



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

CASE OF ANDRONICOU AND CONSTANTINOU v. CYPRUS

(86/1996/705/897)

JUDGMENT

STRASBOURG

9 October 1997

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SUMMARY¹

Judgment delivered by a Chamber

Cyprus – alleged unlawful killing of a young couple by officers of a special police unit (MMAD) in the course of a rescue operation

I. GOVERNMENT’S PRELIMINARY OBJECTIONS

A. Non-exhaustion of domestic remedies

Government’s assertion that applicants failed to take civil proceedings to claim compensation on strength of authorities’ *ex gratia* offer of legal aid.

Effective remedy in circumstances would have been institution of criminal proceedings against officers involved – Attorney-General refused applicants’ request – in addition, detailed and reasoned findings of domestic commission of inquiry after exhaustive investigation of circumstances of killings likely in practice to remove any reasonable prospects which applicants had of winning a civil action – commission of inquiry chaired by most senior judicial appointee in respondent State.

Conclusion: objection dismissed (seven votes to two).

B. Abuse of process

Applicant’s refusal either to enter or continue negotiations on terms of friendly settlement over alleged breach of Convention right not to be construed as abuse of process – in instant case, proposed settlement did not moreover contain any admission of authorities’ liability for deaths of couple, as sought by applicants.

Conclusion: objection dismissed (unanimously).

II. ARTICLE 2 OF THE CONVENTION

Reiteration of Court’s case-law on principles governing use of lethal force by security forces.

A. Application of Article 2 to facts in issue

Court takes Commission’s findings of fact, which are not disputed, to be an accurate and reliable account of circumstances of case – Court must make its own assessment as to whether facts disclose a violation of Article 2.

1. This summary by the registry does not bind the Court.

B. Planning and control of rescue operation

Court only concerned to establish whether in circumstances authorities had taken appropriate care in planning and control of rescue operation, including decision to deploy *MMAD* officers, to minimise any risk to lives of couple – not appropriate to assess alternative ways of handling situation with benefit of hindsight.

Authorities conducted prolonged negotiations in knowledge that they were dealing with a young couple – negotiations carried out in a reasonable manner in view of circumstances – however, as situation became increasingly fraught with danger, authorities could reasonably conclude that decisive action needed to bring an end to incident in view of failure of negotiations phase – justified fear that young man, known to be armed, would kill his fiancée at midnight and commit suicide – decision to send in *MMAD* officers only taken after careful reflection and high-level consultation.

Although officers armed with machine guns it was never intended that these weapons be used – officers given clear instructions to use only proportionate force and to open fire only if life of young woman or their own lives in danger.

Not shown in view of above considerations that rescue operation had not been planned and organised in a way which minimised to greatest extent possible any risk to lives of couple.

C. Administration of force

Officers' use of force was direct result of young man's decision to open fire when rescue team entered flat – officers had to take split-second decisions to save life – officers' honest, even if mistaken, belief at the time that young man constituted a real and immediate danger to life of young woman and to lives of officers – valid reasons for this belief in circumstances and for officers' conclusion that it was necessary to kill young man to save young woman's life as well colleagues' lives – clearly regrettable that Officers nos.2 and 4 used as much fire power as they did – however, Court cannot with detached reflection substitute its own assessment of situation for that of officers confronted with agonising dilemma and the need to neutralise any risk presented by young man to lives of others.

Use of lethal force in circumstances did not exceed what was absolutely necessary for purposes of defending life of young woman and lives of officers.

Conclusion: no violation (five votes to four).

III. ARTICLE 6 § 1 OF THE CONVENTION

Applicants' assertion that absence of legal-aid system in respondent State for civil proceedings resulted in a denial of possibility to seek damages in respect of deaths of couple – justified in refusing to accept authorities' *ex gratia* offer of legal aid – offer not administered independently and arbitrarily withdrawn shortly afterwards.

Court reiterates that it is not its function to indicate measures to be taken by Contracting States to guarantee litigants an effective access to a court – in instant case, *ex gratia* offer would have provided solution to overcome applicants' lack of resources to take civil proceedings – applicants cannot maintain therefore that they were denied an effective access to a court.

Conclusion: no violation (unanimously).

COURT'S CASE-LAW REFERRED TO

18.1.1978, Ireland v. the United Kingdom; 9.10.1979, Airey v. Ireland; 27.9.1995, McCann and Others v. the United Kingdom; 18.12.1996, Aksoy v. Turkey

In the case of Andronicou and Constantinou v. Cyprus¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr N. VALTICOS,

Mrs E. PALM,

Mr R. PEKKANEN,

Mr A.B. BAKA,

Mr G. MIFSUD BONNICI,

Mr D. GOTCHEV,

Mr K. JUNGWIERT,

Mr G. PIKIS, *ad hoc judge*,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 23 April and 25 August 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) and by the Government of Cyprus (“the Government”) on 4 July 1996 and 20 September 1996 respectively, within the three-month period laid down in Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 25052/94) against the Republic of Cyprus lodged with the Commission under Article 25 by four Cypriot nationals, Mr Andreas and Mrs Paraskevoula Andronicou and Mr Gregoris and Mrs Yiolanda Constantinou, on 22 August 1994. The first and second applicants were the father and sister of Mr Lefteris Andronicou, deceased. The third and fourth applicants were the parents of Miss Elsie Constantinou, deceased.

Notes by the Registrar

1. The case is numbered 86/1996/705/897. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Cyprus recognised the compulsory jurisdiction of the Court (Article 46). The Government's application referred to Articles 44 and 48 (d) of the Convention. The object of the Commission's request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 2 and Article 6 of the Convention. The object of the Government's application was to obtain a decision as to whether the facts of the case disclosed a breach of Article 2 of the Convention.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 31).

3. The Chamber to be constituted included *ex officio* Mr A.N. Loizou, the elected judge of Cypriot nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). In a letter to the President of 1 August 1996, Mr Loizou stated that he wished to withdraw pursuant to Rule 24 § 3 as he had chaired a public inquiry into the events giving rise to the application. On 17 September 1996 the Agent of the Government informed the Registrar that Mr Georghios Pikis, President of the Supreme Court of Cyprus, had been appointed as *ad hoc* judge (Article 43 of the Convention and Rule 23).

On 7 August 1996 in the presence of the Registrar, the President had drawn by lot the names of the other seven members, namely Mr N. Valticos, Mrs E. Palm, Mr R. Pekkanen, Mr A.B. Baka, Mr G. Mifsud Bonnici, Mr D. Gotchev and Mr K. Jungwiert (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence on 8 October 1996, the Registrar received the Government's and the applicants' memorials on 7 and 9 January 1997 respectively.

5. In accordance with the decision of the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr A. MARKIDES, Attorney-General
of the Republic of Cyprus,

Mrs L. KOURSOMBA, Senior Counsel,

Law Office of the Republic of Cyprus,

Agent,

Mrs P. POLYCHRONIDOU-ORPHNIDOU, Counsel “A”,
Law Office of the Republic of Cyprus, *Counsel;*

(b) *for the Commission*
Mr S. TRECHSEL, *Delegate;*

(c) *for the applicants*
Mr Michael KYPRIANOU, Barrister-at-Law,
Mr Menelaos KYPRIANOU, Barrister-at-Law,
Mr K. STARMER, Barrister-at-Law, *Counsel.*

The Court heard addresses by Mr Trechsel, Mr Michael Kyprianou and Mr Markides.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The facts of the case as established by the Commission in its report of 23 May 1996 are not disputed. The events giving rise to the application were fully examined at the national level by a commission of inquiry which held hearings over a 46-day period during which it took evidence from 72 witnesses and examined 113 exhibits (see paragraph 96 below). The Commission was able to examine a full transcript of the proceedings before the commission of inquiry and to study various pieces of evidentiary material submitted to it, including a video recording of the incident.

7. The conclusions to be drawn from the facts as established by the Commission are, on the other hand, disputed by the Government since its conclusions differ from those reached by the domestic commission of inquiry.

8. The facts set out below are based mainly on those contained in the report of the Commission. The conclusions of the commission of inquiry are set out at paragraphs 123–39 below.

A. The deceased couple

9. Lefteris Andronicou and Elsie Constantinou were at the time of the events 33 and 22 years old respectively. Lefteris Andronicou had two children from a previous marriage which was dissolved in 1988.

He first met Elsie Constantinou in August 1993. At the time she was working for a fashion shop. He was employed by a cement company. On 26 November 1993 Elsie Constantinou moved into Lefteris Andronicou's ground-floor flat in the Chloraka district of Paphos. It would appear that her parents, the third and fourth applicants, did not approve of the relationship and attempted to persuade her to return home. On one occasion her father enlisted the help of the police. Elsie Constantinou's mother did in fact succeed in persuading her to move out of the flat and return home. She subsequently spent two weeks in England. She returned from England on 19 December and moved back into Lefteris Andronicou's flat.

The couple announced their engagement in the local press on 22 December 1993.

B. The early phases of the incident

10. On 24 December 1993 at around 8.30 a.m., three of Lefteris Andronicou's neighbours, D. Papapetru, G. Georgiu and H. Hrisanthu, heard a woman calling for help from inside Lefteris Andronicou's flat. Initially, they decided not to interfere and D. Papapetru and G. Georgiu left. However, as the woman continued to shout: "Stop beating me," H. Hrisanthu, who owned the shop next door, decided to call A. Trifonos, the owner of the block of flats, and the third applicant, Elsie Constantinou's father. At one stage H. Hrisanthu saw a woman trying to jump from the window and someone pulling her inside. At around 10.30 he called Paphos police station and two police officers were sent to investigate.

11. The police officers rang the door bell, but did not get an answer. One of the officers, who happened to know Lefteris Andronicou, pleaded with him to open the door. He heard a woman calling from behind the closed door: "Lefteris, leave the gun aside; what are you going to do?"

12. The officers withdrew and radioed Paphos police station. At that stage D. Papapetru and G. Georgiu returned to the scene and saw a girl getting out of Lefteris Andronicou's flat and signalling to them. Then she went back into the flat again. They were not in a position to say whether she returned of her own accord or whether someone pulled her back inside.

13. At around 11.30 I. Hatzipashalis, the deputy head of the Paphos Criminal Investigations Department (hereinafter "CID") arrived on the scene together with other police officers. He knocked on the door and spoke with Lefteris Andronicou, who told him that he had quarrelled with Elsie Constantinou and that they had hit each other. He then heard Elsie Constantinou shouting to him that Lefteris Andronicou had beaten her and

asking to be let out. He also heard Elsie Constantinou asking Lefteris Andronicou why he was loading the gun and pointing it at her. I. Hatzipashalis tried to calm Lefteris Andronicou by telling him that many couples quarrel and then make up without the need for the police to intervene. However, when he approached the window, Lefteris Andronicou threatened to shoot him if he did not move away. I. Hatzipashalis asked him to let him see Elsie Constantinou, specifying that, if the latter told him that she had no complaint, he would leave. There was no reply.

14. D. Papapetru, with the authorisation of I. Hatzipashalis, succeeded in engaging Lefteris Andronicou in a conversation. The latter asked him for cigarettes, telling him that: "Afterwards he would think what he should do and would open the door." D. Papapetru pushed some cigarettes under the door. At one stage Elsie Constantinou cried to D. Papapetru that Lefteris Andronicou was pointing the gun at her and that he was going to shoot her. At one point Lefteris Andronicou drew the curtain and D. Papapetru saw him holding a shotgun.

15. Efforts to persuade Lefteris Andronicou to release Elsie Constantinou continued but to no avail and at 12.50 p.m. I. Hatzipashalis decided to notify A. Nikolaidis, the deputy director of Paphos police, and G. Georgiagis, the head of Paphos CID.

16. The deputy director of Paphos police, A. Nikolaidis, arrived on the scene at around 1 p.m. He talked to Lefteris Andronicou, who asked in an angry manner for the police to withdraw. A. Nikolaidis promised him help and protection and invited him to state his claims. Lefteris Andronicou repeated that he just wanted the police to go. Elsie Constantinou started shouting for help, claiming that Lefteris Andronicou had hit her the previous evening and that her eye was now swollen and sore. Sobbing, she stated that she feared he would kill her and claimed that he was pointing his gun at her. A. Nikolaidis called D. Konstantinidis, the director of Paphos police.

17. In the meantime the third applicant, Elsie Constantinou's father, arrived together with her cousin, Andreas Onufriu. They found there Antonis Onufriu, another cousin who had also made an attempt to persuade Lefteris Andronicou to release the young woman. A. Nikolaidis started gathering information concerning the couple's relationship. It was established that they were living together. As it emerged however in the course of the proceedings before the commission of inquiry, the police were not aware during the operation that they had just announced their engagement.

18. D. Konstantinidis, the director of Paphos police, arrived on the scene at around 2.15 p.m. He told Lefteris Andronicou that he had nothing to fear, as there would be no consequences. Lefteris Andronicou demanded once more the complete withdrawal of the police.

19. At around 3 p.m. I. Hatzipashalis, the deputy head of Paphos CID, ordered another policeman to obtain an arrest and search warrant on the ground that Lefteris Andronicou was holding Elsie Constantinou against her will and threatening her with a shotgun. The warrants were issued by a Paphos district judge.

20. D. Konstantinidis, the director of Paphos police, discussed the situation with Elsie Constantinou's father in H. Hrisanthu's shop, which was now being used as an operations room. As A. Nikolaidis, the deputy director of Paphos police, confirmed before the commission of inquiry, Elsie Constantinou's father suggested that the police should withdraw and leave the family to deal with the problem on their own.

21. D. Konstantinidis also asked for the assistance of G. Poliviu, Lefteris Andronicou's previous employer, who was present at the scene. G. Poliviu talked to Lefteris Andronicou and found out that his telephone was not functioning. G. Poliviu, having obtained D. Konstantinidis's approval, left outside the window of the flat a telephone which belonged to H. Hrisanthu. It was later established that the telephone had a loudspeaker facility.

22. D. Konstantinidis called the fourth applicant, Elsie Constantinou's mother, and persuaded her to come. He also asked Elsie Constantinou's father to talk to her, but the applicant refused.

At a certain stage, Lefteris Andronicou asked G. Poliviu for cigarettes and food, specifying that Elsie Constantinou was hungry and must have something to eat. D. Konstantinidis decided that no food should be given to him. G. Poliviu left some cigarettes outside the window of the flat.

23. D. Konstantinidis had several telephone conversations with Lefteris Andronicou promising him help. He also talked to Elsie Constantinou on the telephone who said that she was being held against her will since 11 p.m. the previous night. D. Konstantinidis concluded that Lefteris Andronicou did not want to negotiate. At around 4.50 p.m. he called A. Potamaris, the chief of police, and explained the situation. He volunteered to conduct a rescue operation should the need arise. A. Potamaris, however, decided to dispatch to Chloraka the platoon of the Police Special Forces (*Mihanokiniti Monada Amesis Drasis* – hereinafter “*MMAD*”) which, in his opinion, was specially trained for this type of action.

24. At some stage Elsie Constantinou's mother arrived, but Lefteris Andronicou refused to talk to her on the telephone. The young woman's mother suggested that the police should leave and let the family handle the situation.

25. Shortly before 5 p.m. G. Georgiadis, the head of Paphos CID, arrived. A great number of persons had already gathered at the scene and the area around the flat had been cordoned off. At around 5 p.m., the director of Paphos police, D. Konstantinidis, departed leaving his deputy,

A. Nikolaidis, in charge. A. Nikolaidis testified before the commission of inquiry that it was the first time in his career that he had been involved in such an operation or such negotiations.

26. At around 5.10 p.m. A. Potamaris, the chief of police, ordered H. Mavros to lead to Chloraka the specially trained platoon of *MMAD* of which he was in charge.

27. A. Nikolaidis, the deputy director of Paphos police, repeatedly tried to communicate with Lefteris Andronicou, but the telephone was engaged. At a certain point the latter's sister and niece arrived and talked to him through the door. He told them that he was afraid of the police. Elsie Constantinou confirmed that this was so. He told his sister to take her children home and when she returned he would open the door.

28. At around 6 p.m. Lefteris Andronicou called Dr A. Hatzimitsi, a general practitioner whom he had consulted on occasion during the past three months. He told her that he had beaten up Elsie Constantinou and that the police were outside his flat. He said that he was going to lose Elsie Constantinou. He asked the doctor to call his sister and tell her that he had left money on the fridge. He indicated that, after he had done what he intended to do, his sister might have health problems and need the money. When Dr A. Hatzimitsi tried to reason with him, he said that he did not want to talk and warned her that he would hang up on her if she tried to call him back. Dr A. Hatzimitsi called G. Poliviu, who had introduced Lefteris Andronicou to her, and asked him to inform the police about her conversation with him.

29. At 6.10 p.m. A. Potamaris, the chief of police, called his deputy, K. Papakostas, and put him in charge of the operation. He also ordered N. Konstantinu, the deputy director of *MMAD*, to go to Paphos.

30. At 6.15 p.m. A. Potamaris, in the course of his daily telephone conversation with the Minister of Justice and Public Order, informed the Minister of the incident.

31. At around 6.30 p.m. Lefteris Andronicou agreed to talk with the deputy director of Paphos police, A. Nikolaidis, on the phone. He told A. Nikolaidis that his relationship with Elsie Constantinou was over, that he had behaved very badly towards her and had lost her forever. He appeared to be concerned about the damage to her eye and A. Nikolaidis offered to take her to the doctor. However, he refused, telling A. Nikolaidis that he should wait until midnight. He specified that, after celebrating Christmas with Elsie Constantinou, A. Nikolaidis could come and get her at five minutes past midnight. When A. Nikolaidis asked him whether he meant that he would release Elsie Constantinou, he did not reply. He claimed that he was tired and hung up.

32. At around 7.30 p.m. H. Mavros, the head of the *MMAD* platoon, arrived on the scene together with three other officers of the *MMAD*. He was briefed by A. Nikolaidis, the deputy director of Paphos police, who told him that Lefteris Andronicou was carrying a double-barrelled shotgun. It was later established that the gun could only contain two shots at a time. H. Mavros asked him whether there was any indication that Lefteris Andronicou might be in possession of other weapons and A. Nikolaidis replied that this possibility could not be excluded. H. Mavros also talked with N. Konstantinu, the deputy director of *MMAD*, who was already there. H. Mavros noticed the presence of a great number of bystanders, which he considered “unacceptable”. A. Nikolaidis ordered a number of persons to be moved along.

33. H. Mavros asked A. Trifonos, the owner of the block of flats, who had also previously tried to persuade Lefteris Andronicou to release Elsie Constantinou, to show him the layout of the flats. H. Mavros visited the flat above Lefteris Andronicou’s as well as the identical flat next door. A. Trifonos made a sketch of the flat for him.

34. The flat consisted of two rooms and a bathroom. The living-room was in the front. It measured 5 by 3.6 metres and had a door and a window. There was a skylight above the door. The bedroom and bathroom were at the back. They had one window each.

35. At some point after 7.30 p.m. G. Poliviu told A. Nikolaidis, the deputy director of Paphos police, that Lefteris Andronicou had told Dr A. Hatzimitsi on the phone that around midnight he would set Elsie Constantinou free and commit suicide. A. Nikolaidis conveyed this information to his director, D. Konstantinidis, and to the deputy chief of police, K. Papakostas. The latter ordered A. Nikolaidis to act as the principal negotiator, since he had gained Lefteris Andronicou’s confidence. He also told him to engage Dr A. Hatzimitsi in the negotiations, as well as a psychologist or a psychiatrist and other persons who could influence him. Finally, A. Nikolaidis and K. Papakostas discussed the possibility of administering soporifics to Lefteris Andronicou’s food.

36. A. Nikolaidis called Lefteris Andronicou and told him that Elsie Constantinou’s mother and grandmother wished to talk to him, but he refused. He then called the district doctor in order to find out the whereabouts of the psychiatrists of Paphos Hospital. He was informed that both psychiatrists lived in Limassol. A. Nikolaidis also called the pharmacist of Paphos Hospital and ordered drugs. P. Hatzimitsis, the pharmacist, testified that he had provided one packet of 1mg and one packet of 2mg Lorezabam pills. The hospital did not store 3mg pills.

37. Two police officers were dispatched to Dr A. Hatzimitsi's surgery. Dr A. Hatzimitsi discussed Lefteris Andronicou's telephone call with them. In reply to their questions, she expressed the view that Lefteris Andronicou did not have any psychological problems. She also expressed doubts as to whether she could help since Lefteris Andronicou had already told her not to call him again.

C. The rescue plan

38. At around 8 p.m. H. Mavros went to Paphos police station where the rest of the *MMAD* platoon had arrived. According to the testimony of the police witnesses before the commission of inquiry the platoon included two officers whom the police witnesses described as "trained negotiators". H. Mavros explained the plan to the officers of the platoon, the aim of which was to rescue Elsie Constantinou and capture Lefteris Andronicou. The key elements of the plan were surprise, speed and accurate execution. As soon as the platoon were in position outside the flat, H. Mavros would inform the commanding officer via a link person. The commanding officer would in turn ask the negotiator to call Lefteris Andronicou. While he was busy talking on the phone, which was in the front room to the left of the door, tear gas would be thrown into the flat through the three glass windows by four officers. Two other officers would force the door with a battering ram. Four men would enter the front room. The first two would seize Lefteris Andronicou who would be expected to be less than two metres away from the door. A third officer would seize the young woman. A fourth officer would enter the flat to provide any form of assistance which might prove necessary. All communications would be made by walkie-talkie on a secure frequency. The members of the platoon would carry their pistols and machine guns. They were informed by their head, H. Mavros, that Lefteris Andronicou had a double-barrelled shotgun. They were also told that the possibility could not be excluded that he could be in possession of other arms. They were instructed to use proportionate force and fire only if Elsie Constantinou's life or their own lives were in danger. If the room was dark, they were to use the lights fitted to their machine guns.

D. Later phases of the incident

39. At 8.40 p.m. the chief of police, A. Potamaris, had a meeting with his deputy, K. Papakostas. It was decided that the deputy director of Paphos police, A. Nikolaidis, should continue to conduct the negotiations, that two additional negotiators should be sent and that the police, after obtaining

appropriate medical advice, should administer soporifics to Lefteris Andronicou's food, if he asked for any.

40. While the meeting between A. Potamaris and K. Papakostas was still in progress and at around 8.50 p.m., the deputy director of Paphos police, A. Nikolaidis, talked with Lefteris Andronicou on the phone again. Lefteris Andronicou was very negative because of the media coverage that the incident had received. He did not allow A. Nikolaidis to talk to Elsie Constantinou. She shouted that Lefteris Andronicou would kill her. N. Hatziharalambus, a police officer who knew Lefteris Andronicou, also tried to persuade him to release Elsie Constantinou.

41. The meeting between A. Potamaris and K. Papakostas ended at 9 p.m. K. Papakostas ordered two additional negotiators from the police force to be dispatched to Chloraka. He also called the deputy director of Paphos police, A. Nikolaidis, who informed him that he had not been able to contact the psychiatrists of Paphos Hospital and that Lefteris Andronicou would not talk to Elsie Constantinou's parents. K. Papakostas ordered A. Nikolaidis to look for psychologists in the private sector.

42. At around 9.30 p.m. D. Konstantinidis, the director of Paphos police, returned to the scene together with H. Mavros, the head of the *MMAD* platoon. He was briefed by the deputy director of Paphos police, A. Nikolaidis. He called the deputy chief of police K. Papakostas. He also called Dr A. Hatzimitsi who agreed to go to the scene.

43. D. Konstantinidis then saw H. Athinodoru, Lefteris Andronicou's last employer, talking with Lefteris Andronicou on his mobile phone. H. Athinodoru had already made various unsuccessful efforts to persuade him to release Elsie Constantinou. Lefteris Andronicou had threatened that he would shoot Elsie Constantinou if H. Athinodoru tried to enter the flat.

44. The director of Paphos police, D. Konstantinidis, interrupted the conversation between H. Athinodoru and Lefteris Andronicou and instructed H. Athinodoru to tell him that they wanted to help him. He specified that he had been authorised by his superiors to promise Lefteris Andronicou that there would be no consequences if he let Elsie Constantinou go. He could leave by car, together with the young woman if he wished. H. Athinodoru conveyed the message to Lefteris Andronicou.

45. In the course of the second part of his conversation with Lefteris Andronicou, H. Athinodoru threatened him with the possibility of being left to starve and being beaten up. This is heard in the video recording. Moreover, D. Konstantinidis accepted before the commission of inquiry that he heard such a statement being made by H. Athinodoru. He also testified that H. Athinodoru talked to Elsie Constantinou on the phone who said that Lefteris Andronicou had been pointing his gun at her.

46. D. Konstantinidis subsequently called the chief of police, A. Potamaris, and told him about the telephone conversation between Lefteris Andronicou and Dr A. Hatzimitsi. In the meantime, H. Mavros returned to Paphos police station and led the *MMAD* platoon to a warehouse situated 200 to 300 metres away from the flat where they could not be seen by the bystanders.

47. Dr A. Hatzimitsi arrived at the scene escorted by G. Georgiadis, the head of Paphos CID. She talked with Lefteris Andronicou from the operations room. She offered to help him end the incident without any consequences. He refused to let her enter the flat, saying that he was afraid of the police. Having obtained the authorisation of the director of Paphos police, D. Konstantinidis, Dr A. Hatzimitsi made the following proposal to Lefteris Andronicou. A car would be brought to his door, the police would withdraw, he would leave his gun and get in the car alone or with Elsie Constantinou. The doctor, or any other person whom he wished to accompany him, could get in the car as well. They could all leave together and go to another location to discuss the matter. Lefteris Andronicou refused. Elsie Constantinou intervened and asked the doctor whether Lefteris Andronicou had psychological problems. The doctor replied that she was not aware of any such problems. Lefteris Andronicou repeated that he was afraid of the police and of the consequences. He insisted that he would let Elsie Constantinou out of the flat at midnight or five past and then he would commit suicide. In the course of the telephone conversation, the couple quarrelled and Lefteris Andronicou threatened her: "Sit down and do not move." He also told the doctor not to call again because it made Elsie Constantinou nervous. At one stage Dr A. Hatzimitsi passed Lefteris Andronicou to D. Konstantinidis who promised once again that there would be no consequences.

48. At 9.50 p.m. D. Konstantinidis, the director of Paphos police, called the deputy chief of police, K. Papakostas, and told him that Dr A. Hatzimitsi was of the view that Lefteris Andronicou had decided to kill Elsie Constantinou and commit suicide. In the first statement she gave to the police, Dr A. Hatzimitsi confirmed that this was the view which she had formed and conveyed to D. Konstantinidis. In a letter she addressed to applicants' counsel on 28 December 1995, Dr A. Hatzimitsi claimed that, in the course of her telephone conversation with Lefteris Andronicou she had formed the view that he was intransigent and "capable of doing harm to himself and Elsie". She further specified that this was the personal opinion of somebody who was not a psychiatrist. She also protested that the police had tried to attribute to her more responsibility for the operation than she could have had. In her testimony before the commission of inquiry, when

under examination by counsel for the police, Dr A. Hatzimitsi repeated her initial statement, specifying that that was her personal opinion.

49. H. Athinodoru then told D. Konstantinidis that Lefteris Andronicou had asked on the phone for food. D. Konstantinidis told his deputy, A. Nikolaidis, to call Lefteris Andronicou. A. Nikolaidis called him and two kebab pies were ordered.

50. A person whom A. Nikolaidis could not identify had told A. Nikolaidis that he had received a telephone call from Lefteris Andronicou asking for a written assurance that he would not go to jail. A. Nikolaidis called Lefteris Andronicou again, who told him that he was afraid that he would go to jail. A. Nikolaidis told him that the situation was not so serious and offered to enter the flat and hand him a written assurance that he would not go to jail. However, Lefteris Andronicou told A. Nikolaidis not to be in a hurry; he could enter the flat at five minutes past midnight. A. Nikolaidis told Lefteris Andronicou that he would break the door down and enter the flat unarmed. Lefteris Andronicou warned him that, if he tried, he would kill Elsie Constantinou and commit suicide. At a certain point, the latter shouted that Lefteris Andronicou was not serious about letting her go.

51. Lefteris Andronicou's threats, combined with some information that he had wanted in the past to shoot a person who had insulted Elsie Constantinou with his shotgun, led A. Nikolaidis to the conclusion that he was planning to kill her and commit suicide at around midnight.

52. At 10.15 p.m. the director of Paphos police, D. Konstantinidis, called the deputy chief of police, K. Papakostas, and requested his authorisation to administer soporifics. K. Papakostas called a doctor at Nicosia Hospital and the chief of police, A. Potamaris, who approved the plan. D. Konstantinidis was duly informed.

53. S. Zinonos, a police officer, testified before the commission of inquiry that he had been ordered to bring some food for Lefteris Andronicou at 10.20 p.m. Three to five minutes after he had left he was called on the radio and the order was changed. I. Pavlu, another officer, claimed in his original statement to the police that S. Zinonos had been ordered to bring food at around 10.40 p.m. and that the order had been changed fifteen minutes later. Before the commission of inquiry he specified that the times he had given were very approximate since he had not looked at his watch when S. Zinonos left. He had merely estimated that this must have been the time. He also specified that it was possible that the order had been changed eight to eleven minutes after S. Zinonos's departure. S. Zinonos testified that it took ten to fifteen minutes for the kebabs to be prepared.

54. At 10.30 p.m. the head of the *MMAD* platoon, H. Mavros, called the deputy chief of police, K. Papakostas, and explained the rescue plan to him. K. Papakostas asked whether it had been envisaged to use explosives to open the door, and stun grenades. These options were, however, discarded

for fear that the couple might be hurt. It was also noted that it normally took four seconds for the stun grenades to explode and that that might give Lefteris Andronicou time to react.

55. At 10.40 p.m. there was another meeting between the chief of police and his deputy in the chief's house. The deputy chief, K. Papakostas, told the chief, A. Potamaris, that Lefteris Andronicou was planning to kill the young woman and commit suicide. At 10.45 p.m. A. Potamaris called the Minister who was of the view that "the police should decide whether *MMAD* should conduct a rescue operation on the basis of their appreciation of the situation at the time after having reviewed all relevant information and eliminated all other possibilities". K. Papakostas explained the rescue plan to A. Potamaris who instructed the former to delay the involvement of the *MMAD* platoon as much as possible to enable the efforts to persuade Lefteris Andronicou to release Elsie Constantinou to continue. The meeting ended at 11 p.m.

56. When the food which Lefteris Andronicou had ordered arrived, Dr A. Hatzimitsi put in the pies the Lorezabam pills that P. Hatzimitsis, the hospital pharmacist, had provided. Before the commission of inquiry she testified that she had placed six 3mg Lorezabam pills in each pie. She also testified that earlier on it had been suggested that another drug called Dormicum could be used but that the police did not have sufficient time to find such pills.

57. The food was then delivered to Lefteris Andronicou by the deputy director of Paphos police, A. Nikolaidis, who left it by the window. All the police officers who testified on this issue agreed that the food had been delivered around 11 p.m. Dr A. Hatzimitsi's testimony supported their version of events. Antonis Onufriou, Elsie Constantinou's cousin, testified that the food had arrived at around 11.30 p.m. G. Poliviu, an ex-employer and friend of Lefteris Andronicou, claimed in his original statement to the police that the food had arrived at 11.15 p.m. Before the commission of inquiry he testified that the food had arrived between 11.30 and 11.40 p.m. H. Athinodoru, Lefteris Andronicou's last employer, testified that the drugs had been put in the food at around 11.10 p.m., immediately before he left the scene.

58. The head of the *MMAD* platoon, H. Mavros, admitted before the commission of inquiry that he had not been aware that soporifics had been administered to the food.

59. At around 11 p.m. two additional negotiators arrived. Elsie Constantinou was repeatedly heard screaming that Lefteris Andronicou was going to kill her.

60. After 11 p.m., the director of Paphos police, D. Konstantinidis, held a meeting with his deputy, A. Nikolaidis, the head of Paphos CID,

G. Georgiadis, the deputy director of *MMAD*, N. Konstantinu, and the head of the *MMAD* platoon, H. Mavros. They came to the conclusion that Lefteris Andronicou was planning to kill Elsie Constantinou and commit suicide at midnight or five minutes past. As a result, there could be no further negotiations and the *MMAD* platoon should move into action. H. Mavros affirmed that he was prepared to lead the operation.

61. D. Konstantinidis, the director of Paphos police, accepted before the commission of inquiry that, although some notes were taken during the incident, he had not been involved in this process. Neither did he consult these notes either before or during the final meeting. A. Nikolaidis, the deputy director of Paphos police, made a similar statement.

62. Immediately after the meeting, the director of Paphos police, D. Konstantinidis, called the deputy chief of police, K. Papakostas, and told him that they were awaiting instructions from the headquarters as to whether they should continue the negotiations or break into the flat. If the instructions were to continue the negotiations and Elsie Constantinou was nevertheless killed, responsibility would lie with the headquarters. K. Papakostas testified that he received D. Konstantinidis's telephone call at 11.10 p.m.

63. H. Mavros left to inform his platoon about the new development, namely the information that Lefteris Andronicou was planning to kill Elsie Constantinou. The platoon was then moved closer to the flat, behind the block of flats.

64. The deputy chief of police, K. Papakostas, met with his chief, A. Potamaris, in the latter's house. A. Potamaris agreed that the *MMAD* should be used. K. Papakostas called the director of Paphos police, D. Konstantinidis, and informed him that the rescue plan had been approved. K. Papakostas talked to the head of the *MMAD* platoon, H. Mavros, who had in the meantime returned and the two men agreed that the plan remained unchanged. Then K. Papakostas talked again to D. Konstantinidis who had in the meantime given instructions that an ambulance be dispatched to the scene. D. Konstantinidis had specified that the lights of the ambulance and its siren should be switched off so as not to alert Lefteris Andronicou. According to the evidence presented to the commission of inquiry, the order for the ambulance reached Paphos Hospital at 11.45 p.m.

65. H. Mavros asked for all bystanders to be pushed back and D. Konstantinidis gave orders to that effect.

66. After the final meeting of the police officers, E. Parmatzia, Lefteris Andronicou's cousin, arrived with her husband and her sister. E. Parmatzia claimed before the commission of inquiry that she had received two telephone calls from Lefteris Andronicou in the course of the day and that he had told her that he would open his door only if the police left. The

police director of Paphos, D. Konstantinidis, called Lefteris Andronicou on the phone. Lefteris Andronicou talked to E. Parmatzia but declined her offer to meet her. He also questioned her identity and then, according to E. Parmatzia, D. Konstantinidis interrupted the conversation.

67. E. Parmatzia further testified that, when she talked to Lefteris Andronicou on G. Poliviu's mobile phone five to six minutes later, he asked for the withdrawal of the police. E. Parmatzia's husband testified that he had also talked to him on that occasion.

68. According to a detailed telephone bill produced by G. Poliviu before the commission of inquiry, three telephone calls were made from his mobile phone to Lefteris Andronicou's phone that night, one at 11.18 p.m., one at 11.39 and one at 11.49. According to G. Poliviu, when he last talked with Lefteris Andronicou, the latter indicated that he wanted to be left alone to prepare some coffee.

E. The armed intervention

69. Shortly before midnight the members of the *MMAD* platoon silently took up their positions around the flat. They were filmed by the journalist who made the video recording.

70. H. Mavros testified before the commission of inquiry that he stood 60 metres away from the flat. Six officers were placed in front of the flat (in the proceedings before the commission of inquiry these were referred to as Officers nos. 1, 2, 3, 4, 5 and 6) and two at the back (for the purposes of the inquiry, Officers nos. 7 and 8). Officers nos. 5 and 6, who would fire tear gas into the living-room, were by the front window. Officers nos. 1 and 3 were placed on the right of the door and Officers nos. 2 and 4 on the left. The two men with the battering ram were placed opposite the door. Five other *MMAD* officers took up positions around the flat for security purposes.

71. The director of Paphos police, D. Konstantinidis, testified that, once the officers had taken up their positions, he called the deputy chief of police, K. Papakostas, on the phone once more at 11.55 p.m.

72. H. Mavros testified that he called the link person on his radio. According to H. Mavros, the link person called the commanding officer, D. Konstantinidis, who ordered the deputy director of Paphos police, A. Nikolaidis, to call Lefteris Andronicou. When H. Mavros was told by the link person that A. Nikolaidis was talking with Lefteris Andronicou, he gave the signal for the armed intervention.

73. A. Nikolaidis testified that he called Lefteris Andronicou when he was told to do so by D. Konstantinidis at 11.59 p.m. or midnight. Lefteris Andronicou said: "Hello." Then A. Nikolaidis tried to say something but he heard shots being fired. He shouted Lefteris Andronicou's name two or three times but received no answer.

74. Officers nos. 1, 3 and 5 testified that they heard the telephone ring three times. They considered that it was the telephone call intended to distract him. They did not hear him reply. Then they heard the telephone ring again followed by the signal: "Inside, inside, inside." According to Officer no. 1, there was a one-minute interval between the two telephone calls.

75. When the signal was given, Officer no. 5 fired two tear gas bullets through the front window and then Officer no. 6 sprayed the living-room with tear gas. Officer no. 8 fired two tear gas bullets into the bathroom. Officer no. 7 inadvertently, as he subsequently testified, fired two real, instead of tear gas, bullets into the bedroom.

76. The door was broken down and Officer no. 1 entered the flat. In his testimony, he claimed that he saw Lefteris Andronicou standing in front of him, three to four metres away, with his gun pointed at him. Elsie Constantinou was in front of Lefteris Andronicou and both appeared to make a slight movement. Lefteris Andronicou's gun was over Elsie Constantinou. Officer no. 1 moved and Lefteris Andronicou shot him in the right shoulder. He fell back, pushing Officer no. 3 as he went. Officer no. 3 fell down as well.

77. It was subsequently established that immediately after the first shot Lefteris Andronicou fired a second one which hit Elsie Constantinou. In their testimony, Officers nos. 1, 2, 3 and 5 claimed that they only heard one shot.

78. Officer no. 2 testified that he saw Officers nos. 1 and 3 falling backwards. He also heard Officer no. 1 crying out: "He shot me." He believed that Officer no. 1 had been seriously injured and that Officer no. 3 had been killed. He entered the flat three seconds later, having decided to use his machine gun and not his pistol because he needed light. He switched on his gun-light and saw Lefteris Andronicou and Elsie Constantinou in the diagonally opposite corner. Lefteris Andronicou's knees were bent as if he were preparing to sit down. Elsie Constantinou was in front of Lefteris Andronicou, facing him. Officer no. 2 could only see the left side of Lefteris Andronicou's body. He did not notice whether Lefteris Andronicou had a gun but believed that he did. He considered that he did not have time to ascertain whether his belief corresponded to reality. He distinguished Lefteris Andronicou and fired two to three times. The couple moved and

Officer no. 2 could no longer see Lefteris Andronicou. He moved to the right and could then see Lefteris Andronicou's left side. Lefteris Andronicou was sitting on the floor and Elsie Constantinou was covering the right side of his body. Officer no. 2 fired again at Lefteris Andronicou several times. He stopped shooting when Lefteris Andronicou was lying on the floor. He wanted to make sure that Lefteris Andronicou was no danger to him or to the young woman. Lefteris Andronicou's moves appeared to him to be menacing. Officer no. 2 further testified that all his shots were aimed at the left side of Lefteris Andronicou's body, because this was the only side he could see. He affirmed that he had been trained to shoot to kill when shot at. He did not exclude that he might have fired one or two bullets when Lefteris Andronicou was already lying on the floor. It was later ascertained that Officer no. 2 had fired thirteen bullets.

79. Officer no. 4 testified that he entered the flat after Officer no. 2 had fired the first bullets and had moved on. He saw Lefteris Andronicou in the diagonally opposite corner sitting on the floor, his legs stretched out in front of him. Elsie Constantinou was lying on Lefteris Andronicou's right shoulder. He did not notice whether he was holding a gun. When the firing was over, he saw Lefteris Andronicou lying on the floor and Elsie Constantinou covering his right side. He refused to answer any other questions at the inquiry invoking his right not to incriminate himself. It was later ascertained that he had fired sixteen bullets.

80. In the video recording, once the officers enter the flat, a small number of distinct shots – approximately six – are heard. A burst of fire follows. It was accepted by all parties that these were all single shots as opposed to automatic fire.

81. Officer no. 1 testified that he re-entered the flat after Officers nos. 2 and 4. He pointed his light at Lefteris Andronicou, who was lit up by the gun-lights of Officers nos. 2 and 4 who were still shooting at him. As Officer no. 1 entered the room, Officer no. 2 was on his right and Officer no. 4 on his left. He saw Lefteris Andronicou sitting on the ground with his back against the wall. Elsie Constantinou was covering part of Lefteris Andronicou's right side, her face down. He did not count how many shots he heard. Neither did he notice where Lefteris Andronicou's gun was. He testified that he had been trained to shoot to kill when shot at. He also testified that he would not have stopped firing, even if it had been clear to him that Lefteris Andronicou, when he was sitting with his back against the wall, had no gun. He had been told that it could not be excluded that Lefteris Andronicou might have had another weapon, for example a knife, which he could have used to kill the young woman.

82. Officer no. 3 testified that he entered the flat after Officer no. 1, having heard two or three shots when moving towards the door. As he entered he saw the couple in the diagonally opposite corner. Lefteris Andronicou was sitting on the floor, his legs stretched out in front of him. Elsie Constantinou was covering his right side. He saw Officers nos. 2 and 4 shooting. He did not count the shots. He wanted to seize Elsie Constantinou without getting in the line of fire. He looked at Officer no. 4 and before looking at the bodies again the firing stopped. Then he saw Lefteris Andronicou lying down, his knees bent against the wall, his head on the stereo. Elsie Constantinou was lying on him, the right part of her body on Lefteris Andronicou's right side, covering half his chest. Their bodies were not touching from the waist down. He did not see a gun. He seized Elsie Constantinou and headed for the door shouting: "An ambulance, an ambulance." At the doorstep, he stumbled and let Elsie Constantinou sit on the floor. He then gave her to two other *MMAD* officers. He testified that, according to his training, when it was necessary to shoot, the practice was always to shoot to kill.

83. In the video recording, as Elsie Constantinou is being taken out of the flat, several persons are heard shouting for an ambulance. According to all the witnesses, however, no ambulance was present and she had to be transported to Paphos Hospital in a police car. Dr A. Hatzimitsi escorted her. The ambulance arrived at the scene shortly afterwards.

84. While Elsie Constantinou is being taken to the police car two more shots are heard in the video recording. Officer no. 1 testified that he and Officer no. 2 realised that the bedroom door of the flat was locked. He called Officer no. 5 on the radio who carried a gun which could be used for breaking doors open. Officer no. 5 testified that he entered the flat when Elsie Constantinou was being carried out. He shot once, kicked the door and shot again. The door did not open. When they realised that nobody was inside, they left. Officer no. 1 saw the head of the *MMAD* platoon, H. Mavros, and told him that Lefteris Andronicou was dead.

85. G. Georgiadis, the head of Paphos CID, testified that he was informed by a person whom he could not identify that Lefteris Andronicou was dead. He went to the door of the flat and shone his torch in. He saw Lefteris Andronicou lying in a pool of blood but did not move in because of the tear gas. He was satisfied that Lefteris Andronicou was dead and informed his superiors. In the course of the proceedings before the commission of inquiry, it emerged that the next person to approach Lefteris

Andronicou's body was the State pathologist, Dr M. Matsakis, who visited the scene at 5 o'clock on the morning of 25 December 1993 and confirmed his death. Dr M. Matsakis considered that Lefteris Andronicou's death had occurred five hours earlier.

86. When Elsie Constantinou was admitted to Paphos Hospital, she was in deep shock. She was operated on for four and a half hours and then taken to the intensive care unit, where she died of her wounds at around ten past five on the morning of 25 December 1993.

87. Officer no. 1 was also taken to Paphos Hospital. First aid was administered to him and X-rays were taken. Although advised to stay in hospital, he left of his own will shortly afterwards.

F. The immediate aftermath

88. At around 8.30 on the morning of 25 December 1993, the police started photographing the scene of the incident and a video recording was made. Lefteris Andronicou's body was half naked. He was only wearing a pair of trousers at the time of his death. A shotgun cartridge was found in one of his pockets. The telephone was on a table to the left of the door. The receiver was not off the hook. On the same table there was a half-full cup of coffee, one kebab pie which was intact and the remains of a second kebab pie. The bedroom door was still locked, with two bullet holes near the lock. Lefteris Andronicou's gun was lying across the arms of an armchair near his body. The gun was not breached for reloading and there was no blood on the armchair. None of the police officers involved suggested that the gun had been moved after the incident.

89. A senior police officer, Mr Onisiforu, started an inquiry and written statements were taken from a number of witnesses. Later on in the day the police issued a first press release entitled: "Operation for the rescue of an abducted young woman".

90. At around 11 a.m. on 26 December 1993 the Minister of Justice and Public Order participated in a meeting at the police headquarters. After the meeting he told the journalists that Elsie Constantinou had been abducted.

91. On the same day the families of Lefteris Andronicou and Elsie Constantinou requested that a criminal investigation be opened in accordance with Article 4 of the Criminal Procedure Law. Moreover, an application for an inquest into the couple's deaths was filed with the coroner of the Paphos District Court.

G. The commission of inquiry

92. On 27 December 1993 the Council of Ministers mandated the President of the Supreme Court, Mr A.N. Loizou, judge of the European Court of Human Rights, to carry out an inquiry in accordance with the Commissions of Inquiry Act. The terms of the mandate were “to investigate in full the circumstances under which the deaths of Lefteris Andronicou and Elsie Constantinou occurred in Chloraka, Paphos, on the night of 24 to 25 December 1993, to determine who, if any, was responsible and to make any recommendations or observations which (the President of the Supreme Court) would deem necessary”.

93. The Attorney-General ordered Mr Onisiforu to continue his inquiry, but not to interfere with any of the real evidence, on the ground that the inquiry was not a criminal one within the meaning of Article 4 of the Criminal Procedure Law but was of an internal, purely administrative, character. Moreover, the coroner decided to refrain from fixing a hearing date.

94. On 29 December 1993 the Council of Ministers decided to grant the applicants *ex gratia* legal aid for the purposes of the inquiry which would cover their legal representation and enable them to obtain expert evidence.

95. The hearings before the one-member commission of inquiry opened on 3 January 1994. The applicants promptly objected to the appointment of the commission of inquiry, considering that the matter should have been dealt with by way of a criminal investigation. The commission considered, however, that it was not competent to examine the legality of the decision of the Council of Ministers setting it up.

96. The commission of inquiry held forty-six hearings, which were attended by the Attorney-General on behalf of the Republic and counsel on behalf of the families of the deceased, the police and the *MMAD*. Directions were given concerning the collection and preservation of all real evidence and the carrying out of all appropriate forensic tests. One hundred and thirteen exhibits were examined and seventy-two witnesses were heard. The witnesses testified under oath and were examined and cross-examined by all interested parties. Although the proceedings were public, the officers of the *MMAD* who took part in the armed intervention testified in camera. Their identities were disclosed only to the President of the Supreme Court who conducted the inquiry. The minutes of the inquiry, totalling 2,389 pages, were made public in their entirety.

H. Expert evidence before the commission of inquiry

97. The following expert evidence was tendered to the commission of inquiry.

1. Planning of the operation

98. R. Bagg, an ex-colonel of the Israeli army and a professional anti-terrorist and negotiations trainer, criticised the following aspects of the rescue operation. The witness considered that in most cases which did not involve terrorists or hardened criminals, negotiations could secure the release of the persons held and render the use of force unnecessary. In the case under examination, however, some of the main rules concerning negotiations had not been followed. The witness considered that the result of the negotiations could have been much more satisfactory if they had been based on a “give and take” approach. In general it was better for the negotiations to be conducted by persons who were not or did not appear to be police officers. The police could have ensured that no unauthorised calls reached Lefteris Andronicou by disconnecting his telephone and providing him with another line. Lefteris Andronicou should not have been able to see the crowd outside.

99. The *MMAD* platoon should have used multiple entries for their armed intervention. An observer should have been placed by the skylight who could have informed the police of Lefteris Andronicou’s movements. Special care should have been taken, however, because the head of the person at the skylight could have been seen by Lefteris Andronicou. The armed intervention should have taken place earlier on and stun grenades should have been used instead of tear gas. A fire engine could have poured water into the flat in order to neutralise Lefteris Andronicou. However, it would have been necessary to ascertain Lefteris Andronicou’s exact position. The witness did not exclude the possibility that the officers might have mistaken Lefteris Andronicou’s two shots for one. In this case, however, they should have lured Lefteris Andronicou into using his second shot. Well-trained officers like those of the *MMAD* should have realised that Lefteris Andronicou was not holding a gun and, in any event, should have fired the least possible number of bullets. No bullets should have been fired after Lefteris Andronicou had fallen to the ground.

100. W. Spalding, an ex-police officer from the United States and a professional crisis management and hostage negotiations trainer who had trained some of the officers of the *MMAD*, was not critical of the rescue operation. Although persons holding hostages often extended their deadlines, symbolic deadlines were to be taken more seriously. The failure to use the skylight was not “a big issue”. It was not a mistake to use tear gas instead of stun grenades. In W. Spalding’s view, it could not have been the

intention of H. Mavros to wait for the tear gas to produce its effects since that usually took some time. The tear gas was thrown to divert Lefteris Andronicou's attention. In the United States there were two schools of thought regarding multiple entry. Although he tended to favour it, others avoided it for fear that the hostage might be caught in the crossfire. In any event, there was nothing to reproach in the plan of the head of the *MMAD* platoon, H. Mavros, who had considered and excluded all other possible options.

101. W. Spalding also testified that he had trained the *MMAD* officers to such a level that they had to fire real bullets at balloons attached to his body. He had trained the officers to use lethal force as the last option. When it was necessary, however, they had been trained to shoot at the thorax. They had been trained to shoot until the target ceased to be a threat. In the case under examination, the use of lethal force became justified when Lefteris Andronicou opened fire. The officers should not have been concerned about the number of bullets fired. When cross-examined by applicants' counsel, the witness accepted that he had taken part in a number of operations involving ordinary civilians who held others under the threat of a gun where a negotiated solution had been found.

2. *Drugs*

102. K. Konari, a State chemist who examined the kebab pie which had not been consumed, testified that the quantity of Lorezabam that she had found in the pie indicated that five 2mg pills had been used. Elsie Constantinou had consumed a very large portion of her pie. Lorezabam was a tranquilliser and anti-anxiety drug which also had soporific effects. It started producing its effects within approximately thirty-five minutes of absorption. Its maximum effects occurred after two hours.

103. P. Hatzimitsis, the pharmacist who provided the soporifics, testified that Lorezabam started producing its effects within half an hour. Its maximum effects occurred between one and six hours after absorption.

104. Dr A. Hatzimitsi, the general practitioner who placed the soporifics in the food, testified that, if Lefteris Andronicou and Elsie Constantinou had eaten the pies, the drug would have produced its effects in half an hour and they would have fallen asleep. If Dormicum had been administered, they would have fallen asleep in ten minutes.

3. *Sequence of events*

105. N. Adan, a forensic expert from Israel, who had prepared a noise time chart on the basis of the video recording, testified that the second shot from Lefteris Andronicou's gun was fired 0.8 seconds after the first. In the witness's view, Lefteris Andronicou's second shot, like the first, was directed towards the door. The witness had reached this conclusion on the basis of the small number of pellets found in the flat. The noise time chart indicated that a number of distinct shots were fired after the *MMAD* officers entered the flat in the following sequence: one single shot, one triple shot and one double shot. These shots started 5.8 seconds and ended 8.5 seconds after the first tear gas shot. N. Adan considered that Elsie Constantinou must have been wounded at that stage because her screams, which could be heard on the video recording, were significantly reduced after the six shots. However, the witness was not sure whether the screaming had stopped entirely. The noise time chart further indicated that a burst of firing followed the single shots. It began 11 seconds and ended 13 seconds after the first tear gas shot.

106. Dr A.C. Hunt, a university Reader in forensic pathology in the United Kingdom, an ex-Home Office pathologist and an examiner in forensic pathology for the Royal College of Pathologists, testified that Elsie Constantinou must have received her wounds at the early stage of the operation because she was not heard shouting after the first shots heard in the video recording. However, he did not exclude that she might have stopped shouting for another reason or that the noise of the shooting might have covered her screams.

4. *Lefteris Andronicou's death*

107. Dr M. Matsakis, the State pathologist, conducted a post-mortem examination on Lefteris Andronicou's body on 27 December 1993. He found seven wounds to Lefteris Andronicou's head and neck, twenty-eight wounds to the thorax, abdomen and pelvis, nine wounds to the right arm, sixteen wounds to the left arm and four other wounds, all caused by bullets fired by the machine guns of the officers of the *MMAD*. At least twenty-five bullets had hit Lefteris Andronicou. The position of the wounds was such that, in Dr M. Matsakis's opinion, for at least part of the firing, the arms of Lefteris Andronicou had been interposed between the guns and his thorax. Before the commission of inquiry Dr M. Matsakis testified that these could have been among the first wounds inflicted.

108. In his report Dr M. Matsakis also specified that it was possible that the wounds inflicted to the left and right side of Lefteris Andronicou's body had been caused by bullets fired from different directions. Many of the bullets had been fired when Lefteris Andronicou was not in an upright position. At least some of the bullets which had entered the right front side of the body (mainly the abdomen) and had exited from the right lumbar region, had been fired while Lefteris Andronicou's body had been lying on the floor. Before the commission of inquiry, Dr M. Matsakis specified that the last bullets had hit Lefteris Andronicou's body while the right side of his back was in contact with the floor.

109. Dr A.C. Hunt testified that, if Elsie Constantinou had been covering the right side of Lefteris Andronicou during the shooting, as Officer no. 2 had testified, Lefteris Andronicou would not have received the wounds to the right side of his thorax, his right shoulder and his abdomen. He further testified that the position of Lefteris Andronicou's wounds was such that Elsie Constantinou could not have been covering his right side, as Officer no. 4 had testified. Moreover, the position of the wounds inflicted when Lefteris Andronicou was already lying on the floor could not be reconciled with the testimony of the officers of the *MMAD* that Elsie Constantinou had been found covering his abdomen.

110. In the course of the examination of Dr A.C. Hunt it was accepted by both sides that Lefteris Andronicou was already dead when the last shots were fired.

5. *Elsie Constantinou's death*

111. Dr M. Matsakis, the State pathologist, also performed a post-mortem examination on Elsie Constantinou's body on 26 December 1993. Two bullets fired from the machine guns of the *MMAD* officers had penetrated her body. The first bullet had entered the left lower postero-lateral region of the thorax and had exited from the right side of the mid-thorax. The second bullet had entered the lower right back and exited from the right side of the abdomen. The distance between Elsie Constantinou's body and the machine guns must have been greater than one metre.

112. Dr M. Matsakis also found four areas of wounding caused by the shot fired from Lefteris Andronicou's shotgun. A wound to the right hand was caused by contact or near-contact firing. Dr M. Matsakis considered it very likely that it had been caused by the same shot which had injured Officer no. 1. There was a second wound to the left hand also caused by contact or near-contact firing. A third wound to the upper left thoracic region and the front region of the left upper shoulder had been caused by the

same shot which had injured Elsie Constantinou's left hand. The same shot had also caused slight wounding to Elsie Constantinou's left ear.

113. There were also signs that Elsie Constantinou had been beaten in the face before her death.

114. Dr M. Matsakis concluded in his report that Elsie Constantinou's death had been caused by the wound inflicted by the machine-gun bullet which had penetrated her right lung, liver, stomach and spleen.

A second machine-gun wound to the abdominal area and the shotgun wounds to the anterior left upper thorax and hands had contributed to her death.

115. Before the commission of inquiry, Dr M. Matsakis specified that the first wound was capable of causing Elsie Constantinou's death on its own. The chances that Elsie Constantinou might have died, if she had only received the wounds to the anterior left upper thorax and hands, were very slim. However, this could not be excluded, in the sense that even the most insignificant wound could cause death if it became seriously infected. The State pathologist was invited to explain what he meant when he stated in his report that the wounds in the anterior left upper thorax and hands contributed to Elsie Constantinou's death. He replied that Elsie Constantinou had died because her brain was not receiving oxygen due to the bleeding. Although the principal wound had caused intense bleeding, the wounds to the left upper thorax and arms had also caused bleeding.

116. Dr F. Konstantinidis, the doctor who had operated on Elsie Constantinou, testified that the presence of an ambulance at the scene would not have prevented Elsie Constantinou's death.

117. Dr H. Fotiu, a surgeon called on behalf of the families of the deceased who was present during the post-mortem examination, accepted before the commission of inquiry that the wounds inflicted by Lefteris Andronicou's gun had contributed to Elsie Constantinou's death. However, he specified that Elsie Constantinou would have died in any event. In his view, there could be no doubt that Elsie Constantinou would have survived if she had only received the wounds caused by Lefteris Andronicou's gun. He specified that she would have had to spend only three days in hospital.

118. Dr A.C. Hunt testified that the wounds to the anterior left upper thorax and the hands "should [not] have been put as a contributory cause. It is like saying ... that somebody who has had their head cut off, death was influenced by a broken leg. The wounds described in the first paragraph are so catastrophic that there would be no need for any contributory cause. And

I have never seen a death from a discharge of a shotgun which has not penetrated a body cavity or the head or neck. Finally, it would be also more a matter for the surgeon who saw the wound in life”.

6. Lefteris Andronicou's gun

119. Ar. Haralambus, the police officer who had collected the fingerprints, testified that he was sure that all the fingerprints on Lefteris Andronicou's gun, with the exception of two, belonged to Lefteris Andronicou. One fingerprint could have belonged to Lefteris Andronicou and one did not. H. Diogenus, a bio-chemist at Nicosia Hospital, was not in a position to testify that Lefteris Andronicou's blood was found on his gun.

120. A. Nikolaidis, a police officer and an expert in ballistics, testified that Lefteris Andronicou's gun had not been hit by any bullets and that it could not be excluded that the gun might have fallen accidentally, instead of having been placed, on the armchair. The State pathologist, Dr M. Matsakis, expressed the view that Lefteris Andronicou's gun could have fallen on the armchair while Lefteris Andronicou was collapsing.

121. Dr A.C. Hunt also testified that, if Lefteris Andronicou had been holding a gun when being shot at, the gun would have fallen on the floor. It could not have fallen on the armchair in the position in which it had been found. It might have fallen on the armchair only if the armchair had been in front of Lefteris Andronicou when he dropped the gun.

122. N. Adan testified that the position in which Lefteris Andronicou's gun had been found, its muzzle pointing towards the door, and the absence of blood suggested that it had been placed there by Lefteris Andronicou. He considered that Lefteris Andronicou had sufficient time to place the gun there between the time of firing the shots and the entry of the first *MMAD* officer.

I. Findings of the commission of inquiry

123. The investigation was concluded on 27 April 1994 and the report of the commission of inquiry, totalling 258 pages, was published on 15 June 1994. The main findings of the commission of inquiry were the following.

124. The negotiations between the police and Lefteris Andronicou were conducted in the best possible manner under the circumstances, given in particular the stance he had adopted. He had been granted everything he had requested, namely a telephone, cigarettes and food. Although the food arrived after some delay, this had been done on purpose to exhaust him and make him surrender. He had also been given assurances that no consequences would follow if he agreed to release Elsie Constantinou.

However, he would not accept anything less than the departure of the police. There were no indications that Lefteris Andronicou had any particular enmity *vis-à-vis* the police. In any event, it would have been extremely improvident for the police to withdraw and leave Elsie Constantinou in his hands.

125. The non-involvement of psychologists, who had been sought but not found, did not affect the validity of the commission's conclusion concerning the manner in which the negotiations had been conducted. The police used the deputy director of Paphos police as principal negotiator, an officer with great experience in dealing with people, who immediately won Lefteris Andronicou's confidence and who communicated with him until the end. Trained negotiators, members of the police force, were also present. Their knowledge was used and they could have intervened if mistakes had been made. Moreover, the police used all available persons who could have influenced Lefteris Andronicou in the direction of abandoning his plan.

126. No attempt to prolong further the negotiations could be made, as there were grounds for believing that Lefteris Andronicou was determined to abide by his deadline. Lefteris Andronicou made repeated and consistent references to something which would happen at midnight on 24 December. The symbolic importance of the time chosen could not be easily ignored.

127. There was nothing reproachable in the Paphos police director acting as commanding officer. An attempt was made to disperse the crowd. The suggestion of counsel for the families of the deceased that the police missed several opportunities to neutralise Lefteris Andronicou, when he opened the window to take the telephone, the cigarettes and the food, was entirely unrealistic.

128. When deciding to dispatch the *MMAD* the chief of police acted responsibly, correctly and within his competence. All necessary information had been made available to him. There was no indication that the involvement and deployment of the *MMAD* had been decided and planned in a sloppy manner. The *MMAD* was a body specially trained to deal with such situations, which could not be handled by ordinary police officers. It was wrong to assume that the *MMAD* could only be used against terrorists or in wartime operations.

129. Despite some testimony to the contrary, the commission was satisfied that the food which Lefteris Andronicou had ordered arrived at approximately 11 p.m. The pharmacist who provided the drugs and Dr A. Hatzimitsi agreed that the soporifics which were administered to the food would have started producing their effects within half an hour. The other expert, K. Konari, made a distinction between the time which the particular soporific took to produce its effects, which she put at approximately thirty-

five minutes and the time the drug took to produce its maximum effects, which she put at two hours. These estimates, however, applied to situations where a normal dose had been administered. In any event, even if the wrong dose or the wrong drug had been administered as suggested by the applicants, Lefteris Andronicou did not eat the food and the operation could not have been planned exclusively around that factor.

130. The police formed the view that Lefteris Andronicou was planning to kill Elsie Constantinou and commit suicide at midnight on the basis of all necessary and available information. This was the opinion of Lefteris Andronicou's doctor, who had had extensive discussions with him. Lefteris Andronicou had told the director of Paphos police verbatim: "There is no Christmas for us, I will celebrate Christmas with Elsie and at five minutes past midnight you will come inside and take her." Elsie Constantinou herself claimed that Lefteris Andronicou intended to kill her. Lefteris Andronicou had not accepted any of the assurances offered to him and had threatened to shoot whenever it had been suggested to him that somebody might try to enter the flat.

131. There was no indication that the police were in a hurry to close the matter before midnight because it was Christmas Eve, as suggested by the applicants. The fact that the police had not been fully informed about the particulars of Lefteris Andronicou's relationship with Elsie Constantinou could not have affected the validity of their assessment of the situation. Although reference had been made to Elsie Constantinou having been abducted, the police knew that Elsie Constantinou had not initially been taken to Lefteris Andronicou's flat against her will.

132. The head of the *MMAD* platoon carefully inspected the scene, gathered information about the layout of Lefteris Andronicou's flat and was fully briefed about the events preceding his arrival. He was also in possession of all the information which had been made available to him subsequently or which he had himself acquired. That the sole aim of the operation was to save Elsie Constantinou's life was proved by the fact that no explosives were used to break down the door and no stun grenades were thrown. The use of a water hose, multiple entries or an observer by the skylight would not have been advisable in the circumstances.

133. The armed intervention was planned for around midnight in the hope that Lefteris Andronicou could be persuaded to release Elsie Constantinou. The head of the *MMAD* platoon had relied on surprise, quickness and accuracy to ensure the success of the armed intervention. No disproportionate importance should be attached to the fact that some of the

expert witnesses would have planned the armed intervention in another manner. The test to be applied was whether the head of the *MMAD* platoon had planned the armed intervention in a “reasonable” manner, which he had done.

134. Lefteris Andronicou was not taken by surprise because of an unauthorised telephone call which he received just before the armed intervention. Lefteris Andronicou could have answered the phone without lifting the receiver by activating the loudspeaker facility. When the first officer of the *MMAD* entered the flat he found Lefteris Andronicou hiding behind Elsie Constantinou and pointing a gun at him. Lefteris Andronicou fired two shots, one at the *MMAD* officer and one at Elsie Constantinou. The commission of inquiry did not accept expert testimony to the effect that the second shot was not aimed at Elsie Constantinou.

135. The commission of inquiry rejected the suggestion that the officers entered the flat with the intention of killing Lefteris Andronicou out of vengeance. It also considered that the officers of the *MMAD* could not exclude the possibility that the second cartridge in Lefteris Andronicou’s gun had not been used because the two shots had been fired immediately one after the other. When the officers entered the flat, they did not see whether Lefteris Andronicou was still holding his gun. Moreover, the possibility could not be excluded that Lefteris Andronicou could be in possession of other weapons. As a result, the commission of inquiry did not consider it necessary to determine whether Lefteris Andronicou’s gun could have accidentally fallen on the armchair where it was eventually found. The officers saw Elsie Constantinou in front of Lefteris Andronicou, her back to the door. She moved together with Lefteris Andronicou and, as a result, they considered that he was using her as a shield.

136. The officers were justified in their decision to start shooting as soon as they entered the flat because they were under the impression that their lives and that of Elsie Constantinou were in danger. As long as Lefteris Andronicou moved, they considered that the threat persisted. They shot repeatedly at Lefteris Andronicou’s torso and head, as they had been trained to do, in order to neutralise him as quickly as possible. Twenty-nine bullets were used. When Elsie Constantinou fell on Lefteris Andronicou’s right shoulder, her body left part of his torso and his pelvis uncovered. All the shots were fired in a very short period of time and that explained why the last two bullets penetrated Lefteris Andronicou’s body when his back or part of it was very close to or already touching the ground. The situation was comparable with that in the McCann, Farrell and Savage case in which the European Commission of Human Rights considered that firing nine shots at a person lying on the ground engaged no responsibility when the aim of the person firing was to neutralise a perceived risk. No inferences

could be drawn from the exercise by one *MMAD* officer of his right not to incriminate himself.

137. The commission of inquiry considered that, taking into consideration the explanations provided by the State pathologist, the latter was right in considering that the wounds inflicted on Elsie Constantinou by shot fired from Lefteris Andronicou's gun contributed to her death. Although Dr A.C. Hunt had a different view, he specified that "it would be also a matter for the surgeon who saw the wound in life". Dr H. Fotiu also accepted that the wounds inflicted by Lefteris Andronicou contributed to Elsie Constantinou's death. However, he specified that Elsie Constantinou would have died even if these wounds had not been inflicted.

138. The commission considered that Elsie Constantinou was injured by the officers of the *MMAD* because "she had moved when they were shooting to save her". In accordance with expert testimony, the presence of an ambulance at the scene would not have made any difference to Elsie Constantinou's fate.

139. In the light of all the above and relying, among other things, on the findings of the European Commission of Human Rights on the merits of application no. 18984/91 (*McCann, Farrell and Savage v. the United Kingdom*), the commission of inquiry concluded that the use of force by the officers of the *MMAD*, as a result of which Lefteris Andronicou and Elsie Constantinou died, was no more than absolutely necessary for the rescue of Elsie Constantinou and the self-defence of those who carried out the rescue operation and fell within the exceptions in Article 7 § 3 (a) of the Constitution of the Republic of Cyprus and Article 2 § 2 (a) of the Convention. Neither was there any lack of due care in the planning of the operation. Although no criminal acts had been committed and the police could not be criticised in any way for their handling of the case, the commission of inquiry recommended that the Government should examine the possibility of making an *ex gratia* payment to the families of the deceased on the basis of the judgment of 26 April 1994 of the European Court of Human Rights in the case of *Díaz Ruano v. Spain* (Series A no. 285-B).

J. Subsequent developments

140. By letter of 28 September 1994 the Attorney-General informed the applicants' lawyer that, in the light of the findings of the commission of inquiry, no criminal proceedings would be instituted in connection with the deaths of Lefteris Andronicou and Elsie Constantinou. He indicated, however, that he would propose to the Government that they make an *ex gratia* payment of "full and substantial compensation" to the heirs of the two deceased.

141. On 26 October 1994 Lefteris Andronicou's former wife asked the Paphos District Court to appoint her, jointly with her lawyer, administrator of Lefteris Andronicou's estate in her capacity as representative of the two under-age children Lefteris Andronicou had from his marriage with her. On 7 November 1994 the first and second applicants entered a caveat arguing that the children's mother could not be appointed administrator and asking the court not to take any steps without notifying them.

142. On 18 January 1995 the first and second applicants instituted proceedings before the Paphos District Court against Lefteris Andronicou's former wife and her lawyer. They asked to be appointed administrators of Lefteris Andronicou's estate.

143. On 17 May 1995 the Attorney-General offered the applicants legal aid for the proceedings before the coroner in Paphos. A hearing had been planned for 29 May 1995, which was, however, adjourned at the request of the applicants' lawyer.

144. On 7 June 1995 the Attorney-General informed the applicants' lawyer that "the State [would] cover any advocates' costs that the dependants of the deceased may sustain if and when they decide to bring a civil action for damages against anyone on the basis of the facts which led to the tragic deaths of Elsie Constantinou and Lefteris Andronicou".

145. On 20 July 1995 the Attorney-General withdrew both offers of legal aid. No agreement on the payment of *ex gratia* compensation was reached between the applicants and the Government.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The guarantee of the right to life

146. The right to life is guaranteed under Article 7 of the Constitution of the Republic of Cyprus. Article 7 provides:

"1. Every person has the right to life and corporal integrity.

2. No person shall be deprived of his life except in the execution of a sentence of a competent court following his conviction of an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy *jure gentium* and capital offences under military law.

3. 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 person or property against the infliction of a proportionate and otherwise unavoidable and irreparable evil;

- (b) in order to effect an arrest or to prevent the escape of a person lawfully detained;
- (c) in action taken for the purpose of quelling a riot or insurrection, when and as provided by law.”

B. The status of the European Convention on Human Rights in domestic law

147. The European Convention on Human Rights has been incorporated into the domestic law of the Republic of Cyprus and, under Article 169 of the Constitution, takes precedence over domestic law.

C. The defences of compulsion and necessity under domestic law

148. Article 16 of the Criminal Code provides as follows:

“Except for murder and offences against the State punishable with death, no act is an offence which is done by a person who is compelled to do it by threats which at the time of doing it reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided that the person doing the act did not, of his own accord or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.”

149. Article 17 of the Criminal Code provides for a defence of necessity. Article 17 reads:

“An act or omission which would otherwise be an offence may be excused if the person accused can show that it was done or omitted to be done only in order to avoid consequences which could not otherwise be avoided, and which if they had followed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided.”

D. Police powers of arrest

150. Article 9 of the Criminal Procedure Law provides:

“(1) In making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If the person to be arrested forcibly resists the endeavour to arrest him or attempts to evade the arrest, the police officer or other person making the arrest may use all means necessary to effect the arrest:

Provided that nothing in this subsection contained shall be deemed to justify the use of greater force than was reasonable in the circumstances in which it was employed or was necessary for the arrest of the offender.

(3) Except when the person arrested is in the actual course of the commission of an offence or is pursued immediately after the commission of an offence or escapes from lawful custody, the police officer or other person making the arrest shall inform the person arrested of the cause of the arrest.”

E. Commissions of inquiry

151. Under section 2 of the Commissions of Inquiry Act 1959, which remained in force after the independence of Cyprus, the Governor has power to appoint a commission of inquiry and to invest it with the powers set out in section 7. Section 7 provides:

“A Commission appointed under the provisions of this Law shall have such of the following powers as are conferred upon it by the Order of appointment required by section 2 of this Law –

(a) to procure all such evidence, written or oral, and to examine all such persons as witnesses as the Commission may think it necessary or desirable to procure or examine;

(b) to require the evidence, whether written or oral, of any witness to be made on oath or declaration, such oath or declaration to be that which could be required of the witness if he were giving evidence in a court of law;

(c) to summon any person residing in the Colony to attend any meeting of the Commission to give evidence or produce any document in his possession and to examine him as a witness or require him to produce any document in his possession, subject to all just exceptions;

(d) to issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails to do so, and does not excuse such failure to the satisfaction of the Commission, and to order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his refusal to obey the summons, and also to fine such person a sum not exceeding five pounds;

(e) to fine in a sum not exceeding five pounds any person who, being required by the Commission to give evidence on oath or declaration or to produce a document, refuses to do so and does not excuse such refusal to the satisfaction of the Commission:

Provided that, if the witness objects to answer any question on the ground that it will tend to incriminate him, he shall not be required to answer the question nor be liable to any penalties for refusing so to answer;

(f) to admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings;

(g) to admit or exclude the public from any meeting of the Commission;

(h) to admit or exclude the press from any meeting of the Commission;

(i) to award any person who has attended any meeting of the Commission such sum or sums as in the opinion of the Commission may have been reasonably incurred by such person by reason of such attendance.”

PROCEEDINGS BEFORE THE COMMISSION

152. In their application before the Commission (no. 25052/94) lodged on 22 August 1994, the applicants complained that the killing of Mr Lefteris Andronicou and Miss Elsie Constantinou in the circumstances in question was a violation of the victims’ right to life, as guaranteed by Article 2 of the Convention. They further complained that they were denied access to a court to institute proceedings for damages in connection with the deaths of the couple, in breach of Article 6 § 1 of the Convention.

153. The Commission declared the application admissible on 5 July 1995. In its report of 23 May 1996 (Article 31), it expressed the opinion (by fifteen votes to three) that there had been a violation of Article 2 of the Convention and (by twelve votes to six) that there had been no violation of Article 6 § 1 of the Convention. The full text of the Commission’s opinion and of the five separate opinions contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

154. As they had done at the admissibility stage of the proceedings before the Commission, the Government in their memorial raised objections as to the admissibility of the application on account of the facts that the applicants had failed to exhaust available domestic remedies and had lodged their application in circumstances which amounted to an abuse of the right

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission’s report is obtainable from the registry.

of individual petition. Addressing the merits of the applicants' complaints, they contended in the alternative that the facts of the case did not disclose a breach of either Article 2 or Article 6 of the Convention.

155. For their part the applicants requested the Court to dismiss the Government's preliminary objections, to find that the Government had breached Articles 2 and 6 of the Convention and to award them just satisfaction under Article 50.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-exhaustion of domestic remedies

156. The Government maintained that the applicants' complaints under Articles 2 and 6 of the Convention should be declared inadmissible since they had failed to institute a civil action to claim compensation for damages in respect of the deaths of the couple. The Government through the Office of the Attorney-General had taken positive steps to facilitate such a civil action by making the applicants an *ex gratia* offer to cover any legal costs which they would have incurred, thereby overcoming any difficulties which they might have encountered through the absence of a legal-aid scheme in Cyprus for instituting civil proceedings. Even though the absence of a civil legal-aid scheme had never proved to be an obstacle to a litigant in Cyprus, the offer, had it been accepted, would have guaranteed the applicants an effective opportunity to sue for damages in a domestic court. Since the applicants had impliedly rejected that offer by persisting with their application before the Commission, the Government was justified in withdrawing it.

Before the Court the Government contended that the applicants could not assert that they had exhausted all effective remedies simply by virtue of their participation in the proceedings of the domestic commission of inquiry given that the commission was not empowered to grant remedies.

157. The applicants stated that the essence of their complaints concerned the unlawful deprivation of the lives of the deceased couple. The appropriate and effective remedy would therefore have been the institution of criminal proceedings against the police officers responsible for the unlawful killings. They had requested the authorities to take this course of action (see paragraphs 95 and 140 above), but the Attorney-General had refused in view of the findings of the commission of inquiry.

In addition, they had actively participated throughout the proceedings of the commission of inquiry. The scope of a civil action for damages would not have been any broader than that of the commission of inquiry. In any event, the absence of a legal-aid system in the respondent State for instituting civil proceedings operated against the applicants in view of their inadequate financial resources. As to the Attorney-General's *ex gratia* offer of legal aid, this could not be considered to be a substitute for an independently administered legal-aid scheme and at any rate the offer was arbitrarily withdrawn six weeks after it was made. They also maintained that civil proceedings in the respondent State could last up to eight years. Before the Court the Government denied that this was the case.

158. The Commission in its admissibility decision had considered that the applicants had exhausted domestic remedies given that the Attorney-General had refused their request to institute criminal proceedings. Before the Court the Delegate of the Commission stated that the applicants had no effective chance of succeeding in a civil action for damages in view of the outcome of the domestic commission of inquiry.

159. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 26 of the Convention requires an applicant to have normal recourse to remedies within the national legal system which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2276, § 52).

160. The Court notes that the remit of the domestic commission of inquiry was to carry out a thorough investigation into the circumstances surrounding the deaths of the couple and to determine who, if anyone, was responsible for their deaths. The commission of inquiry was not competent to grant a remedy even though it could make any recommendations or observations in the light of its findings (see paragraphs 92 and 151 above). Accordingly the applicants' full participation in the proceedings did not in itself absolve them from the requirement to have recourse to domestic legal remedies which may have afforded them redress in respect of their complaints.

161. It is to be noted in this respect that, following the close of the proceedings before the commission of inquiry, the applicants did in fact request the Attorney-General to institute criminal proceedings, but this request was refused (see paragraph 140 above), leaving them without the possibility of obtaining a verdict from a criminal court that the deceased had been unlawfully deprived of their lives, which is the essence of their complaint under Article 2 of the Convention. Furthermore, the Court agrees

with the views of the Delegate of the Commission that the conclusions of the investigation conducted by the commission of inquiry, chaired as it was by the highest judicial appointee in the respondent State, could reasonably be considered to be decisive of the issue of liability. Those conclusions were fully reasoned and reached on the basis of strict rules of evidence, following a meticulous investigation of the facts (see paragraphs 6 and 96 above). While those conclusions were not binding on a domestic civil court, they were likely in practice to remove any reasonable prospects of success which a civil claim for damages may have offered the applicants. Accordingly, the applicants' decision not to accept the Attorney-General's *ex gratia* offer of legal aid and to institute civil proceedings on the strength of that offer could be considered to have been justified in the circumstances.

162. For the above reasons the Court dismisses the Government's preliminary objection of non-exhaustion of domestic remedies in respect of both of the applicants' complaints.

B. Abuse of process

163. The Government argued that the decision of the applicants to lodge an application with the Commission amounted to an abuse of process in view of the fact that the Government had declared their intention to compensate them as generously as possible for the loss of their loved ones. Notwithstanding the Government's declaration of intent and the opening of negotiations on the terms of an *ex gratia* settlement the applicants broke off discussions and lodged their application with the Commission.

To illustrate their good faith to reach a settlement with the applicants, the Government drew attention to the fact that substantial compensation had been agreed on an *ex gratia* basis for the benefit of the children of Lefteris Andronicou to settle an action brought by the children's mother. The settlement had been approved by a domestic court.

164. The Government did not elaborate on this objection at the hearing; nor did the applicants or the Delegate of the Commission address the point.

165. In the view of the Court an applicant's refusal either to enter into or continue negotiations with the authorities of a respondent State on the terms of a friendly settlement over an alleged breach of a right guaranteed under the Convention cannot be construed as an abuse of the right of individual petition under Article 27 § 2 of the Convention. In the instant case it is also to be noted that the proposed settlement did not involve any admission of the Government's liability for the deaths of the couple. However, it was the firm intention of the applicants to establish that the authorities were indeed responsible for the unlawful killing of the couple. In these circumstances, it cannot be said that the applicants' refusal to reach an

agreement with the authorities on the terms of a settlement and their decision to pursue an application before the Commission amounted to an abuse of process.

Accordingly the Government's second preliminary objection also fails.

166. In view of its conclusions on the Government's preliminary objections the Court will now consider the merits of the applicants' complaints under Articles 2 and 6 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

167. The applicants alleged that the killings of Lefteris Andronicou and Elsie Constantinou by officers of the *MMAD* (*Mihanokiniti Monada Amesio Drasis*) constituted a violation of Article 2 of the Convention which reads:

“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.”

168. The applicants maintained that the force used by the officers of the *MMAD* which resulted in the deaths of the couple must be viewed in the context of the planning, control and implementation of the rescue operation as a whole. Having regard to the principles established by the Court in its *McCann and Others v. the United Kingdom* judgment of 27 September 1995 (Series A no. 324) they contended that the authorities had failed to minimise to the greatest extent possible recourse to lethal force in the planning and control phases and that the force administered by the officers in the implementation of the rescue operation was not in the circumstances strictly proportionate to the aim of arresting Lefteris Andronicou and rescuing Elsie Constantinou. They requested the Court to accept the Commission's finding that the authorities of the respondent State had violated Article 2 of the Convention.

169. The Government disputed the applicants' conclusion, stressing that it was in contradiction to the findings of the domestic commission of inquiry which had conducted a thorough investigation of the circumstances leading to the tragic death of the couple. Having heard the evidence of seventy-two witnesses over the course of forty-six days, including the key

officials involved in the planning, control and implementation of the rescue operation, the commission of inquiry concluded that all due care had been shown in the planning and control stages and that the force administered by Officers nos. 2 and 4 was in the circumstances strictly proportionate to the aim of defending the life of Elsie Constantinou and their own lives against the threat of unlawful violence. In reaching those conclusions the Chairman of the commission of inquiry had particular regard to the requirements of Article 2 of the Convention as interpreted by the European Commission of Human Rights in relevant decisions. Although the Chairman did not have the benefit of the Court's *McCann and Others* judgment (cited above) at the time, the legal rules which he applied in reaching his conclusions were fully in line with the principles governing the use of lethal force set out in that judgment.

170. The Commission found fault in particular with the authorities' decision when planning and controlling the rescue operation to have recourse to officers of the *MMAD* to bring to an end what was essentially a domestic quarrel. That decision inevitably led to the deaths of the couple and to a use of force which was not in the circumstances absolutely necessary. Accordingly, the Commission concluded that the respondent State had breached Article 2 of the Convention.

A. The Court's approach

General principles

171. The Court recalls that Article 2 ranks as one of the most fundamental provisions of the Convention – indeed one which, in peace time, admits of no derogation under Article 15. Like Article 3 of the Convention it enshrines one of the basic values of the democratic societies making up the Council of Europe. As such its provisions must be strictly construed. This is particularly true of the exceptions delineated in paragraph 2 of that Article which apply not only to intentional deprivation of life but also to situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. However, the use of force must be no more than “absolutely necessary” for the achievement of one of the purposes defined in sub-paragraphs (a), (b) and (c).

In this respect the use of the term “absolutely necessary” in Article 2 § 2 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 subparagraphs 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 the *McCann and Others* judgment cited above, pp. 45–46, §§ 147–50).

172. The Court adopts the above principles for the purposes of its assessment of the lawfulness under Article 2 of the Convention of the actions of the authorities which led to the deaths of the couple. Indeed, those appearing before it have not disputed the applicability of these principles to the facts in issue.

The establishment of the facts

173. In the proceedings before the Court neither the applicants nor the Government have contested the facts as established by the Commission. Having regard to these views as well as to the fact that the Commission had before it all key evidence, including the transcripts of oral testimony of witnesses, which had been available to the domestic commission of inquiry (see paragraph 6 above), the Court takes the Commission's establishment of the facts set out in paragraphs 9–91 above to be an accurate and reliable account of the circumstances of this case.

174. On the other hand the applicants and the Government differ fundamentally on the conclusions to be drawn from these facts under Article 2 of the Convention. The Court must have due regard to the fact that the domestic commission of inquiry applied substantially the same legal rules as the European Commission when assessing the planning, control and implementation of the rescue operation from the standpoint of the requirements of Article 2 (see paragraph 139 above), and provided full reasons for its conclusions. It is to be noted, however, that the primary function of the commission of inquiry was to assess the responsibility, if any, of those directly or indirectly concerned in the planning, control and implementation of the operation, which is not the Court's function in the instant case. It considers therefore that in the circumstances it must make its own assessment of whether the facts established by the Commission disclose a violation of Article 2. In accordance with its usual practice it will

accordingly assess the issues in the light of all the material placed before it by the applicants and by the Government or, if necessary, material obtained of its own motion (see the *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 64, § 160).

1. Planning and control of the rescue operation

(a) Arguments of those appearing before the Court

(i) The applicants

175. The applicants contended that the negotiations between the authorities and Lefteris Andronicou were uncoordinated and deficient both in terms of leadership and strategy. Responsibility for the conduct of the negotiations was assigned to a police officer, A. Nikolaidis, who had admitted to having no experience of handling such incidents (see paragraph 25 above). On one occasion A. Nikolaidis actually threatened to break down the door of Lefteris Andronicou's flat, thereby undermining any assurances he had earlier given to him (see paragraph 50 above). Trained negotiators were in fact present but they were never used. The failure to secure the assistance of a psychologist meant that it was left to the police negotiator to gauge Lefteris Andronicou's frame of mind and intentions from the conversations which he and others had with him as well as from Elsie Constantinou's cries for assistance. Furthermore, the authorities had failed to provide for a dedicated telephone line between the police negotiator and Lefteris Andronicou with the result that the line was occasionally engaged when he attempted to speak to him. One caller in fact sought to frighten Lefteris Andronicou into letting his fiancée go (see paragraph 45 above). The authorities had also allowed the negotiations to be conducted against the background of a crowd of onlookers. There was also a strong police presence around the flat, which only served to heighten the pressure on Lefteris Andronicou, especially since he had repeatedly asked for the police to be withdrawn from the area around his flat.

The applicants maintained that, although the police had been at the scene from 10.30 a.m. on 24 December and had ample time and opportunity to defuse the incident, their failure to conduct the negotiations in an appropriate manner allowed an essentially domestic quarrel to develop into a crisis and led to the decision to mount a rescue operation based on the use of officers of the *MMAD* to the exclusion of alternative options entailing less risk to life. They pointed to Mr Bagg's expert opinion before the commission of inquiry in this respect (see paragraphs 98 and 99 above).

176. The decision to deploy the *MMAD* officers who were trained to shoot to kill if fired at was a fundamental error in the planning and control phase of the rescue operation. The authorities incorrectly concluded from the negotiations phase that Lefteris Andronicou had formed the definite intention to kill his fiancée at midnight and then commit suicide and that the shotgun might not be the only weapon in his possession. However the authorities did not seek to confirm these beliefs and in fact there were no concrete indications that the beliefs were indeed well-founded. Lefteris Andronicou had never in fact stated categorically that he would kill Elsie Constantinou at midnight, nor was he ever seen to be in possession of any weapon apart from the shotgun. The failure of the authorities to exercise all due care in evaluating the information at their disposal gave rise to a situation in which the *MMAD* officers entered the flat psychologically prepared to be confronted by a person about to kill his hostage and who was armed with other weapons. This fundamental mistake in the planning and control of the operation was compounded by the decision to equip the raiding team with machine guns and to send its members into a badly-lit room measuring 5 by 3.6 metres without any clear instructions on how to react in the event that Lefteris Andronicou might be holding on to Elsie Constantinou.

177. Given these considerations the applicants argued that the planning and control of the rescue operation had been conducted in a way which failed to meet the standards demanded under Article 2 of the Convention.

(ii) *The Government*

178. The Government contended that the development of the situation had been kept under continuous review by the police officers at the scene of the incident. The negotiations had been conducted in the best possible manner in the circumstances by an experienced police officer who had succeeded in building up a relationship with Lefteris Andronicou. It had also been justified to enlist the help of the latter's family, friends and former employers in the negotiations since these persons were close to him and their possible influence could not be disregarded. The decision to use the *MMAD* officers was only taken after the failure of protracted negotiations and when it became clear from his threatening stance and Elsie Constantinou's cries for help that Lefteris Andronicou intended to kill her at a highly symbolic time and date and then take his own life. This conclusion was in fact borne out by the fact that he fired two shots when the *MMAD* officers entered the flat, one of which was aimed at and hit Elsie Constantinou.

The Government asserted that it was incorrect to consider the *MMAD* as a unit specially and exclusively trained for use in anti-terrorist or wartime operations. In fact the rescue operation was planned in such a way as to avoid the use of weapons and with the protection of human life in mind. It

was solely geared to securing the release of Elsie Constantinou and the arrest of Lefteris Andronicou on the basis of surprise, speed and precision. The concern to avoid injury to the couple led in fact to the decision to use tear gas rather than stun grenades. The *MMAD* officers were moreover given clear instructions to use only strictly proportionate force and to fire only if the young woman's life or their own lives were in danger; nor was it unreasonable to equip the officers with machine guns given that these were fitted with torches which could light up the living-room. The Government also challenged the applicants' assertion that the authorities had negligently informed the rescue party that Lefteris Andronicou might be in possession of other weapons apart from a double-barrelled shotgun. They argued that this eventuality could not reasonably be excluded in the circumstances and that the *MMAD* officers needed to be alert to it.

179. For these reasons the Government requested the Court to adopt the findings of the Chairman of the commission of inquiry, whose exhaustive evaluation of the evidence given by witnesses and experts led him to conclude on the basis of the correct legal rules that all due care had been taken in the planning and control of the rescue operation.

(iii) The Commission

180. While acknowledging that it may be possible to make allowances for some of the mistakes, omissions and errors of judgment which had occurred in the authorities' handling of the situation in view of the atmosphere of crisis which developed throughout the day, the Commission nevertheless concluded that the decision to deploy the *MMAD* officers to deal with a domestic quarrel was a fundamental flaw in the planning and control of the operation. The *MMAD* officers were trained to shoot to kill when they perceived themselves to be in danger. They were equipped with machine guns, forewarned that Lefteris Andronicou might be holding other weapons even though there was no reason to support that belief and sent into a small, badly lit room to effect the operation. In these circumstances, the couple were both exposed to an obvious risk of injury or death. For these reasons the authorities had failed to plan and control the operation in a way which minimised the recourse to lethal force.

Before the Court the Delegate of the Commission was also critical of the chaotic way in which the negotiations phase had been conducted. The authorities' failure to use a trained negotiator and to control third-party contacts with Lefteris Andronicou as well as the crowds milling around the flat suggested a lack of professionalism. Furthermore the authorities, in forming the belief that Lefteris Andronicou intended to kill the young

woman, did not attach sufficient weight to his statements that he would release her provided the police withdrew from the scene. In addition, the mishap over the timing of the delivery of the drugged food and the failure to secure the presence of an ambulance at the scene were both symptomatic of a badly handled operation.

(b) The Court's assessment of the rescue operation

181. The Court's sole concern must be to evaluate whether in the circumstances the planning and control of the rescue operation including the decision to deploy the *MMAD* officers showed that the authorities had taken appropriate care to ensure that any risk to the lives of the couple had been minimised and that they were not negligent in their choice of action. It does not therefore consider it appropriate to discuss with the benefit of hindsight the merits of alternative tactics such as the administration of drugs to Lefteris Andronicou's food early in the afternoon of 24 December or the use of psychologists in the negotiations, or to substitute its own views for those of the authorities confronted with a dilemma unprecedented in the respondent State and the need to take decisive action to break the deadlock. It is to be noted that alternative strategies were in fact discussed and analysed before the domestic commission of inquiry and expert opinion differed as to their suitability in the circumstances (see paragraphs 97–101 above).

182. In carrying out its assessment of the planning and control phase of the operation from the standpoint of Article 2 of the Convention, the Court must have particular regard to the context in which the incident occurred as well as to the way in which the situation developed over the course of the day.

183. As to the context, the authorities clearly understood that they were dealing with a young couple and not with hardened criminals or terrorists. The negotiations and the resolve to negotiate up until the last possible moment clearly indicate that the authorities never lost sight of the fact that the incident had its origins in a "lovers' quarrel" and that this factor had to be taken into account if, in the final analysis, it transpired that force had to be used to free Elsie Constantinou. It was not unreasonable in view of the context for the authorities to enlist the help of the family and friends of Lefteris Andronicou in order to bring the situation to an end.

It is also to be noted that the authorities tried to bring an end to the incident through persuasion and dialogue right up to the last possible moment. The police negotiator continued his attempts in the later phase of the incident to assure Lefteris Andronicou that no harm would come to him if he were to release the young woman. Instructions were in fact given at a meeting which ended at 11 p.m. to delay the involvement of the *MMAD*

officers as much as possible to enable negotiations to continue (see paragraph 55 above). This sustained effort by the authorities to resolve the situation through negotiations illustrates a deep concern on the part of the authorities to deploy the *MMAD* officers only as a last resort.

While there may have been shortcomings as regards, for example, the lack of crowd control or the absence of a dedicated telephone line between the police negotiator and Lefteris Andronicou, the Court considers nevertheless that the negotiations were in general conducted in a manner which can be said to be reasonable in the circumstances.

184. Irrespective of the domestic nature of the incident, the situation progressively developed in the eyes of the authorities present into a situation fraught with danger and in which critical decisions had to be taken. Lefteris Andronicou's intransigence in the face of negotiations, his threatening tone as well as the young woman's shouts for help persuaded the authorities that he intended to kill her and commit suicide at midnight. Admittedly, Lefteris Andronicou never announced that he would kill Elsie Constantinou and he only threatened to shoot her if the police broke into his flat. Nevertheless, the authorities could not reasonably ignore her shouts that her life was in danger. It must be emphasised that one hour before midnight she was repeatedly heard screaming that Lefteris Andronicou was going to kill her (see paragraph 59 above) and that Lefteris Andronicou had already shown his capacity for violence by beating her (see paragraph 16 above). In these circumstances and in the knowledge that Lefteris Andronicou was armed, the authorities could reasonably consider that as midnight approached the negotiations had failed and that an attempt had to be made to get into the flat, disarm and arrest him and free Elsie Constantinou.

185. In the Court's view the authorities' decision to use the *MMAD* officers in the circumstances as they were known at the time was justified. Recourse to the skills of a highly professionally trained unit like the *MMAD* would appear to be quite natural given the nature of the operation which was contemplated. The decision to use the *MMAD* officers was a considered one of last resort. It was discussed both at the highest possible level in the police chain of command and at ministerial level (see paragraph 55 above) and only implemented when the negotiations failed and, as noted above, in view of a reasonably held belief that the young woman's life was in imminent danger. While it is true that the officers deployed were trained to shoot to kill if fired at, it is to be noted that they were issued with clear instructions as to when to use their weapons. They were told to use only proportionate force and to fire only if Elsie Constantinou's life or their own lives were in danger (see paragraph 38 above).

It is to be noted that no use of weapons was ever intended and in fact the authorities were deeply anxious to avoid any harm to the couple (see

paragraphs 38 and 54 above). However, it was not unreasonable to alert the officers to the dangers which awaited them and to direct them carefully on firearms use. Furthermore, it must be stressed that the officers were not in fact informed that Lefteris Andronicou was in possession of weapons in addition to the shotgun. They were told that this possibility could not be excluded (see paragraph 38 above). Seen in these terms the message could reasonably be considered to be a warning to the officers to use extreme caution when effecting the operation.

As to the decision to arm the officers with machine guns, it must be emphasised once again that the use of any firearm was never intended in the execution of the plan. However, given that Lefteris Andronicou was armed with a double-barrelled shotgun and it was not to be excluded that he had other weapons, the authorities had to anticipate all possible eventualities. It might be added that the machine guns had the advantage that they were fitted with flashlights which would enable the officers to overcome any difficulties encountered in identifying the precise location of the young woman in a dark room filled with tear gas and at the same time leave their hands free to control their weapons in the event of coming under fire. Furthermore, the use by the officers of their machine guns was subject to the same clear instructions as applied to the use of their pistols (see paragraph 38 above).

186. Having regard to the above considerations the Court is of the view that it has not been shown that the rescue operation was not planned and organised in a way which minimised to the greatest extent possible any risk to the lives of the couple.

2. The administration of force: the action of Officers nos. 2 and 4

(a) Arguments of those appearing before the Court

(i) The applicants

187. The applicants argued that the force used by Officers nos. 2 and 4 was more than absolutely necessary for the purposes of either rescuing Elsie Constantinou and arresting Lefteris Andronicou or saving her life and their own lives. When Officer no. 2 entered the living-room, he was aware that Elsie Constantinou was standing in front of Lefteris Andronicou. He made no attempt to check whether the latter was armed at that moment. Without assessing the situation, Officer no. 2 fired two to three shots and followed up with ten more shots as Lefteris Andronicou began to slide to the floor. On no occasion had Lefteris Andronicou made a threatening move as if to use or reach for a weapon. All the shots were directed at the waist upwards, using a machine gun. Officer no. 4 joined in the firing, although Lefteris

Andronicou was at that stage slumped on the floor with nothing to indicate that he was armed. Officer no. 4 nevertheless fired a total of sixteen shots from his machine gun.

The applicants contended that by directing machine-gun fire in such a sustained manner in a badly lit and confined space the officers were running a very high risk of killing Elsie Constantinou and they did in fact kill her. Neither officer exercised the degree of caution in the use of firearms required of law-enforcement officers in a democratic society. They intentionally killed Lefteris Andronicou in the mistaken and ill-founded belief, which could not be justified either on objective or subjective grounds, that he presented a threat to Elsie Constantinou's life or to their own lives.

(ii) The Government

188. The Government maintained that the force administered by Officers nos. 2 and 4 was strictly proportionate to the aim of rescuing Elsie Constantinou and defending their own lives in the circumstances which confronted them. Lefteris Andronicou had opened fire on Officer no. 1, wounding him. Officer no. 1 fell backwards knocking over Officer no. 3. Officer no. 2 heard the gunfire and saw his colleagues fall. Officer no. 2 justifiably believed that Lefteris Andronicou had shot dead Officer no. 1 and seriously wounded Officer no. 3. He entered the front room which was in darkness. He not unreasonably switched on the torch fitted to his machine gun to light up the room. Believing that Lefteris Andronicou was still holding a gun, although he did not see one, and had one cartridge left, Officer no. 2 fired two to three shots at him. Lefteris Andronicou moved, pulling Elsie Constantinou with him and using her as a human shield. Officer no. 2 then fired further rounds aiming as accurately as possible at Lefteris Andronicou's upper body. He continued to fire in order to neutralise any possible risk which Lefteris Andronicou may still have presented either to Elsie Constantinou's life or to the lives of his colleagues through being in possession of other weapons. Officer no. 2 fired a total of thirteen shots. Officer no. 4 had not testified before the commission of inquiry, relying on his right not to incriminate himself. In the view of the Government the overall number of bullets fired by both officers was irrelevant since it was believed necessary to render their target incapable of depriving the lives of others.

189. The Government insisted that, had Lefteris Andronicou not opened fire on the first officers to enter the flat, the tragedy would have been averted. The use of lethal force to bring the situation to an end was never intended in the planning of the rescue operation and the *MMAD* officers had been given clear instructions on when to use their weapons (see paragraph 38 above). In view of Lefteris Andronicou's reaction, the only

alternative available to Officers nos. 2 and 4 was to open fire on him in order to save the young woman's life and their own lives.

The Government requested the Court not to assess with the benefit of hindsight whether or not the force used was absolutely necessary in the circumstances but to have regard to the situation which confronted Officers nos. 2 and 4 at the crucial time and to their need to react on the spur of the moment on the basis of an honestly and reasonably held belief that lives were at risk. In this respect, they recalled that the domestic commission of inquiry, having thoroughly investigated the circumstances surrounding the fatal shootings, had concluded on the basis of the requirements of Article 2 of the Convention as interpreted by the European Commission of Human Rights in its report adopted under Article 31 of the Convention on 4 March 1994 in the McCann, Farrell and Savage case (application n 18984/91) that the use of force resulting in the deaths of the couple was no more than absolutely necessary for rescuing Elsie Constantinou and in self-defence of the rescuing party and for this reason could be justified under Article 2 § 2 (a) of the Convention.

(iii) The Commission

190. The Commission took the view that the recourse to lethal force in the circumstances which presented themselves and the deaths which resulted were inevitably linked to the authorities' decision to entrust the MMAD officers with the implementation of the rescue operation. Those officers had been trained to shoot to kill when they perceived themselves to be in danger and had been issued with machine guns. It was clear that Officers nos. 2 and 4 opened fire in response to the shots which were fired by Lefteris Andronicou and in the belief that Officer no. 1 had been killed and Officer no. 3 seriously wounded. They considered also that Lefteris Andronicou still had one cartridge left since the two shots were fired in quick succession. In these circumstances they reacted automatically in accordance with their training. The force which they used made it almost inevitable that both Lefteris Andronicou and Elsie Constantinou would be killed. The Commission considered that the number of bullets fired by the two officers indicated a response which lacked the degree of caution in the use of firearms to be expected from law-enforcement personnel in a democratic society even when dealing with a person posing a threat to the lives of others.

The Commission concluded therefore that the deaths of the couple resulted from the use of force which was more than absolutely necessary in defence of persons from unlawful violence or in order to effect a lawful arrest within the meaning of Article 2 § 2 (a) and (b) of the Convention.

(b) The Court's assessment of the administration of force

191. The Court recalls its earlier finding that the rescue operation was mounted with the sole aims of freeing Elsie Constantinou and arresting Lefteris Andronicou and in a manner which minimised to the greatest extent possible any risk to life through recourse to lethal force (see paragraph 186 above). It is to be noted that the officers' use of lethal force in the circumstances was the direct result of Lefteris Andronicou's violent reaction to the storming of the flat. He sought to take the life of the first officer who entered the room.

The commission of inquiry concluded on the basis of the evidence before it that Lefteris Andronicou in fact fired the second shot at Elsie Constantinou (see paragraph 134 above). His reaction thus brought about a situation in which split-second decisions had to be taken to avert the real and immediate danger which he presented to Elsie Constantinou and to the members of the rescue team. Officer no. 2 believed that Lefteris Andronicou had shot dead one colleague and wounded another and that he still had not discharged the second cartridge in the shotgun. When he entered the room he saw Lefteris Andronicou holding Elsie Constantinou and appearing to make a threatening move. He also believed that Lefteris Andronicou might have other weapons. As it transpired, he did not have any other weapons and he was not holding the shotgun when Officer no. 2 entered.

192. The Court accepts however, in line with the findings of the commission of inquiry, that Officers nos. 2 and 4 honestly believed in the circumstances that it was necessary to kill him in order to save the life of Elsie Constantinou and their own lives and to fire at him repeatedly in order to remove any risk that he might reach for a weapon. It notes in this respect that 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 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 the lives of others (see the McCann and Others judgment cited above, pp. 58–59, § 200).

It is clearly regrettable that so much fire power was used in the circumstances to neutralise any risk presented by Lefteris Andronicou. However, the Court cannot with detached reflection substitute its own assessment of the situation for that of the officers who were required to react in the heat of the moment in what was for them a unique and unprecedented operation to save life. The officers were entitled to open fire for this purpose and to take all measures which they honestly and reasonably believed were necessary to eliminate any risk either to the young

woman's life or to their own lives. It transpired at the commission of inquiry that only two of the officers' bullets actually struck her. While tragically they proved to be fatal, it must be acknowledged that the accuracy of the officers' fire was impaired through Lefteris Andronicou's action in clinging on to her thereby exposing her to risk.

193. The Court considers therefore that the use of lethal force in the circumstances, however regrettable it may have been, did not exceed what was "absolutely necessary" for the purposes of defending the lives of Elsie Constantinou and of the officers and did not amount to a breach by the respondent State of their obligations under Article 2 § 2 (a) of the Convention.

B. The Court's overall conclusion

194. Having regard to its findings in regard to the planning and control of the rescue operation and to the administration of force, the Court concludes that in the circumstances the killing of the couple resulted from the use of force which was no more than absolutely necessary in defence of persons from unlawful violence within the meaning of Article 2 § 2 (a) of the Convention and to effect a lawful arrest within the meaning of Article 2 § 2 (b).

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

195. The applicants contended that, having regard to their lack of adequate financial resources, the absence of a legal-aid system in the respondent State for instituting civil proceedings meant that they were unable to sue for damages in respect of the deaths of the couple. They claimed therefore that they had been denied access to a court in breach of Article 6 § 1 of the Convention, which provides to the extent relevant:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

196. They maintained that they had been justified in refusing to take up the Government's *ex gratia* offer to cover any legal costs which they would incur in bringing a civil action for damages. In the first place, the offer had been made by the party whom they were suing and could not therefore be considered a substitute for the absence of a system of legal aid administered independently of the litigants and offering a possibility of independent

review of means-test decisions. Secondly, the offer was made on 7 June 1995 and withdrawn suddenly and arbitrarily on 20 July 1995, two weeks after the Commission had declared their application admissible. The applicants had never been informed that the offer was subject to a time-limit.

197. Referring to the Court's case-law, the Government asserted that the guarantee of an effective access to a court within the meaning of Article 6 § 1 of the Convention did not impose an obligation on a Contracting State to implement a full-scale legal-aid system for the purposes of enabling civil litigation. Notwithstanding the absence of any such obligation, the Attorney-General had made the applicants an *ad hoc* offer of legal aid to enable them to bring a civil action. Had the applicants accepted that offer, they would have had an effective access to a court for an adjudication on their entitlement to damages for the loss which they sustained as a result of the deaths of the couple.

198. The Commission found no violation of Article 6 § 1 of the Convention. An offer of legal aid, albeit *ex gratia*, had been made to the applicants by the Government. Given that the applicants required legal assistance to bring a civil action in view of their lack of financial resources, they could have been expected to have availed themselves of that offer. Their failure to do so meant that they could no longer complain of a lack of legal assistance.

199. The Court notes that whilst Article 6 § 1 of the Convention guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations", it leaves to the State a free choice of the means to be used towards this end. The institution of a legal-aid scheme constitutes one of those means but there are others. It is not the Court's function to indicate, let alone stipulate, which measures should be taken. All that the Convention requires is that an individual should enjoy his effective right of access to the courts in conditions not at variance with Article 6 § 1 (see the *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32, pp. 14–15, § 26).

200. The Court, like the Commission, considers that the Attorney-General's *ex gratia* offer of 7 July 1995 provided a solution to help overcome the applicants' lack of resources. It is surprising that the applicants did not take up the offer immediately, given their need of financial assistance to institute proceedings and their determination to sue the authorities. It is significant in this respect that they had no hesitation in accepting the Government's earlier offer to cover the costs and expenses incurred through their participation in the proceedings of the commission of inquiry.

201. In the circumstances therefore, the applicants cannot maintain that they did not have an effective access to a court within the meaning of Article 6 § 1 of the Convention, it being recalled that this provision does not guarantee a litigant a favourable outcome. There has accordingly been no violation of Article 6 § 1.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection concerning abuse of process;
2. *Dismisses* by seven votes to two the Government's preliminary objection concerning the exhaustion of domestic remedies;
3. *Holds* by five votes to four that there has been no violation of Article 2 of the Convention;
4. *Holds* unanimously that there has been no violation of Article 6 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 October 1997.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the following separate opinions are annexed to this judgment :

- (a) partly concurring, partly dissenting opinion of Mrs Palm;
- (b) partly concurring, partly dissenting opinion of Mr Pekkanen;
- (c) partly concurring, partly dissenting opinion of Mr Mifsud Bonnici;
- (d) partly concurring, partly dissenting opinion of Mr Jungwiert;
- (e) dissenting opinion of Mr Pikis.

Initialled: R. R.
Initialled: H. P.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE PALM

I am unable to agree with the majority that Article 2 of the Convention has not been violated in the present case.

I subscribe to the general principles laid down in paragraph 171 of the judgment. However, I cannot share the view that the application of these principles to the facts in issue leads to the conclusion that there was no breach of Article 2. I particularly disagree with the Court's assessment in paragraph 185 that the use of *MMAD* officers in the circumstances as they were known at the time was justified and that the use of a unit like the *MMAD* "would appear to be quite natural given the nature of the operation ...".

In this context it has to be recalled that the background to the police intervention was a quarrel between a young couple who had just got engaged. The man, Lefteris Andronicou, had during the quarrel threatened to kill his fiancée, Elsie Constantinou, at midnight on 24 December and then commit suicide.

The whole rescue operation was mounted with the sole aims of freeing Elsie Constantinou and arresting Lefteris Andronicou.

Admittedly the situation was difficult for the authorities at the time and some allowances can therefore be made for mistakes committed during the negotiating phase of the operation. However, I find it wholly out of proportion under the circumstances to implement a plan using *MMAD* officers who were equipped with machine guns and trained to shoot to kill when they perceived themselves to be in danger and send them into a small, badly lit room where the young couple were. It is evident that this plan and use of force exposed Elsie Constantinou and Lefteris Andronicou to a foreseeable risk of being killed. This could have been avoided had the operation been carried out with more caution and in greater conformity with the requirements of Article 2.

I therefore find that the deaths of Elsie Constantinou and Lefteris Andronicou resulted from the use of force which was more than absolutely necessary for the purposes of defending Elsie Constantinou's life or arresting Lefteris Andronicou, in breach of Article 2 of the Convention.

PARTLY CONCURRING, PARTLY DISSENTING OPINION
OF JUDGE PEKKANEN

1. I regret that I cannot agree with the majority of the Court that there has been no violation of Article 2 of the Convention in the present case.

2. In the case of *McCann and Others v. the United Kingdom* (judgment of 27 September 1995, Series A no. 324) the Court has laid down several principles for assessing the lawfulness of the actions of the authorities under Article 2 of the Convention when they have recourse to the use of lethal force. This Article requires that the force used must be limited to what is “absolutely necessary” for the achievement of one of the purposes defined in sub-paragraphs (a), (b) and (c) in the sense that it must be strictly proportionate. The Court’s task is to undertake a most careful scrutiny of all the circumstances of the case including the planning and control of the actions of the authorities. I fully agree with the majority that these principles should also be applied in the present case. I would like to stress the importance of taking due account of the manner in which the authorities acted during the negotiating phase.

3. The present case started as a quarrel between two lovers, Lefteris Andronicou and Elsie Constantinou, who had just announced their engagement, and developed gradually into a crisis which tragically resulted in their deaths. One of the main questions is, in my opinion, whether the authorities during the negotiations did everything possible to solve the crisis using peaceful means so as to avoid the use of lethal force.

The authorities had plenty of time, more than twelve hours, between the arrival at the scene of the first policemen at around 10.30 on the morning of Christmas Eve, 24 December 1993, and the culmination of events at midnight on the same day. During this period it should have been possible for the authorities to find a peaceful solution. However, the negotiations were not, in my opinion, carried out effectively and in a proper manner.

Since it was Christmas Eve, there were understandable difficulties in finding the responsible personnel and organising the negotiations. The description of the events gives the impression that the leadership of the operation changed hands from one policeman to another of higher rank at frequent stages in the early phases of the incident. The leadership was then assigned to a relatively young policeman who had no previous experience of handling such a situation. It is also obvious from the facts that the leaders did not act in any coherent way. The only plan that was really formulated and agreed on was the use of *MMAD* officers. Even taking into account that

this was the first time a situation like this occurred in Cyprus, the actions of the authorities were to my mind seriously deficient and lacking in coordination.

Negotiations can only be successful if an atmosphere of confidence is created between the police negotiator and the aggressor. In this respect it is very important that only one negotiator represent the authorities and discuss with the aggressor, in this case after the members of the family had failed in their efforts to persuade Lefteris Andronicou to abandon his action. The worst mistake in this respect was that Lefteris Andronicou had throughout an open telephone line which was used, in addition to the negotiator, by members of the families, a former employer of Lefteris Andronicou as well as by friends and acquaintances. This resulted in confusion. The negotiator could not reach Lefteris Andronicou when he wanted to speak to him and even the rescue operation lost its element of surprise as a consequence of the line being open. Even more important was the fact that there was no coordination of the messages given to Lefteris Andronicou – one caller even threatened him (see paragraph 45 of the judgment) – which naturally made it very difficult for the negotiator to form a relationship of trust and for Lefteris Andronicou to make a correct assessment of the situation at hand. In addition, even the official negotiator himself at one moment threatened to break down the door and enter the flat unarmed (see paragraph 50 of the judgment).

Lefteris Andronicou also repeatedly stressed that he was afraid of the police and that he wanted them to withdraw. In spite of this there was a strong police presence around the flat which naturally increased Lefteris Andronicou's anxiety. His anxiety was also increased by the presence of a large number of bystanders near the flat and by the intensive media coverage which Lefteris Andronicou could follow. The police could clearly have prevented or at least minimised these interferences.

4. The above circumstances in my opinion played an important part in the failure of negotiations. On the other hand it is naturally very difficult to assess whether positive results could have been achieved had these mistakes been avoided. In any case the police would have had a much better chance of success if the negotiations had been conducted in a more coordinated and professional way. After all, the crisis did not concern hardened criminals but a quarrel between two young lovers.

5. I also have some doubts whether there was sufficient justification for the decision to use *MMAD* officers. Lefteris Andronicou had threatened to kill his fiancée and commit suicide only if anyone tried to enter the flat forcibly. Otherwise he had promised to let her go at midnight and then kill himself. The conclusion that he would kill his fiancée at midnight was only an assumption based on no direct evidence. However, at

this stage it is useless to speculate as to what Lefteris Andronicou would have done at midnight had the police not attacked.

6. The officers of the *MMAD* were informed that the possibility could not be excluded that Lefteris Andronicou had other guns in addition to his shotgun. There was no foundation for this information; it was a pure assumption. However, it surely increased the officers' apprehension and made them more prone to shoot. Before warning the officers the authorities should have tried to verify the degree of truthfulness of the information and made sufficient allowances for the possibility that their assessment might be erroneous.

The use of machine guns in the circumstances of the present case seems to me to be an excessive use of force. The use of that kind of fire power against a frightened young man cannot be considered to be absolutely necessary even if he had the possibility to fire two shots with his shotgun. Taking into account especially that the main purpose of the operation was to save Elsie Constantinou's life, the use of machine guns in a very small room was not strictly proportionate to that aim. On the contrary, it unnecessarily endangered her life as well as Lefteris Andronicou's life. It should also have been possible to find sources of lighting for the attack other than the flashlights attached to the machine guns.

7. On these grounds I find that Article 2 of the Convention has been violated in the present case.

PARTLY CONCURRING, PARTLY DISSENTING OPINION
OF JUDGE MIFSUD BONNICI

1. I form part of the majority on all the points decided except for the one concerning the plea of non-exhaustion of domestic remedies which was dismissed.

2. Article 26 of the Convention provides:

“The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision is taken.”

3. In the present case, a commission of inquiry was set up by the Government of Cyprus to examine and report on all the circumstances connected with the tragic deaths of Lefteris Andronicou and Elsie Constantinou.

4. In the majority, if not all, of the Contracting States, “abnormal” causes of death open up two possible actions in law: a criminal action, which, however, is usually invested in a public authority and may therefore depend completely on the State’s appraisal of the facts; and a civil action by those persons who allege that they have suffered damage as a consequence of that “abnormal” death. Both types of action are directed against whoever is deemed to be responsible for the death, either through *dolo* or through *culpa*. In some States the victim is given the opportunity to make his claim for damages in the criminal action taken by the State by becoming a party to the proceedings.

5. In the instant case, the Commission, which was the first of the Convention organs to examine the Government’s plea, rejected that plea, *inter alia*, on the ground that when the applicants requested the Attorney-General to institute criminal proceedings and the latter refused, they were under no further obligation to institute civil proceedings for damages and the requirement of Article 26 had therefore been satisfied.

The Commission appears to have based its finding on what the Court decided and stated in the case of *A. v. France* (judgment of 23 November 1993, Series A no. 227-B, p. 48, § 32):

“... an applicant who has exhausted a remedy which is apparently effective and sufficient cannot be required also to have tried others which would have been directed to the same end and would in any case not have offered a better chance of success or which are probably ineffective.”

However, it is not correct to rely on that judgment. In the *A. v. France* case the Court considered that, once Mrs A. had joined the criminal proceedings against the persons who had violated her right to privacy and confidentiality of her telephone communications and had presented her claim for compensation in the criminal proceedings “and pursued the said proceedings to their conclusion” (*ibid.*, § 32), her failure to take *further*

actions to claim compensation could not be deemed to mean that she did not in fact exhaust as a consequence the remedy afforded by the domestic legal order.

6. In the present case the applicants never put forward any sort of claim for damages before the Cypriot courts. All they did was request the Attorney-General to institute criminal proceedings against the police officers who took part in the unfortunate operation. When the Attorney-General issued a *nolle prosequi*, they immediately applied to the Commission. The Cypriot courts never had a chance to go into the matter and to examine whether or not the applicants had any right to compensation. In fact the domestic courts did not have the chance to say whether they considered some or all of the officers “civilly” if not criminally responsible, whether a case could be made out against the Government, whether the first two applicants, the father and sister of Lefteris Andronicou, had a right to claim damages because of his violent death in view of the fact that his heirs in law, his estranged wife and his children, did in fact institute proceedings and obtain compensation.

Clearly, domestic law should have been given the opportunity to give answers to all these questions.

7. The majority of the Court, although they did not follow too closely the opinion of the Commission, nevertheless dismissed, like the Commission, the Government’s objection. In essence, at paragraph 161 of the judgment the majority stated that, although the conclusions of the commission of inquiry

“were not binding on a domestic civil court, they were likely in practice to remove any reasonable prospects of success which a civil claim for damages may have offered the applicants. Accordingly, the applicants’ decision not to accept the Attorney-General’s *ex gratia* offer of legal aid and to institute civil proceedings on the strength of that offer could be considered to have been justified in the circumstances”.

8. In my opinion the majority is here indulging in pure speculation as to what the particular domestic court would do or not do when and if it is confronted with a claim for damages by the applicants, whether made against the Government or against a particular officer or officers of the police.

9. Finally, it is to be noted that the majority later on in the judgment (paragraph 200) had this to say on the *ex gratia* offer of the Attorney-General:

“It is surprising that the applicants did not take up the offer immediately, given their need of financial assistance to institute proceedings and their determination to sue the authorities. It is significant in this respect that they had no hesitation in accepting the Government’s earlier offer to cover the costs and expenses incurred through their participation in the proceedings of the commission of inquiry.”

This conclusion in my opinion practically cancels the previous finding in paragraph 161 wherein the refusal of the applicants to accept the Attorney-General’s offer not only exempted them from pursuing their determination to sue the authorities in the domestic courts but that that refusal could also be considered “justified in the circumstances” (see paragraph 7 above).

PARTLY CONCURRING, PARTLY DISSENTING OPINION
OF JUDGE JUNGWIERT

(Translation)

I cannot concur with the majority of the Chamber inasmuch as they find that there has been no violation of Article 2 of the Convention.

A fundamental question arose in this case: was the use of force, as actually deployed, absolutely necessary?

In my opinion, the concept of “absolutely necessary” must be understood as meaning that there is no other possible course of action.

To my regret, the reasoning in the judgment does not correspond to that interpretation.

In the rescue plan and the armed intervention there was a serious and unnecessary disproportion between the means used and the situation that had to be faced.

It is regrettable that the operation, whose only objective aim was to save Elsie Constantinou’s life and arrest Lefteris Andronicou, was carried out without the necessary care and appropriate consideration for the person concerned.

Having considered the behaviour of the police special forces (*MMAD*) and especially the way in which they were commanded, for which the Government of the respondent State are fully responsible, I continue to believe that the operation was marked by a lack of organisation and appropriate equipment.

Lefteris Andronicou was hit by at least twenty-five bullets fired by automatic weapons. He collapsed after the first few shots but the officers of the *MMAD* continued to fire.

Using machine guns in a small confined space without proper lighting and knowing that the very person to be rescued was next to or in front of the person being aimed at, Lefteris Andronicou, seems to me more than irresponsible.

In order to achieve the desired objective, there were other readily available means. The manifest shortcomings of the organisation and management of the rescue operation in actual fact brought about the opposite of what was sought to be achieved. In my opinion, it was difficult to imagine a worse outcome of the operation: there is no doubt that Elsie Constantinou’s death was caused by the machine-gun bullet which, according to Dr M. Matsakis, penetrated the lung, liver and stomach. The question arises how a single bullet could strike the lung and stomach if Elsie Constantinou was in a vertical position. Or did the officers shoot at her again after she had collapsed like Lefteris Andronicou? In the opinion of the medical experts, Elsie Constantinou would certainly have survived if she had sustained only the injuries caused by Lefteris Andronicou’s gun.

That being so, it is difficult to take the view that the use of lethal force did not go well beyond what was “absolutely necessary” to protect the lives of Elsie Andronicou and the *MMAD* officers.

I consider that the argument in the judgment that is founded mainly on acceptance of the hypothesis that the action of the officers (nos. 2 and 4) was based “on an honest belief which [was] perceived, for good reasons, to be valid at the time but subsequently turn[ed] out to be mistaken” is wrong. It could be valid where there was no one in command. Accepting such reasoning would presuppose overlooking that the officers were simply carrying out the orders of their superiors. Their choice of the means to be used and the approach to adopt was already very limited once the operation had been launched, and they may bear only a very limited responsibility. The full responsibility rests with those who planned and directed the operation and also with those who organise and oversee police work in general.

That is a brief statement of the reasons which lead me to the same conclusion as the Commission, that is to say that the deaths of Elsie Constantinou and Lefteris Andronicou were the result of a use of force that was not absolutely necessary in defence of others from unlawful violence or in order to effect a lawful arrest, within the meaning of Article 2 § 2 (a) and (b) of the Convention.

It is for these reasons that I consider that in the instant case there has been a violation of Article 2 of the Convention.

DISSENTING OPINION OF JUDGE PIKIS

There are three issues to be resolved, which merit separate consideration.

(a) Abuse of the right of petition. This refers to abuse of the process to seek relief before the European Commission and subsequently the European Court of Human Rights for violation of the rights guaranteed by the European Convention on Human Rights. Article 27 § 3 of the Convention renders inadmissible proceedings which constitute an abuse of the process before the organs of the Convention.

(b) Exhaustion of domestic remedies. Article 26 of the Convention makes exhaustion of the remedies available under domestic law a prerequisite before an aggrieved party can validly have recourse to the Convention organs and before the latter can take cognisance of the case. The process established by the Convention is remedial, intended to ensure that breaches of the Convention are remedied and, if that is not feasible, that appropriate relief is provided. Only if domestic proceedings are exhausted and a breach of the rights secured by the Convention remains unredressed can a party legitimately file a petition under Article 25. Correspondingly, the obligation of a State party to answer for breaches of the Convention is confined to cases where its competent authorities, mainly but not exclusively, the judicial authorities, fail to put the breach right, including the award of satisfactory compensation. The applicant can be absolved from the duty to exhaust internal remedies only if the outcome of domestic proceedings is a foregone conclusion, either because of the ineffectiveness of the judicial system or the absence of a real prospect of success (see, *inter alia*, the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and decisions* 1996-VI). Mere doubts as to the chance of success will not suffice (see *Donnelly v. the United Kingdom*, applications nos. 5577–5583/72, decision of 15 December 1975, *Decisions and Reports* (DR) 4, p. 4; *McDonnell v. Ireland*, application no. 15141/89, decision of 15 February 1990, DR 64, p. 203).

(c) Violation of the right to life safeguarded by Article 2 of the Convention. The right to life is all-embracing and is to be protected at all times and in all circumstances. The only exceptions are those specified in Article 2 to which a restrictive interpretation is given in order to ensure the efficacy of the right (see, *inter alia*, *Kathleen Stewart v. the United Kingdom*, application no. 10044/82, decision of 10 July 1984 on the admissibility of the application). The recent decision of the Court in the case of *McCann and Others v. the United Kingdom* (judgment of 27 September 1995, Series A no. 324) puts, to my understanding, the duty of the State to protect the life of the individual on a higher pedestal than hitherto. An operation that carries with it danger to life must be planned and controlled in a way eliminating every foreseeable element of unnecessary risk to life on account of the use of force. The duty of the State when

confronting a challenge to social order involving risk to life is not discharged by confining its reaction to the use of force proportionate to the risk involved. The State has the added duty of planning as well as controlling the operation so as to limit the circumstances in which force is used and, if the use of force is unavoidable, to minimise its effects.

In addressing the issues raised for consideration the Court, although not bound by the findings of the Commission, is as a rule guided by them. The Court recalled in the *McCann and Others* judgment that, under the general scheme of the Convention (Articles 28 § 1 and 31), the establishment and verification of the facts are primarily a matter for the Commission. This approach reflects the fact that the Commission is *par excellence* the fact-finding body for violations of the Convention (see, *inter alia*, the *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32). The position is different with regard to the inferences that may be drawn from the findings of the Commission. The Court is in the same position as the Commission in assessing their implications and drawing inferences therefrom.

In this case the findings of the Commission, with few exceptions of no great consequence, are accepted by the parties. The dispute centres on their effect and consequences in law. I accept the findings of the Commission and, generally, its approach to the matters in issue, subject to the following qualification: the Commission did not address and in my view failed to advert to the implications on the admissibility of the application of the finding that the applicants had an effective remedy before the Cyprus courts of which they did not avail themselves.

A. Abuse of process

It was argued on behalf of Cyprus that the proceedings are an abuse of the right of petition on account of the rejection by the applicants of an offer by the Government of Cyprus to compensate them on an *ex gratia* basis. The suggestion implied that the sum could be negotiated. The question raised requires us to decide whether an *ex gratia* offer to compensate a party injured because of a claimed breach of the Convention can be a substitute for the vindication of the right allegedly breached before a competent court or tribunal. The answer is in the negative. The process envisaged by the Convention is designed both for the ventilation of the right allegedly derogated from, the identification of breaches of the Convention and the award of consequential relief. The offer of an *ex gratia* payment leaves the right allegedly violated in limbo and renders the relief a benevolent act of the State. It might be otherwise if the liability of the State was acknowledged and the offer of compensation was meant to forestall judicial proceedings which the victim of the violation would be free to pursue if no

agreement were reached. The Government's objection to the admissibility of the proceedings on account of abuse of process fails.

B. Non-exhaustion of domestic remedies

In order to appreciate and evaluate the issue of non-exhaustion of domestic remedies in a proper perspective, brief reference must be made to the history of the proceedings, the identity of the applicants, the nature of the rights sought to be vindicated and the background to the case.

The applicants are (a) Andreas and Paraskevoula Andronicou, the father and sister of Lefteris Andronicou, deceased, respectively, and (b) Gregoris and Yiolanda Constantinou, the parents of Elsie Constantinou, deceased.

The applicants pursue the present proceedings in a personal, not in a representative capacity, as the administrators of the estates of Andronicou and Constantinou.

No proceedings were taken by any of the applicants to assert their rights and seek relief before the courts of Cyprus. In their application to the Commission, the failure to do so is attributed to lack of the necessary means to meet the costs of legal proceedings, thereby preventing them from having access to a civil court in Cyprus competent to determine their civil rights and obligations. Because of this impediment they were, as they claimed, unable to pursue proceedings in Cyprus. Consequently, they petitioned the Commission for relief claiming in the first place that they were denied their right of access to a court of law guaranteed by Article 6 § 1 of the Convention, a denial that opened the way for the institution of proceedings under Article 25 of the Convention.

The foundation of the applicants' claims for relief remained obscure. Andreas and Paraskevoula Andronicou are neither heirs of Lefteris Andronicou nor representatives of his estate. The children of Lefteris Andronicou, his heirs, instituted, as it emerged, proceedings in Cyprus through the administrators of the estate of the deceased (their mother and a third party) against the State for damages for loss occasioned to them because of the death of their father. The case was settled and judgment was given in their favour against the Republic of Cyprus for a sum approved by a competent civil court as just compensation for the damage they had suffered. They were also awarded their legal costs.

Likewise, the claim of Gregoris and Yiolanda Constantinou is a personal one for damages for the loss suffered as a result of the death of Elsie Constantinou.

It is acknowledged by the applicants that they could pursue proceedings in Cyprus for the vindication of their rights and recovery of compensation. The basic reason given for not doing so was that they lacked the necessary means to meet the costs of the proceedings.

Under Cyprus law, only the personal representatives of the deceased, that is the administrators of his estate, can maintain an action on behalf of his estate (see *Cyprus Legislation*, section 58 of the Civil Wrongs Law, chapter 148, and the Administration of Estates Law, chapter 189), for damage to the estate and loss to his or her dependants. If the administrators fail to take an action, the dependants may do so themselves. Proof that they depended on the deceased for support is essential for the success of any such claim.

Put at their highest the claims of both groups of applicants are for loss of support by the deceased in the future as a result of the deaths of Lefteris Andronicou and Elsie Constantinou caused by the breach of their right to life. Their claim is founded on the loss of an expectation forecast to materialise at an unspecified time in the future. This is how they depict their claim for compensation at paragraph 6 of their written submissions under Article 50:

“As for the ‘dependency’ claim, the Applicants submit that it was fully expected that had Lefteris Andronicou and Elsie Constantinou lived, they would have supported the Applicants in their old age. In other words, there would have come a time when Lefteris Andronicou and Elsie Constantinou, as part of the Applicants’ families, would have contributed financially to the well-being of the Applicants.”

In their application the applicants alleged that the laws of Cyprus on the use of lethal force are vague and general and consequently fail to give effect to the provisions of Article 2 of the Convention, a lapse that in itself constitutes a violation of Article 2. This contention of the applicants was not pursued before the Commission and was expressly abandoned in their memorial (see paragraph 2). In their submissions under Article 50, they acknowledge that the law of Cyprus not only makes adequate provision for the compensation of victims of violations of the rights guaranteed by the Convention but also renders the State liable for exemplary damages in circumstances involving oppressive, arbitrary and unconstitutional action by “servants of the Government”.

The European Convention on Human Rights has been incorporated into and made part of Cyprus law as from 1962 by virtue of ratification Law no. 39 of the same year. Like any other Convention satisfying the test of reciprocity, its provisions override those of municipal legislation in the event of a conflict between the two, as laid down in Article 169 § 3 of the Constitution. Furthermore, the rights enshrined in the Convention are also in the main embodied in the Constitution of Cyprus, including the right to life guaranteed by Article 2. They are incorporated in Part II of the Constitution under the heading “Fundamental Rights and Liberties”. Article 35 of the Constitution, the ultimate section of this Part of the Constitution, imposes a duty on the legislative, executive and judicial authorities of the State –

within the limits of their respective competences – to ensure the efficient application of the human rights entrenched therein.

The provisions of Article 2 of the Convention are in all important respects incorporated into and made part of Article 7 of the Constitution.

Article 172 of the Cyprus Constitution renders the State liable for unjust (wrongful) acts or omissions causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic. The liability of the State under Article 172 is all-embracing and *a fortiori* includes violations of fundamental human rights (see the following Cypriot cases: *Kyriakides v. Republic* 1 RSCC 66; *Vrahimi and Another v. Republic* 4 RSCC 121; *Georghiou v. Attorney-General* [1982] 1 CLR 938; *Alexandrou v. Attorney-General* [1983] 1 CLR 41; *Pitsillos v. Republic* [1984] 1 CLR 780).

In my opinion, the application is ill-founded and ought to have been dismissed as inadmissible. In the Airey case (cited above), it was emphatically decided that the Court is endowed with full jurisdiction to determine questions of admissibility. In this, as in other respects, the Court is in the same position as the Commission and enjoys similar powers to determine issues relevant to the admissibility and outcome of the application.

Irrespective of any other objection to the admissibility of the application, its fate ought to have been sealed by the finding of the Commission made in paragraph 197 of its report that the applicants had an effective access to the courts of Cyprus for the determination of their civil rights and obligations, of which they did not avail themselves. Paragraph 197 of the Commission's report reads as follows:

“However, on 7 June 1995 the Attorney-General informed the applicants' lawyer that ‘the State [would] cover any advocates' costs that the dependants of the deceased may sustain if and when they decide to bring a civil action for damages against anyone on the basis of the facts which led to the tragic deaths of Elsie Constantinou and Lefteris Andronicou’. This offer remained valid until 20 July 1995, when it was withdrawn. The applicants had for more than a year the possibility to institute civil proceedings for the deaths of their relatives by accepting the Attorney-General's offer. It follows that they could have had effective access to the courts for the determination of their civil rights and obligations.”

Reference to the offer having been kept open for more than a year is an obvious mistake. The offer was only open between the dates specified in paragraph 197, that is between 7 June 1995 and 20 July 1995.

The failure of the applicants to pursue domestic proceedings providing an avenue for the effective determination of their rights as found by the Commission renders their application inadmissible for failure to exhaust domestic remedies. The inference I draw is that the applicants sought to bypass domestic proceedings without any justification whatsoever.

The exhaustion of domestic remedies prior to having recourse to a supranational or international court or tribunal for the vindication of a right is a rule of international law that is incorporated and finds expression in Article 26 of the Convention. In the cases of *De Wilde, Ooms and Versyp v. Belgium* (judgment of 18 June 1971, Series A no. 12) it was pointed out that States are under no obligation to answer before an international body, court or tribunal for their acts before they have had an opportunity to put matters right through their own legal system (see also the *Airey* case cited above).

As in other areas of the Convention, the rule adopted in Article 26 must be given effect without undue formalism and must be applied with a degree of flexibility excusing non-exhaustion wherever domestic proceedings would be a fruitless exercise (see the *Cardot v. France* judgment of 19 March 1991, Series A no. 200; and the *Castells v. Spain* judgment of 23 April 1992, Series A no. 236).

In his statement before the Court Mr Trechsel made the following submission on behalf of the Commission with respect to the issue of non-exhaustion of domestic remedies.

“The question of non-exhaustion has been raised again. I think one of the main arguments against non-exhaustion should be that there was no effective chance – I would suggest – of successful court proceedings for damages in view of the result of the commission of inquiry’s work.”

The above proposition comes into direct conflict with the findings of the Commission in paragraph 197 of its report (quoted above) and cannot be sustained as part of the findings and conclusions of the Commission. Furthermore, it is premised on a misconception of the status and competence of a commission of inquiry and the effect of its findings.

A commission of inquiry is not a court of law. It has no competence or jurisdiction to make binding declarations on the rights and obligations of anyone; nor, for that matter, to make binding findings of fact. Its findings are not binding on anyone. It is an *ad hoc* body set up to hold an inquiry into a given matter or area or public activity. The compass of the inquiry (its mandate), is defined by the terms of reference of the commission established by the executive branch of government, the Council of Ministers, for whose benefit and guidance the outcome of the inquiry is principally intended. The establishment and powers of a commission of inquiry are provided for and regulated by law, namely the Commissions of Inquiry Law, Cap. 44 (as amended by Law no. 37/82 and Law no. 84/83). In this case its terms of reference required the one-member commission of inquiry to inquire into the circumstances under which the deaths of Lefteris Andronicou and Elsie Constantinou were caused, to ascertain whether anyone bore responsibility for these deaths and to make suggestions and

observations such as the Chairman would deem necessary (see appendix to the report of the Commission, p. 48). As the Chairman made clear at the outset, the inquiry was no substitute for any other proceedings, nor did its holding have any suspensive effect on the right of an individual to have recourse to a court of law in accordance with Article 6 of the Convention or Article 30 of the Constitution, which guarantees a similar right as part of the fundamental rights and liberties of the individual.

The findings of the commission of inquiry are irrelevant and inadmissible in any judicial proceedings. The fact that the inquiry was conducted by the President of the Supreme Court is likewise an irrelevant consideration. To repeat the time-honoured pronouncement of Lord Atkin¹ “...Judges are no respecters of persons ...”. The law is their only source of authority and guidance and proven facts the only facts relevant to the discharge of their duties.

The fact that no criminal proceedings were instituted against anyone for the incident under consideration is of no relevance. The responsibility of the State under Article 2 is not contingent on or dependent upon the criminal liability of those directly or indirectly involved in the use of force exposing life to unnecessary risk (see the *McCann and Others* judgment cited above, p. 51). A State may be liable for a breach of Article 2 without anyone bearing criminal responsibility for the deprivation of the life of another. This is especially true in a case involving lack of proper planning and control on the part of those who organised and approved the operation.

Under the Constitution of Cyprus the institution of criminal proceedings is primarily the responsibility of the public authorities subject to the overriding power of the Attorney-General, an independent officer of the Republic of Cyprus, to initiate or discontinue such proceedings. The jurisdiction of a criminal court in Cyprus is confined to passing judgment on the guilt or innocence of the accused. It has no jurisdiction to inquire into questions of civil liability of the accused or to award damages. Nor is the conviction of the alleged offender a prerequisite for the institution of civil proceedings founded on allegations amounting to a crime, subject to prior notice being given to the Attorney-General of the Republic of the institution of the proceedings (see *Cyprus Legislation*, proviso to section 67 of the Civil Wrongs Law, chapter 148).

Lastly, it must be noted that the victim of a crime has the right to take a private prosecution (see the Cypriot case of *Ttofinis v. Theocharides* [1983] 2 CLR 363), subject only to the right of the Attorney-General to take over and continue or discontinue any such proceedings at his discretion.

1. See dissenting opinion of Lord Atkin in *Liversidge v. Anderson* [1941] 3 All ER 338; see also *IRC v. Rossminster Ltd* [1980] 1 All ER 80.

The findings of the Commission pertaining to the deaths of Lefteris Andronicou and Elsie Constantinou and the consequent liability of the Republic of Cyprus for a breach of Article 2 are not pegged to the criminal liability of those who caused their deaths. On the contrary, it is accepted that the two officers who fired at them and caused their deaths acted under the honest belief that their lives were in imminent danger, a fact that sparked off a reflex reaction with fatal consequences for Lefteris Andronicou and Elsie Constantinou.

The decision of the Commission holding Cyprus responsible for a breach of Article 2 is founded solely on the lack of proper planning and control of the operation. The crux of the decision is that the operation was ill-planned and badly controlled, rendering Cyprus responsible for breach of Article 2.

The validity of the application can also be tested in another way. Assuming the Court found that Cyprus was not responsible for a breach of Article 2, would that finding prevent the applicants from reverting to the domestic courts and seeking remedies they had not exhausted before? I think not. The issues before the two jurisdictions are not identical. The rules of evidence relevant to the proof of the issues before the two bodies are wholly different. In fact the justiciable issues before the two jurisdictions are separate and distinct. In this context we must bear in mind that the choice of means for the ventilation of a right and the procedure applicable before the domestic courts is a matter for the Contracting States. The domestic process does not coincide with the process before the Commission or the Court. It is different. This is one of the reasons why exhaustion of domestic remedies is an essential prerequisite for proceedings to be brought under Article 25 of the Convention. A reverse decision by the Court finding a breach of Article 2 but leaving the applicants dissatisfied with the remedies awarded them would by a similar reasoning leave the door open to them to pursue proceedings before the courts of Cyprus with a view to securing higher compensation.

In my view, the applicants did not pursue domestic remedies to vindicate their rights and obtain relief, far less did they exhaust them. Hence, their application falls to be dismissed for non-compliance with Article 26 of the Convention.

The majority of the Court (seven members) take the view, for the reasons indicated in the judgment, that domestic remedies were exhausted. Inevitably the Court had to concern itself with the merits of the application and decide whether the Republic of Cyprus violated the right to life of Lefteris Andronicou and Elsie Constantinou in the light of the findings of the Commission pertaining to the circumstances of their deaths.

Consequently, the Court had to determine the substantive issue of a breach of the rights of the two deceased under Article 2 of the Convention.

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The next question I shall address is whether my decision that the application is inadmissible precludes me from participating in the adjudication of the issue under Article 2. After giving due consideration to the matter, I have concluded that there is no such impediment. On the contrary, I am duty bound to take part in the resolution of every issue raised before the Court for determination, including the one under Article 2.

Article 43 of the Convention must first be consulted. It provides:

“For the consideration of each case brought before it the Court shall consist of a chamber composed of nine judges. There shall sit as an *ex officio* member of the chamber the judge who is a national of any State Party concerned, or, if there is none, a person of its choice who shall sit in the capacity of judge; the names of the other judges shall be chosen by lot by the President before the opening of the case.”

The duty of the Court to consider a case extends to and encompasses, as Article 43 implies, all the issues raised in a given matter, the resolution of which is necessary for a conclusive outcome of the case. The jurisdiction of the Court is indivisible. It is entrusted to the Court as a whole requiring all its component parts, i.e. each member of it, to take part in the resolution of every issue the determination of which is necessary for the outcome of the case. Any other interpretation would make it possible for one or more pertinent issues to be determined by a part of the Court and conceivably by a minority of its members. For instance, if four out of the nine members of the Court voted for non-exhaustion of domestic remedies and abdicated on that account from taking part in the resolution of the substantive issue, the outcome of a case might turn on the decision of three of the nine members of the Court.

The view that it is incumbent upon every member of the Court to address every issue raised in a case is reinforced by the provisions of Article 50 of the Convention conferring jurisdiction on the Court (in its entirety) to address the implications of a finding of a breach and afford consequential relief.

Although I am unable to trace any decision of the Court specifically dealing with the subject under consideration, it appears that the Court has consistently adhered to the view that every issue necessary for the determination of the case must be resolved by all the members of the Court. This emerges from a survey of the voting practice of the Court by Marc-André Eissen (former Registrar of the Court) to which my attention was drawn and entitled “*Discipline de vote à la Cour européenne des Droits de l’Homme ?*”. A consistent pattern emerges to the effect that members of the

Court do in fact address every issue raised before it for consideration without being fettered by their decision on any other issue in the case. It is in this spirit that I shall also address the third substantive question raised before us concerning violation of Article 2, accepting, as I must, the decision of the majority of the Court that local remedies were exhausted. It is upon that premise laid by the decision of the Court that I shall examine the next question calling for resolution and decide, on the strength of the material before us, whether the right to life of Lefteris Andronicou and Elsie Constantinou, safeguarded by Article 2 of the Convention, was violated.

C. Violation of Article 2 of the Convention

I accept, as indicated earlier, the findings of fact made by the Commission relevant to: (a) the events that preceded the operation; (b) its necessity and planning ; and (c) the circumstances leading to the deaths of Lefteris Andronicou and Elsie Constantinou.

At the outset, it must be acknowledged that the necessity of the operation and the action of those who planned and those who conducted it must be judged from the perspective of the time when the events took place and the pressure under which the decision to mount the operation was taken and its planning made. The following passage from the judgment in the case of *McCann and Others* (cited above) is relevant in this connection:

“[The Court] considers that 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.” (pp. 58–59, § 200)

The police were confronted with a difficult choice, having to steer between two alternatives: to allow on the one hand the impasse in the negotiations with Lefteris Andronicou concerning the release of his captive, Elsie Constantinou, to continue or, on the other, to mount a rescue operation. Both alternatives were fraught with foreseeable risks to the lives of to the occupants of the flat. The threatening innuendoes of Lefteris Andronicou as to what might happen at midnight, his violent behaviour towards Elsie Constantinou exhibited earlier in the day, coupled with his erratic and unpredictable conduct, made the decision of the police to mount the operation for the dual purpose of rescuing Elsie Constantinou and arresting Lefteris Andronicou a reasonable option in the circumstances. No blame is cast by the Commission on the police authorities for taking that decision. What the Commission found to be wrong was the planning of the operation. Because of its shortcomings, the lives of Lefteris Andronicou and Elsie Constantinou were exposed to risks that could have been avoided had

the operation been planned more adequately and prudently. The planning of the operation, as I construe the report of the Commission, was deficient, betraying a lack on the part of the Cypriot authorities of the concern required by Article 2 for the lives of Lefteris Andronicou and Elsie Constantinou in four material respects.

(a) Insufficient consideration was given to the fact that Lefteris Andronicou was not a terrorist or a hardened criminal.

(b) The choice of *MMAD* officers to carry out the rescue operation carried foreseeable risks to the lives of Lefteris Andronicou and Elsie Constantinou that could have been avoided had the task been entrusted to a police force with a different training and approach to such an operation. The *MMAD* officers were trained to shoot to kill if they came under fire or perceived immediate danger to their safety. In those circumstances, they could foreseeably be expected to react by shooting to kill.

(c) Equipping the *MMAD* officers with machine guns was not warranted by the risks inherent in the operation for the safety of the task force and unnecessary for the success of the operation. The availability of machine guns increased unnecessarily the risks to the lives of Lefteris Andronicou and Elsie Constantinou. Their possession was not warranted either by the weapon known to be at the disposal of Andronicou (a non-automatic weapon) or the inherent hazards of the operation.

(d) The information that Lefteris Andronicou might be in possession of weapons other than the shotgun had no foundation and ought to have been discarded.

A fair inference from the findings of the Commission is that the passing on of this information to the officers entrusted with carrying out the rescue operation magnified in their minds the dangers inherent in the operation and made Lefteris Andronicou appear a far greater source of danger than he was. The inevitable result was to enhance their readiness to use lethal force.

In my view the findings of the Commission are warranted by the evidence relevant to the events leading to the deaths of Lefteris Andronicou and Elsie Constantinou. Equally justified is its conclusion that the planning and control of the rescue operation was faulty to the extent of rendering the respondent, the Republic of Cyprus, liable for a breach of Article 2 of the Convention. The operation exposed the lives of Lefteris Andronicou and Elsie Constantinou to risks that could have been avoided had it been planned with more diligence and greater awareness of the duty under Article 2. The non-elimination by State authorities of avoidable risks to the lives of others in the planning and control of an operation with inherent danger to their lives constitutes a breach of Article 2 (see the *McCann and Others* judgment cited above).

The events that followed the forcible entry by the *MMAD* officers into the flat occupied by Lefteris Andronicou and Elsie Constantinou revealed to

the full the inadequacies in the planning of the rescue operation and the lack of proper control of its execution. Below, I explain why.

(1) The ill-advised choice of officers trained to shoot to kill if they perceived danger to their safety had disastrous consequences. After apprehending danger to themselves following the fall of their two colleagues, they (the members of the team identified as Officers nos. 2 and 4) reacted by firing at Lefteris Andronicou with a view to killing him. Such was their training that they continued firing at him long after it was evident that he lay motionless on the ground, posing no danger to their safety. At no time did they give thought to moderating their reaction in view of the presence of Elsie Constantinou, whose safety ought to have been uppermost in their minds and in those who planned the operation.

Elsie Constantinou was used as a shield by Lefteris Andronicou. In directing their fire – twenty-nine shots – the two officers involved do not appear to have discriminated between Lefteris Andronicou, whom they perceived as posing a threat to their lives, and Elsie Constantinou, whom they were entrusted with rescuing. At no time do they appear to have given thought to firing at Lefteris Andronicou with a view to disabling and neutralising him as a potential source of danger. The officers' reaction was in large measure the result of their training.

The fact that the use of lethal force is, as made clear in *McCann and Others*, the result of reflex action is neither an excuse nor a justification for acts incompatible with the duty under Article 2 of the Convention; not even when dealing with dangerous terrorists. The following passage from paragraph 212 of the *McCann and Others* judgment is instructive on the subject:

“Their reflex action in this vital respect lacks the degree of caution in the use of firearms to be expected from law-enforcement personnel in a democratic society, even when dealing with dangerous terrorist suspects, and stands in marked contrast to the standard of care reflected in the instructions in the use of firearms by the police which had been drawn to their attention and which emphasised the legal responsibilities of the individual officer in the light of conditions prevailing at the moment of engagement.”

In this case, no specific instructions were given to the chosen team (the *MMAD* platoon) as to how they should confront danger. The conduct of the operation was very much left to the discretion of the officers assigned to the task, a fact in itself indicative of the lack of proper control of the operation and of absence of due regard for the lives of Lefteris Andronicou and Elsie Constantinou.

(2) There was no proper foundation for the information that Lefteris Andronicou was in possession of any weapon other than the double-barrelled shotgun. On the contrary, all the indications were that he

had no other weapon available to him; neither the background of Lefteris Andronicou nor his previous conduct could lend credence to the information. Its unwarranted communication to the officers assigned to the operation, coupled with the weight that they could be expected to attach to information coming from an official source, increased their sense of the danger inherent in carrying out the operation and correspondingly their readiness to use lethal force.

(3) Arming the *MMAD* platoon with machine guns was wholly unwarranted – all the more so in view of the training of the officers who carried them and the knowledge that the police authorities ought to have had of the likely reaction of those officers when perceiving danger to their safety. The fact that the machine guns were fitted with lighting apparatus was no excuse. The armoury of the *MMAD* officers was disproportionate to the risks involved in the operation and counter-productive to its life-saving objective. The carrying of automatic weapons introduced foreseeable dangers for the lives of Lefteris Andronicou and Elsie Constantinou that could have been avoided by restricting the equipment of the officers to lighter arms.

The end result of the bad planning and lack of proper control of the operation was that two of the members of the platoon, perceiving danger to their safety, made unrestrained use of their machine guns regardless of the consequences. And the consequences were fatal.