

## **ECtHR - Makaratzis v. Greece, Application no. 50385/99, 20 December 2004**

**Country of Applicant:**

Greece

**Date of Decision:**

20-12-2004

**Citation:**

European Court of Human Rights, Makaratzis v. Greece, Application no. 50385/99, 20 December 2004

**Court Name:**

European Court of Human Rights (Second section)

**Keywords:**[Actors of protection](#) [1][Effective remedy \(right to\)](#) [2][Protection](#) [3]**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [4] > [Article 1](#) [5]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [4] > [Article 2](#) [6]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [4] > [Article 3](#) [7]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [4] > [Article 13](#) [8]**Headnote:**

The application concerned the violations of Articles 2, 3 and 13 of the Convention following police officers' excess powers used against the applicant during his arrest. The Court held that to be a violation of Article 2.

**Facts:**

The Applicant was driving his car in the centre of Athens at excessive speed and had driven through a red traffic light. The police officers tried to arrest the applicant who, instead of stopping, accelerated and was chased by several police officers. According to the Applicant, he tried to stop but police officers started firing at him. During the pursuit, the applicant collided with several vehicles and two drivers were injured. The police fired at the applicant after the applicant had broken through five police roadblocks. The firing continued until the applicant was arrested. He claimed that the police officers knelt him down and fired at him; he was shot at the sole of his foot while being dragged out of his car.

The Applicant sustained injuries on the right arm, the right foot, the left buttock and the right side of the chest; he was hospitalised for 9 days. One bullet was removed from his foot and another remains in his buttock. He suffered from depression prior to his arrest. His existing mental health deteriorated significantly since the accident.

An investigation was carried out by the police. The Applicant's car was examined. According to the ballistic report, the car "severely damaged due to collisions/crashes and to bullets" three holes and a mark on the car's front windscreen caused by bullets which came through the rear window; the latter was broken and had fallen in; sixteen holes were also found on the car, caused by the direct impact of a 9mm calibre weapons. A laboratory test was carried on 33 police firearms, three bullets and four fragments. There were 29 police officers who participated in the chase who were later identified. Those who left the incident scene without identifying themselves, did not hand in their weapons. A bullet found inside the Applicant's car and the one removed from his body were from the same weapon. However, they are untraceable to those examined above.

After the investigation, the public prosecutor brought two criminal charges before the Athens First-Instance Criminal Court against 7 police officers for: causing serious bodily harm (charge 1) and unauthorised use of weapons (charge 2). The Applicant joined these proceedings as a civil party to claim damages. The first-instance Court acquitted the police officers. In relation to charge 1, the Court found that it can't be shown beyond reasonable doubt that they were the ones who had injured the Applicant because there were many other shots fired by unidentified weapons. With regards to charge 2, "the Court held that the police officers had used their weapons for no other purpose than trying to stop a car whose driver they reasonably considered to be a dangerous criminal". The Applicant did not have the right to appeal the decision under domestic law.

Criminal proceeding were also brought against the Applicant for several offences in relation to his driving; failing to stop at a red light and for causing bodily injury and harm to others. He was sentenced to 40 days in prison.

The Applicant claimed before the ECtHR that the police officers who chased him had used excessive firepower against him, putting his life at risk, and that the authorities had failed to carry out an adequate and effective investigation into the incident. He argued that Articles 2, 3 and 13 of the convention had been breached.

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## **Decision & Reasoning:**

### **Article 2**

The Court found that there was a dual violation of Article 2 by the State in respect of its failure to fulfil their positive obligation to protect the applicant's right to life and its inadequacy of the investigation.

#### **1. Failure to fulfil their positive obligation to protect the applicant's right to life by law**

The Court held that the degree and type of force, used by the police, endangered the Applicant's life, irrespective of whether the police intended to kill him. He was the victim of conduct which, by its very nature, put his life at risk, even though, he survived.

The Court acknowledged that in the circumstances the police could reasonably have considered that there was a need to resort to the use of their weapons to stop the car and neutralise the threat posed by its driver. However, in the absence of a legal and administrative framework defining the exceptional circumstances in which law-enforcement officials may use force and firearms, Greece had failed to protect the applicant's life by law. At that time, there were no level of safeguards in place to avoid a real and immediate risk to life which the authorities knew was likely to arise in exceptional circumstances such as in hot-pursuit by police.

The safeguards would have prevented the chaotic chase and firing from which the Applicant survived

## **2. Inadequacy of the investigation**

The Court concludes that the authorities failed to carry out an effective investigation into the circumstances of the incident which put the applicant's life at risk. This is due to their omissions to obtain all relevant evidence to conduct a full finding of facts as it might otherwise have done. They were unable to identify all the officers who were involved in the shooting and wounding of the applicant.

The Court is not convinced by the Government's assertion that the domestic authorities could not have done more to obtain evidence concerning the incident. It would assist the investigation if the authorities had obtained the list of the police officers on duty in that area on the relevant day. Despite the chaotic firing, only three bullets were collected for examination.

Due to the dual violations of Article 2 by the state, the Court held that no separate issues arise under Articles 3 and 13 of the Convention.

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### **Outcome:**

The Court held that there has been a violation of Article 2 and that no separate issue arises under Articles 3 and 13.

The Applicant was awarded pecuniary damages, cost and expenses, a default interest.

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### **Observations/Comments:**

This case summary was written by Petula Southgate-Smith, student at BPP University.

### **Case Law Cited:**

ECtHR - Kılıç v. Turkey, Application no. 22492/93, 28 March 2000

ECtHR - Hilda Hafsteinsdóttir v. Iceland, Application No. 40905/98

ECtHR - Çakıcı v. Turkey [GC], Application No. 23657/94

ECtHR - Ilascu and Others v Moldova and Russia [GC], Application No. 48787/99

ECtHR - Velikova v Bulgaria, Application No. 41488/98

ECtHR - Rehbock v. Slovenia, Application No. 29462/95

ECtHR - Salman v. Turkey [GC], Application No. 21986/93

ECtHR - Ilhan v Turkey, Application No. 22277/93

Klaas and Others v. Germany, no. 5029/71

ECtHR - Anguelova v. Bulgaria, Application no. 38361/97, 13 June 2002

ECtHR - Kaya v. Turkey, Application no. 22535/93

ECtHR - Kelly and Others v. the United Kingdom, no. 30054/96, 4 May 2001

ECtHR - Ya?a v. Turkey, no. 22495/93, 2 September 1998

[ECtHR - Soering v. The United Kingdom, Application No. 14038/88, 7 July 1989](#) [9]

ECtHR - L.C.B. v United Kingdom, no. 14/1997/798/1001, 9 June 1998

[ECtHR - McCann and others v United Kingdom, Application No. 18984/91, 27 September 1995](#) [10]

ECtHR - Berkta? v. Turkey, Application no. 22493/93, 1 March 2001

ECtHR - Osman v UK, Application No. 15933/89

**Attachment(s):**



[CASE OF MAKARATZIS v. GREECE.pdf](#)[11]

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**Other sources cited:**

International Covenant on Civil and Political Rights, Articles 1 and 6

Human Rights Committee, General Comment no. 6, Article 6, 16th Session (1982)

United Nations Force and Firearms Principles

**Authentic Language:**

English

**State Party:**

Greece

**National / Other Legislative Provisions:**

Greece - Criminal Code - Articles 308

Greece - Criminal Code - Articles 309

Greece - Law no. 2168/1993

Greece - Law no. 3169/2003

Greece - Law no. 29/1943

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**Links:**

- [1] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A12](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A12)
- [2] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A30](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30)
- [3] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A82](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A82)
- [4] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [5] [https://www.asylumlawdatabase.eu/node/195#toc\\_1](https://www.asylumlawdatabase.eu/node/195#toc_1)
- [6] [https://www.asylumlawdatabase.eu/node/195#toc\\_4](https://www.asylumlawdatabase.eu/node/195#toc_4)
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- [8] [https://www.asylumlawdatabase.eu/node/195#toc\\_60](https://www.asylumlawdatabase.eu/node/195#toc_60)
- [9] <https://www.asylumlawdatabase.eu/en/content/ecthr-soering-v-united-kingdom-application-no-1403888-7-july-1989>
- [10] <https://www.asylumlawdatabase.eu/en/content/ecthr-mccann-and-others-v-united-kingdom-application-no-1898491-27-september-1995>
- [11] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20MAKARATZIS%20v.%20G>