tute Bianche* march, the Court of Appeal largely endorsed the view of the District Court. It observed that the *carabinieri* had encountered the march, which numbered around 10,000 persons, as a result of the route indicated to them by the control room. The front of the march, or "contact group", had been made up of around twenty individuals, mostly members of Parliament, mayors, cultural figures and journalists. Behind them had been a series of Plexiglas protective devices, joined together; these were followed by the "head of the procession" made up of demonstrators equipped with helmets and shoulder and arm protectors. The march had not encountered the scenes of any clashes but had simply proceeded for about two

kilometres without meeting any obstacle. The protective equipment showed that, although they were not carrying blunt instruments, the demonstrators had been prepared for possible clashes.

133. In these circumstances it was difficult to understand why officers Bruno and Mondelli had decided to launch an attack on the march. They had not received any orders to that effect; on the contrary, they had been requested to avoid crossing the marchers' path. The news that an attack was in progress had been greeted with cries of disapproval in the control room.

134. The *carabinieri* had been summoned to intervene urgently in Marassi Prison, where law-enforcement officers were struggling to cope with an attack by the Black Bloc. Accordingly, when they encountered the march they had attempted to clear the junction and the tunnel through which they wished to pass. According to the witness testimony of one journalist, judged to be "neutral" and therefore credible, youths belonging to the Black Bloc arriving from the opposite direction to the marchers had thrown stones at the *carabinieri*; this had led to the order to fire tear gas, given by Mr Bruno. The Court of Appeal concluded that, although the charge by the *carabinieri* had been illegitimate, they had been called upon to intervene in a situation characterised by violence from the Black Bloc demonstrators, who had earlier ransacked other parts of the city, and by the fact that the junction they needed to cross was occupied by the crowd and the tunnel was blocked by barricades.

135. In the Court of Appeal's view, the District Court had correctly found the following actions by the *carabinieri* to be illegitimate:

(a) the firing of tear gas at chest height;

(b) the failure to order the dispersal of the marchers, who were not causing a disturbance and who could only have entered the red zone much further on, at Piazza Verdi;

(c) the attack on an authorised, peaceful march made up of unarmed demonstrators. While the Black Bloc had created serious disturbances elsewhere in the city, there was no proof that they were being "covered" by the marchers, that is, that they had hidden amongst them before or after committing acts of vandalism.

136. Furthermore, there had been arbitrary acts in the form of: the use of non-regulation batons (*manganelli*) (pieces of wood or iron wrapped in adhesive tape and a source of serious cuts and bleeding); the use of armoured vehicles to make "forays" amidst the demonstrators, pursuing some of them at high speed along the pavement (the Court of Appeal observed that the vehicles did not have sufficiently safe brakes and that one of them had pursued a demonstrator in zigzag fashion, as if attempting to run him over); the infliction of excessive injury and the beating of demonstrators, journalists and an ambulance driver.

137. The illegitimate and arbitrary attack had produced a reaction from the demonstrators which was not punishable in view of the grounds of justification provided for in Article 4 of Legislative Decree no. 288 of 1944. However, once the *carabinieri* had withdrawn and an armoured vehicle had broken down, the demonstrators had no longer been in danger. Hence, the attack on the vehicle and its occupants had not constituted a defensive act, but an act of retaliation. From that point onwards the *Tute Bianche* had "reclaimed" their right of assembly and protest, and any further acts of violence and vandalism on their part, including the damage to the armoured vehicle, amounted to a criminal offence.

138. The Court of Appeal endorsed the District Court's view that, despite their violent response, the marchers had not been guilty of the offence of criminal damage. The damage caused had been minor and had resulted from the use of objects (cars and refuse containers) as protection against the

carabinieri. Unlike the Black Bloc, the *Tute Bianche* had not taken to the streets with the intention of damaging public or private property symbolising the system they opposed. The damage had been confined to the fairly small area in which the response had occurred and, by and large, had ceased with the withdrawal of the *carabinieri*. Although "disquieting", the fact that the demonstrators in the front lines had worn protectors could not give rise to the assumption that they had intended to engage in acts of violence.

H. The audiovisual material produced by the parties

139. During the proceedings before the Court the parties submitted a large volume of audiovisual material. The CD-ROMs produced by the Government and the applicants on 28 June and 9 July 2010 respectively were viewed by the judges of the Grand Chamber on 27 September 2010 (see paragraph 9 above). These show several phases in the demonstrations that took place in Genoa on 20 July 2001 and contain images of the moments before and after the shot which killed Carlo Giuliani. They also show the violence perpetrated by the demonstrators (throwing of stones, charges on the law-enforcement agencies, acts of vandalism in the street and against police and *carabinieri* vehicles) and violence imputable to the authorities. Some of the footage shows police armoured vehicles pursuing demonstrators at high speed along the pavement and police officers beating a demonstrator lying on the ground. The applicants' CD-ROM also contains extracts from Mr Lauro's statement and from an interview with M.P. shown on television.

I. The administrative documents produced by the Government

140. The Government produced numerous administrative documents from the police authorities, the Ministry of the Interior and the Chamber of Deputies. The documents relevant to the present case noted the following:

– on 6 February 2001 the Public Safety Department of the Interior Ministry had sent out a circular to all *questori* reminding them, in particular, that the firing of tear gas should be considered a "measure of last resort for dealing with particularly serious situations which cannot be managed otherwise";

– the Public Safety Department of the Interior Ministry had prepared "an information handbook for State police personnel" which contained guidelines on conduct at the Genoa G8;

– on 17 July 2001 – hence, before the G8 – the Minister of the Interior had addressed the Chamber of Deputies "on the public-order situation in Genoa";

– on 23 July 2001 the same Minister had addressed Parliament on the subject of the "serious incidents occurring in Genoa during the G8 summit";

– on 30 and 31 July 2001 the Interior Ministry's Public Safety Department had submitted reports on the conduct of the law-enforcement agencies during the search carried out on the night of 21 July 2001 in a school occupied by demonstrators, and in a police station where persons had been taken into custody. Disciplinary action had been proposed against several police officers and the Genoa *questore*;

– on 6 August 2001 the inter-regional police directorate had forwarded to the chief of police the findings of an administrative inspection carried out in the Genoa *questura*, which pointed to certain organisational problems during the G8 and analysed thirteen "potentially punishable incidents"

imputable to the law-enforcement agencies emerging from the available audiovisual material; none of the incidents related to the use of force by M.P.

141. The Government also produced a memorandum from the Public Safety Department of the Interior Ministry dated 4 October 2010, according to which some 18,000 law-enforcement officers had been deployed at the G8 in Genoa. In particular, the State had drafted in 14,102 "reinforcements" including 11,352 "police operators" (police officers, *carabinieri*, officers of the revenue and forestry police and prison officers) and 2,750 members of the armed forces. Of the 11,352 "police operators", 128 belonged to the elite units, while 2,510 police officers and 1,980 *carabinieri* belonged to "mobile units" (*reparti mobile*) made up of personnel specially trained and equipped for public-order operations. The Public Safety Department indicated that, beginning in March 2001, it had put in place a training programme aimed specifically at personnel taking part in the G8, with a view to ensuring public-order management based on the principles of democracy and respect for fundamental rights (hence, participants in the training courses were reminded that the use of force was a measure of last resort). Advanced training seminars had also been organised which explored the dynamics of events such as the G8 summit.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. "Grounds of justification"

142. The Criminal Code ("the CC") provides for situations (*cause di giustificazione* or *scriminanti*) which may exempt individuals from criminal responsibility and render not punishable conduct which amounts to an offence under the law. Possible grounds of justification include the legitimate use of weapons and self-defence.

1. Legitimate use of weapons

143. Article 53 of the CC provides that no sanctions may be imposed on

> "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, 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 case, 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 or 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

144. Article 52 of the CC provides that no sanctions may be imposed on

> "persons who commit an offence when forced to do so by the need to defend their rights or the rights of others against a real danger of unjust attack, provided that the defensive response is proportionate to the attack."

3. Negligent excess

145. Under Article 55 of the CC, 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 actions are punishable as negligent conduct to the extent provided for by law.

B. Provisions governing public safety

146. Articles 18-24 of the Public Safety Code (*Testo Unico*) of 18 June 1931 (No. 773) govern public gatherings and assemblies in public places or open to the public. Where such a gathering is liable to endanger public order or safety, or where offences are committed, the gathering may be dissolved. Before it is dissolved, the participants must be requested by the law-enforcement agencies to disperse. If the request is not complied with, the crowd must be 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 gathering or assembly 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).

C. Rules governing the use of weapons

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

148. In addition, Presidential Decree No. 359 of 5 October 1991 lays down the "criteria for determining the weapons to be issued to the public safety authorities and the State police". The decree contains a description of the various weapons issued as standard (Articles 10 to 32), making a distinction between "personal weapons" and "collective weapons". The personal weapons consist of a pistol which is allocated to the individual for the duration of his or her service (Article 3 § 2). He or she must keep the weapon, ensure its upkeep, apply the safety measures provided for at all times and in all situations and participate in the firing exercises organised by the authorities (Article 6 § 1).

149. Article 32 states that the authorities "may issue weapons with tranquilising agents (*proiettili narcotizzanti*)" and that in cases of necessity and urgency the Minister of the Interior may authorise police officers who have received *ad hoc* training to use weapons other than those issued as standard, provided that the weapons have been checked and do not exceed the offensive capacity of the standard-issue weapons (Article 37). The above-mentioned decree further provides that the standard-issue weapons must be appropriate and proportionate to the requirements of protecting public order and public safety, preventing and dealing with crime and other institutional aims (Article 1).

D. The rights of injured parties during the preliminary investigation and following a request by the public prosecutor to discontinue the proceedings

150. Under Article 79 of the Code of Criminal Procedure ("the CCP"), the injured party may apply to join the proceedings as a civil party from the preliminary hearing onwards; the latter is the hearing at which the judge is called upon to decide whether the accused should be committed for trial. Before the preliminary hearing, or where no such hearing is held because the case is discontinued at an earlier stage, injured parties may exercise certain powers. The relevant provisions of the CCP provide:

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 legal representative for the exercise of the rights and powers afforded to them ..."

Article 359 § 1

"Where the public prosecutor orders examinations ... or any other technical operation calling for a specific competence, he or she may appoint ... experts. The latter may not refuse to cooperate."

Article 360

"1. Where the examinations referred to in Article 359 ... concern persons, objects or places in a state subject to alteration, the public prosecutor shall inform the accused, the injured party and the lawyers without delay of the date, time and place designated for the briefing of the experts and of the possibility of appointing experts.

...

3. Any lawyers or experts appointed shall have the right to attend the briefing of the experts, participate in the examinations, make observations and express reservations."

Article 392

"1. In the course of the preliminary investigation, the public prosecutor and the accused may apply to the judge for the immediate production of evidence...

2. The public prosecutor and the accused may also request a forensic examination where such examination, if ordered during the trial, could entail the suspension of the latter for more than 60 days ... ."

Article 394

"1. Injured parties may request the public prosecutor to apply for the immediate production of evidence.

2. Should the public prosecutor refuse that request, he or she shall give reasons for the decision and serve it on the injured party."

151. The public prosecutor does not have the power to discontinue the proceedings; he or she may simply request the investigating judge to do so. The injured party may object to that request. The relevant provisions of the CCP read as follows:

Article 409

"1. Except in cases where the objection referred to in Article 410 has been lodged, if the judge grants the request for the proceedings to be discontinued he or she shall make an order to that effect, giving reasons, and return the file to the public prosecutor's office. ...

2. If the judge rejects the request [to discontinue the proceedings], he or she shall fix the date of the private hearing and shall inform the public prosecutor, the accused 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 may be obtained by counsel.

...

4. After the hearing, if the judge considers additional investigative measures to be necessary, he or she shall issue an order to the public prosecutor detailing the measures and laying down a binding time-limit for their completion.

5. Where the circumstances described in paragraph 4 do not apply and the judge rejects the request to discontinue the proceedings, he or she shall issue an order instructing 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 the grounds of nullity provided for by Article 127 § 5 [in particular failure to comply with the procedural provisions concerning the holding of hearings in private]."

Article 410

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

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

..."

E. Burial and cremation

152. Article 116 of the implementing provisions of the CCP concerns investigations into deaths where there are grounds for suspecting that a crime has been committed. This Article provides:

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

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

153. 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 PRINCIPLES AND DOCUMENTS

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

154. The relevant parts of these principles ("the UN Principles"), which were 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, 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. Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

155. The CPT visited Italy in 2004. The relevant parts of its report, published on 17 April 2006, read as follows:

"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).

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 ..."

C. Documents produced by the United Nations Committee Against Torture (CAT)

156. The Government produced documents summarising the consideration by the CAT of reports submitted by States Parties under Article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Part of the fourth periodic report submitted by Italy (dated 4 May 2004) deals with the "events of Genoa" (paragraphs 365-395). It is based mainly on certain passages from the report of the parliamentary commission (see paragraphs 113-116 above). The CAT considered Italy's fourth periodic report at its 762nd and 765th meetings, held on 4 and 7 May 2007, and adopted, at its 777th and 778th meetings, a document containing conclusions and recommendations. The relevant parts of the CAT report read as follows:

"Training

15. The Committee takes note with appreciation of the detailed information provided by the State party on training for its law enforcement officials, penitentiary staff, border guards and armed forces. However, the Committee regrets the lack of information on training on the employment of non-violent means, crowd control and the use of force and firearms. In addition, the Committee regrets that there is no available information on the impact of the training conducted for law enforcement officials and border guards, and how effective the training programmes have been in reducing incidents of torture and ill-treatment. (art. 10)

The State party should further develop and implement educational programmes to ensure that:

a) All law enforcement officials, border guards and personnel working in the CPTs and CPTAs are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted; and

b) All law enforcement officers are adequately equipped and trained to employ non-violent means and only resort to the use of force and firearms when strictly necessary and proportionate. In this respect, the Italian authorities should conduct a thorough review of current policing practices, including the training and deployment of law enforcement officials in crowd control and the regulations on the use of force and firearms by law enforcement officials.

Furthermore, the Committee recommends that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment and that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians.

In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training/educational programmes on the reduction of cases of torture and ill-treatment.

...

Ill-treatment and excessive use of force

17. The Committee notes with concern continued allegations of excessive use of force and ill-treatment by law enforcement officials. In this respect, the Committee is particularly concerned at reports emerging of alleged excessive use of force and ill-treatment by law enforcement officials during the demonstrations in Naples (March 2001) in the context of the Third Global Forum, the G8 Summit in Genoa (July 2001) and in Val di Susa (December 2005). The Committee is also concerned that such incidents have reportedly occurred during football matches but it notes the recent adoption of Act no. 41/2007, entitled 'Urgent measures on the prevention and the repression of violence cases occurring during football matches'. (arts. 12, 13 and 16)

The Committee recommends that the State party should take effective measures to:

(a) Send a clear and unambiguous message to all levels of the police force hierarchy and to prison staff that torture, violence and ill-treatment are unacceptable, including through the introduction of a code of conduct for all officials;

(b) Certify that those who report assaults by law enforcement officials are protected from intimidation and possible reprisals for making such reports; and

(c) Ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duty.

Furthermore, the State party should report to the Committee on the progress of the judicial and disciplinary proceedings related to the above-mentioned incidents.

18. The Committee is concerned at reports that law enforcement officers did not carry identification badges during the demonstrations in connection with the 2001 G8 summit in Genoa which made it impossible to identify them in case of a complaint of torture or ill-treatment (arts. 12 and 13).

The State party should make sure that all law enforcement officials on duty be equipped with visible identification badges to ensure individual accountability and the protection against torture, inhuman or degrading treatment or punishment.

Prompt and impartial investigations

19. The Committee is concerned at the number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated. The Committee notes with concern that the offence of torture, which as such does not exist in the Italian Criminal Code but rather is punishable under other provisions of the Criminal Code, might in some cases be subject to the statute of limitations. The Committee is of the view that acts of torture cannot be subject to any statute of limitations and it welcomes the statement made by the State party's delegation that it is considering a modification of the time limitations (arts. 1, 4, 12 and 16).

The Committee recommends that the State party should:

(a) Strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the suspect should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;

(b) Try the perpetrators and impose appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for violations prohibited by the Convention; and

(c) Review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture as well as attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION IN ITS SUBSTANTIVE ASPECT

157. The applicants complained that Carlo Giuliani had been killed by the law-enforcement agencies and that the authorities had not safeguarded his life. 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. Whether the use of lethal force was justified

158. The applicants submitted first of all that in the specific circumstances of the case the use of lethal force by M.P. had not been "absolutely necessary" in order to achieve the aims enumerated in the second paragraph of Article 2 of the Convention. The Government contested that argument.

1. The parties' submissions

(a) The applicants

159. The applicants pointed out that they had never subscribed to the "intermediate object theory". According to their expert, Mr Gentile, the bullet had not fragmented on striking the victim's body (see paragraph 64 above). However, since the bullet was not available and neither the shape nor the dimensions of the "intermediate object" were known, it was impossible to formulate a scientific hypothesis as to the type of collision in which the bullet had been involved during its trajectory and to maintain that it had been deflected. Furthermore, the other experts appointed by

the applicants had taken the view that the stone had shattered on impact with the jeep rather than because of the bullet fired by M.P. (see paragraph 65 above).

160. According to the applicants, the lives of the jeep's occupants had not been in danger, as the vehicle in question had been a Defender jeep, a model which, even without armour, was sufficiently robust. Furthermore, the number of demonstrators visible on the images was no more than a dozen or so. The demonstrators had not had lethal weapons and had not surrounded the jeep; the audiovisual material showed that there had been no demonstrators to the left or in front of the vehicle. As proved by the photographs, 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 in the vicinity and there was no proof that the injuries of which M.P. and D.R. complained had been sustained during the events.

161. According to the autopsy report (see paragraph 50 above) and as could be deduced from M.P.'s own statements, the latter had fired downwards. When questioned on 20 July 2001 by representatives of the Genoa public prosecutor's office, M.P. had stated that there had been nobody in his field of vision when he pointed his gun; he had been aware of stones being thrown and of the presence of assailants whom he could not see (see paragraph 36 above). In those circumstances it was difficult to imagine how M.P. could have been acting in self-defence in response to the actions of Carlo Giuliani, whom he was unable to see. As neither Carlo Giuliani nor the other demonstrators had been armed, M.P.'s response could not be said to have been proportionate.

162. Moreover, M.P.'s statements had been contradictory. On the first two occasions when he had been questioned (on 20 July and 11 September 2001 – see paragraphs 36 and 39 above), he stated that he had not seen Carlo Giuliani and did not say that he had fired upwards (this, in the applicants' view, amounted to a tacit admission that he had fired at chest height). However, at the hearing of 1 June 2007 in the "trial of the twenty-five", he stated that he had fired with his arm in the air; this was at odds with a photograph produced by the defence which showed him pointing the weapon at chest height, at a downward angle from the horizontal. Lastly, during a television interview broadcast on 15 November 2007, M.P. stated that he had "tried to fire as high in the air as possible", that he had not aimed at Carlo Giuliani and that he had never been a good shot. He added that he had been sent to the G8 in Genoa as a replacement for a colleague who did not wish to go.

163. Finally, the applicants submitted that M.P. had not issued clear warnings of his intention to use his firearm and that some of the photographs taken during the events showed a riot shield being used as protection in place of one of the broken windows of the jeep.

(b) The Government

164. The Government argued 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 was to be found in the request for the proceedings to be discontinued. In support of their assertions the Government referred to *Grams v. Germany* ((dec.), no. 33677/96, ECHR 1999-VII) and 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.

165. There had been no intentional taking of life in the instant case, nor had there been any "excessive use of force". Furthermore, no causal link existed between the shot fired by M.P. and the

death of Carlo Giuliani. Although the investigating judge, in her decision to discontinue the case, had applied Articles 52 and 53 of the CC, she had not disregarded the exceptional and unforeseeable circumstance whereby the shot had been deflected following a collision with a stone, a circumstance which had been assessed from the standpoint of proportionality. The Government inferred from this that the decision to discontinue the proceedings had exonerated M.P. on the ground that the causal link between the shot and Carlo Giuliani's death had been broken by the collision between the bullet and the stone and the deflection of the shot's trajectory.

166. In the view of the investigating judge, M.P. had acted on his own initiative, in a state of panic and in a situation where he had valid reasons to believe that there was a serious and imminent threat to his own life or physical integrity. Furthermore, M.P. had not aimed at Carlo Giuliani or anyone else. He had fired upwards, in a direction that entailed no risk of striking someone. 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, in particular, to *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, §§ 58 and 60, 7 February 2006, and *Kathleen Stewart v. the United Kingdom*, no. 10044/82, Commission decision of 10 July 1984, Decisions and Reports (DR) 39).

167. Both parties' experts had agreed as to the fact that the bullet had already been in fragments when it hit the victim. The possibilities advanced by the applicants to explain why the bullet had fragmented – such as its having been manipulated in order to increase its capacity to fragment, or the presence of a manufacturing defect – had been considered by the applicants themselves to be "much less likely" (see paragraphs 64, 71 and 81 above), and could not provide a valid explanation. The fact that it had been impossible to identify the intermediate object was a detail not capable of having a decisive impact on the investigation's findings.

168. In the alternative, the Government submitted that the use of lethal force had been "absolutely necessary" and "proportionate". They stressed the following elements in particular: the level and widespread nature of the violence which had marked the demonstrations; the force of the demonstrators' assault 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 short duration of the events, from the assault on the vehicle until the fatal shot was fired; 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 indistinctly on the edge of his field of vision; and the injuries sustained by M.P. and D.R.

169. In the Government's submission, it had not been proven that the photograph showing the pistol protruding from the rear window of the jeep represented the position of the weapon at the moment the shots were fired. M.P. had drawn his weapon a few seconds at least before shooting, and only a fraction of a second was needed in order to move the hand by a few centimetres or alter the angle of fire by a few degrees. The photograph in question, therefore, did not provide proof that M.P. was responsible for the death of Carlo Giuliani and did not serve to refute the hypothesis of an unforeseeable accident.

170. It had been objectively impossible for the prosecuting authorities to establish M.P.'s state of mind and his precise intentions, given his confusion and state of panic at the time of the events. M.P.'s equipment had consisted of the uniform issued for public-order duties, two helmets fitted

with a visor, a rucksack, six large tear-gas grenades, a gas-mask filter and a Beretta pistol and magazine. According to the Ministry of the Interior, it could not be established whether there had been a riot shield in the jeep.

171. M.P. had had no other option than to shoot, 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 aggressive intentions of the demonstrators and the speed of events. In any case, 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 the demonstrators. The Government referred to the audiovisual material produced before the Court, which in their view showed that if M.P. had not used his gun, the violent assault by some seventy demonstrators on the *carabinieri* vehicle would have ended in the death of one of the occupants.

172. The public prosecutor's request for the proceedings to be discontinued had been based on all these factors and on the *favor rei* principle: under Italian law, where there were doubts and it appeared impossible to prosecute the case in court, and a trial was not likely to add anything significant to the evidence, the proceedings had to be discontinued.

2. The Chamber judgment

173. The Chamber held that the use of force had not been disproportionate. This finding was based mainly on its acceptance of the investigating judge's reasoning in her decision to discontinue the proceedings, which the Chamber considered to have been based on a detailed analysis of the witness evidence and the available photographic and audiovisual material. The Chamber added that, before shooting, M.P. had held the weapon in his hand in such a way that it was visible from outside the jeep (see paragraphs 214-227 of the Chamber judgment).

2. The Court's assessment

(a) General principles

174. The Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention, one which, in peace time, admits of no derogation under Article 15. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among many other authorities, *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI, and *Solomou and Others v. Turkey*, no. 36832/97, § 63, 24 June 2008).

175. The exceptions delineated in paragraph 2 indicate that Article 2 extends to, but is not concerned exclusively with, intentional killing. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c) (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 148, Series A no. 324, and *Solomou and Others*, cited above, § 64).

176. The use of the term "absolutely necessary" 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 aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2. Furthermore, in keeping with the importance of this provision in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, §§ 147-150, and *Andronicou and Constantinou*, cited above, § 171; see also *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII, and *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, § 142, 26 July 2007).

177. The circumstances in which deprivation of life may be justified must be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also require that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Solomou and Others*, cited above, § 63). In particular, the Court has held that the opening of fire should, whenever possible, be preceded by warning shots (see *Kallis and Androulla Panayi v. Turkey*, no. 45388/99, § 62, 27 October 2009; see also, in particular, paragraph 10 of the UN Principles, paragraph 154 above).

178. 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 (see *McCann and Others*, cited above, § 200, and *Andronicou and Constantinou*, cited above, § 192).

179. When called upon to examine whether the use of lethal force was legitimate, the Court, detached from the events at issue, cannot 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).

180. The Court must also 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 (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). As a general rule, 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 it is for the latter to establish the facts on the basis of the evidence before them (see, among many other authorities, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B, and *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Though the Court is not bound by the findings of domestic courts and remains free to make its own appreciation in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see *Avşar*, cited above, § 283, and *Barbu Anghelescu v. Romania*, no. 46430/99, § 52, 5 October 2004).

181. To assess the factual evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and

concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained may also be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; and *Solomou and Others*, cited above, § 66).

182. The Court must be especially vigilant in cases where violations of Articles 2 and 3 of the Convention are alleged (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32). When there have been criminal proceedings in the domestic courts concerning such allegations, it must be borne in mind that criminal law liability is distinct from the State's responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions which are to be interpreted in the light of the object and purpose of the Convention, taking into account any relevant rules or principles of international law. The responsibility of a State under the Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Tanlı v. Turkey*, no. 26129/95, § 111, ECHR 2001-III, and *Avşar*, cited above, § 284).

(b) Application of these principles to the present case

183. The Court deems it appropriate to begin its analysis on the basis of the following facts, which are not disputed between the parties. On 20 July 2001, during the day, numerous clashes had taken place between demonstrators and the law-enforcement agencies: in particular, Marassi Prison had come under attack (see paragraph 134 above), the *carabinieri* had charged the *Tute Bianche* march (see paragraphs 18-19, 122-124 and 132-136 above) and an armoured vehicle belonging to the *carabinieri* had been set on fire (see paragraph 20 above). Following these incidents, at around 5 p.m., when the situation was relatively calm, a battalion of *carabinieri* took up positions on Piazza Alimonda, where two Defender jeeps were located; on board one of the jeeps were two *carabinieri*, M.P. and D.R., who were unfit to remain on duty (see paragraphs 21, 23 and 29 above).

184. Shortly afterwards, the *carabinieri* left their positions to confront a group of aggressive demonstrators; the jeeps followed the *carabinieri*. However, the latter were forced to retreat rapidly as the demonstrators succeeded in repelling the charge. The jeeps then tried to reverse away, but the one in which M.P. and D.R. were travelling found its way blocked by an overturned refuse container and was unable to leave the scene rapidly as its engine had stalled (see paragraphs 21-22 above).

185. This is one of those rare cases in which the moments leading up to and following the use of lethal force by a State agent were photographed and filmed. Accordingly, the Court cannot but attach considerable importance to the video footage produced by the parties, which it had the

opportunity to view (see paragraphs 9 and 139 above) and the authenticity of which has not been called into question.

186. This footage and the photographs in the file show that, as soon as it became hemmed in by the refuse container, the jeep driven by F.C. was attacked and at least partially surrounded by the demonstrators, who launched an unrelenting onslaught on the vehicle and its occupants, tilting it sideways and throwing stones and other hard objects. The jeep's rear window was smashed and a fire extinguisher was thrown into the vehicle, which M.P. managed to fend off. The footage and photographs also show one demonstrator thrusting a wooden beam through the side window, causing shoulder injuries to D.R., the other *carabiniere* who had been taken off duty (see paragraph 84 above).

187. This was quite clearly an unlawful and very violent attack on a vehicle of the law-enforcement agencies which was simply trying to leave the scene and posed no threat to the demonstrators. Whatever may have been the demonstrators' intentions towards the vehicle and/or its occupants, the fact remains that the possibility of a lynching could not be excluded, as the Genoa District Court also pointed out (see paragraph 128 above).

188. The Court reiterates in that regard the need to consider the events from the viewpoint of the victims of the attack at the time of the events (see paragraph 179 above). It is true, for instance, that other *carabinieri* were positioned nearby who could have intervened to assist the jeep's occupants had the situation degenerated further. However, this fact could not have been known to M.P., who, injured and panic-stricken, was lying in the rear of the vehicle surrounded by a large number of demonstrators and who therefore could not have had a clear view of the positioning of the troops on the ground or the logistical options available to them. As the footage shows, the jeep was entirely at the mercy of the demonstrators shortly before the fatal shooting.

189. In the light of the foregoing, and bearing in mind the extremely violent nature of the attack on the jeep, as seen on the images which it viewed, the Court considers that M.P. acted in the honest belief that his own life and physical integrity, and those of his colleagues, were in danger because of the unlawful attack to which they were being subjected. M.P. was accordingly entitled to use appropriate means to defend himself and the other occupants of the jeep.

190. The photographs show, and the statements made by M.P. and some of the demonstrators confirm (see paragraphs 36, 39 and 45 above), that before firing, M.P. had shown his pistol by stretching out his hand in the direction of the jeep's rear window, and had shouted at the demonstrators to leave unless they wanted to be killed. In the Court's view, M.P.'s actions and words amounted to a clear warning that he was about to open fire. Moreover, the photographs show at least one demonstrator hurrying away from the scene at that precise moment.

191. In this extremely tense situation Carlo Giuliani decided to pick up a fire extinguisher which was lying on the ground, and raised it to chest height with the apparent intention of throwing it at the occupants of the vehicle. His actions could reasonably be interpreted by M.P. as an indication that, despite the latter's shouted warnings and the fact that he had shown his gun, the attack on the jeep was not about to cease or diminish in intensity. Moreover, the vast majority of the demonstrators appeared to be continuing the assault. M.P.'s honest belief that his life was in danger could only have been strengthened as a result. In the Court's view, this served as justification for recourse to a potentially lethal means of defence such as the firing of shots.

192. The Court further notes that the direction of the shots was not established with certainty. According to one theory supported by the prosecuting authorities' experts (see paragraphs 60-62 above), which was contested by the applicants (see paragraphs 80 and 159 above) but accepted by the Genoa investigating judge (see paragraphs 87-91 above), M.P. had fired upwards and one of the bullets had hit the victim after being accidentally deflected by one of the numerous stones thrown by the demonstrators. Were it to be proven that the events occurred in this manner, it would have to be concluded that Carlo Giuliani's death was the result of a stroke of misfortune, a rare and unforeseeable occurrence having caused him to be struck by a bullet which would have otherwise have disappeared into the air (see, in particular, *Bakan v. Turkey*, no. 50939/99, §§ 52-56, 12 June 2007, in which the Court ruled out any violation of Article 2 of the Convention, finding that the fatal bullet had ricocheted before hitting the applicants' relative).

193. However, in the instant case the Court does not consider it necessary to examine the well-foundedness of the "intermediate object theory", on which there was disagreement between the experts who conducted the third set of ballistics tests, the applicants' experts and the findings of the autopsy report (see paragraphs 60-62, 66 and 50 above). It simply observes that, as the Genoa investigating judge rightly remarked (see paragraph 92 above), and as shown by the photographs, M.P.'s field of vision was restricted by the jeep's spare wheel, since he was half-lying or crouched on the floor of the vehicle. Given that, in spite of his warnings, the demonstrators were persisting in their attack and that the danger he faced – in particular, a likely second attempt to throw a fire extinguisher at him – was imminent, M.P. could only fire, in order to defend himself, into the narrow space between the spare wheel and the roof of the jeep. The fact that a shot fired into that space risked causing injury to one of the assailants, or even killing him, as was sadly the case, does not in itself mean that the defensive action was excessive or disproportionate.

194. In the light of the foregoing, the Court concludes that in the instant case the use of lethal force was absolutely necessary "in defence of any person from unlawful violence" within the meaning of Article 2 § 2 (a) of the Convention (see paragraph 176 above).

195. It follows that there has been no violation of Article 2 in its substantive aspect in this regard.

196. This finding makes it unnecessary for the Court to consider whether the use of force was also unavoidable "in action lawfully taken for the purpose of quelling a riot or insurrection" within the meaning of sub-paragraph (c) of paragraph 2 of Article 2.

B. Whether the respondent State took the necessary legislative, administrative and regulatory measures to reduce as far as possible the adverse consequences of the use of force

197. As they had done before the Chamber, the applicants also complained of deficiencies in the domestic legislative framework. The Government contested their arguments. The Chamber did not address these issues.

1. The parties' submissions

(a) The applicants

198. The applicants complained of the absence of a legislative framework capable of protecting the lives of the demonstrators. In their submission, the domestic law had made the use of a firearm inevitable, as demonstrated by the fact that the case had been discontinued because M.P.'s actions came within the scope of Articles 52 and 53 of the CC. According to the Court's case-law, an inadequate legislative framework reduced the statutory protection of the right to life required in a democratic society. The applicants drew the Court's attention to the following points in particular.

(i) Failure to equip law-enforcement personnel with non-lethal weapons

199. The applicants stressed that M.P. would not have been able to kill anyone if he had been issued with a non-lethal weapon such as a gun firing rubber bullets (they referred to *Güleç v. Turkey*, 27 July 1998, § 71, *Reports* 1998-IV, and *Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97, § 111, 26 July 2005). The pre-eminence of respect for human life and the obligation to minimise the risk to life meant that law-enforcement personnel should be equipped with non-lethal weapons (such as electric stun guns, glue guns or guns firing rubber bullets) during demonstrations; this was the case in the United Kingdom and had also been the case at the G20 summit in Pittsburgh. On this point, the applicants relied on paragraph 2 of the UN Principles (see paragraph 154 above), observing that in the instant case it had been easy to foresee that disturbances would occur. The Beretta SB 9 mm parabellum pistol with which M.P. had been equipped was a semi-automatic pistol classified as a combat weapon under the Italian legislation: once loaded, it did not need to be reloaded for subsequent rounds and allowed fifteen shots to be fired within a few seconds, rapidly and with a high degree of accuracy.

200. In the course of a parliamentary inquiry the Government had stated that the legislation in force did not permit the use of non-lethal weapons such as guns firing rubber bullets (see paragraphs 118-119 above). This assertion was incorrect, as these weapons were specifically provided for in the rules of engagement issued to the Italian forces in Iraq, who had the task of maintaining law and order in a war zone.

201. Furthermore, while it was true that rubber bullets could be dangerous in some circumstances, they could not be compared to live ammunition (the applicants referred, in particular, to *Kathleen Stewart*, cited above, § 28). The applicants also asserted that some *carabinieri* had used non-regulation weapons such as metal batons.

(ii) Absence in Italian law of adequate provisions governing the use of lethal weapons during demonstrations

202. The applicants observed that the relevant provisions on the use of force by law-enforcement personnel were Article 53 of the CC and Article 24 of the Public Safety Code (see paragraphs 143 and 146 above). Those provisions, enacted in 1930 and 1931, during the Fascist era, were not compatible with more recent international standards or with liberal legal principles. They were symptomatic of the authoritarianism that had prevailed at that time. In particular, the concepts of "necessity" legitimising the use of weapons and "use of force" were not equivalent to the principles developed by Strasbourg case-law, which was based on "absolute necessity".

203. Furthermore, according to Article 52 of the CC, self-defence applied where "the defensive response [was] proportionate to the attack". This was in no way equivalent to the expressions "strictly unavoidable in order to protect life" and "strictly proportionate [to the circumstances]" which featured in the Court's case-law.

204. In addition, there were no clear regulations in Italy conforming to international standards concerning the use of firearms. None of the service instructions from the Genoa *questore* submitted by the Government had dealt with this issue. The applicants referred to the UN Principles (see paragraph 154 above), and in particular to the obligation for governments and law-enforcement agencies to adopt and implement rules and regulations in this sphere (paragraph 1). They further referred to paragraph 11, which specified the required content of such rules and regulations.

(b) The Government

205. The Government observed first of all that Italian law did not permit the use of rubber bullets. The latter were liable to cause loss of life if fired from a distance of less than fifty metres (the Government referred to *Kathleen Stewart*, cited above). In the instant case the distance between M.P. and Carlo Giuliani had been less than one metre, which suggested that even a rubber bullet would have proved fatal. The experiments with "non-lethal" weapons and ammunition conducted in the 1980s had been suspended following incidents which demonstrated that they were capable of killing or causing very serious injury. Furthermore, rubber bullets would encourage officers to use weapons in the mistaken belief that they would not cause harm.

206. In any event, weapons with live ammunition were designed for personal defence in the event of imminent and serious danger and were not used for public-order purposes: law-enforcement personnel in Italy did not fire on crowds, either with live rounds or with rubber bullets. 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 and their equipment had been intended for their personal protection.

207. No specific provisions concerning the use of firearms had been adopted with a view to the G8 summit, but the circulars issued by the senior command of the *carabinieri* had referred to the provisions of the CC.

3. The Court's assessment

(a) General principles

208. Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III, and *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII).

209. The primary duty on the State to secure the right to life entails, in particular, putting in place an appropriate legal and administrative framework defining the limited circumstances in which law enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI, and *Bakan*, cited above, § 49; see also the relevant paragraphs of the UN Principles, paragraph 154 above). In line with the principle of strict proportionality inherent in Article 2 (see paragraph 176

above), the national legal framework must make recourse to firearms dependent on a careful assessment of the situation (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 96). Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, cited above, § 58).

210. Applying these principles, the Court has, for instance, characterised as deficient the Bulgarian legal framework which permitted the police to fire on any fugitive member of the armed forces who did not surrender immediately in response to an oral warning and the firing of a warning shot in the air, without containing any clear safeguards to prevent the arbitrary deprivation of life (see *Nachova and Others*, cited above, §§ 99-102). The Court also identified deficiencies in the Turkish legal framework, adopted in 1934, which listed a wide range of situations in which a police officer could use firearms without being liable for the consequences (see *Erdoğan and Others v. Turkey*, no. 19807/92, §§ 77-78, 25 April 2006). On the other hand, it held that a regulation setting out an exhaustive list of situations in which gendarmes could make use of firearms was compatible with the Convention. The regulation specified that the use of firearms should only be envisaged as a last resort and had to be preceded by warning shots, before shots were fired at the legs or indiscriminately (see *Bakan*, cited above, § 51).

(b) Application of these principles to the present case

211. The Court notes that the Genoa investigating judge took the view that the legitimacy of the use of force by M.P. should be assessed in the light of Articles 52 and 53 of the CC. It therefore considers that these provisions constituted, in the instant case, the legal framework defining the circumstances in which the use of firearms was authorised.

212. The first of these provisions concerns the ground of justification of self-defence, a common concept in the legal systems of the Contracting States. It refers to the "need" for defensive action and the "real" nature of the danger, and requires the defensive response to be proportionate to the attack (see paragraph 144 above). Even though the terms used are not identical, this provision echoes the wording of Article 2 of the Convention and contains the elements required by the Court's case-law.

213. Although Article 53 of the CC is couched in vaguer terms, it nevertheless refers to the person concerned being "obliged" to act in order to repel an act of violence (see paragraph 143 above).

214. It is true that from a purely semantic viewpoint the "need" mentioned in the Italian legislation appears to refer simply to the existence of a pressing need, whereas "absolute necessity" for the purposes of the Convention requires that, where different means are available to achieve the same aim, the means which entails the least danger to the lives of others must be chosen. However, this is a difference in the wording of the law which can be overcome by the interpretation of the domestic courts. As is clear from the decision to discontinue the case, the Italian courts have interpreted Article 52 of the CC as authorising the use of lethal force only as a last resort where other, less damaging, responses would not suffice to counter the danger (see paragraph 101 above, which mentions the references made by the Genoa investigating judge to the Court of Cassation's case-law in this sphere).

215. It follows that the differences between the standards laid down and the term "absolutely necessary" in Article 2 § 2 are not sufficient to conclude on this basis alone that no appropriate domestic legal framework existed (see *Perk and Others v. Turkey*, no. 50739/99, § 60, 28 March 2006, and *Bakan*, cited above, § 51; see also, conversely, *Nachova and Others*, cited above, §§ 96-102).

216. The applicants next complained of the fact that the law-enforcement agencies had not been equipped with non-lethal weapons, and in particular with guns firing rubber bullets. However, the Court notes that the officers on the ground had available to them means of dispersing and controlling the crowd which were not life-threatening, in the form of tear gas (see, conversely, *Güleç*, cited above, § 71, and *Şimşek*, cited above, §§ 108 and 111). In general terms, there is room for debate as to whether law-enforcement personnel should also be issued with other equipment of this type, such as water cannons and guns using non-lethal ammunition. However, such discussions are not relevant in the present case, in which a death occurred not in the course of an operation to disperse demonstrators and control a crowd of marchers, but during a sudden and violent attack which, as the Court has just observed (see paragraphs 185-189 above), posed an imminent and serious threat to the lives of three *carabinieri*. The Convention, as interpreted by the Court, provides no basis for concluding that law-enforcement officers should not be entitled to have lethal weapons at their disposal to counter such attacks.

217. Lastly, as to the applicants' submission that some *carabinieri* had used non-regulation weapons such as metal batons (see paragraph 201 above), the Court does not discern any connection between this circumstance and the death of Carlo Giuliani.

218. It follows that there has been no violation of Article 2 of the Convention in its substantive aspect as regards the domestic legislative framework governing the use of lethal force or as regards the weapons issued to the law-enforcement agencies during the G8 summit in Genoa.

C. Whether the organisation and planning of the policing operations were compatible with the obligation to protect life arising out of Article 2 of the Convention

219. The applicants submitted that the State's responsibility was also engaged on account of shortcomings in the planning, organisation and management of the public-order operations. The Government contested that argument.

1. The parties' submissions

(a) The applicants

220. In the applicants' submission, the planning and conduct of the law-enforcement agencies' operations had been beset by a number of failings, omissions and errors. They contended that Carlo Giuliani's life could have been saved if the appropriate measures had been taken. They referred in particular to the following circumstances.

(i) Lack of a clear chain of command and of proper organisation of the operations

221. The applicants pointed out that changes had been made to the organisation of the operations on the eve of the demonstrations, giving the *carabinieri* a dynamic role (rather than a

stationary one, as originally planned). The commanding officers had been informed of the change orally on the morning of 20 July. As was clear from the statements made during the "trial of the twenty-five" by police officer Lauro and *carabinieri* officer Zappia, the commanding officers had not been correctly informed of the decision to authorise the *Tute Bianche* march. Moreover, the law-enforcement personnel deployed in Genoa had not been familiar with the city and its streets.

222. The communications system chosen had merely allowed information to be exchanged between the police and *carabinieri* control centres but not direct radio contact between the police officers and *carabinieri*. In the applicants' view, these anomalies had led to the critical situation in which M.P. had found himself and which prompted him to resort to lethal force. There was a cause-and-effect relationship here which the Chamber had not identified. The applicants pointed out in that regard that policing operations had to be organised and planned in such a way as to avoid any arbitrariness, abuse of force or foreseeable incident. They referred to the Court's case-law (*Makaratzis*, cited above, § 68), to paragraph 24 of the UN Principles and to the partly dissenting opinion of Judge Bratza, joined by Judge Šikuta, annexed to the Chamber judgment.

223. The lack of a clear chain of command had been the reason for the *carabinieri* attack on the *Tute Bianche* march and for the fact that a few hours later the jeeps had followed the *carabinieri*, having received no instructions to the contrary. M.P., who had been given permission to board one of the jeeps, had sustained burns, was reacting badly to his gas mask, was having trouble breathing and was injured and panic-stricken. Although the jeep's task had been to transport M.P. and D.R. to hospital, it had not left Piazza Alimonda before the *carabinieri* charge, and the two men, in distress and in a highly nervous state, had remained in the back of the vehicle.

224. The investigation had not provided any explanation as to why the jeeps had followed the detachment when the latter moved off to confront a group of demonstrators. Officers Lauro and Cappello, who had been in charge, stated at the "trial of the twenty-five" that they had not noticed the two jeeps following behind. Officer Cappello had also stated: "The jeep following behind has to be armoured, anything else is suicide". Furthermore, the jeeps had been left without supervision, further evidence of the lack of organisation of the law-enforcement operation.

(ii) M.P.'s physical and mental state and his lack of training

225. The applicants stressed that, owing to his physical and mental state, M.P. had been judged by his superior officers to be unfit to remain on duty. He had nevertheless been left in possession of a gun loaded with live ammunition and instead of being taken straight to hospital had been allowed to board a jeep which had no protection. M.P.'s situation had prevented him from making an accurate assessment of the danger he faced. If he had received the appropriate training he would not have panicked and would have had the necessary presence of mind to assess and deal with the situation correctly. The shots would have been avoided if the rear of the jeep and the side windows had been equipped with protective metal grilles and if M.P.'s tear-gas gun, which he could have used to defend himself, had not been taken from him.

226. M.P., who was twenty years of age at the time of the G8 (see paragraph 35 above), had been young and inexperienced. He had been with the *carabinieri*, with whom he was performing his military service, for only ten months. He had attended a three-month course at the *carabinieri* training college and a week-long course in the Velletri centre which amounted in substance to combat training (contrary to paragraph 20 of the UN Principles). Hence, in the applicants'

submission, he had not received the appropriate training in the use of firearms and had not undergone the necessary tests of his mental, physical and psychological capacities. By issuing him with a lethal weapon at the G8 summit, the authorities had placed both demonstrators and law-enforcement personnel at considerable risk.

227. The other two *carabinieri* in the jeep had also been young and lacking in experience: D.R. had been nineteen and a half and had been in military service for four months, while F.C. had not reached his twenty-fourth birthday and had been serving for twenty-two months.

(iii) Criteria for selecting armed forces personnel for the G8

228. The applicants argued 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. This had been the case with officers Leso, Truglio and Cappello. At the material time there had been no regulations laying down criteria for recruiting and selecting personnel to work on public-order operations, and the Government had omitted to specify the minimum requirements to be met by *carabinieri* deployed at events such as the G8. This was in breach of paragraphs 18 and 19 of the UN Principles. Three quarters of the troops deployed in Genoa had been young men who were performing military service within the *carabinieri* (*carabinieri di leva*) or who had recently been appointed as auxiliaries (*carabinieri ausiliari*); this gave some idea of their lack of experience. The applicants also pointed to the observations made by the CPT in the report on its visit to Italy (see paragraph 155 above).

(iv) Events following the fatal shooting

229. In the applicants' submission, there had been a violation of Article 2 of the Convention also on account of the fact that neither the law-enforcement officers present on Piazza Alimonda and in the vicinity nor the *carabinieri* on board the jeep had rendered assistance to Carlo Giuliani after the fatal shot was fired. They relied in that regard on paragraph 5 of the UN Principles. They further stressed that the jeep in which M.P. had been travelling, which was driven by another *carabiniere*, had driven twice over the body of the victim, who had been shot but was still alive.

(b) The Government

230. The Government observed that Carlo Giuliani's death had resulted from the individual action taken by M.P., which had not been ordered or authorised by his superior officers. It had therefore been an unforeseen and unforeseeable reaction. The conclusions of the investigation 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 operations. 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 (see paragraph 67 above), had not been specified nor had their existence been established.

231. In any event, there was no indication of any error of assessment in the organisation of the operation which could be linked to the events at issue. It was not possible to establish a causal link between the death of Carlo Giuliani and the attack on the *Tute Bianche* march, which had "nothing to do" with the events on Piazza Alimonda. Nor were there any grounds for asserting that the contingent of *carabinieri* should not have been sent to Piazza Alimonda, been given time to regroup and been deployed to deal with the demonstrators.

232. 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 context of the G8, the planning of operations had inevitably been incomplete and approximate, given that the demonstrators could either have remained peaceful or have engaged in violence. 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.

233. Likewise, the principles articulated in *McCann and Others* and *Andronicou and Constantinou* (both cited above) had no bearing on the present case, since they related to a policing operation with a precise target rather than an urban guerrilla-type situation lasting three days, which was in constant flux and was spread over an entire city. In the latter situation, preventive planning was impossible as the decisions were taken by the commanding officers on the ground in the light of the scale of the violence and the dangers.

234. The demonstrations in Genoa should have been peaceful and lawful. The video footage showed that most of the demonstrators had acted within the law and without recourse to violence. The authorities had done everything in their power to prevent disruptive elements from mingling with the demonstrators and causing the demonstrations to degenerate. Despite that, several criminal incidents, often unrelated, had occurred in different parts of the city. Considerable precautions had been taken against a possible deterioration of the situation. However, no authority – "without the help of a clairvoyant" – could have predicted exactly when, where and how violence would break out and in what directions it would spread.

235. While denying the existence of any shortcomings imputable to the State which could be connected to the death of Carlo Giuliani, the Government drew the Court's attention to the following points.

236. The change of plan on 19 July 2001 which had given the *carabinieri* a more dynamic role had been justified by the evolving situation and the demonstrators' increasingly aggressive behaviour.

237. There was nothing to show that the selection and training of personnel had been defective. The training received by M.P., D.R. and F.C. had included basic technical training when they were recruited and further courses on public-order operations and use of the equipment issued. In addition, M.P., D.R. and F.C. had acquired considerable experience at sporting and other events. Ahead of the G8 summit all the personnel to be 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 public-order techniques (see paragraphs 108-109 above). Furthermore, as the State had deployed approximately 18,000 officers on the ground (see paragraph 141 above), it would be unrealistic to expect that all the police officers and *carabinieri* would belong to elite units.

238. In the Government's submission, the communications system chosen by the *carabinieri* had had no bearing on events on Piazza Alimonda. The jeeps had not been armoured (but had been equipped with metal grilles protecting the front windscreen and the driver and front passenger windows) because they were merely logistical support vehicles not designed for operational use in a public-order setting. That was why the side windows at the back and the rear window were not fitted with grilles. Moreover, the demonstrators had managed to set fire even to a fully armoured vehicle (see paragraph 20 above). The jeeps had followed the *carabinieri* who were engaged in

clashes with demonstrators most probably on the drivers' initiative and to avoid being cut off, which would have made them an easy target for aggressive demonstrators.

239. M.P. had had a loaded pistol because, although he had finished firing tear gas, he had to be able to defend himself in the event of an attack. Had that not been the case it was likely that he, rather than the attacker, would have died.

240. 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 thus 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. Moreover, the tragic events had occurred very rapidly (within some tens of seconds in total).

241. The Government also pointed out that, according to the autopsy report, the fact that the vehicle had driven over Carlo Giuliani's body had not entailed any serious consequences for the latter (see paragraph 50 above). The emergency services had intervened promptly at the scene.

242. In the Government's submission, the authorities and the law-enforcement agencies had had no other course of action available to them. Although Article 2 § 2 (c) of the Convention permitted the taking of life for the purpose of "quelling a riot", the *carabinieri* had confined themselves to trying to disperse the violent demonstrators without causing damage and, after finding themselves trapped, to withdrawing in order to avoid being surrounded, which could have had more serious consequences. The attack on the jeep had been the result of the trap set by the demonstrators rather than of any malfunction. In view of the foregoing, the Court should avoid conveying the message that the State was to be held liable in all cases where rioting resulted in loss of human life.

2. The Chamber judgment

243. The Chamber examined the shortcomings complained of by the applicants, relating to the authorities' choice of communications system, the supposedly inadequate circulation of the service instructions for 20 July and the alleged lack of coordination between the law-enforcement agencies. It concluded that the latter had had to respond to sudden and unpredictable disturbances and that in the absence of an in-depth domestic investigation into the matter no immediate and direct link could be established between the shortcomings complained of and the death of Carlo Giuliani. Lastly, it held that the emergency services had been summoned with sufficient promptness, and stressed the severity of Carlo Giuliani's injuries (see paragraphs 228-244 of the Chamber judgment).

3. The Court's assessment

(a) General principles

244. According to the Court's case-law, Article 2 may imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 67 *in fine*, ECHR 2002-VIII; *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 50, ECHR 2009-...; and *Opuz v. Turkey*, no. 33401/02, § 128, ECHR 2009-...).

245. That does not mean, however, that a positive obligation to prevent every possibility of violence can be derived from this provision. The obligation in question must be interpreted in a way

which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Osman*, cited above, § 116, and *Maiorano and Others v. Italy*, no. 28634/06, § 105, 15 December 2009).

246. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. The Court has held that a positive obligation will arise where the authorities knew or ought to have known of the existence of a real and immediate risk to the life of an identified individual or individuals and failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Bromiley v. the United Kingdom* (dec.), no. 33747/96, 23 November 1999; *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-II; and *Branko Tomašić*, cited above, §§ 50-51).

247. In this connection it should be pointed out that in *Mastromatteo* (cited above, § 69), the Court drew a distinction between cases concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act (see *Osman* and *Paul and Audrey Edwards*, both cited above; see also the judgments adopted in the wake of *Mastromatteo*, namely *Branko Tomašić*, cited above, and *Opuz*, cited above), and those in which the obligation to afford general protection to society was in issue (see *Maiorano and Others*, cited above, § 107).

248. Furthermore, for the State's responsibility under the Convention to be engaged, it must be established that the death resulted from a failure on the part of the national authorities to do all that could reasonably be expected of them to avoid a real and immediate risk to life of which they had or ought to have had knowledge (see *Osman*, cited above, § 116; *Mastromatteo*, cited above, § 74; and *Maiorano and Others*, cited above, § 109).

249. According to its case-law, the Court must examine the planning and control of a policing operation resulting in the death of one or more individuals in order to assess whether, in the particular circumstances of the case, the authorities took appropriate care to ensure that any risk to life was minimised and were not negligent in their choice of action (see *McCann and Others*, cited above, §§ 194 and 201, and *Andronicou and Constantinou*, cited above, § 181). 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 policing operations must be sufficiently regulated by national law, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force. Accordingly, the Court must take into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination. Police officers should not be left in a vacuum when performing their duties: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect (see *Makaratzis*, cited above, §§ 58-59).

250. In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see

Nachova and Others, cited above, § 97; see also the Court's criticism of the "shoot to kill" instructions given to soldiers in *McCann and Others*, cited above, §§ 211-214).

251. Lastly, it should not be overlooked that Carlo Giuliani's death occurred in the course of a mass demonstration. While it is the duty of Contracting States to take reasonable and appropriate measures with regard to lawful demonstrations to ensure their peaceful conduct and the safety of all citizens, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used. In this area the obligation they enter into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved (see *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 34, Series A no. 139; *Oya Ataman v. Turkey*, no. 74552/01, § 35, ECHR 2006-XIII; and *Protopapa v. Turkey*, no. 16084/90, § 108, 24 February 2009). However, it is important that preventive security measures such as, for example, the presence of first-aid services at the site of demonstrations, be taken in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature (see *Oya Ataman*, cited above, § 39). Moreover, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Patyi and Others v. Hungary*, no. 5529/05, § 43, 7 October 2008). On the other hand, interferences with the right guaranteed by that provision are in principle justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others where demonstrators engage in acts of violence (see *Protopapa*, cited above, § 109).

(b) Application of these principles to the present case

252. The Court notes first of all that the demonstrations surrounding the G8 summit in Genoa degenerated into violence. On 20 July 2001 numerous clashes took place between the law-enforcement agencies and a section of the demonstrators. This is amply demonstrated by the video footage produced by the parties. These images also show violence being perpetrated by some police officers against demonstrators (see paragraph 139 above).

253. The fact remains, however, that the present application does not concern the organisation of the public-order operations during the G8 as a whole. It is confined to examining, among other things, whether, in the organisation and planning of that event, failings occurred which can be linked directly to the death of Carlo Giuliani. In that connection it should be noted that violent incidents had been observed well before the tragic events on Piazza Alimonda. In any event, there are no objective grounds for believing that, had those violent incidents not occurred, and had the *Tute Bianche* march not been charged by the *carabinieri*, M.P. would not have fired shots to defend himself against the unlawful violence to which he was being subjected. The same conclusion must be reached as regards the changes to the instructions issued to the *carabinieri* on the eve of the events and the choice of communications system.

254. The Court observes in that regard that the intervention of the *carabinieri* on Via Caffa (see paragraphs 42-44 above) and the attack on the jeep by demonstrators took place at a time of relative calm when, following a long day of clashes, the detachment of *carabinieri* had taken up position on Piazza Alimonda in order to rest, regroup and allow the injured officers to board the jeeps. As the footage shows, the clash between demonstrators and law-enforcement officers occurred suddenly and lasted only a few minutes before the fatal shooting. It could not have been predicted that an

attack of such violence would take place in that precise location and in those circumstances. Moreover, the reasons which drove the crowd to act as it did can only be speculated upon.

255. It should also be noted that the Government had deployed considerable numbers of personnel to police the event (18,000 officers – see paragraphs 141 and 237 above) and that all the personnel either belonged to specialised units or had received *ad hoc* training in maintaining order during mass gatherings. M.P., in particular, had taken part in training courses in Velletri (see paragraphs 108-109 and 237 above; contrast *Makaratzis*, cited above, § 70). In view of the very large numbers of officers deployed on the ground, they could not all be required to have lengthy experience and/or to have been trained over several months or years. To hold otherwise would be to impose a disproportionate and unrealistic obligation on the State. Furthermore, as the Government rightly stressed (see paragraph 233 above), a distinction has to be made between cases where the law-enforcement agencies are dealing with a precise and identifiable target (see, for instance, *McCann and Others* and *Andronicou and Constantinou*, both cited above) and those where the issue is the maintenance of order in the face of possible disturbances spread over an area as wide as an entire city, as in the instant case. Only in the first category of cases can all the officers involved be expected to be highly specialised in dealing with the task assigned to them.

256. It follows that no violation of Article 2 of the Convention can be found solely on the basis of the selection, for the G8 summit in Genoa, of a *carabiniere* who, like M.P., was only twenty years and eleven months of age at the material time and had been serving for only ten months (see paragraph 35 above). The Court also points out that it has already held that M.P.'s actions during the attack on the jeep did not amount to a breach of Article 2 in its substantive aspect (see paragraphs 194-195 above). It has not been established that he took unconsidered initiatives or acted without proper instructions (contrast *Makaratzis*, cited above, § 70).

257. It therefore remains to be ascertained whether the decisions taken on Piazza Alimonda immediately before the attack on the jeep by the demonstrators were in breach of the obligation to protect life. To that end the Court must take account of the information available to the authorities at the time the decisions were taken. There was nothing at that juncture to indicate that Carlo Giuliani, more than any other demonstrator or any of the persons present at the scene, was the potential target of a lethal act. Hence, the authorities were not under an obligation to provide him with personal protection, but were simply obliged to refrain from taking action which, in general terms, was liable to clearly endanger the life and physical integrity of any of the persons concerned.

258. The Court considers it conceivable, in an emergency situation such as that prevailing after the clashes of 20 July 2001, that the law-enforcement agencies might have to use non-armoured logistical support vehicles to transport injured officers. Likewise, it does not appear unreasonable not to have required the vehicles concerned to travel to hospital immediately, as this would have placed them at risk of crossing, without protection, a part of the city where further disturbances could have broken out. Before the attack in Via Caffa which, as the Court has just observed, was entirely sudden and unforeseeable (see paragraph 254 above), everything seemed to indicate that the jeeps were better protected on Piazza Alimonda, where they were next to a contingent of *carabinieri*. Furthermore, there is nothing in the file to suggest that the physical condition of the *carabinieri* in the jeep was so serious that they needed to be taken to hospital straightaway as a matter of urgency; the officers concerned were for the most part suffering from the effects of prolonged exposure to tear gas.

259. The jeeps next followed the detachment of *carabinieri* when the latter moved off towards Via Caffa; the reasons for this decision are not clear from the file. It may be that the move was made to avoid being cut off, which, as subsequent events demonstrated, could have been extremely dangerous. Furthermore, when the move was made, there was no reason to suppose that the demonstrators would be able to force the *carabinieri*, as they did, to withdraw rapidly and in disorderly fashion, thereby prompting the jeeps to retreat in reverse gear and leading to one of them becoming hemmed in. The immediate cause of these events was the violent and unlawful attack by the demonstrators. It is quite clear that no operational decision previously taken by the law-enforcement agencies could have taken account of this unforeseeable element. Moreover, the fact that the communications system chosen apparently only allowed information to be exchanged between the police and *carabinieri* control centres, but not direct radio contact between the police officers and *carabinieri* themselves (see paragraph 222 above), is not in itself sufficient basis for finding that there was no clear chain of command, a factor which, according to the Court's case-law, is liable to increase the risk of some police officers shooting erratically (see *Makaratzis*, cited above, § 68). M.P. was subject to the orders and instructions of his superior officers, who were present on the ground.

260. Moreover, the Court does not see why the fact that M.P. was injured and deemed unfit to remain on duty should have led those in command to take his weapon from him. The weapon was an appropriate means of personal defence with which to counter a possible violent and sudden attack posing an imminent and serious threat to life, and was indeed used for that precise purpose.

261. Lastly, as regards the events following the fatal shooting (see paragraph 229 above), the Court observes that there is no evidence that the assistance afforded to Carlo Giuliani was inadequate or delayed or that the jeep drove over his body intentionally. In any case, as demonstrated by the autopsy report (see paragraph 50 above), the brain injuries sustained as a result of the shot fired by M.P. were so severe that they resulted in death within a few minutes.

262. It follows that the Italian authorities did not fail in their obligation to do all that could reasonably be expected of them to provide the level of safeguards required during operations potentially involving the use of lethal force. There has therefore been no violation of Article 2 of the Convention on account of the organisation and planning of the policing operations during the G8 summit in Genoa and the tragic events on Piazza Alimonda.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION IN ITS PROCEDURAL ASPECT

263. The applicants alleged that the respondent State had failed in several respects to comply with the procedural obligations arising out of Article 2 of the Convention. The Government contested that allegation.

A. The issues raised by the applicants

1. *Alleged shortcomings in the performance of the autopsy and the cremation of the body*

(a) The parties' submissions

(i) The applicants

264. The applicants observed that on 21 July 2001 the public prosecutor had ordered an autopsy of Carlo Giuliani's body and had appointed two experts (Mr Canale and Mr Salvi) who were to begin work at 3 p.m. the same day. The public prosecutor had asked the police to inform M.P. and the victim's parents before 1 p.m. It had been impossible for the applicants at such short notice to appoint a forensic medical expert of their choosing to attend the autopsy. Moreover, the public prosecutor had authorised the cremation of the body on 23 July 2001, well before the results of the autopsy were known (the experts had been given sixty days in which to complete their report).

265. The applicants had at no point been "parties" to the proceedings, since under Italian law an application to join the proceedings as a civil party could only be made once the accused had been committed for trial. As injured parties, they had had only limited powers to participate in the investigation. These were even more restricted when the public prosecutor ordered technical examinations which could not be repeated, on the basis of Article 360 of the CCP (see paragraph 150 above); in that case, the injured party could only request the public prosecutor to apply to the judge for the immediate production of evidence. Only if that application was granted could the injured party request the investigating judge to put questions to the prosecuting authorities' experts. In the instant case the autopsy had been classified as a technical examination which could not be repeated.

266. Lastly, the applicants observed that the full body scan carried out on Carlo Giuliani's body (see paragraph 60 above) had revealed a metal fragment lodged in his head, but that this fragment had not been found or recorded (see Mr Salvi's statement during the "trial of the twenty-five" – paragraph 130 above).

(ii) The Government

267. The Government argued that extracting the metal fragment would have been not just pointless but impossible. It would not have yielded any useful additional information regarding the circumstances in which M.P. had had recourse to lethal force. Micro-fragments of lead had already been found on the victim's balaclava, the analysis of which had confirmed the intermediate object theory. Furthermore, at the time Carlo Giuliani's body was returned to his family for cremation there had been no reason to suppose that the autopsy report, which had not yet been written, would be "superficial". It was usual practice, moreover, to hand over the body to the relatives once the experts had indicated that they had no further need of it. This spared the victim's relatives a further ordeal and respected their rights under Article 8 of the Convention.

268. The cremation had been requested by the applicants themselves, who had been informed that an autopsy was due to take place and could have attended it. Moreover, the applicants' representative had not made any application for the immediate production of evidence (the

Government referred to *Sottani v. Italy* (dec.), no. 26775/02, ECHR 2005-III, in which the Court had dismissed a similar complaint).

269. As the Court had had occasion to state (the Government referred, *mutatis mutandis*, to *R.K. and A.K. v. the United Kingdom*, no. 38000/05, § 36, 30 September 2008), whether or not an investigation had been conducted properly had to be assessed *ex ante*, on the basis of the facts known when the decision was taken, and not *ex post facto*. An investigation was defective for the purposes of the Convention if the shortcomings identified undermined its capability of establishing the circumstances of the case or the persons responsible (the Government referred to *Makaratzis*, cited above, § 74). Only unusual circumstances had led the Court, in certain cases, to find a procedural violation of Article 2 without finding a substantive violation of the same provision or of Article 38 of the Convention (the Government referred, by way of example, to *Hugh Jordan v. the United Kingdom* (no. 24746/94, ECHR 2001-III)), and this had in any case given rise to dissenting opinions (the Government cited the example of *Ramsahai and Others v. the Netherlands* ([GC], no. 52391/99, ECHR 2007-VI)). In the instant case, the conclusions of the domestic authorities as to the existence of self-defence had been endorsed by the Chamber. Accordingly, any defect there might have been in the investigation had no impact on its effectiveness.

270. In any event, the effectiveness requirement was an obligation as to means rather than results. The Government conceded that "certain documents noted difficulties in reconstructing the events, on account, *inter alia*, of the unavailability of some elements". However, those difficulties had not been attributable to the authorities or to any negligence on their part, but had resulted from objective circumstances beyond their control. The investigators had therefore complied with their obligation as to means. Moreover, even assuming that any doubts persisted with regard to some elements, it was the accused and not the victim who had to be given the benefit of the doubt in criminal matters. Lastly, it should not be overlooked that the Court had judged domestic investigations to be "effective" where errors had been committed by the authorities (the Government referred to *Grams*, cited above, and *Menson and Others v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

(b) The Chamber judgment

271. The Chamber observed that the scan performed on Carlo Giuliani's body had revealed the presence of a metal fragment lodged in his head which was not extracted or recorded, although analysing it would have been important "for the purposes of the ballistic analysis and for the reconstruction of events". Moreover, the doctors performing the autopsy had not "explicitly stated whether the shot had been direct". Crucial questions had therefore remained unanswered, leading the public prosecutor's office to describe the autopsy report as "superficial". These shortcomings had been aggravated by the fact that authorisation had been given to cremate the body before the content of the expert medical report was known, preventing any further tests from being carried out. The Chamber also deplored the short notice given to the applicants for the purposes of appointing an expert of their choosing to participate in the autopsy. Accordingly, it held that there had been a violation of Article 2 of the Convention in its procedural aspect (see paragraphs 245-251 of the Chamber judgment).

2. Failure to institute proceedings with a view to establishing possible liability on the part of certain police officers

(a) The parties' submissions

(i) The applicants

272. In the applicants' submission, Article 2 of the Convention had been breached also on account of the absence of an administrative or criminal investigation into the conduct of the law-enforcement agencies at the G8 in Genoa. An investigation could have shed light on responsibilities within the chain of command and enabled administrative sanctions to be imposed if necessary. The absence of any administrative investigation had been confirmed by the Government (see paragraph 280 below) and by the statements made by Colonel Truglio at the "trial of the twenty-five".

273. It followed that no assessment had been made at any point of the authorities' overall liability with regard to the shortcomings in the planning, coordination and conduct of the operations and their inability to ensure proportionate use of force in order to disperse the demonstrators. There had been no scrutiny of the instructions issued to the law-enforcement officers or the reasons why the latter had been issued only with live ammunition. The prosecuting authorities had never considered whether M.P.'s superior officers could be held liable for having left a lethal weapon in the hands of a *carabiniere* who was considered unfit to remain on duty.

274. If the Government were correct in their assertion that the investigation could not be extended to persons other than those suspected of having committed the offence, it was the domestic law that was incompatible with Article 2 of the Convention. Furthermore, the public prosecutor, in requesting that the proceedings be discontinued, had referred to problems (without specifying what they might be). Since this finding had not prompted an investigation into the causes of the problems and who was responsible for them, the Convention had also been breached on account of the prosecuting authorities' choice to conduct an incomplete investigation.

275. The applicants deplored the fact that, far from being punished, M.P.'s superior officers (officers Leso, Truglio, Cappello and Mirante) had all obtained promotion. Furthermore, some police officers suspected of unlawful arrest and violence towards demonstrators had likewise been promoted. However, in a judgment of 18 May 2010 the Genoa Court of Appeal had sentenced some of these senior officers to prison terms ranging from three years and eight months to five years for offences committed at Diaz school during the G8 (twenty-five of the twenty-seven accused had been convicted and had received custodial sentences totalling eighty-five years). The day after that judgment was delivered, the Under-Secretary of the Interior had stated that none of the senior officers convicted would be dismissed and that they continued to enjoy the Minister's confidence.

(ii) The Government

276. Referring to their observations concerning the circumstances in which an investigation could be considered to be defective (see paragraph 269 above), the Government alleged that, since no liability arose in connection with the conduct of the public-order operations, the fact that it had not been the subject of investigation was without consequence. The Chamber itself had concluded that the planning and organisation of the G8 in Genoa had been compatible with the obligation to

protect life under Article 2. Accordingly, there was no reason to investigate the persons responsible for the planning.

277. The Chamber had criticised the investigation for not elucidating the reasons why M.P. had not been taken straight to hospital, had been left in possession of a loaded pistol and had been placed in a jeep that was cut off and had no protection. The Government observed that the domestic investigation had been unable to establish with certainty whether the jeeps had followed the detachment of *carabinieri* on the drivers' own initiative or because they were ordered to do so. In any event, this had been the only reasonable course of action given that the jeeps were required to travel together and under cover of the detachment. M.P. had been placed in the jeep because of a sudden event (his personal state) and the vehicle had become cut off because of the "trap" set by the demonstrators. The pistol had been M.P.'s means of defending himself.

278. As M.P. had acted in self-defence, it was difficult to see what offence could be imputed to those responsible for the public-order operations. Article 7 of the Convention required, for the purpose of imposing a penalty, an intellectual link (knowledge and intent) disclosing an element of responsibility in the conduct of the person who had physically carried out the offence (the Government referred to *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 116, 20 January 2009). In the instant case no physical offence or knowledge of and intention to commit such an offence could be imputed to those responsible for policing the G8 summit.

279. Furthermore, 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 operations could in no way be considered to have been the direct cause of the tragic events on Piazza Alimonda. It would therefore have been superfluous to extend the investigation to include high-ranking police officers or to try to identify other persons potentially responsible. If the Chamber judgment were upheld on this point the State would be obliged to institute pointless and damaging investigations which would yield no results and would interfere in an arbitrary manner in the lives of innocent individuals.

280. No administrative or disciplinary investigation had been opened concerning the *carabinieri*. However, two sets of criminal proceedings were pending against several police officers for acts of violence allegedly committed against demonstrators on 21 and 22 July 2001, after Carlo Giuliani's death. The "overall context" of the G8 had also been examined in the course of the parliamentary inquiry (see paragraphs 107-117 above), the "trial of the twenty-five" (see paragraphs 121-138 above) and the investigations conducted by the Ministry of the Interior (see paragraph 140 above).

(b) The Chamber judgment

281. The Chamber deplored the fact that the domestic investigation had been confined to ascertaining whether M.P. and F.C. were to be held liable and had not studied the "overall context" in order to determine whether the authorities had planned and managed the public-order operations in such a way as to prevent the type of incident which had caused Carlo Giuliani's death. In particular, no light had been shed on the reasons why M.P. had not been taken to hospital immediately, had been left in possession of a loaded pistol and had been placed in an isolated jeep that had no protection. These questions had required an answer, given that "the fatal shot [was]

closely linked to the situation in which M.P. and F.C. found themselves" (see paragraphs 252-254 of the Chamber judgment).

3. Other alleged shortcomings in the domestic investigation

282. The applicants contended that there had been numerous other shortcomings in the domestic investigation. The Government contested this assertion. The Chamber did not consider it necessary to examine these issues (see paragraph 255 of the Chamber judgment).

(a) The parties' submissions

(i) The applicants

283. The applicants alleged that the investigation had lacked impartiality and independence, had not been thorough and, having resulted in a decision to discontinue the proceedings, had deprived them of a public hearing and hence of public scrutiny of the circumstances surrounding their relative's death.

284. In their request for the proceedings to be discontinued the prosecuting authorities had expressed uncertainty as to M.P.'s intentions when he fired the shots, finding that it was not possible to determine whether M.P. had simply wanted to frighten his assailants or had sought to defend himself by firing in their direction, accepting the risk that he might hit someone. According to the prosecuting authorities, it could have been a case of causing death by negligence, of knowingly taking the risk of killing someone or of intentional homicide. After dismissing the third possibility (without due explanation), the public prosecutor had concluded that M.P. had acted in self-defence and that a request should be made for the proceedings to be discontinued owing to the existence of "doubts" based on grounds of justification (see paragraphs 72-75 above). In the applicants' submission, the prosecuting authorities' lack of certainty regarding the establishment of the facts had made public proceedings and further investigation necessary.

285. The applicants conceded that they had been able to object to the public prosecutor's request to discontinue the proceedings and that following that objection a hearing had been held in private before the investigating judge. However, the hearing had been conducted in camera, with only the parties and their counsel allowed to attend. Furthermore, the investigating judge had had to take a decision on the basis of the evidence submitted by the prosecuting authorities, who had effectively accepted without question the version of events given by the law-enforcement agencies' representatives, without the injured party having the opportunity of questioning the accused, witnesses or experts. The investigating judge had established the facts on the basis of an anonymous account posted on a website with possible links to French anarchists; a public hearing should have been held to test the accuracy of that account. Finally, the applicants had had no effective remedy by which to challenge the investigating judge's decision to discontinue the proceedings, as an appeal on points of law was admissible only on grounds of nullity, which did not apply in the instant case (Article 409 § 6 of the CCP – see paragraph 151 above).

286. It also had to be borne in mind that the forensic examinations ordered by the public prosecutor had produced contradictory findings. The applicants stressed the following points:

(a) according to the "Cantarella" ballistics report (5 December 2001), there was a 90% probability that the spent cartridge found inside the jeep matched M.P.'s gun, while the cartridge found near Carlo Giuliani's body was only a 10% match (see paragraph 54 above);

(b) the "Manetto" ballistics report (15 January 2002) stated that the two cartridges had come from M.P.'s pistol and that the fatal shot had been fired in a downward direction, from a distance of between 110 and 140 centimetres (see paragraph 55 above);

(c) the ballistics report of 26 July 2002 by a panel of experts concluded that before hitting Carlo Giuliani the bullet had collided with an object which had deflected its trajectory (see paragraphs 56-62 above);

(d) according to the autopsy report, M.P. had fired downwards and the shot had not been deflected (see paragraph 50 above).

287. Furthermore, Mr Romanini should not have been appointed as an expert, owing to the fact that in September 2001 he had published an article in a specialist weapons journal in which he stated that M.P.'s conduct was to be regarded as a "clear and wholly justified defensive reaction" (see paragraph 56 above). Questions regarding Mr Romanini's impartiality 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. As the case had not progressed beyond the preliminary investigation stage, the applicants had not had an opportunity to request Mr Romanini's exclusion. The forensic examination in which he had participated had, moreover, been of great significance, as it had given rise to the intermediate object theory, which the investigating judge had accepted.

288. In any case, since the judicial authority had not acted promptly at the scene of the events and had not managed to preserve the scene, the bullets had never been recovered, with the result that no proper ballistics examination had been possible. Only two spent cartridges had been found, and it was not even certain that they were from the bullets fired by M.P.

289. With regard to the first and second sets of ballistics tests, the applicants conceded that it had been open to them in theory to request the public prosecutor to apply to the judge for the immediate production of evidence. However, as the prosecuting authorities themselves had made such an application and it had been refused, the applicants had seen no point in making the request.

290. The public prosecutor had also decided to entrust a significant part of the investigation to the *carabinieri*, and in particular to the Genoa provincial command and the mobile brigade of the Genoa *questura*. In particular, the *carabinieri* had:

– seized M.P.'s weapon and certified that it had a magazine containing fewer than fifteen rounds of ammunition;

– carried out the initial inspection of Carlo Giuliani's body and of the jeeps;

– seized one of the jeeps and the material inside it, including a spent cartridge;

– compiled photographic evidence of the equipment which M.P. had at the time of the events;

– acquired, checked and examined the audiovisual material relating to the events of 20 July 2001;

– drawn up the records of some of the statements made to the public prosecutor.

291. The applicants further stressed that immediately after Carlo Giuliani's death, M.P., D.R. and F.C. had left the scene (with the jeep and weapons) and had been absent until the public prosecutor had begun hearing evidence several hours later. They had had an interview with their superior officers and had been able to communicate among themselves before being questioned by the public prosecutor. Moreover, D.R. had not given evidence until the day after the events and

some of the law-enforcement officers present at the scene had been questioned only after a considerable delay (Captain Cappello had made a statement on 11 September 2001 and his deputy Zappia on 21 December 2001).

292. In the applicants' view, several *carabinieri* and police officers, and the *questore* himself, should have been placed under investigation in the judicial proceedings concerning Carlo Giuliani's death. The Genoa *questura* had played a "major" role in the planning, organisation and management of the public-order operations during the G8 summit. The Genoa *questore* was the most senior official responsible for public order, the police control centre had been run by the *questura* and officers from the latter had issued and carried out orders to intervene against the *Tute Bianche* march. To guarantee the independence and impartiality of the investigation the public prosecutor should have entrusted it to the revenue police (*Guardia di finanza*), a branch of the police which was not implicated in the events.

(ii) The Government

293. The Government submitted that the investigation had been conducted with the requisite promptness. The judicial authority had spared no effort in seeking to establish the facts and had deployed the most advanced technologies as well as more traditional methods. Hence, the prosecuting authorities 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 local residents who had witnessed the events. A reconstruction of the events and test shootings had been carried out at the scene. A large body of audiovisual material, from the law-enforcement agencies and private sources, had been included in the case file. Three sets of ballistics tests had been ordered by the public prosecutor's office and the investigating judge had relied on material from sources close to the demonstrators themselves (an account published on an anarchist website).

294. The investigation had been opened as a matter of course and the applicants had had the opportunity to participate in it fully from the outset by being represented by lawyers and appointing experts of their own choosing. In particular, the applicants' experts had participated in the third set of ballistics tests and in the reconstruction of the events (see paragraph 57 above).

295. The applicants had also been able to make criticisms and requests when objecting to discontinuation of the case, and the investigating judge had provided them with sufficiently detailed reasons for refusing their requests for further investigation (see paragraph 104 above). While it was true that the applicants had not been able to request the immediate production of evidence in relation to the first steps in the investigation, checks of that kind were a matter exclusively for the police. When it came to the third set of ballistics tests, the public prosecutor had asked the parties whether they had any objections to the use of the procedure under Article 360 of the CCP, and there had been no objections. While the Government conceded that the first and second sets of ballistics tests had been carried out unilaterally (see paragraphs 54 and 55 above), they submitted that these had been no more than routine checks, aimed solely at establishing whether or not the two spent cartridges that had been found matched M.P.'s weapon. Moreover, M.P. had already admitted firing two shots and the weapon had in any case been examined again during the third set of ballistics tests.

296. 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 involved

only in tasks of lesser importance and mainly when it came to seizing objects in their possession – for example, the vehicle and the weapon – or summoning members of the *carabinieri* to appear. In addition, the prosecuting authorities had kept the number of tasks delegated to a minimum, preferring to conduct the most important interviews themselves and also those liable to be influenced by the fact that the interviewer was a law-enforcement officer. Given the level of autonomy and independence of the judiciary in Italy and the fact that the investigation had to be entrusted to a police authority, the State could not be said to have lacked impartiality in any sense. Furthermore, the findings of the investigation and the reasons given for discontinuing the proceedings had provided no grounds for supposing that there had been any attempt at a cover-up.

297. 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 (see paragraph 55 above). At the time of Mr Romanini's appointment the prosecuting authorities had been unaware that he had expressed the view that M.P. had acted in self-defence (see paragraph 56 above). In the Government's submission, the aim of Mr Romanini's article had been simply to propound a political theory based on a comparison between the incident in question and an earlier tragedy in Naples. The fact that he had written the article did not render Mr Romanini unfit to fulfil his mandate in an objective and impartial manner, as his task had not consisted in examining whether the facts supported the hypothesis that M.P. had acted in self-defence. The panel of experts had been asked in particular to give its views on the trajectory of the bullet. Moreover, Mr Romanini's role had been confined to conducting test shootings in the presence of the other experts, the applicants and the latter's experts. That "purely technical and essentially physical" procedure had not afforded scope for preconceived judgments liable to influence the outcome of the investigation. The Government further observed that the applicants had not raised any objections to Mr Romanini's appointment.

B. The Court's assessment

1. *General principles*

298. Having regard to their fundamental character, Articles 2 and 3 of the Convention contain a procedural obligation to carry out an effective investigation into alleged breaches of the substantive limb of these provisions (see *Ergi v. Turkey*, 28 July 1998, § 82, *Reports* 1998-IV; *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-106, *Reports* 1998-VIII; and *Mastromatteo*, cited above, § 89). A general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State (see *McCann and Others*, cited above, § 161). The State must therefore ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Zavoloka v. Latvia*, no. 58447/00, § 34, 7 July 2009).

299. The State's obligation to carry out an effective investigation has in the Court's case-law been considered as an obligation inherent in Article 2, which requires, *inter alia*, that the right to life be "protected by law". Although the failure to comply with such an obligation may have consequences for the right protected under Article 13, the procedural obligation of Article 2 is seen as a distinct obligation (see *İlhan v. Turkey* [GC], no. 22277/93, §§ 91-92, ECHR 2000-VII; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 148, ECHR 2004-XII; and *Šilih v. Slovenia* [GC], no. 71463/01, §§ 153-154, 9 April 2009). It can give rise to a finding of a separate and independent "interference". This conclusion derives from the fact that the Court has consistently examined the question of procedural obligations separately from the question of compliance with the substantive obligation (and, where appropriate, has found a separate violation of Article 2 on that account) and the fact that on several occasions a breach of a procedural obligation under Article 2 has been alleged in the absence of any complaint as to its substantive aspect (see *Šilih*, cited above, §§ 158-159).

300. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Güleç*, cited above, §§ 81-82, and *Oğur*, cited above, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also a practical independence. What is at stake here is nothing less than public confidence in the State's monopoly on the use of force (see *Hugh Jordan*, cited above, § 106; *Ramsahai and Others* [GC], cited above, § 325; and *Kolevi v. Bulgaria*, no. 1108/02, § 193, 5 November 2009).

301. 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 v. Turkey*, 19 February 1998, § 87, *Reports* 1998-I) and of identifying and – if appropriate – punishing those responsible (see *Oğur*, cited above, § 88). 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 the clinical findings, including the cause of death (as regards autopsies, see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; on the subject of witnesses, see, for example, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; as regards forensic examinations, see, for example, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). 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 *Avşar*, cited above, §§ 393-395).

302. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *Kolevi*, cited above, § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Velcea and Mazăre v. Romania*, no. 64301/01, § 105, 1 December 2009).

303. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Hugh Jordan*, cited above, § 109, and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 191, ECHR 2009-...; see also *Güleç*, cited above, § 82, where the victim's father was not informed of the decision not to prosecute, and *Oğur*, cited above, § 92, where the family of the victim had no access to the investigation or the court documents).

304. However, disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects to private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement under Article 2. The requisite access of the public or the victim's relatives may therefore be provided for in other stages of the procedure (see, among other authorities, *McKerr v. the United Kingdom*, no. 28883/95, § 129, ECHR 2001-III). Moreover, Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation (see *Ramsahai and Others* [GC], cited above, § 348, and *Velcea and Mazăre*, cited above, § 113).

305. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-104, *Reports* 1998-VI; *Tanrıkulu*, cited above, § 109; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-107, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, 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 (see *McKerr*, cited above, §§ 111 and 114, and *Opuz*, cited above, § 150).

306. However, it cannot be inferred from the foregoing that Article 2 may entail the right to have third parties prosecuted or sentenced for a criminal offence (see *Šilih*, cited above, § 194; see also, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I) or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see *Zavoloka*, cited above, § 34(c)).

On the other hand, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished. The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined (see *Öneryıldız*, cited above, § 96, and *Mojsiejew v. Poland*, no. 11818/02, § 53, 24 March 2009).

2. Application of these principles to the present case

307. The Court observes at the outset that it has just concluded, from the standpoint of the substantive limb of Article 2, that the use of lethal force was "absolutely necessary in defence of any person from unlawful violence" (see paragraph 194 above) and that there has been no violation of the positive obligation to protect life on account of the organisation and planning of the policing

operations during the G8 summit in Genoa and the tragic events on Piazza Alimonda (see paragraph 262 above).

308. In arriving at that conclusion the Court, on the basis of the information provided by the domestic investigation, had available to it sufficient evidence to satisfy it that M.P. had acted in self-defence in order to protect his life and physical integrity and those of the other occupants of the jeep against a serious and imminent threat, and that no liability in respect of Carlo Giuliani's death could be attributed under Article 2 of the Convention to the persons responsible for the organisation and planning of the G8 summit in Genoa.

309. It follows that the investigation was sufficiently effective to enable it to be determined whether the use of lethal force had been justified in the present case (see the case-law cited at paragraph 301 above) and whether the organisation and planning of the policing operations had been compatible with the obligation to protect life.

310. The Court further notes that several decisions taken by the organisers of the G8 and by the commanding officers of the battalions present on the ground were examined and subjected to critical scrutiny in the course of the "trial of the twenty-five" (see paragraphs 121-138 above) and of the inquiry conducted by the parliamentary commission (see paragraphs 107-117 above). Furthermore, the Genoa *questura* was the subject of an administrative inspection (which identified problems in the organisation of the law-enforcement operations and "potentially punishable" incidents) and the Public Safety Department of the Ministry of the Interior proposed taking disciplinary action against several police officers and the Genoa *questore* (see paragraph 140 above).

311. It remains to be determined whether the applicants were afforded access to the investigation to the extent necessary to safeguard their legitimate interests, whether the proceedings satisfied the requirement of promptness arising out of the Court's case-law and whether the persons responsible for and conducting the investigation were independent from those implicated in the events.

312. In that connection the Court observes that it is true that under Italian law the injured party may not apply to join the proceedings as a civil party until the preliminary hearing, and that no such hearing took place in the present case. Nevertheless, at the stage of the preliminary investigation injured parties may exercise rights and powers expressly afforded to them by law. These include the power to request the public prosecutor to apply to the investigating judge for the immediate production of evidence (Article 394 of the CCP) and the right to appoint a legal representative. In addition, injured parties may submit pleadings at any stage of the proceedings and, except in cassation proceedings, may request the inclusion of evidence (Article 90 of the CCP – see *Sottani*, cited above, where these considerations led the Court to conclude that the civil limb of Article 6 § 1 of the Convention was applicable to criminal proceedings in which the applicant participated as an injured party but not as a civil party).

313. It is not disputed in the instant case that the applicants had the option to exercise these rights. In particular, they appointed experts of their own choosing, whom they instructed to prepare expert reports which were submitted to the prosecuting authorities and the investigating judge (see paragraphs 64-66 above), and their representatives and experts participated in the third set of ballistics tests (see paragraph 57 above). Furthermore, they were able to lodge an objection against the request to discontinue the proceedings and to indicate additional investigate measures which

they wished to see carried out. The fact that the Genoa investigating judge, making use of her powers to assess the facts and the evidence, refused their requests (see paragraph 104 above) does not in itself amount to a violation of Article 2 of the Convention, particularly since the investigating judge's decision on these points does not appear to the Court to have been arbitrary.

314. The applicants complained in particular that they had not had enough time to appoint an expert of their choosing ahead of the autopsy on 21 July 2001. They also complained of the "superficial" nature of the autopsy report and the impossibility of conducting further expert medical examinations because of the cremation of the body (see paragraph 264 above).

315. The Court accepts that giving notice of an autopsy scarcely three hours before the beginning of the examination (see paragraph 48 above) may make it difficult in practice, if not impossible, for injured parties to exercise their power to appoint an expert of their choosing and secure the latter's attendance at the forensic examinations. The fact remains, however, that Article 2 does not require, as such, that the victim's relatives be afforded this possibility.

316. It is also true that, where an expert medical examination is of crucial importance in determining the circumstances of a death, significant shortcomings in the conduct of that examination may amount to serious failings capable of undermining the effectiveness of the domestic investigation. The Court reached that conclusion, in particular, in a case where, following allegations that the death had been the result of torture, the autopsy report, signed by doctors who were not forensic specialists, had failed to answer some fundamental questions (see *Tanlı*, cited above, §§ 149-154).

317. The present case, however, differs significantly from *Tanlı*. Moreover, the applicants did not provide evidence of any serious failings in the autopsy performed on Carlo Giuliani. It was not alleged, either, that the forensic experts had failed to establish the cause of death with certainty; the applicants did not contest before the Court the domestic authorities' conclusion that Carlo Giuliani had died as a result of the shot fired by M.P.

318. The applicants stressed that the forensic experts had omitted to extract and record a fragment of bullet which, according to the results of the scan performed on the body, was lodged in the victim's head (see paragraph 266 above). The Court notes that Mr Salvi, one of the experts, explained at the "trial of the twenty-five" that the fragment had been very small and very difficult to find because of the damage to the brain tissue and the large amount of blood present. It had been regarded as a "minor detail" and the search for it had been discontinued (see paragraph 130 above).

319. The Court does not consider it necessary to assess the pertinence of this explanation. For the purposes of examining the applicants' complaint, it simply observes that the fragment in question might have served to shed light on the trajectory of the fatal bullet (and in particular whether it had been deflected by another object before hitting Carlo Giuliani). However, as the Court has just noted in relation to the substantive aspect of Article 2 (see paragraphs 192-193 above), the use of force would have been justified under this provision even if the "intermediate object theory" had been dismissed. It follows that the metal fragment in question was not crucial to the effectiveness of the investigation. Moreover, the Court observes that the cremation of Carlo Giuliani's body, which made any further expert medical examinations impossible, was authorised at the applicants' request (see paragraph 49 above).

320. The Court also notes that the procedural obligations arising out of Article 2 require that an effective "investigation" be carried out and do not require the holding of public hearings. Hence, if the evidence gathered by the authorities is sufficient to rule out any criminal responsibility on the

part of the State agent who had recourse to force, the Convention does not prohibit the discontinuation of the proceedings at the preliminary investigation stage. As the Court has just found, the evidence gathered by the prosecuting authorities, and in particular the footage of the attack on the jeep, led to the conclusion, beyond reasonable doubt, that M.P. had acted in self-defence, which constitutes a ground of justification under Italian criminal law.

321. Furthermore, it cannot be said that the prosecuting authorities accepted without question the version supplied by the law-enforcement officers implicated in the events. They not only questioned numerous witnesses, including demonstrators and third parties who had witnessed the events on Piazza Alimonda (see paragraphs 45-46 above), but also ordered several forensic examinations, including an expert medical examination and three sets of ballistics tests (see paragraphs 48-50 and 54-62 above). The fact that the experts did not agree on all aspects of the reconstruction of events (and, in particular, on the distance from which the shot had been fired and the trajectory of the bullet) was not, in itself, such as to make further investigations necessary, given that it was for the judge to assess the pertinence of the explanations given by the various experts and whether they were compatible with the existence of grounds of justification exempting the accused from criminal responsibility.

322. It is true that the *carabinieri*, that is, the armed force to which M.P. and F.C. belonged, were given the task of conducting certain checks (see paragraph 290 above). However, in view of the technical and objective nature of those checks, this fact cannot be said to have adversely affected the impartiality of the investigation. To hold otherwise would be to impose unacceptable restrictions in many cases on the ability of the courts to call on the expertise of the law-enforcement agencies, which often have particular competence in the matter (see, *mutatis mutandis* and from the standpoint of Article 6 of the Convention, *Emmanuello v. Italy* (dec.), no. 35791/97, 31 August 1999). In the instant case, the law-enforcement agencies were already present at the scene and were thus able to secure the area and search for and record any items of relevance to the investigation. Given the number of people on Piazza Alimonda and the confusion reigning after the shots were fired, the authorities cannot be criticised for not finding objects as small as the bullets fired by M.P.

323. In the Court's view, Mr Romanini's appointment as an expert raises some more delicate issues, as he had openly defended the view, in an article written for a specialist journal, that M.P. had acted in self-defence (see paragraph 56 above). It should be observed in this connection that the expert reports ordered in the context of the investigation were designed, among other things, to provide evidence for or against that view. The presence of an expert who had preconceived ideas on the subject was therefore far from reassuring (as regards the expert's role in judicial proceedings, see *Brandstetter v. Austria*, 28 August 1991, § 59, Series A no. 211). Nevertheless, Mr Romanini was just one member of a four-expert team (see, *mutatis mutandis*, *Mirilashvili v. Russia*, no. 6293/04, § 179, 11 December 2008). He had been appointed by the prosecuting authorities and not by the investigating judge and was therefore not acting as a neutral and impartial auxiliary of the latter (see, conversely, *Bönisch v. Austria*, 6 May 1985, § 33, Series A no. 92, and *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47, ECHR 2007-VIII). Furthermore, the tests he was required to carry out for the purposes of the ballistics report were of an essentially objective and technical nature. Accordingly, his presence was not capable, in itself, of compromising the impartiality of the domestic investigation.

324. Furthermore, it has not been established by the applicants that the investigation lacked impartiality and independence or that the branch of the police which performed certain steps in the investigation was implicated in the events to such an extent that the entire investigation should have been entrusted to the revenue police (see the applicant's allegations at paragraphs 283 and 292 above).

325. Finally, as regards the promptness of the investigation, the Court observes that it was conducted with the requisite diligence. Carlo Giuliani died on 20 July 2001 and the public prosecutor's office closed the preliminary investigation, with a request for the case to be discontinued, approximately one year and four months later, in late 2002. On 10 December 2002 the applicants objected to that request (see paragraph 76 above) and the hearing before the Genoa investigating judge took place four months later, on 17 April 2003 (see paragraph 80 above). The text of the decision discontinuing the proceedings was deposited with the registry twenty-three days later, on 5 May 2003 (see paragraph 82 above). In the circumstances, it cannot be said that the investigation was beset by excessive delays or lapses of time.

326. In the light of the foregoing, the Court concludes that there has been no violation of Article 2 of the Convention in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

327. 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. They referred to paragraphs 5 and 8 of the UN Principles (see paragraph 154 above) and relied on Article 3 of the Convention, which provides:

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

328. 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.

329. The Chamber, observing that it could not be inferred from the law-enforcements officers' conduct that they had the intention to inflict pain or suffering on Carlo Giuliani, took the view that it was not necessary to examine the case under Article 3 of the Convention (see paragraphs 260-261 of the Chamber judgment).

330. The Court considers that the facts complained of fall within the scope of the examination it has carried out under Article 2 of the Convention. Accordingly, it sees no reason to depart from the approach taken by the Chamber.

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

331. 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 § 1, in its relevant parts, provides:

> "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."

332. The applicants submitted that, in view of the inconsistent and incomplete findings of the investigation, the case had required more detailed examination within a framework of genuine adversarial proceedings.

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

334. The Chamber considered that, in view of its finding of a violation of Article 2 of the Convention in its procedural aspect, it was not necessary to examine the case under Article 13 or Article 6 § 1 (see paragraphs 265-266 of the Chamber judgment).

335. Bearing in mind that in the instant case the applicants did not have the possibility under Italian law of applying to join the criminal proceedings against M.P. as civil parties (see, conversely and *mutatis mutandis*, *Perez*, cited above, §§ 73-75), the Court considers that their complaints should not be examined under Article 6 § 1 of the Convention, but rather in the light of the more general obligation on the Contracting States under Article 13 of the Convention to provide an effective remedy in respect of breaches of the Convention, including of Article 2 (see, *mutatis mutandis*¸ *Aksoy v. Turkey*, 18 December 1996, §§ 93-94, *Reports* 1996-VI).

336. The Court reiterates that the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Abramiuc v. Romania*, no. 37411/02, § 119, 24 February 2009).

337. In the instant case the Court has found that an effective domestic investigation satisfying the requirements of promptness and impartiality under Article 2 of the Convention was conducted into the circumstances surrounding the death of Carlo Giuliani (see paragraphs 307-326 above). That investigation was capable of leading to the identification and punishment of the persons responsible. It is true that the applicants were not able to apply to join the proceedings as civil parties; nevertheless, they were able to exercise the powers afforded to injured parties under Italian law. In any event, their lack of status as civil parties resulted from the fact that the criminal judge had concluded that no offence punishable under criminal law had been committed. Finally, there was nothing to prevent the applicants from bringing a civil action for compensation either before or in parallel with the criminal proceedings.

338. In these circumstances, the Court considers that the applicants had effective remedies available to them in respect of their complaint under Article 2 of the Convention.

339. It follows that there has been no violation of Article 13 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

340. The applicants alleged that the Government had not cooperated sufficiently with the Court. They relied on Article 38 of the Convention, which provides:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

341. In the applicants' submission, the Government had given false or incomplete replies (for instance, regarding the professional experience of the *carabinieri* in the jeep and the presence of a riot shield in the vehicle). They had also omitted to give details of some essential circumstances. In particular, they had failed to:

– provide details of the command structure of the police and *carabinieri* extending to the top of the structure;

– specify the criteria for selecting officers to be deployed on public-order operations;

– produce the documents certifying the professional experience of the *carabinieri* concerned (*fogli matricolari*);

– submit the orders which police officer Lauro and the officers in charge of the company had received from their superiors;

– indicate the identity of the person who had ordered the attack on the *Tute Bianche* march;

– produce transcripts of the relevant radio conversations.

342. 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 was unconnected to the events at the centre of the present application.

343. The Chamber was of the view that there had been no violation of Article 38 of the Convention because, although the information provided by the Government did not deal exhaustively with all the points listed above, the incomplete nature of that information had not prevented the Court from examining the case (see paragraphs 269-271 of the Chamber judgment).

344. The Court sees no reason to depart from the approach taken by the Chamber on this point. It therefore concludes that there has been no violation of Article 38 of the Convention in the instant case.

FOR THESE REASONS, THE COURT

1. *Holds,* by thirteen votes to four, that there has been no violation of Article 2 of the Convention in its substantive aspect as regards the use of lethal force;

2. *Holds,* by ten votes to seven, that there has been no violation of Article 2 of the Convention in its substantive aspect as regards the domestic legislative framework governing the use of lethal force or as regards the weapons issued to the law-enforcement agencies at the G8 summit in Genoa;

3. *Holds*, by ten votes to seven, that there has been no violation of Article 2 of the Convention in its substantive aspect as regards the organisation and planning of the policing operations during the G8 summit in Genoa;

4. *Holds*, by ten votes to seven, that there has been no violation of Article 2 of the Convention in its procedural aspect;

5. *Holds*, unanimously, that it is not necessary to examine the case under Articles 3 and 6 of the Convention;

6. *Holds*, by thirteen votes to four, that there has been no violation of Article 13 of the Convention;

7. *Holds*, unanimously, that there has been no violation of Article 38 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 March 2011.

Vincent Berger Jurisconsult	Jean-Paul Costa President

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

(a) Joint partly dissenting opinion of Judges Rozakis, Tulkens, Zupančič, Gyulumyan, Ziemele, Kalaydjieva and Karakaş;

(b) Joint partly dissenting opinion of Judges Tulkens, Zupančič, Gyulumyan and Karakaş;

(c) Joint partly dissenting opinion of Judges Tulkens, Zupančič, Ziemele and Kalaydjieva.

J.-P.C.
V.B.

JOINT PARTLY DISSENTING OPINION OF JUDGES ROZAKIS, TULKENS, ZUPANČIČ, GYULUMYAN, ZIEMELE, KALAYDJIEVA AND KARAKAŞ

(Translation)

We are unable to agree with the majority's conclusions concerning points 2, 3 and 4 of the operative provisions, according to which there has been no violation of Article 2 of the Convention in its substantive and procedural aspects.

1. As regards the substantive aspect, the State's positive obligation to protect life under Article 2 of the Convention raises two main questions in the instant case which, as we shall see, are closely linked. Firstly, did the State take the necessary legislative, administrative and regulatory measures to reduce as far as possible the risks and consequences of the use of force? Secondly, were the planning, organisation and management of the policing operations compatible with that obligation to protect life?

2. We further believe that the obligation to protect life has to be considered in the specific context of the facts of the case: where a State accepts the responsibility of organising a high-risk international event, that obligation implies a duty to put in place the appropriate measures and strategies to maintain law and order. In that connection, it cannot be argued that the authorities were not aware of the possible dangers entailed in an event such as the G8 summit. Moreover, the number of law-enforcement officers deployed on the ground demonstrates this clearly (see paragraph 255 of the judgment). In these circumstances, Article 2 of the Convention cannot be interpreted or applied as if the case merely concerned an isolated incident occurring in the course of accidental clashes, as the majority suggest. In the case of mass demonstrations, which are becoming more and more frequent in a globalised world, the obligation to protect the right to life safeguarded by the Convention necessarily takes on another dimension.

3. First of all, as regards the domestic legislative framework governing the use of lethal force, which, under the terms of Article 2 of the Convention, must be capable of protecting the lives of the demonstrators, we observe shortcomings which played a decisive role in the death of the applicants' son. The Government did not make reference to any specific provisions governing the use of firearms during police operations, and indeed observed that circulars had simply been issued by the senior command of the *carabinieri* referring to the general provisions of the Criminal Code (see paragraph 207 of the judgment).

4. The 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which the judgment cites among the relevant international materials (see paragraph 154 of the judgment),

provide pointers in this regard which it is now impossible to ignore. The Preamble states that "[these] basic principles ..., which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public".

5. As regards the use of firearms, paragraph 2 of the Principles is crucial: "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".

6. Admittedly, in the particular circumstances of this case, given the violence of the attack to which M.P. and his colleagues were subjected, there is no guarantee that rubber bullets would have had a sufficient deterrent effect to avert the danger posed by large numbers of demonstrators wielding blunt instruments. The same may be true in many similar situations with which the law-enforcement agencies are confronted. For that reason we would not argue that the officers in the present case should have been issued *only* with non-lethal weapons; the State was empowered to decide that the law-enforcement personnel should *also* be equipped with guns firing live ammunition. Nevertheless, one thing is certain: M.P. did *not* have any alternative means of defence available to him. While he could have fired into the air or at a different angle, he had no weapon with which to defend himself other than the Beretta parabellum pistol.

7. Next, as regards the second aspect of the obligation to protect life arising out of Article 2 of the Convention, namely the planning and management of the policing operations, we believe that there was a lack of organisation imputable to the State. In its judgment in *Halis Akın v. Turkey* (no. 30304/02, § 24, 13 January 2009), the Court reiterated that "[i]n keeping with the importance of this provision in a democratic society, [it] must, in making its assessment, subject instances of the use of deliberate lethal force to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination".

8. M.P., one of the large number of *carabinieri* present at the scene and the person who fired the fatal shot, was a young man aged twenty years and eleven months who had been performing military service for only ten months. Furthermore, it does not appear from the case file that he had received specific training concerning public-order operations or how to act in the event of disturbances during demonstrations. Finally, given his youth and lack of experience, it is difficult to accept the fact that he did not receive more support from his superior officers and, above all, that he was not given particular attention once he had been judged unfit to continue on active duty because of his physical and mental state. In these circumstances, moreover, the fact that he was left in possession of a gun loaded with live ammunition is especially problematic.

9. That situation is in clear contradiction with paragraph 18 of the 1990 United Nations Basic Principles, according to which: "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."

10. Lastly, as regards the attack on the jeeps – which, incidentally, were not fitted with protective grilles on the rear and side windows – it was obviously conceivable that the vehicles might come under attack, even though they were intended for the transport of wounded officers rather than to support law-enforcement personnel in the event of clashes with demonstrators. In an urban guerrilla-type situation it was to be expected that the demonstrators would not necessarily differentiate between armoured vehicles and those providing logistical back-up.

11. In the light of the foregoing, we believe that the failings in the organisation of the law-enforcement operations should be assessed from the standpoint of both the criteria for selecting the armed *carabinieri* deployed in Genoa and the failure to give proper consideration to the particular situation of M.P., who, despite being in a state of distress and panic, had been left in a vehicle which was not adequately protected, with a lethal weapon as his only means of defence. The requirement to protect human life called for greater support to be provided to the young officer.

12. In paragraph 253 of the judgment the majority state that the application did not concern the organisation of the public-order operations during the G8 as such, but was confined to examining, among other things, whether, in the organisation and planning of that event, failings had occurred which could be linked directly to the death of Carlo Giuliani. Our answer to that question is in the affirmative. The lack of an appropriate legislative framework governing the use of firearms, *coupled* with the shortcomings in the preparation of the policing operations and in the

training of the law-enforcement personnel, disclose real and serious problems in the maintenance of public order during the G8 summit. In our opinion, these shortcomings should be regarded as linked to the death of Carlo Giuliani. Had the necessary measures been taken, the chances of the demonstrators' attack on the jeep ending so tragically could have been significantly reduced.

13. In relation to the procedural aspect of Article 2 of the Convention, two questions arise. The first concerns the issue whether the conditions in which the autopsy and the cremation of the body were carried out undermined the effectiveness of the investigation, while the second relates to the decision not to institute proceedings against the police officials.

14. The circumstances surrounding the autopsy disclose failings imputable to the authorities. First of all, the applicants were given notice very late of this fundamental step in the investigation, making it virtually impossible for them to appoint an expert of their choosing. Furthermore, as the prosecuting authorities themselves stressed, the expert report was "superficial", the doctors having omitted, in particular, to extract and record a crucial piece of evidence, namely the fragment of bullet lodged in the victim's head. Of course, there is no certainty that any tests carried out on the fragment would have yielded a definitive answer to the question whether the fatal bullet had been deflected by an object before hitting the applicants' son. Nevertheless, it was not beyond the bounds of possibility that they might have shed considerable light on the matter (the way in which the fragment was deformed, for instance, or the presence of traces of material might have helped to reconstruct its trajectory). Moreover, it is common practice in conducting autopsies to extract and record any object found in the body which might have contributed to the person's death.

One of the experts, Mr Salvi, stated at the "trial of the twenty-five" that the fragment in question had been very small and very difficult to recover from the mass of brain tissue and, above all, was of no use for the purposes of the ballistics tests. Be that as it may, it was up to the forensic experts to undertake the necessary efforts to record any object capable of clarifying the circumstances of the death and lethal act in a homicide case that had attracted an exceptional degree of media attention. The experts' assumption that the fragment was of no relevance for ballistics purposes proved, moreover, to be mistaken: in view of M.P.'s statements it was vital to establish whether he had fired upwards with the aim of frightening off his assailants or at chest height with the aim of hitting them or accepting the risk of killing them.

In the light of the foregoing, we believe that the conditions in which the autopsy was carried out gave rise to a violation of Article 2 of the Convention in its procedural aspect.

15. The Government judged the applicants' conduct to be "ambiguous". The applicants, so the Government argued, had been aware that the results

of the autopsy ordered by the public prosecutor would not be known for another sixty days. Concern to ensure that the examinations were carried out in a professional and reliable manner might have prompted them either to contest the lawfulness of the autopsy or to request that it be performed again. Far from doing this, they had requested permission to cremate the remains. In doing so they had known, or should have known, that if their request was granted no further examination of the body would be possible. If the applicants had wished to retain the option of further forensic examination, according to the Government, they should have opted to have their son buried.

16. It is our belief that a family dealing with such a tragic event cannot be criticised for failing to weigh up carefully all the ramifications of a request to have the remains returned to them, made immediately after their son's death. Although the applicants requested permission to cremate the body, the public prosecutor's office could have refused the request or insisted that the cremation should not take place until the results of the autopsy had been published. On the latter point it would have been preferable for the forensic experts to be given a shorter deadline for completion of their task. A period of sixty days for the preparation of a report a few pages long in such a sensitive and widely publicised case seems excessive.

17. In these circumstances we believe that the Grand Chamber should have upheld and reinforced the Chamber's finding that the circumstances surrounding the autopsy and the cremation of the applicants' son's body were in breach of Article 2 in its procedural aspect.

18. The second question is whether the lack of an investigation aimed at establishing possible liability on the part of certain police officials breached the procedural obligations arising out of Article 2.

We have just concluded that there were a number of failings, imputable to the Italian authorities, in terms of the support provided to M.P. and the consideration of his particular situation during the G8 summit in Genoa, and in terms of the organisation of the policing operations. This being so, was there an obligation to institute investigations to elucidate these aspects of the case? The domestic investigation in the instant case was confined to the exact circumstances of the incident itself, examining only whether those immediately involved should be held liable, without seeking to shed light on possible shortcomings in the planning and management of the public-order operations.

19. Of course we agree that it would be unreasonable to require a State to institute a criminal investigation where no offence has been committed. In line with the general principles of criminal law common to the Contracting States, in the circumstances of the present case the only persons who might have been held criminally responsible for the death of the applicants' son were M.P. and F.C., who were placed under investigation

and against whom proceedings were brought. However, those proceedings, conducted by the prosecuting authorities, ended with a request to discontinue the case on the basis of Articles 52 and 53 of the Criminal Code (see paragraphs 67 et seq. of the judgment), which was granted by the Genoa investigating judge (see paragraphs 82 et seq. of the judgment), thus excluding any possibility of adversarial proceedings before a judge.

20. It is true that extending the procedural obligations arising out of Article 2 to the point of requiring other individuals to be charged would impose an excessive and impracticable burden on the respondent State and would be liable to be contrary to Article 7 of the Convention. The fact remains, however, that an investigation capable of leading to the identification and, possibly, the punishment of the persons responsible could also be disciplinary in character. In this regard it is astonishing that, in the wake of the death of a demonstrator following the use of lethal force by an agent of the State (an exceedingly rare occurrence in Italy), the Government should acknowledge that no administrative or disciplinary investigation was commenced concerning the representatives of the law-enforcement agencies. Admittedly, any such investigation might have concluded that there was no evidence of any disciplinary offence in the training and support given to M.P. or, more broadly, in the organisation of the policing operations. However, it might equally have shed light on the circumstances surrounding some crucial aspects of the case which have unfortunately remained obscure (in particular, the criteria used in selecting and training the officers conducting the public-order operations at the G8 and the reasons why M.P.'s personal situation was not taken duly into account).

21. The fact that no disciplinary proceedings of any kind were instituted against the *carabinieri* appears to have been based on the preconceived idea that despite the tragic turn taken by events there was no criticism to be made of the manner in which the officers had been deployed on the ground or the way in which orders had been given throughout the chain of command. However, it is clear from all the arguments put forward by the Government in this case that the dangers linked to the rioting and the risks facing the law-enforcement officers had been largely foreseeable. The approach taken is difficult to reconcile with the procedural obligations arising out of Article 2 of the Convention.

JOINT PARTLY DISSENTING OPINION OF JUDGES TULKENS, ZUPANČIČ, GYULUMYAN AND KARAKAŞ

(Translation)

To our considerable regret we are unable to subscribe to the majority view, not just in relation to the finding that there has been no violation of Article 2 of the Convention in its substantive and procedural aspects as regards the domestic legislative framework governing the use of lethal force, the weapons with which the law-enforcement agencies were issued during the G8 summit in Genoa and the organisation and planning of the policing operations at the G8 (on which points we would refer to our partly dissenting opinion shared by Judges Rozakis, Ziemele and Kalaydjieva), but also in relation to the finding (point 1 of the operative provisions) that the use of lethal force was "absolutely necessary" in the particular circumstances of this case.

1. On the subject of Article 2 of the Convention and the issue whether the fatal shot was justified, we do not doubt the existence of a serious and objective threat to M.P. at the moment he fired the fatal shot. As the photographs and audiovisual footage submitted by the parties show, the jeep with M.P. on board was surrounded by demonstrators who were throwing an assortment of objects and had tried to grab M.P. by the legs in order to pull him out of the vehicle; the possibility of a lynching could not be ruled out. Furthermore, before firing the shots, M.P. had displayed his gun and clearly warned the demonstrators, shouting at them to leave unless they wanted to be killed. Even amidst the confusion reigning around the jeep at the material time, the sight of a loaded weapon, together with the threats uttered by M.P., must have indicated to the demonstrators in no uncertain terms that the *carabiniere* was prepared to defend his life and/or his physical integrity by using potentially lethal force.

2. Despite this, the applicants' son decided to continue his assault on the *carabinieri* vehicle and its occupants, approaching the jeep brandishing a fire extinguisher above his chest, prompting fears that he might use it as a blunt instrument. It could therefore be argued that the applicants' son bore responsibility for his unlawful action, which triggered the tragic course taken by events (see, *mutatis mutandis*, *Solomou and Others v. Turkey*, no. 36832/97, § 48, 24 June 2008); according to this argument, he knew or ought to have known that his action placed him at risk of a response from the vehicle's occupants, possibly involving the use of the weapons with which the *carabinieri* were equipped.

3. There is, however, one factor which runs counter to this interpretation of events and which the Grand Chamber's judgment does not take into consideration. When questioned by a representative of the public prosecutor's office, M.P. stated that he had not aimed at anyone and that no

one had been within his field of vision at the moment he fired the shots. If we are to believe this statement – which was made by M.P. himself and the credibility of which was never called into question by the domestic courts – the implication is that the *carabiniere* did not see the assailant approaching with a fire extinguisher and did not aim at him. Article 52 of the Italian Criminal Code ("the CC") states that persons who commit an offence may claim self-defence if they were forced to commit the offence by the need to defend their rights against a real danger. That need implies a subjective perception of the existence of such danger, as demonstrated by the fact that Italian law (Article 55 of the CC) provides for the possibility of prosecuting the perpetrator of the offence for unintentional homicide where he or she, as a result of negligence or of a mistaken but punishable assessment of the situation, oversteps the limits "dictated by necessity". It would follow that the shots were motivated by M.P.'s attempts to defend himself not against Carlo Giuliani's unlawful action but against the overall danger created by the demonstrators' attack on the jeep.

4. It remains to be determined whether M.P.'s reaction was "proportionate" to the danger he sought to avert. To that end, establishing the trajectory of the shot fired by M.P. was of decisive importance. While the imminent threat of an object with considerable destructive potential being thrown justifies firing at chest height, an overall state of danger can only justify firing shots into the air (see, in particular, *Kallis and Androulla Panayi v. Turkey*, no. 45388/99, § 63, 27 October 2009, where the Court stated that the opening of fire should, *whenever possible*, be preceded by warning shots). If M.P. did not see anyone targeting him directly and individually, his response should have been aimed at dispersing rather than eliminating the assailants.

5. In other words, only the firing of warning shots would be compatible with the requirements of Article 2 of the Convention in its substantive aspect were it to transpire that M.P.'s "defence" was not justified by the need to halt an attack liable to result in immediate consequences of a serious nature which could not be averted by means of less radical action (the "*real* danger of an unjust attack" referred to in Article 52 of the CC). This follows from the test of "absolute necessity", which dictates that the force used must be strictly proportionate to the aims pursued (see *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI). If methods less dangerous to human life can reasonably be regarded as sufficient to achieve the aim of "defence of any person from unlawful violence" or "for the purpose of quelling a riot", then those methods must be deployed. Moreover, the Italian Criminal Code (Article 52 *in fine*) appears to adopt a similar approach in requiring that the "defensive response [be] proportionate to the attack".

6. In short, if M.P. was seeking to defend himself against the demonstrators' assault on the jeep rather than against the applicants' son

individually, it cannot be concluded that there was a serious threat to his person of such imminence that only shots fired at chest height could have averted it. While it is true that the jeep was surrounded by demonstrators and that various objects were being thrown at it, the fact remains, as shown by the photographs in the file, that when M.P. drew his pistol and opened fire no one with the exception of Carlo Giuliani was attacking him directly, individually and at close range. The firing of shots into the air would probably have been enough to disperse the assailants; if not, M.P. would still have had time to defend himself by means of further shots, this time targeting those individuals who, despite the warning shots, chose to continue the attack. It should be borne in mind in that regard that M.P. had an automatic pistol which was loaded with fifteen rounds of ammunition.

7. In the light of the foregoing, and as we have already observed, it was of decisive importance to establish the trajectory of the bullets fired by M.P. On this point, two theories were put forward. According to the first, defended by the applicants, the fatal shot was fired at chest height; according to the second, supported by the Government and considered more likely by the investigating judge, the bullet was fired upwards and was deflected in the direction of Carlo Giuliani after colliding with an object (probably a stone) thrown by the demonstrators.

8. If we accept the latter version of events, namely that the bullet was fired upwards, any appearance of a violation of Article 2 can be ruled out, on the basis that an unforeseeable and uncontrollable factor turned M.P.'s warning action into a fatal shot (see *Bakan v. Turkey*, no. 50939/99, §§ 52-56, 12 June 2007, in which a warning shot fired during a chase ricocheted and accidentally killed the applicants' relative, prompting the Court to find that the death had been caused by “misadventure”). Even amidst the panic generated by a violent and unexpected attack, law-enforcement officers should be expected to fire warning shots before resorting to lethal force. However, they cannot be deprived of any means of defence by being required to allow for the possibility – statistically unlikely but theoretically always present during clashes between police and demonstrators – that the trajectory of a missile could be deflected following a collision with a flying object.

9. If, on the other hand, M.P. fired at chest height, it would have to be concluded, in our view, that the use of lethal force was not “absolutely necessary” within the meaning of Article 2 of the Convention.

10. In these circumstances it is regrettable that the domestic investigation was unable to establish with certainty whether or not the bullet ricocheted off an object before striking Carlo Giuliani. The investigating judge simply stated that the powerful nature of the weapon and the low resistance of the body tissue through which the bullet had travelled “served to confirm” “the intermediate object theory”.

11. We would observe that the authorities had a number of elements available to them in calculating the trajectory of the fatal bullet: the various forensic medical and ballistics reports; the fact that the bullet had fragmented; the fact that an object is shown on film disintegrating in the air shortly before Carlo Giuliani fell to the ground; the theory advanced by the applicants' experts according to which the fragmentation of the bullet could have been caused by factors other than collision with a stone; and the photographs taken shortly before and shortly after the fatal shot and during the autopsy.

12. The photograph taken a few moments before the shot shows the gun positioned at chest height (see also point 6 of Judge Bratza's partly dissenting opinion, annexed to the Chamber judgment), at an angle compatible with the wound sustained by Carlo Giuliani (according to the autopsy report, the bullet entered the body through the left eye socket and exited through the back of the skull, travelling through the body in a downward direction). Accordingly, although it is not impossible, it is unlikely that (a) M.P. raised his gun just as he fired the shot; (b) the bullet ricocheted off a flying object; (c) the angle of collision between the object and the bullet was such as to make the bullet strike the victim very close to where it would have struck him had the gun not changed position.

13. As regards scenario (b) above, it should be noted that the photographs taken just before the fatal shot do not show any stone or other object hovering in the air. This would seem to indicate that in the moments surrounding the firing of the shots the demonstrators were not engaged in intensive throwing of missiles. That suggests that the statistical probability of any of the three scenarios having occurred is low; the likelihood of all three occurring in rapid succession is smaller still.

14. In terms of the Court's case-law, when an applicant adduces prima facie evidence that excessive use was made of lethal force, the onus is on the Government to prove otherwise (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II). We believe that the same should apply where the Government rely on a statistically unlikely theory in order to counter the applicants' version of events, which is corroborated by visual evidence; it was for the authorities to prove that the very rare events which they alleged actually occurred. However, no such proof was furnished either at domestic level or before the Court. In her decision to discontinue the proceedings the investigating judge herself observed that the ballistics tests had not succeeded in establishing the initial trajectory of the shot.

15. Finally, it seems to us that the Grand Chamber judgment does not place the events giving rise to this tragic case in their proper context. Proceeding as though the case concerned a situation of individual violence, the Grand Chamber concludes that the use of lethal force was necessary in defence of the person concerned under Article 2 § 2 (a) of the Convention

(see paragraph 194 of the judgment). Accordingly, it considers it unnecessary to examine whether the use of force was also unavoidable "in action lawfully taken for the purpose of quelling a riot or insurrection" within the meaning of sub-paragraph (c) of the second paragraph of Article 2 (see paragraph 196 of the judgment). However, that was precisely the crucial issue to be examined in this case.

16. These considerations lead us to the conclusion that there has been a violation of Article 2 of the Convention in its substantive aspect.

JOINT PARTLY DISSENTING OPINION OF JUDGES TULKENS, ZUPANČIČ, ZIEMELE AND KALAYDJIEVA

(Translation)

We cannot agree with the majority's conclusions in relation to point 6 of the operative provisions, to the effect there has been no violation of Article 13 concerning the right to an effective remedy.

One of the crucial issues in terms of Article 13 of the Convention is the fact that the applicants were unable to join the criminal proceedings as civil parties because the investigating judge discontinued the case. They were thereby deprived of the support of the prosecuting authorities in seeking to establish the facts and obtain the evidence.

To contend in that regard, as the judgment does, that “there was nothing to prevent the applicants from bringing a civil action for compensation either before or in parallel with the criminal proceedings” (see paragraph 337 of the judgment) strikes us as not merely theoretical but also illusory, since in any event the Grand Chamber considers the entire policing operation to have been perfectly lawful.