



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44587/98  
by Maria ISAAK and Others  
against Turkey

The European Court of Human Rights (Third Section), sitting on 28 September 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,  
Mr J. HEDIGAN,  
Mr R. TÜRMEŒ,  
Mr C. BİRSAN,  
Mr V. ZAGREBELSKY,  
Mrs A. GYULUMYAN,  
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 31 January 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

**A. The circumstances of the case**

The applicants, Mrs Maria A. Isaak, Mr Isaak A. Isaak, Mrs Anastasia I. Isaak, Ms Kyriaki I. Issak and Ms Andriani I. Isaak, are

Cypriot nationals who were born in 1977, 1944, 1951, 1974 and 1979 respectively. The first applicant lives in Ayia Napa and the remaining applicants live in Paralimni. The first applicant is the widow, the second and third applicants are the parents and the fourth and fifth applicants are the sisters of Mr Anastassios (Tassos) Isaak, a Greek Cypriot, who died on 11 August 1996.

The applicants were represented before the Court by Mr C. Candounas, Mr P. Angelides and Mr A. Papacharalambous, lawyers practising in Nicosia. The Government were represented by their agent Mr Z.M. Necatigil.

The deceased, Anastassios Isaak, participated in a demonstration organised by the Cyprus Motorcycle Federation (CMF) that took place on 11 August 1996 at several points of the buffer zone east of Nicosia, including the area of Dherynia. The demonstration, details of which are in dispute between the parties, was the subject of a report by the United Nations Forces in Cyprus (UNFICYP) (report of 15 August 1996) and by the Secretary General of the United Nations (UN) (report S/1196/1016 of 10 December 1996).

The facts of the case, as submitted by the parties, may be summarised as follows.

### *1. Applicants' version of the facts*

#### (a) Background to the demonstration

The demonstration was organised by the CMF and aimed at protesting against the Turkish occupation of the northern part of Cyprus. On 2 August 1996 a group of over one hundred Cypriot and other European motorcyclists set off from Berlin and made their way through Europe to Cyprus. Tensions arose when the authorities of the "Turkish Republic of Northern Cyprus" ("TRNC") announced that in the event the demonstration took place, they would be organising "counter rallies" with the participation of the Turkish extremist "Grey Wolves" group and that they would fire on Greek-Cypriot demonstrators. Throughout the relevant period the Government of Cyprus and the competent authorities had been monitoring the developments and had been in constant consultation with the UN. On 11 August 1996, in the morning, following an urgent appeal by the UN Secretary General, a meeting was held under the Chairmanship of the President of the Republic and it was decided to cancel the final part of the rally. Consequently, the President of the Republic made a special plea to the motorcyclists to disperse peacefully.

Notwithstanding, on 11 August 1996, a group of motorcyclists and other civilians acting spontaneously, proceeded to various points along the buffer zone. In the meantime, the Cypriot police had taken tight security measures in order to prevent the motorcyclists from entering the buffer zone.

(b) The demonstration

Anastassios Isaak was part of the above group. He had joined the rally with a friend on his motorbike.

At about 2.30 p.m. the motorcyclists, including Anastassios Isaak, arrived at the Dherynia roadblock where they left their motorcycles and proceeded to cross on foot the National Guard ceasefire line, after breaking the police and UN cordon. The demonstrators, who were unarmed, entered the buffer zone.

Behind the ceasefire line of the Turkish forces, a mob gathered comprised of Turkish-Cypriot and Turkish civilians, many of them carrying hunting rifles and air guns, iron bars, wooden sticks, batons, stones and catapults. There were also many Turkish soldiers and "TRNC" policemen armed with automatic and other military weapons. According to the report of UNFICYP the Turkish forces had allowed about 1,000 persons in buses to pass through their 3 km military zone and assemble there. Some of them belonged to the "Grey Wolves" organisation.

Between approximately 3 and 3.30 p.m. many stones were thrown on both sides. Shots were fired against the Greek-Cypriot demonstrators some of whom suffered injuries as a result.

Between 3.30 and 4 p.m. the mob in the occupied area entered the buffer zone. They were armed with long sticks, batons and iron bars. At approximately 4.30 p.m. a group of the Turkish mob together with uniformed policemen, managed to isolate several Greek-Cypriot demonstrators whom they started beating. A group of about 15-20 persons, including five uniformed policemen, surrounded Anastassios Isaak who had been isolated in the buffer zone and was unarmed. Anastassios Isaak was thrown to the ground after having being chased. During a period of approximately five minutes he was kicked and beaten continuously on every part of his body and his head with metal and wooden batons. There were in total eight "TRNC" police officers in the vicinity.

When the UNFICYP police officer, Frank Flood of the Irish Civilian Police (IRCIVPOL) of UNFICYP, tried to intervene and started pushing some of the attackers away, Anastassios Isaak was already unconscious with blood coming out of his mouth and nose. Officer Flood was also attacked from behind. According to Officer Flood's statement, there had been approximately twelve people surrounding Anastassios Isaak at that moment, including a number of uniformed policemen. When the attackers eventually moved away, Officer Flood tried to trace signs of life. As the officer stood up, one of the attackers threw a large stone on Anastassios Isaak's head. This struck Anastassios Isaak on the right hand side of his head causing him to jerk. The attacker then ran away.

UNFICYP officer Sergeant Loraine Stack who had been helping out another Greek-Cypriot demonstrator a few meters away, went to Officer Flood's assistance. The two UNFICYP officers then dragged Anastassios Isaak's body to the area controlled by the Cyprus Government. Then Greek-Cypriot demonstrators took the body and placed it in a car. The car was

driven towards the guard room of the National Guard and Anastassios Isaak was transferred to Paralimni Hospital. On the way to hospital Anastassios Isaak had no pulse and was not breathing, despite the efforts of the medical staff in the ambulance. At the hospital the doctors' efforts to revive him continued but to no avail. Anastassios Isaak was pronounced dead at the hospital. His body was then transferred on the same day to Larnaca General Hospital.

(c) The investigation into the killing

On 12 August 1996, members of the police, escorted by members of UNFICYP and State pathologists Mr P. Stavrianos and Mr S. Sophocleous, visited the scene of the incident and carried out an examination. During this examination several exhibits were photographed and recorded on video by the police. UNFICYP Sergeant Dale Roberts examined the scene of the crime and detected drops of blood stains on the ground and on a stone. Various objects were found such as glass marbles, metal bars, shotgun bullets, wooden sticks, blood stains on a rusty metal can and plate pieces which were all taken as exhibits. Soil with blood was also recovered for further examination.

On 13 August 1996 Professor Petros Vanezis, Department of Forensic Medicine and Science, Glasgow University, arrived in Cyprus to perform the post mortem examination. On the same day and before the post mortem, Professor Vanezis visited the scene accompanied by state pathologists Mr P. Stavrianos and Mr. S Sophocleous and members of the police. The team was escorted by members of UNFICYP. During the examination further exhibits were found such as blood stains, a blood stained piece of wood and a piece of pipe. All the exhibits were photographed and recorded on video by the Cyprus police.

On the above date a post mortem examination was performed by Dr Petros Vanezis assisted by two State pathologists. Members of the police and of UNFICYP had also been present. The entire process of the examination was photographed and recorded on video. During the examination various exhibits were taken by Professor Vanezis which were later delivered by the police to him in Glasgow for further laboratory analysis.

According to the post mortem examination the cause of death was multiple blunt trauma to the head. The same conclusion appeared in the preliminary post mortem examination issued by Dr. M. Enk of UNIFCYP and also in Dr Vanezis's final report issued on 17 September 1996. Furthermore, according to the report issued on 9 September 1996 by Dr John S. Oliver, Senior Lecturer in Forensic Medicine (Toxicology), Department of Forensic Medicine and Science, University of Glasgow, the results of the analysis of the blood and urine samples of Anastassios Isaak for alcohol and drugs were negative.

The forensic examination carried out by UNFICYP found that the blood on the rusty can, the stone, in the soil and on the shirt worn by Office Frank

Flood during the incidents, belonged to the same blood group as that of Anastassios Isaak (the victim's blood sample had been handed over to the UN after the post mortem examination had been carried out on 13 August 1996).

## *2. Government's version of the facts*

### *(a) Background to the demonstration*

The demonstration was organised by Greek Cypriots as an alleged motorcycle rally and began on 1 August 1996 in Berlin. This rally was actively supported by the Greek-Cypriot authorities and had extensive media coverage. The aim of the rally was to forcibly enter the buffer zone, cross the ceasefire line and enter illegally into "TRNC" territory in order to meet at the most northerly town of Kyrenia at all costs. As a result of the aggressive conduct of the organisers tensions arose on both sides of the border. The Greek-Cypriot administration did nothing to prevent the rally in spite of appeals by the Turkish-Cypriot side and the UN Secretary-General. In view of this, the Turkish-Cypriot side announced that it would stop such provocative, hostile and aggressive action at its borders in order to prevent danger to the lives and properties of its citizens within the borders of the "TRNC".

Upon representations from UNFICYP as to the serious consequences such demonstrations were likely to lead to, the President of the Republic of Cyprus issued a statement on 11 August 2006 declaring that the demonstrations had been prohibited and appealed to the demonstrators to disperse. Acting upon this, the Turkish-Cypriot demonstrators started to disperse peacefully.

### *(b) The demonstration*

Nonetheless, on 11 August 1996, Greek-Cypriot demonstrators were involved in violent incidents at various places along the ceasefire lines within the UN buffer zone. Over a thousand Greek Cypriot motorcyclists and demonstrators arrived at Dherynia escorted by Greek-Cypriot police. The latter allowed the demonstrators to advance and to enter the UN buffer zone up to the border with the "TRNC". The UN personnel were unable to prevent the unauthorised entry into the buffer zone and to control the demonstrators. The situation then got out of control due to the Greek Cypriot demonstrators throwing stones and missiles and firing towards the counter-demonstrators. Skirmishes took place between the Greek-Cypriot mob and a group of Turkish-Cypriot counter demonstrators, when the former crossed into the buffer zone and consequently into the Turkish-Cypriot controlled area.

As a result of the clashes both Turkish-Cypriot and Greek-Cypriot demonstrators were injured. Anastassios Isaak was the leader of the group of Greek Cypriots who had entered the UN buffer zone and approached the barbed wire fence at the Turkish-Cypriot ceasefire line at Dherynia shouting

abuse and throwing stones from a close range at a line of Turkish-Cypriot policemen on the other side of the fence. One of the stones hit a policeman who was wounded on the temple of the head and fell on the ground bleeding profusely. It had not been possible for the Turkish-Cypriot police to prevent Turkish-Cypriot groups of provoked civilians from entering the buffer zone to pursue the Greek Cypriots. Turkish-Cypriot policemen also entered the buffer zone to bring back the Turkish Cypriots who had already gone into that area. However, Anastassios Isaak, who was a strong and well-built man, continued his aggressive attitude against the Turkish-Cypriot group, including the police, throwing stones and hitting them with a stick. Skirmishes continued between the Greek-Cypriot and the Turkish-Cypriot demonstrators, resulting in the unfortunate death of Anastassios Isaak who had got entangled and trapped in spiral barbed wire barriers that had been put up temporarily by the UN force and that had prevented his escape from that area.

## B. Documents and materials submitted by the parties

### *1. Documents and materials submitted by the applicants*

#### **(a) Report by UNFICYP concerning the demonstration**

In its report dated 15 August 1996, UNFICYP set out the facts concerning the demonstrations held on 11 August 1996. The relevant extracts provide as follows:

“8. The most serious incident took place in Dherinia. On Sunday morning, a peaceful demonstration by some 250 Greek Cypriots took place. They entered the United Nations buffer zone and requested to deliver a petition to the Turkish Cypriot checkpoint. When the latter refused to receive the petition, the demonstrators left the United Nations buffer zone, but remained in the area. At 14.30 hours, some 300 motorcyclists together with some 700 persons in vehicles escorted by Cypol [Cyprus police] arrived at the NG [National Guard] ceasefire line checkpoint in Dherinia. Cypol deployed along the NG ceasefire line but left the checkpoint unattended, thus enabling the demonstrators to enter the United Nations buffer zone unimpeded.

9. In the meantime, the Turkish forces had allowed some 1,000 persons in buses to pass through their 3 km deep military zone and to assemble along the TF [Turkish Forces] ceasefire line, including persons carrying the flag of the Grey Wolves who had come from Turkey.

10. The situation soon became violent, after Greek Cypriot demonstrators entered the buffer zone and approached the TF ceasefire line to provoke the TF, the TCPE [Turkish Cypriot Police Element] and demonstrators assembled there with verbal abuse and throwing stones. Cypol was not effective in controlling the Greek Cypriot demonstrators.

11. At about 16.00 hours, the Turkish Forces allowed the Turkish Cypriot demonstrators to enter the United Nations buffer zone armed with bats and iron bars. The Turkish Cypriot demonstrators, joined by the Turkish Cypriot Police, proceeded to pursue the Greek Cypriots and mercilessly beat all those who they were able to catch. At the same time, there was shooting, including by Turkish Cypriot police,

from behind the Turkish Forces ceasefire line towards the Greek Cypriot demonstrators.

12. During this period, a Greek Cypriot demonstrator, Anastasios Isaak, was beaten to death by a number of Turkish Cypriot demonstrators, including three Turkish Cypriot policemen. By 18.00 hours the situation began to calm down. In addition to the one dead, it was reported that some 54 Greek Cypriots and 17 Turkish Cypriots were injured. 12 UNFICYP personnel suffered injuries.

13. The UNFICYP investigation revealed conclusively that the killing of Anastasios Isaak had occurred some 50 metres from the scene shown on television in which three Greek Cypriots were being severely beaten by Turkish Cypriot demonstrators while helplessly entangled in barbed wire. Two UNFICYP Irish Civilian Police had done their best in trying to rescue Anastasios Isaak at considerable personal risk.

14. The two United Nations Civilian Police had observed two Greek Cypriot demonstrators being set upon by two groups of Turkish Cypriot demonstrators who proceeded to beat them with brutal force. The two United Nations Police went to the assistance of one of the Greek Cypriots and managed to facilitate his escape. When they turned to the second Greek Cypriot (Isaak), and were finally able to push aside the Turkish Cypriots, including three Turkish Cypriot policemen, who were still beating him, it was too late. The location of the killing inside the buffer zone was about 95 meters from the National Guard ceasefire line and about 32 meters from the Turkish Forces ceasefire line.

15. A video broadcast on 'Euronews' *inter alia* clearly shows the killing of Anastasios Isaak and the intervention of the two United Nations police. The autopsy, attended by UNFICYP, which was performed later in the afternoon of 13 August, revealed that Anastasios Isaak died of 'multiple blunt trauma to the head'. UNFICYP has completed the collection of the evidence at the scene of the crime and is in the process of completing its investigation in cooperation with Cypol..."

**(b) Statements taken by UNFICYP**

Following the events, the statements of members of An Garda Síochána attached to IRCIVPOL of UNFICYP, who was on duty at the Dherynia checkpoint on 11 August 1996, were taken by UNFICYP in Pyla, Cyprus.

*(i) Statement by Garda (Police Officer) Frank Flood*

The witness was on duty at Dherynia checkpoint on 11 August 1996 between 3 and 8 p.m. In his statement of 13 August 1996 he reported, *inter alia*, the following:

"... At approximately 4.30 p.m. I observed approximately 100 Turkish Cypriots protesters enter the buffer zone. They ran towards the Greek Cypriot side of the buffer zone. They were accompanied by a number of T.C.P.E policemen and Turkish Military personnel in camouflage uniform. I observed a number of Greek Cypriot men running from the Turkish Cypriot crowd in the direction of UN OP143. The Turkish Cypriots were armed with sticks and large batons. I observed one man being caught and beaten to the ground by the Turkish Cypriot crowd. This man was immediately surrounded and attacked while he was on the ground. I would describe this man as having long black hair tied into a pony tail. He was wearing a black sleeveless jacket and dark trousers. I rushed forward to attempt to assist him. As I went forward I was accompanied by Sergeant Carney and Sergeant Stack. I heard Sergeant Carney shout at a T.C.P.E. policeman to leave the buffer zone. This police man was armed with a meter long baton and a riot shield. He appeared to hesitate for a moment but then he

moved towards the group of people who were attacking the man on the ground. I moved into this group, Sergeant Stack was beside me. We pushed a number of people away from the man on the ground. I was struck by the baton of a T.C.P.E policeman on my right shoulder. I am unable to describe this policeman except that he was wearing uniform. Eventually we managed to clear a small space around the man on the ground and Sergeant Stack managed to get this man on his feet while I pushed the crowd back. I then observed another man being knocked to the ground approximately 10 meters away. I observed that he was being kicked, punched and struck by a number of people including T.C.P.E policemen. Sergeant Stack was pushing the first man towards the Greek Cypriot side of the buffer zone. I ran over to assist the second man. I would describe this man as wearing a white T-shirt and faded blue jeans. As I approached this man I observed that he appeared to be unconscious and there was blood coming from his nose and mouth. I pushed one man away from the man on the ground and shouted at the crowd 'Stop. You'll Kill him'. I was attacked from behind. There were approximately 10 or 12 people around the man on the ground at this stage including a number of T.C.P.E policemen. I pushed some of these people away and eventually the attackers moved away. I briefly checked the man on the ground for signs of life. I observed no sign of life. I stood up and as I did so I observed a man who was wearing a grey sleeve-less T-shirt, he had black hair and was approximately 5'5' in height, I would not be able to identify this man if I saw him again. This man had a large stone, held in both his hands, raised above his head. This man threw the stone at the man on the ground. The stone struck the man on the ground on the right hand side of his head causing him to jerk. The man who threw the stone immediately turned and ran away. I observed that the crowd of attackers appeared to be returning. I lifted the man on the ground into a sitting position and dragged him a short distance. Sergeant Stack came to my assistance and assisted me in dragging the man towards the Greek side of the buffer zone. We had covered a distance of about 30 meters when I was attacked by a group of 5 or 6 Greek Cypriots. I was knocked to the ground and the man we were dragging was taken away from us. I moved back a short distance and I observed the injured man been taken towards the Greek Cypriot side of the buffer zone..."

(ii) *Statement by Garda Sergeant Lorraine Stack*

The witness was on duty at Dherynia checkpoint on 11 August 1996 from 8 a.m. In her statement of 13 August 1996, she reported, *inter alia*, the following:

"...At approx. 03.30 hrs the people on the Turkish side of the C.F.L [Ceasefire Line] began to enter the B.Z. in groups of 50 approx. I saw them charge at civilians who, after running towards the Turkish C.F.L were running towards the N.G.C.F.L [National Guard ceasefire line] heaving stones and missiles. The people from the Turkish side had long sticks and batons and began savagely beating any civilian they could catch. I saw TCPE members enter the B.Z. with uniform and beat the civilians already in the B.Z [Buffer Zone], who were from the N.G. side. There was no difference between the behaviour of the Turkish civilians in the B.Z. and the TCPE there in uniform. They acted like a mob beating severely any person they could catch from the other side who was in the B.Z. Again I ran to numerous incidents, however, these were spread over a large area of ground in the buffer zone. It was approx. 60 metres in depth and 200 metres in length. The attacks were sporadic again, the groups from the Turkish side would return to their C.F.L. and re-group. These attacks were very violent. I was standing approx. 40 meters from the Turkish ceasefire line during these times changing position as the missiles were being aimed at the civilians close to me. Throughout these incidents I could hear shots being fired from the Turkish C.F.L, again not continuous but sporadic. This scene continued until approx. 17.00 hrs. At approx. 16.30 hrs I was standing approx. 40 meters from the Turkish ceasefire line in



the Buffer Zone and approx. 40 meters from the road that links the Turkish Forces check point with the National Guard check point at Dherinia. In front of me I saw a group of about 15 people chase a person (civilian) and begin to beat him with sticks and batons. I ran to his assistance. The group of approx. 15 were dressed in TCPE uniform and civilians from the Turkish side. The man beaten was from the N.G. side and he was attempting to get away. I saw him being beaten to the ground, he was kicked continuously and beaten savagely on the head and body. I got to him and saw Police Officer Flood to my left. I went over to him and pushed the attackers back. I was also assaulted by the attackers during this, however, the blows from the sticks that hit me on my arms and back, were not intended for UN personnel. I saw at least two TCPE in uniform there and when they desisted on seeing us the rest of the group began to move back. ... I pushed him towards the N.G.C.F.L. and he then began running....As I turned to stop any more attackers I saw Police Officer Flood attempting to lift a person off the ground. It was a short distance forward towards the T.C.F.L [Turkish-Cypriot Ceasefire Line] I went to his assistance. I looked at the man's face and it was my opinion at the time that he was dead. I shouted (noise level) at P.O. Flood give me half of him, we'll drag him. At this time there were some people with batons in front of us. We dragged him back approx. 30 meters towards the N.G.C.F.L ensuring he was not beaten again. Approx. 30 meters back we were met by some civilians from the N.G side. They verbally abused us and pushed us taking the body from us. Going to N.G.C.F.L we moved away slowly from them after letting go of the body. I would describe this man as follows: - 25 yrs of age approx., heavy built approx. five foot 10 inches. He had a stubbly face, he had long black hair and he was wearing jeans and a white t-shirt. He was very pale at the time and there was blood coming from his head, nose and mouth. There were no life signs during this removal. I went back to the scene of more incidents. ...

The times I have written into this statement are approximations. At 7.10 pm I went to Paralimni Hospital and viewed a body there. I can identify this body as being the second man whose assistance I went to and carried back 30 metres in the direction of the N.G.C.F.L. I spoke with Supt. Anastassiou CYPOL who gave me the deceased name as being Tasos Isaak from Costa Palma, Paralimni. I also identified this body to my Deputy Commander Superintendent Cosgrave as being the man I dragged out of the Buffer Zone, who was in my opinion dead..."

(iii) *Statement by Sergeant John Carney*

The witness was on duty at Dherynia checkpoint on 11 August 1996 from 8 a.m. In his statement he reported, *inter alia*, the following:

"...At approximately 4.25 p.m. I observed a TCPE member who was armed with a baton assault a man who was dressed in blue jeans and a white t-shirt. I now know this man to be Anastasios Isaak. P.O. Frank Flood was near me at this moment. I ran towards the TCPE member and called out to him 'You are a policeman stop'. I shouted this at him several times. He then stopped. I was approx. 10 meters from this policeman, Anastasios Isaak ran to my right towards the road between O.P. 143 at the TKCYP [Turkish-Cypriot] checkpoint. He was being pursued by a number of TKCYP civilians armed with long sticks and other weapons including metal poles. I ran towards where Anastasios Isaak was when a person whom I presume was a TKCYP attempted to assault me with a metal pole. I swerved to avoid him. He ran off. I then observed the same TCPE member run towards where Anastasios Isaak was being pursued by other TKCYP civilians. He was being continually hit from behind on the head and on the back by these people with wooden and metal poles. I observed the TCPE member also strike Anastasios Isaak with his baton. I was running towards this mob when I was struck by several missiles on my left hand side. I was then hit from behind with a plastic bottle of water. Two GKCYP youths then came from my side

and knocked me to the ground. They kicked me several times while I was on the ground. I managed to get to my feet. These youths were shouting at me ‘Why don’t you save this man, you mother fucking UN bastard’. They repeatedly kicked me and shouted abuse. Then a youth on a four wheel yellow motorcycle drove straight at me and struck me on my left hand side. I was knocked to the ground. He turned his motorcycle and drove at me again. I got to my feet and he drove past me and went towards the GKCYP CFL. I looked towards where Anastasios Isaak was, he was surrounded by TKCYP civilians and the TCPE member who I had confronted a short while previously. There were other TCPE members and TF in military uniform. Anastasios Isaak was being repeatedly hit with batons and sticks by civilians and TCPE and TF. They also kicked him savagely on the ground. I saw P.O. Frank Flood go towards this mob. They began to disperse. I then was again confronted with several GKCYP youths who kicked and pushed me. They screamed abuse at me shouting why the UN do not help the GKCyPs. I then observed Sgt. Stack and P.O. Flood drag Anastasios Isaak to safety. A mob then took him from Sgt. Stack and P.O. Flood. All this time the noise level was intense, missiles were being continually thrown from both sides...”

(iv) *Statement by Superintendent M. Cosgrave*

The witness, the deputy commander of IRCIVPOL, was on duty at Dherynia on 11 August 1996 checkpoint from 8 a.m. In his statement he repeated, *inter alia*, the following:

“...At about 4.20 p.m. I saw a man running along horizontally with the patrol track leading from UM OP.142. As he ran he was hit several times on the head by a group of four to five people who were running after him. He eventually fell to the ground and was kicked and beaten to the ground by the group who included one at least uniformed Turkish policeman. I was about 20 meters from this incident as it unfolded. There was continuous shouting and severe noise as both groups chased each other in the B.Z. I moved towards the man on the ground in an effort to save his life. I also saw that Sgt. Lorraine Stack was with this group and moved towards the injured man. As this stage Sgt Lorraine Stack and Garda Flood removed the injured man and he was taken away by his friends. I now know this man to be Anastasios Isaak, D.O.B. 10/2/71 of Costa Palama 13, Paralimni. The Turkish police moved into the buffer zone and with the assistance of UN personnel the Turkish demonstrators were pushed out of the B.Z. and on to behind the C.F.L. At that stage the Greek demonstrators were moving back towards the Greek C.F.L. with the assistance of UN personnel.

...

I then identified the area where the injured person was attacked and sometime later I was informed that he had died. At 7.10 p.m. accompanied by Sgt. Lorraine Stack and Sgt. George Kulmer AUSCON [Austrian Contingent], photographer, I went to Paralimni Hospital where the body of Anastassios Isaak was lying. I met the State Pathologist, Dr Panicos Stavrianos and D/Supt Th. Anastasiou C.I.D Police Headquarters Nicosia. I directed the photographer George Kulmer to take photographs of the body which he did...”

Furthermore, in his statement, Superintendent M. Cosgrave noted that the following day he had visited the scene of the incident at Dherynia checkpoint with State pathologists Dr. Panicos Stavrianos and Dr. Sophoclis Sophocleous and members of the Cyprus police squad. He pointed out that at that stage the scene had been preserved and had not been examined or interfered with. He also noted that he had measured the area where the body had been lying – it had been 32 meters from the Turkish C.F.L., 41 meters

from the track in front of U.N. OP 143 and 95 meters from the wire on the Greek C.F.L. He stated that, on 12 August 1996, Dale Roberts, a UN photographer, examined the scene and took samples from the area and that on 13 August 1996 he accompanied Dr P. Vanezis, the State pathologist and members of the police squad to the scene of the incident. He then attended the post mortem examination.

**(c) Statements taken by the Cyprus Police**

Between 11 and 29 August 1996 statements were taken by the Cyprus police at Dherynia police station from ten persons who had been present at the Dherynia checkpoint during the incidents of 11 August 1996. These witnesses were Stelios Archimandritis, Antigonos Kaoulla, Panicos Christodoulou Tylliros, Georghios Aresti, Zenon Tavrou, Michalis Andrea Neocleous, Stephanos Stephanou, Floros Adamou Constanti, Zacharias Georghiou Sachariou, and Constantinos Kyriakides.

Furthermore, statements were taken from two Greek-Cypriot police officers by the Cyprus police, at police headquarters, concerning the investigation into the killing of Anastassios Isaak.

*(i) Statement by Constantinos Kyriakides*

The witness is a photographer who was present at the Dherynia checkpoint on 11 August and had taken photographs of the incident. In his statement of 29 August 1996 he claimed, *inter alia*, the following:

“...I then withdrew heading southwards towards our side and then saw the Turks from a distance of 40 meters chasing a Greek Cypriot wearing jean trousers and a white sweater. I approached within 20 meters and started to take photos of the incident. I approached within a distance of 20 metres because the lens I had on my camera at the moment could not take photographs from a long distance. I started taking photographs from the moment they chased him until the moment they stopped beating him and UN men took him away.

I took 16 photographs and another 4 while he was being taken by the UN man to the place the Greek Cypriots were.

From what I noticed, and this is shown also in the photographs I took, about 15 persons, most of whom wore civilian clothes and many wore the uniform of the pseudo state, took part in the beating up and murder of the youth, who as I told you in my previous statement, was Tasos Isaak. They were armed with clubs, iron bars and water pipes and stones.

At first they chased him and while they were chasing him in a big stride he lost his balance and fell down. In his effort to defend himself he caught a Turk by the leg. The Turk sat on the ground and seized Tasos by the hair, while they were on the ground several hit him with offensive objects they held. Among them there were some “policemen” with their batons.

At some moment I noticed that one of the Turks in civilian clothes held a stone in his right hand the size of an orange and was on the point of throwing it on the head of Tasos. I did not notice whether the Turk completed his effort. I was not able to photograph that scene. When Tasos was finally moved by the UN men and handed to the Greek Cypriots to be transported to the hospital, I left...”

(ii) *Statement by Police Inspector Andreas Spatalos*

The witness is a police inspector serving in the Central Information Service as second in command of Division A. On 9 December 1996 he gave a statement concerning the investigation into the killing of Anastassios Isaak as follows:

“As part of my duties I received information from reliable sources according to which the following Turkish settlers and Turkish Cypriots are among the perpetrators of the murder of Tasos Isaak which was committed on 11.8.1996, at Dherynia:

1. Fikret Veli Koreli, Turkish Cypriot, Identity Card No. 421344
2. Hasim Yilmaz, Turkish settler
3. Neyfel Mustafa Ergun, Turkish settler
4. Polan Fikret Koreli, Turkish Cypriot
5. Mehmet Mustafa Arslan, Turkish settler
6. Erhan Arikli, Turkish settler.

The above persons have been identified also from a comparison with photographs, an album of which I handed on 20.11.1996, together with a relevant explanatory memorandum, to the Police Division C Commander”.

An explanatory memorandum was attached to the statement containing additional information and documents about the persons identified in that statement.

(iii) *Statement by the Acting Chief Superintendent N. Papageorghiou*

The witness is a police superintendent and commander of Police Division C at the Police Headquarters. On 11 August 1996 at about 6.45 p.m. he visited the scene of the killing of Anastassios Isaak with a team of men from CID Headquarters and the Forensic Service. In his statement he noted that he had given instructions on the spot to the Acting Superintendent in charge of CID (E) Headquarters concerning the investigation of the killing and that the scene should be photographed and video recorded. He also attended the post-mortem examination of the corpse of Anastassios Isaak at Larnaca Hospital.

In his statement the witness further noted, *inter alia*, that he had received copies of two VHS videotapes; one on 3 September 1996 from Worldwide Television News (W.T.N) of London and one on 25 November 1996 from Reuter’s of London. These contained scenes from the demonstration and the killing of Anastassios Isaak.

**(d) Post mortem examination report**

Dr Peter Vanezis, from the Department of Forensic Medicine and Science at Glasgow University, carried out a post-mortem examination at the Larnaca General Hospital on 13 August 1996 on the body of Anastassios Issak. In his report dated 17 September 1996, in which he summarised his findings, Dr Vanezis, concluded the following:

“1. The body was that of a well nourished man with no natural disease that could have contributed to or caused death at the time.

2. He had suffered multiple blunt impacts to the body, predominantly the head and the trunk.

3. From the characteristic nature of the injuries, the instruments causing them were most likely cylindrical shaped sticks and/or metal piping.

4. There were also injuries which had characteristics indicative of them being caused by square metal objects as found at the scene.

5. The marks on the arms indicated that he had tried to defend himself.

6. The severity and multiplicity of the injuries to the head indicate that he would have lost consciousness at or within a very short time of the infliction and died soon afterwards.

7. The injury to the genital area is consistent with a kick or a blow from an object as described above, to that region.

Cause of death

1a: MULTIPLE BLUNT HEAD TRAUMA”.

**(e) Sketch maps and photographs**

The applicants provided the Court with a sketch plan of the scene of the killing of Anastassios Isaak drawn up by the UN and a print of an aerial view of the location of the killing.

They also submitted a total of 37 photographs that had been taken by Mr Constantinos Kyriakides, a photographer, on 11 August 1996 during the events in Dherynia. Photographs numbered 18 to 37 depict the incident concerning Anastassios Isaak in chronological order.

In photograph 19 Anastassios Isaak is seen falling to the ground and civilian demonstrators coming towards him with batons and/or sticks.

Photographs 20 to 33 show Anastassios Issak on the ground being beaten with batons, kicked on the head and other parts of his body, his hair being pulled and his head being banged on the ground. The photographs show “TRNC” policemen and members of the Turkish and/or Turkish Cypriot police/military in camouflage uniform standing behind the Turkish ceasefire line.

In photograph 20 two UN officers can be seen helping a demonstrator lying on the ground, just a few metres from where Anastassios Isaak is being beaten. The photograph shows that four uniformed “TRNC” policemen and a Turkish or Turkish-Cypriot police/military officer in camouflage uniform were present in the vicinity.

In photograph 23 the above police/military officer in camouflage uniform can be seen joining the civilian demonstrators that are beating Anastassios Isaak and appears to be passing his metal baton over to one of them.

In photograph 24 this civilian is holding the baton high up over Anastassios Issak while the officer in camouflage uniform is standing next to him. The photograph shows five uniformed police officers in the vicinity,

one of whom, with a baton, is making his way through the civilians surrounding Anastassios Isaak.

In photograph 25 the officer in camouflage uniform appears to have taken his baton back whereas the police officer is beating Anastassios Isaak with his baton.

Photograph 26 shows the above police officer beating Anastassios Isaak with his baton and the officer in camouflage uniform holding his baton over Anastassios Isaak. In photograph 27 the officer in camouflage uniform, the above police-officer and a second police officer are beating Anastassios Isaak with their batons. In photograph 28 they are joined by a third police officer. In both photographs 27 and 28 these four officers are seen beating Anastassios Isaak with their batons together with the civilian demonstrators. Another four officers can be seen in the vicinity.

In photograph 29 the officer in camouflage uniform can be seen leaning over Anastassios Issak with his baton.

In photographs 30 to 32 a civilian demonstrator in front of the officers is seen kicking Anastassios Issak on the head.

In photographs 32 and 33 a UN officer can be seen intervening. This officer can also be seen in photographs 26 to 31 in which he is trying to make his way to Anastassios Isaak. Photograph 33 shows the UN officer taking hold of the arm of the officer in camouflage uniform holding the baton.

Photographs 34 and 35 show two UN officers dragging the body of Anastassios Issak.

Photographs 36 and 37 show Greek-Cypriot demonstrators taking the body away.

**(f) Video recording by Reuters**

The applicants submitted a videotape received from Reuters covering the incident. This video recording contains, *inter alia*, scenes from the incidents at Dherynia and part of the beating of Anastassios Isaak by civilian demonstrators, the "TRNC" police and the Turkish or Turkish-Cypriot police/military officer in camouflage uniform. Furthermore, the recording shows a UN officer intervening and with the aid of two policemen, one of whom is holding a riot shield, pushing back the crowd around Anastassios Isaak. The crowd then disperses. While the UN officer is standing over Anastassios Isaak, two civilians approach. One is seen throwing a stone towards Anastassios Isaak's head and one of them a stone/rock at his mid to lower body.

*2. Documents submitted by the Government*

**(a) UN Secretary-General's Report S/11900 of 8 December 1975**

The Government provided a copy of the above report pertaining to the United Nations Operation in Cyprus. This included a map showing the

deployment of UNFICYP in December 1975 and the Forward Defence lines of the Turkish Forces and the Cypriot National Guard.

**(b) UN Secretary-General's Report S/1996/1016 of 10 December 1996**

In his report on the United Nations Operation in Cyprus for the period from 11 June to 10 December 1996, the Secretary-General stated, *inter alia*, the following:

“1. ... Tension arose in early August 1996 in anticipation of a demonstration organised by the Cyprus Motorcycle Federation. First announced in January 1996, it was to take the form of a symbolic motorcycle ride, undertaken by Greek Cypriots and persons from other countries, originating in Berlin and ending in Kyrenia on 11 August. This meant that the demonstrators intended to cross the United Nations buffer zone as well as the Turkish forces ceasefire line, a course of action which was bound to cause the utmost provocation. During the period leading up to the demonstration, the media on both sides publicised a large number of increasingly acerbic statements by the demonstration's organisers and by Greek Cypriot political leaders, as well as counter statements by the Turkish Cypriot side.

2. During this period, the United Nations was in frequent contact with the government authorities, including the Cyprus Police, urging them to prevent any violation of the ceasefire lines or of the United Nations buffer zone. On the eve of the demonstration, I appealed publicly to the Government of Cyprus to take effective measures in exercise of its responsibilities to prevent any unauthorised entry into the United Nations buffer zone.

3. On the morning of 11 August, however, the demonstrators proceeded from the stadium in Nicosia, where they had assembled, to points east of Nicosia. Cyprus police were on hand, but remained largely passive. In the meantime, a major counter-demonstration had begun in north Nicosia, including a significant number of members of the 'Grey Wolves', an ultranationalist Turkish organisation, who had arrived from Turkey.

4. The Greek Cypriot demonstrators entered into the United Nations buffer zone at several points, approached the ceasefire line of the Turkish forces, and clashed with Turkish troops and Turkish Cypriot police as well as with Turkish Cypriot counter-demonstrators. The most serious clash occurred near Dherinia, where a large group of Greek Cypriots were allowed to cross the National Guard ceasefire line. In the meantime, the Turkish forces allowed counter demonstrators and Turkish Cypriot police to cross a restricted military area and to enter the United Nations buffer zone. They proceeded to beat the Greek Cypriots with batons and iron bars, killing one civilian...”

## COMPLAINTS

1. The applicants alleged that the killing of Anastassios Isaak constituted a violation of Article 2 of the Convention.

2. The applicants further complained that Anastassios Isaak's death violated their right to respect for their private and family life under Article 8 of the Convention.

3. Finally, the applicants maintained that Anastassios Isaak had been killed because of his Greek-Cypriot origin contrary to Article 14 of the Convention.

## THE LAW

### A. The Government's objections

#### 1. *As to the victim status of the applicants*

##### (a) The parties' submissions

###### (i) *The Government*

The Government submitted that an applicant had to be a person whose rights had been directly affected by the matter or the violations complained of. In this respect, they firstly argued that none of the applicants could be considered as victims within the meaning of Article 34 of the Convention with regard to the complaints made under Articles 8 and 14 since they had not been directly affected or harmed by the alleged violations of the above-mentioned provisions. Furthermore, concerning the applicants' complaint under Article 2 of the Convention, the Government argued that, apart from the first applicant, i.e. the wife of Anastassios Isaak, the relationship of the other applicants with the deceased, had not been sufficient to render them indirect victims either. They had not been in any way dependent on the deceased and therefore their rights had not been prejudiced as a result of his death.

###### (ii) *The applicants*

The applicants disputed the Government's arguments and submitted that they had been closely related to Anastassios Issak and had suffered from his death. The killing of Anastassios Issak had had a terrible effect on and had been a great loss to all of them. They thus considered that they were victims of the alleged violations within the meaning of Article 34 of the Convention.

The applicants noted that, in accordance with the case-law of both the Court and the Commission, a spouse or other close relative of the deceased person, including a child, brother or sister, allegedly killed in violation of Article 2, constituted a victim of the alleged violation under the Convention. The applicants relied on a number of cases in this respect, including *McCann and Others v. the United Kingdom* (judgment of 27 September 1995, Series A no. 324), *Andronicou and Constantinou v. Cyprus* (judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI), *Kaya v. Turkey* (judgment of 19 February 1998, *Reports* 1998-I) and *Yaşa v. Turkey* (judgment of 2 September 1998, *Reports* 1998-VI).



The same was applicable for the applicants' complaints under Articles 8 and 14 of the Convention. In this connection the applicants submitted that there was a distinction between the question whether a particular person was a victim of a particular violation of the Convention and whether that person was entitled to compensation for pecuniary loss in respect of that violation. The latter question was only relevant to the issue of just satisfaction under Article 41 of the Convention and had nothing to do with the applicants' victim status within the meaning of Article 34 of the Convention.

**(b) The Court's assessment**

The Court recalls that where a violation of the right to life is alleged, the Convention organs have accepted applications from relatives of the deceased. For example applications have been brought by a deceased's wife (*Aytekin v. Turkey*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII), a deceased's mother (*Çiçek v. Turkey*, no. 25704/94, 27 February 2001), a deceased's father (*Hugh Jordan v. the United Kingdom*, no. 24746/94, ECHR 2001-III (extracts)) and a deceased's brother and sister (see respectively *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV and *Şemsi Önen v. Turkey*, no. 22876/93, 14 May 2002). The Court further notes that the applicants' complaints under Articles 8 and 14 of the Convention stem from the death of their relative for which as stated above they can claim to be victims. Indeed, the Convention organs have declared admissible applications from relatives of the deceased where similar complaints have been raised under these provisions and emanated from the death (see, *inter alia*, *Ergi v. Turkey*, no. 23818/94, Commission decision of 2 March 1995, unreported; *Kakoulli v. Turkey*, decision of 4 September 2001, no. 38595/97 and *Bazorkina v. Russia* decision of 15 September 2005, no. 69481/01).

In the light of the established case-law of the Court, the Court considers that the complaints introduced by the applicants as wife, parents and siblings of the deceased, constitute a valid exercise of the right of individual petition.

*2. As to the respondent Government's responsibility*

**(a) The parties' submissions**

*(i) The Government*

The Government disputed Turkey's liability under the Convention for the violations alleged in the application. In particular, they contended that Turkey had no actual "jurisdiction" and/or control of northern Cyprus or of the UN-controlled buffer zone. The acts complained of were imputable to the "TRNC", an independent and sovereign State established by the Turkish Cypriot community in the exercise of its right to self-determination. In their observations the Government emphasised the separate status of the Greek and Turkish-Cypriot communities. Turkey had no jurisdiction over or

responsibility for the acts the authorities of the “TRNC” which was an autonomous entity with its own police and security forces. In the Government’s opinion this had been acknowledged by the Commission in its decision in the case of *Chrysostomos and Papachrysostomou v. Turkey* case (nos. 15299/89 and 15300/89, Commission’s report of 8 June 1993, Decisions and Reports (DR) 86, p. 4, §§ 143-170).

The Government also maintained that it was not possible to invoke Turkish responsibility in respect of the alleged violation of the Convention within the United Nations buffer-zone on the island which ran between the ceasefire lines of the two sides. They noted that the buffer zone had its origin in the demarcation of the Forward Defence Lines of the two sides and was under the control of UNFICYP. All parties were bound to respect this demarcation line that had been established by an international agreement. The UN Secretary-General’s report S/12253 of 9 December 1976 to the Security Council noted that it was an essential element of the ceasefire that neither side could exercise authority or jurisdiction beyond its own military lines or make any moves beyond these lines. Furthermore, in 1989 an agreement titled the “Agreement on Unmanning of Positions in Sensitive Areas in Nicosia” had been concluded between the UN and the two sides in order to reduce tension and prevent incidents along the buffer zone. The UN Secretary-General’s report S/21981 of 7 December 1990 on preserving the integrity of the buffer zone in Cyprus stated that this zone had been set up between the two communities to preserve the military status quo and the UN peacekeeping force had a duty to prevent all unauthorised intrusions and civilian activities.

Finally, the Government pointed out that neither Turkey nor the Turkish-Cypriot police or any other Turkish-Cypriot authority had been involved in any act that had caused the death of Anastassios Isaak. On the contrary, they considered that such responsibility lay with the Greek-Cypriot Administration and the Greek Orthodox Church which had deliberately encouraged the Greek-Cypriot demonstrators to enter forcibly into the UN buffer zone.

(ii) *The applicants*

The applicants contested the Government’s submissions, relying essentially on the reasons given by the Court for rejecting similar objections raised by Turkey in its judgments in the case of *Loizidou v. Turkey* (preliminary objections and merits) (judgments of 23 March 1995, Series A no. 310, pp. 23-24, §§ 62-64 and 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2216, §§ 52-57) and of the Commission’s decision in the case of *Cyprus v. Turkey* (no. 25781/94, Commission decision of 28 June 1996, (DR) 86-A, p. 104). They argued that due to Turkey’s effective control of northern Cyprus, Turkey was responsible under the Convention for all acts and policies of the “TRNC”.

The applicants pointed out that it was irrelevant whether members of the Turkish army had been involved or not in the killing of Anastassios Isaak

since members of the “TRNC” police force had been actively involved. As decided in the case of *Loizidou* (merits, cited above), the actions of the “TRNC” police were also imputable to Turkey irrespective of the degree of control exercised by Turkey over the particular operation. In the aforementioned case the Court decided that Turkey exercised direct control over all military operations along the ceasefire line. In this connection the applicants further observed that the “TRNC” forces and police were commanded by a Turkish general.

The applicants therefore submitted that the killing of Anastassios Isaak was clearly an act that came within the jurisdiction of Turkey.

**(b) The Court’s assessment**

*(i) General principles*

The Court reiterates that according to Article 1 of the Convention Contracting States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their “jurisdiction”. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see *Ilaşcu and Others v. Moldova and Russia*, [GC], no. 48787/99, § 311, ECHR 2004-VII). Furthermore, the words “within their jurisdiction” in Article 1 of the Convention must be understood to mean that a State’s jurisdictional competence is primarily territorial (see *Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, § 59, ECHR 2001-XII).

In exceptional circumstances the acts of Contracting States performed outside their territory or which produce effects there (“extra-territorial act”) may amount to exercise by them of their jurisdiction within the meaning of Article 1 of the Convention (see *Loizidou* cited above, pp. 2235-2236, § 52, and *Issa and Others v. Turkey*, no. 31821/96, §§ 68 and 71, 16 November 2004). According to the relevant principles of international law, a State’s responsibility may be engaged where, as a consequence of military action – whether lawful or unlawful – that State in practice exercises effective control of an area situated outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control, whether it be exercised directly, through its armed forces, or through a subordinate local administration (see *Loizidou v. Turkey*, cited above, § 52).

Moreover, a State may also be held accountable for a violation of the Convention rights and freedoms of persons who are in the territory of another State but who are found to be under the former State’s authority and control through its agents operating – whether lawfully or unlawfully - in the latter State (see, *mutatis mutandis*, *M. v. Denmark*, application no. 17392/90, Commission decision of 14 October 1992, DR 73, p. 193;

*Illich Sanchez Ramirez v. France*, application no. 28780/95, Commission decision of 24 June 1996, DR 86, p. 155; *Coard et al. v. the United States*, the Inter-American Commission of Human Rights decision of 29 September 1999, Report No. 109/99, case No. 10.951, §§ 37, 39, 41 and the views adopted by the Human Rights Committee on 29 July 1981 in the cases of *Lopez Burgos v. Uruguay* and *Celiberti de Casariego v. Uruguay*, nos. 52/1979 and 56/1979, at §§ 12.3 and 10.3 respectively). Accountability in such situations stems from the fact that Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory (see, *mutatis mutandis*, *Lopez Burgos v. Uruguay* and *Celiberti de Casariego v. Uruguay*, cited above).

In addition, the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention. Any different conclusion would be at variance with the obligation contained in Article 1 of the Convention (*Cyprus v. Turkey* [GC], no. 25781/94, § 81, ECHR 2001-IV). This is particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community (see *Ilaşcu and Others v. Moldova and Russia*, cited above, § 318).

Finally, in the particular situation concerning Cyprus, the Court, in the case of *Cyprus v. Turkey* (cited above) found that having effective overall control over northern Cyprus, Turkey's responsibility could not be confined to the acts of its own soldiers or officials in northern Cyprus but had also to be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's jurisdiction must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey (*Cyprus v. Turkey*, cited above, § 77).

(ii) *Application of the above principles*

At the outset, the Court notes that the area in which the acts complained of took place belonged to the neutral UN buffer zone. The civilian demonstrators from both sides violated the ceasefire lines and entered into the buffer zone. To this extent, both sides bear responsibility for the tragic course the demonstration took. In this connection, the Court also notes that both the UN Secretary General's Report of 10 December 1996, submitted by the Government, and the UNFICYP report of 15 August 1996, submitted by the applicant, confirm that the Turkish forces had allowed Turkish-Cypriot demonstrators armed with batons and iron bars and the "TRNC" police to cross a restricted military area and enter the UN buffer zone. Furthermore, these reports as well as the written statements of the

UNFICYP officers who had been present during the demonstration, confirm the participation of members of the police in the beating of Greek-Cypriot demonstrators.

In the present case, the Court must therefore ascertain whether Anastassios Isaak came under the authority and/or effective control, and therefore within the jurisdiction, of the respondent State as a result of the acts of the Turkish and “TRNC” soldiers and/or officials.

The Court notes that the applicants provided written statements from independent eye-witnesses describing the alleged course of events leading to the killing of Anastassios Isaak. In particular, UNFICYP members Police Officer Flood, Sergeant Carney and Superintendent Cosgrave were unequivocal in their statements that Turkish-Cypriot policemen had actively taken part in the beating of Anastassios Isaak. This is also confirmed by the aforementioned reports of UNFICYP and the UN Secretary-General concerning the demonstration and, further, the video recording and photographs submitted by the applicants. In the latter, three “TRNC” policemen and a Turkish or Turkish-Cypriot military/police officer in camouflage uniform can be seen beating Anastassios Isaak with the civilian demonstrators.

Moreover, it transpires from the case-file that despite the presence of the Turkish armed forces and other “TRNC” police officers in the area, nothing was done to prevent or stop the attack or to help the victim.

In view of the above, even if the acts complained of took place in the neutral UN buffer zone, the Court considers that the deceased was under the authority and/or effective control of the respondent State through its agents (see *Issa and Others*, cited above). It concludes, accordingly, that the matters complained of in the present application fall within the “jurisdiction” of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State’s responsibility under the Convention.

### *3. As to exhaustion of domestic remedies*

#### **(a) The parties’ submissions**

##### *(i) The Government*

The Government maintained that the application was inadmissible because the applicants had failed to exhaust domestic remedies as required by Article 35 of the Convention. Referring to the Commission’s decision in the case of *Chrysostomos and Papachrysostomou v. Turkey* (cited above), they submitted that the applicants had filed their application without having recourse to the local remedies within the judicial and administrative system of the “TRNC” which had been effective, sufficient and accessible to them and capable of providing redress for their complaints.

The Government submitted that the Constitution of the “TRNC” clearly demonstrated that an effective and independent judicial system existed in

the “TRNC” and that the Turkish-Cypriot courts were the guardians of the rights of individuals. The Constitution incorporated provisions safeguarding human rights drawn from the Cypriot Constitution of 1960 and the European Convention on Human Rights, which formed part of the laws of the “TRNC”. The Government submitted that the Constitution of the “TRNC” clearly demonstrated that an effective and independent judicial system existed in the “TRNC” and that the Turkish-Cypriot courts were the guardians of the rights of individuals. Articles 136 to 155 of the Constitution provided for access to independent courts and for judicial review of administrative action on the grounds of illegality or error of law and excess and/or abuse of power (Article 152), and also for judicial review of legislation by way of reference to the Supreme Constitutional Court (Article 148) and the institution of proceedings for annulment of legislation and subsidiary legislation (Article 147). Article 152 of the Constitution provided that the High Administrative Court had exclusive jurisdiction to adjudicate in the final instance on a complaint that a decision, act or omission of any body, authority or person exercising any executive or administrative authority was contrary to any of the provisions of the Constitution, or of any law or subsidiary legislation thereunder, or exceeded or abused the powers vested in such body or authority or person.

Moreover, under the Constitution the Attorney-General, who was an independent officer and the legal adviser of the State and was appointed by the Supreme Council of Law Officers, had the power exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the State (Article 158).

Finally, the Government noted that the “TRNC” judicial system was based on the English common law and also drew principles from the continental systems of administrative law.

*(ii) The applicants*

The applicants disputed the respondent Government’s submissions and claimed that there had been no failure on their part to comply with the requirements of Article 35 of the Convention.

They stressed that the “TRNC” courts had not been properly established under the law applicable in the Republic of Cyprus but had been set up by the “TRNC” in the part of Cyprus which was under illegal Turkish occupation. Moreover, the claim of the “TRNC” to statehood had been rejected not only by the UN Security Council but by every State in the world with the exception of Turkey. That being so, institution of proceedings in the “TRNC” courts would inevitably have involved a degree of recognition by the applicants of the legitimacy of those courts and thus of the “TRNC” itself, which would amount to a denial of the sovereignty of the Republic of Cyprus over northern Cyprus. Any such action would also have been in direct conflict with the applicants’ status and duties as citizens of the Republic of Cyprus.

The applicants further asserted that even if there was in principle a duty to make use of any remedies which might exist in the “TRNC”, the courts there did not offer a remedy which was effective and available to them. Nor had the Government indicated in their observations which remedy might exist before the “TRNC” courts in respect of military activity in an area controlled by the armed forces of Turkey, which were not subject to the jurisdiction of those courts in any event.

Finally, the applicants considered that the killing of Anastassios Isaak was not an isolated incident but stemmed, like the other killings that had occurred in the summer and early autumn of 1996, from the practices adopted by organs of the “TRNC” and by the Turkish forces in patrolling the ceasefire line. Therefore, the domestic remedies rule, as decided in the case of *Akdivar and Others v. Turkey* (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV) did not apply.

**(b) The Court’s assessment**

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdivar and Others v. Turkey*, cited above §§ 65-67).

It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicant has not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicants’ complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68).

Bearing in mind the foregoing principles, the Court observes at the outset that, for the purposes of Article 35 § 1, remedies available in the “TRNC” may be regarded as “domestic remedies” of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises (see *Cyprus v. Turkey*, cited above, § 102). However, this conclusion is not to be seen as in any way putting in doubt the view of the international community regarding the establishment of the

“TRNC” or the fact that the Government of the Republic of Cyprus remains the sole legitimate government of Cyprus (ibid, §§ 14, 16 and 90).

The Court considers that the Government’s objection under this head raises issues that are closely linked to those raised by the applicants’ complaint under Article 2 of the Convention.

Consequently, the Court joins the objection concerning the exhaustion of domestic remedies to the merits of the applicants’ complaint under Article 2.

## **B. Merits**

The applicants alleged that the killing of Anastassios Isaak constituted a violation of Article 2 of the Convention. They further complained that his death breached their right to respect for their private and family life under Article 8. Finally, they argued that Anastassios Isaak had been killed because of his Greek-Cypriot origin contrary to Article 14. The aforementioned provisions read as follows:

### **Article 2**

“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.”

### **Article 8**

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

### **Article 14**

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”



### *1. The parties' submissions*

#### **(a) The Government**

The Government maintained that although the death of Anastassios Isaak had been a tragic event, it was clear from the account of events leading to this incident that it had not been just a matter of an individual demonstrator being killed whilst making an innocent protest, as presented by the applicants. Anastassios Isaak had died as a result of the irresponsible action of the Greek-Cypriot demonstrators with the active support of the Greek-Cypriot authorities. He actively participated in an unlawful assembly and riot during which the Turkish-Cypriot police took all necessary measures to try to disperse the demonstrators. In fact, Anastassios Isaak had died after he got tangled up and trapped in a spiral barbed-wire barrier that had been put up by the UN force. This prevented his escape. Neither the Turkish-Cypriot police nor any other Turkish-Cypriot authority were involved in any act that caused the death of Anastassios Isaak. Furthermore, they could not have prevented his death.

Finally, the Government alleged that the Greek Cypriots had taken their revenge by shooting two Turkish Cypriot soldiers on sentry duty in the area of Güvercinlik (near Ayios Nikolaos) on 8 September 1996.

#### **(b) The applicants**

The applicants alleged that there was irrefutable evidence proving the direct involvement of "TRNC" policemen in the killing of Anastassios Isaak. The photographs, the video footage and the statements of eyewitnesses, including those of members of the UN civil police, proved beyond doubt that several "TRNC" policemen had participated in the attack and killing of Anastassios Issak. From the photographs, eight Turkish police officers in uniform could be distinguished in the immediate vicinity of Anastassios Isaak, five of whom participated in the killing. Furthermore, the civilians involved in the attack had been encouraged by the police officers present in the area. In fact, neither the police nor the military made any effort to prevent the Turkish and Turkish-Cypriot demonstrators from attacking Anastassios Isaak and from beating him whilst he had been helplessly lying on the ground, unarmed. Only UN Officer Frank Flood came to his aid and restrained a Turkish officer from hitting Anastassios Isaak.

Although, it was not possible to make an exhaustive list of who had struck Anastassios Isaak, how many times or in what way, the applicants noted that they had managed to ascertain the identities of one of the "TRNC" police officers and five of the civilians involved in the attack.

According to the applicants, the death of Anastassios Isaak was not the unfortunate result of skirmishes between the groups as presented by the Government. In this connection, they disputed the arguments of the Government that he had been caught in barbed wire relying on the

photographs and the eye-witness statements. They noted that Anastassios Isaak (before he fell) and his attackers had been able to move freely.

In the applicants' view, a State should also be held responsible under Article 2 of the Convention when its officials stood back and allowed murder to be committed in front of them and further, when such officials actively encouraged it as in the present case.

In any event, the acts which caused the death of Anastassios Isaak could not be justified on the basis of the exceptions under Article 2. It was clear that the use of force against Anastassios Isaak could not be considered reasonable and proportionate, so as to bring the use of lethal force within the scope of these exceptions. The Government's arguments concerning the violation of the ceasefire line in Cyprus could not justify the killing of Anastassios Isaak.

Furthermore, despite the fact that the killing of Anastassios Isaak took place in front of the "TRNC" police and the identity of those involved was known or could have easily been discovered, the Government did not carry out any investigations and no one was ever tried.

Accordingly, the applicants contended that the Government had fallen short of its obligations under Article 2.

As regards Article 8 of the Convention, the applicants claimed that the killing of Anastassios Isaak had deprived them of a family member. It had brought to an end the first applicant's marriage and left the other applicants without a son and a brother. Finally, the applicants considered that Anastassios Isaak had been killed because he was of Greek-Cypriot origin.

## *2. The Court's assessment*

The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

*Decides to join to the merits* the Government's objection concerning the exhaustion of domestic remedies;

*Declares* the application admissible, without prejudging the merits of the case.

Vincent BERGER  
Registrar

Boštjan M. ZUPANČIČ  
President