



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

FOURTH SECTION

CASE OF KAKOULLI v. TURKEY

(Application no. 38595/97)

JUDGMENT

STRASBOURG

22 November 2005

FINAL

22/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kakoulli v. Turkey,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr R. TÜRMEŒ,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 3 November 2005,

Delivers the following judgment, which was adopted on this date:

PROCEDURE

1. The case originated in an application (no. 38595/97) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Cypriot nationals, Ms Chriso Kakoulli, Mr Andreas Kakoulli, Ms Martha Kakoulli and Ms Kyriaki Kakoulli ("the applicants"), on 19 March 1997.

2. The applicants, who had been granted legal aid, were represented by Mr Constantis A. Candounas, Mr Pavlos Angelides and Mr Andreas Papacharalambous, lawyers practising in Nicosia (Cyprus). The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants complained that their husband and father Petros Kakoulli had been intentionally shot and killed by Turkish soldiers in Cyprus whilst collecting snails. They alleged a violation of Articles 2, 8 and 14 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 4 September 2001 the Court declared the application admissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Cypriot Government, who had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)). The respondent Government replied to those comments (Rule 44 § 5).

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants, Chriso Kakoulli, Andreas Kakoulli, Martha Kakoulli and Kyriaki Kakoulli, were born in 1944, 1969, 1972 and 1970 respectively. The first, third and fourth applicants live in Avgorou and the second applicant lives in Paralini. The first applicant is the widow and the other applicants are the children of Petros Kyriakou Kakoulli, a Greek Cypriot who died on 13 October 1996.

A. The applicants' version of the facts

10. In the early hours of 13 October 1996 Petros Kyriakou Kakoulli and his daughter's fiancé, Panikos Hadjiathanasiou, drove to an area called Syrindjieris, situated near the Achna roundabout in the British Sovereign Base Area (SBA) of Dhekelia, to collect snails. After a time, they separated and agreed to meet up at about 7.30 a.m. to return to their village.

11. A villager from Avgorou, Georgios Mishis, who was also collecting snails on the north side of the main road, saw the victim standing in a field approximately 70 metres away from him. He also saw a Turkish soldier approximately 10 metres from Mr Kakoulli pointing his rifle at him and a second Turkish soldier approaching him. Georgios Mishis heard Mr Kakoulli ask the first soldier, in Greek, whether he spoke Greek, to which there was no response. At that moment, the two soldiers caught sight of Mr Mishis and one of them pointed a weapon at him. Mr Mishis then backed away.

12. At this moment Mr Mishis saw an SBA police patrol vehicle on the road and told the driver, Constable Pyrgou, what he had seen. Constable Pyrgou immediately reported the incident to Sergeant Serghiou of the SBA police at Ayios Nikolaos.

13. Shortly after Mr Mishis had seen Mr Kakoulli surrounded by Turkish soldiers, Panikos Hadjiathanasiou, who was searching for Mr Kakoulli, saw him at a distance of approximately 400 metres inside the territory of northern Cyprus. Panikos Hadjiathanasiou then heard the soldiers issue a command in Turkish to stop. Upon hearing these words, Mr Kakoulli remained still and raised his hands above his head. Panikos Hadjiathanasiou saw two Turkish soldiers in combat uniform drop to battle positions on the ground approximately 40 metres from the victim and aim their rifles at him. Immediately afterwards, Panikos Hadjiathanasiou heard a shot and saw Mr Kakoulli fall down. Mr Hadjiathanasiou heard a second shot immediately after the first.

14. A few minutes later, while Mr Kakoulli was still lying on the ground, Mr Hadjiathanasiou saw one of the Turkish soldiers move and fire a third shot at him from a distance of about 7 to 8 metres from where he was lying.

15. Following orders from Sergeant Serghiou of the SBA police, Constable Duru Chorekdjioglou (a Turkish-Cypriot member of the SBA police) and Constable Petros Kamaris (a Greek-Cypriot member of the SBA police) arrived at the Achna roundabout, where they met Panikos Hadjiathanasiou, who explained what had just happened.

16. Constable Duru Chorekdjioglou spoke to a Turkish lieutenant who told him that a Greek Cypriot had entered the territory of northern Cyprus and had been shot by Turkish soldiers. The officer said that the Greek Cypriot was dead.

17. The officer allowed Constable Duru Chorekdjioglou to see the body of the deceased though not to touch or examine it. Constable Duru Chorekdjioglou reported that Mr Kakoulli appeared to be dead.

18. Sergeant Engin Mustafa of the SBA police (a Turkish Cypriot), together with two Turkish soldiers, also visited the scene of the killing and saw the body. The Turkish soldiers told Sergeant Engin Mustafa that Mr Kakoulli had been shot because he had entered “their area” and had refused to obey warnings to stop.

19. Divisional Commander R.H. Weeks of the SBA police, together with Sergeant Engin Mustafa, entered northern Cyprus and spoke with a Turkish officer who told him that Turkish soldiers had shot and killed Petros Kyriakou Kakoulli because he had entered the territory of northern Cyprus and had refused to stop.

20. The same day, Superintendent Mathias Cosgrave and Inspector Richard Duggan of the Irish Civilian Police (IRCIVPOL), part of the United Nations Forces in Cyprus (UNFICYP), visited the scene, accompanied by Sergeant Engin Mustafa. They found an investigating team from the Turkish forces already present.

21. Superintendent Anastasiou, Inspector Christou, Sergeant Zonias and Constable Hadjiyasemis of the Republic of Cyprus police visited the area, although not the exact spot where the killing had occurred.

22. Sergeant Xenofontos and Constables Kapnoullas and Aristidou of the Republic of Cyprus police visited the area and prepared a draft location plan.

23. Georgios Mishis was escorted back to the scene of the incident, where he pointed out the various locations, which were then photographed by Constable Aristidou.

24. A Turkish pathologist, Dr İsmail Bundak, carried out an autopsy on the body of the deceased, Mr Kakoulli, at Famagusta General Hospital. According to the Turkish pathologist, the deceased had a wound 5 cm in diameter in his chest, 21.5 cm below his left nipple and 17 cm from the collar bone, two wounds in his back and a wound on his side in line with his right elbow.

25. Dr Bundak concluded that the death had occurred as a result of internal bleeding caused by a shot to the heart.

26. According to the report by Superintendent Cosgrave, during the removal of Mr Kakoulli's clothes, an object fell from his left boot which was described as a type of garrotte, consisting of two black metal handles attached to a length of wire. In addition, an object described as a bayonet in a scabbard was removed from the body's right boot. Following the autopsy, the body of Mr Kakoulli was taken to Larnaca Hospital under UN escort.

27. According to the first applicant's statement to the Republic of Cyprus police, her husband had only a red plastic bucket with him and had no object such as a bayonet or a garrotte, or any other kind of weapon.

28. On 14 October a second autopsy was conducted in Larnaca Hospital by Dr Peter Vanezis. In his preliminary report Dr Vanezis stated that there were three sets of gunshot wounds to the body. The report stated the following:

“An entry wound on the right side of the neck, just below the right ear, with an exit wound at the back of the neck. This bullet had left the body without causing any damage to vital organs. A second entry wound on the right side of the trunk and an exit wound on the right side halfway down the back. This bullet appeared to have caused soft tissue damage with minor injury to the lungs but was not fatal. A third entry wound on the left side of the trunk towards the back with a steep upward direction into the body. This bullet had exited from the left side of the front of the chest, causing a large exit wound. This wound was fatal, as it had caused severe damage to the left lung and the heart, resulting in severe internal haemorrhage.”

29. Until the second autopsy was concluded in Larnaca Hospital, IRCIVPOL had sole responsibility for the body. Before that, the body was in the sole custody of the Turkish forces.

30. On 15 January 1997 Dr Vanezis prepared a final report in Glasgow. He concluded that the second set of wounds had been inflicted by a shot fired while Mr Kakoulli had his hand raised and that the third set of wounds

were consistent with a shot fired into the body while Mr Kakoulli was lying on the ground or crouching down.

B. The Government's version of the facts

31. The Government maintained that Petros Kyriakou Kakoulli had violated the ceasefire line and had entered the territory of the "Turkish Republic of Northern Cyprus" ("TRNC"). He was warned verbally and by hand gestures. However, he did not stop and continued to run towards the boundary. One of the soldiers approached him and fired warning shots in the air. Petros Kyriakou Kakoulli took no notice of this shot and consequently a second shot was fired at the ground in order to stop him. As he continued to run away, a third round was fired at him below his waist, which apparently caused the fatal wound. The Government referred to the United Nations Secretary-General's report, which stated: "in a serious incident that occurred on 13 October 1996, a Greek Cypriot was shot three times and killed by a Turkish-Cypriot soldier after crossing the Turkish force's ceasefire line".

32. Neither the UN nor the British Sovereign Base authorities carried out an investigation of their own as the scene of the incident was within the territory of the "TRNC".

33. The Government further referred to various violent incidents which had taken place in the border area and between the ceasefire lines of the two sides between August and October 1996. The United Nations Secretary-General's report, submitted to the Security Council on 10 December 1996, stated that the period under review had seen an increase in the level of violence and tension along the ceasefire lines. The tension rose in early August 1996 owing to the Greek-Cypriot demonstrations at the border area and the ceasefire lines. Violent disturbances and riots took place on 11 and 14 August 1996 in the Dherinia area and in the vicinity of Ayios Nikolaos (Güvercinlik), alongside the British SBA. During these events, two Greek Cypriots were killed. On 8 September 1996 two Turkish soldiers on sentry duty were shot with automatic weapons fired from the SBA into the territory of the "TRNC". One of the soldiers died as a result and the other was seriously wounded.

34. The Government emphasised the fact that Petros Kyriakou Kakoulli had crossed the Turkish-Cypriot ceasefire line into the territory of the "TRNC", in the same area where the two Turkish soldiers had been shot. There were strong reasons to believe that Mr Kakoulli, who was a retired fireman, would not have crossed into the "TRNC" territory by mistake, particularly at a location where there were signs in Turkish and Greek indicating the border. Mr Kakoulli had been in possession of a garrotte and a bayonet at the material time, which constituted a strong presumption that

he had a sinister motive. His act of carrying a bucket apparently to collect snails was a cover for his real motive.

35. The death of Mr Kakoulli had not been a deliberate act, the Government asserted, but an attempt to maintain security in a highly tense environment. The incident had occurred during a period when tension at the border between the north and south of Cyprus was extremely high. Given the circumstances of the dangerous situation created by the Greek-Cypriot authorities, the Turkish soldiers had been fully justified in taking all necessary precautions and using the necessary force in order to remove the danger and threats of the ceasefire being broken and to protect the lives of others.

C. Documents submitted by the parties

36. The parties submitted various documents concerning the investigation into the killing of Petros Kakoulli. These documents, in so far as they are relevant, are summarised below.

1. Documents submitted by the applicants

(a) Statements taken by the Sovereign Base Areas Police

(i) Statement by Panikos Hadjiathanasiou

37. Mr Panikos Hadjiathanasiou is the fiancé of Mr Petros Kyriakou Kakoulli's daughter. He accompanied Mr Kakoulli to collect snails on the day of the impugned incident. In his statements he claimed, *inter alia*, the following:

“...After the rainfall at my village, I agreed with my father-in-law to go together this morning (13 October) to collect snails. So, today in the morning I set off with my father-in-law in my car, which I was driving. We took a bucket each in which to put snails... At approximately 6.30 a.m. we went to a point on the main Vrysoulles-Dhekelia road near a bridge. I stopped my car under some eucalyptus trees, on the left side of the main Vrysoulles-Dhekelia road, by the former Achna police station. We alighted from the vehicle, we each took our buckets and we proceeded south, towards the Avgorou side to collect snails. Because there were no snails to find, my father-in-law said that we should separate. He proceeded towards the lower side of the hill from the right, while I proceeded towards the left, intending to cover the whole lower side of the hill, and then to meet at the opposite side. The area in question is situated south of the main Vrysoulles-Dhekelia road. We started walking and I saw my father-in-law following a route in parallel to the main road and passing the bridge that is at the bottom of the hill by the Achna roundabout. As soon he had proceeded about 20-25 metres after the bridge, I lost sight of him as I had proceeded further and the hill was in between us... Before separating, my father-in-law told me that he was intending to go by the UN observation post, which is opposite the former Achna police station. The main Vrysoulles-Dhekelia road is controlled by the British Bases. Approximately between 7.05 and 7.10 a.m., as we had agreed to return to the village, I started calling

him, “Father! Father!”, but did not receive any reply. Whilst doing so I was walking towards the hill so I could have a better view and be able to see him. Whilst walking, I heard shouting in the Turkish language coming from the direction of the former Achna police station, which is in the Turkish-occupied area. On hearing the shouting, I ran towards the hill, I climbed it and I could see the surrounding area and the former Achna police station. I saw my father-in-law standing by an acacia tree at the rear of the Achna police station, facing towards the Turkish-occupied area... The distance between myself and my father-in-law was approximately 400-450 metres... He was holding his bucket with his left hand, but nothing in his right... I heard someone shouting at him something like a military command, which consisted of three words that were short and sharp in tone, and I understood the first word to be ‘DUR’. The other two words which I heard had a short interval between them but I did not understand them. On hearing those words, my father-in-law remained still; he left the bucket on the ground, and raised his hands up to the level of his head. Simultaneously, I saw in front of my father-in-law, at a distance of approximately 30-40 metres, two men dressed in camouflage combat uniform. They were wearing helmets and were carrying ‘G3’-type rifles. They fell to the ground in front of him and, taking up battle position, aimed their rifles towards his chest and abdominal area. As soon as they fell to the ground, I heard a shot and saw my father-in-law kneeling on the ground and then falling down... Once he fell to the ground, I lost sight of him because of the presence of the acacia tree. Immediately afterwards I heard a second shot. Three or four minutes later, while my father-in-law was still on the ground, I saw one of the two Turkish soldiers standing up and, pointing his rifle forwards, proceeding towards the point where my father-in-law was, with his back arched. He approached within a distance of 7-8 metres of him, straightened up, aimed his rifle towards the point where my father-in-law was and fired another shot... At the time of the shootings, I saw that on the road between myself and the place where my father-in-law was shot, there were three Greek Cypriots. One of them was Georgios Mishis from Avgorou... The Turkish soldier, having fired the third shot, retreated to the point where the other soldier was lying on the ground and afterwards, both of them started walking backwards aiming their rifles towards the main road, and disappeared behind the slope at the rear of the Achna police station... I am sure that my father-in-law was shot and murdered at 7.25 a.m., because I saw my watch...”

(ii) *Statement by Georgios D. Mishis*

38. The witness is a fellow villager of Petros Kyriakou Kakoulli. He stated, *inter alia*:

“...Today at about half past five in the morning, and because of the rain during the previous night, I woke up to go and collect snails... I was alone and drove to the Syrindjieris territory situated near the Achna roundabout on the main Vrysoulles-Dhekalia road ... About six o’clock when there was daylight I was walking on the right side of the main road in the direction of the former Achna police station and started collecting snails... Whilst collecting snails I heard a noise to my rear. I turned back and saw my co-villager Petris the fireman, who is the brother in-law of Kykkos Papettas. He was collecting snails as well, holding a bucket... I continued walking up and down up to the fence of the police station and Petris must have been collecting snails in the same area. After three-quarters of an hour from the time we met with Petris, I walked back down the hill for about 2 or 3 acres from the fence of the police station. To my left in the Turkish-occupied area I then saw Petris and, further back down, about 20-30 feet away from where Petris was, a Turkish soldier with his

weapon aimed at him. Petris was at that time approximately 300 metres from where I was standing. At the same time another soldier approached from the direction of the Turkish observation post and Petris asked him if he could speak Greek. I heard Petris clearly asking the latter soldier: ‘Do you know Greek?’. The soldier did not say ‘yes’ or ‘no’ to him. I then went on to the main road and stopped a car which was approaching from the direction of Vrysoulles and requested the driver to call the police... I told him to call the police because the Turks had captured one of us further down, and pointed out to him the direction where I had seen Petris and the Turkish soldiers... After that I started walking to the right down the road where the eucalyptus trees are, towards Avgorou... After about a quarter of an hour from the time I last saw Petris with the Turks I heard two shots and soon, after a few minutes, maybe five minutes, a third shot. On hearing the two shots I saw in front of me the son-in-law of Petris, namely Panikos, approaching from the direction where the water engine is or just beyond the eucalyptus trees. He said to me that the Turks had shot his father-in-law. The time I heard the third shot, I was together with Panikos and we were just getting ready, before hearing the third shot, to stand up and see if we could see Petris, but because of the third shot we sat down. The first two shots I heard were one after the other whilst the third shot was heard about two to three minutes later...”

(iii) Statement by Constandinos Ioannou Ioannou

39. The witness, who lives on the Vrysoulles refugee housing estate, was collecting snails in the same area where Petros Kyriakou Kakoulli met his death. He stated, *inter alia*:

“...At about 7.25 a.m. I heard a shot and within a short period of time another one, coming from the east of the police station in the occupied area. Because at that time I was in a dried-out river, I could not identify what was happening at the police station... When I returned to my car I saw one young person who looked panic-stricken and told me that the Turkish troops had shot his father-in-law on the eastern side of the police station... I forgot to tell you that as I was heading towards my car I heard a third shot coming from the same direction. While I was with this person he told me he was called Panikos and that he lived in Avgorou, also that his father-in-law who was shot by the Turks was called Petros Kakoulli. While talking with Panikos I noticed that at the point where he showed me the Turks had shot his father-in-law there were two Turkish soldiers with camouflage clothing armed with rifles...”

(iv) Statement by Police Sergeant Engin Mustafa

40. The witness is a police sergeant at the SBA. On the day of the impugned incident he was on duty at the base. He stated:

“...On the same day about at 8 a.m. I was on mobile patrol, dressed in uniform, in a marked police vehicle, in the Ormidia Xylophagou area when I received a message to the effect that there was a border incident around the village of Achna, where a Greek Cypriot had been shot by the Turkish army. I proceeded to the scene, along the Larnaca Famagusta main road by the Achna roundabout. My arrival time was 8.20 a.m... I proceeded about 175 metres north-west, escorted by two Turkish soldiers, where I saw the body of one male person lying face down on the ground, who seemed to be showing no signs of life. He looked to be in his fifties. He was wearing a grey shirt, jeans and wellington boots. There was a red plastic bucket with some snails inside it on the ground to the left of the lifeless person. I now know the name of the deceased to be Petros Kakoulli. I was informed by the Turkish army officer at the

scene that the Turkish soldiers had shot the man in question at 7.30 a.m. the same day because he had entered their area and failed to obey when challenged...”

(v) Statement by Divisional Commander (East) R.H. Weeks

41. The witness is the Commander of the Dhekelia Division of the SBA Police. He stated, in so far as relevant:

“...At 8.50 [on 13 October 1996], I went to the area of the alleged shooting and met with PS Engin Mustafa of the SBA Police. PS Mustafa reported to me that a man, identified as one Petros Petrou Kakoulli, had been shot dead by Turkish soldiers inside the TCA about 175 metres north of Boundary Stone 155... Together with PS Mustafa I entered the TCA and walked to a point about 175 metres to the north of Boundary Stone 155 and some 40 metres to the east of it where I saw the body of a male person laying face down on the ground with his head turned to the right. From the appearance of the body I believed him to be dead, although I was not permitted to touch the body to ascertain if there was any possibility of life. I noted that the body was of a middle-aged male, wearing a white-coloured summer shirt with light-coloured markings around the upper back area, blue denim jeans with a black leather belt and black wellington boots. Lying near the left shoulder of the body was a red-coloured plastic 2 gallon bucket that contained some snails. I could see blood stains on the edges of the shirt emerging from the front of the body as it lay on the ground. There was no sign of blood or wounds on the back of the body. I asked the Turkish NCO if he could tell me what had happened. He told me that at about 7.30 a.m. one of the sentries had seen the deceased moving on foot within the Turkish-controlled area. The sentry challenged the man but he did not stop. The sentry challenged the man a second time but he still did not stop so the sentry shot him twice. The man still managed to move a further 15 to 20 metres to the south and the sentry shot him a third time...”

(vi) Statement by Chryso Kakoulli

42. The witness is the wife of the deceased, Mr Petros Kakoulli. She claimed that her husband had left the family house with a bucket to collect snails. She disputed the allegation that her late husband was in possession of a knife and a wire rope and stated that such an allegation must have been advanced to cover up his murder.

(vii) Statement by Police Constable M. Pyrgou

43. The witness, a police constable stationed at the SBA Police Station in Ayios Nikolaos, saw a middle-aged person holding a basket, collecting snails on the main road in the direction of Larnaca. This person told the witness that somebody had been arrested by the Turkish forces and asked him to take action. The witness called Sergeant Serghiou at the Ayios Nikolaos Police Station and requested him to dispatch a patrol and also to inform the relevant agencies.

(viii) Statement by Police Sergeant Antonios Serghiou

44. The witness is a police sergeant stationed at the SBA Police in Ayios Nikolaos. He was on duty at the time of the killing of Petros Kakoulli. After having been informed, by Police Constable M. Pyrgou, about the arrest of a male Greek Cypriot by the Turkish soldiers, the witness instructed Police Constables P. Kamaris and D. Chorekdjioglou to proceed to the scene and to carry out inquiries and to report back. At 8.15 a.m. Mr Chorekdjioglou informed the witness that the person in question was Petros Kakoulli of Avgorou and that he had been shot dead by Turkish soldiers near Achna within the Turkish-controlled area.

(ix) Statement by Police Constable Duru Chorekdjioglou

45. The witness is a police constable stationed at the SBA Police in Ayios Nikolaos. He was on duty at the time of the killing of Petros Kakoulli. On the instructions of Police Sergeant Serghiou the witness went to the Achna roundabout, along with Police Constable Kamaris, to inquire into the arrest of Petros Kakoulli. He stated, in so far as relevant, the following:

“...When I walked close to [Border Stone] 155 some [Turkish] soldiers shouted at me to stay away. I replied to them that I was a Turkish SBA police officer. Still they shouted at me to stay away and I then walked back to the edge of the main road and shouted at them again to ask whether the commander was present. They replied that he was not there. They promised to call me back when he arrived at the scene. At 7.55 a.m. they called me and signalled to me to cross the boundary. I walked into the Turkish-controlled area and met with the Turkish lieutenant, who refused to give me his name. I then asked him if he had seen any Greek Cypriot collecting snails in the area. He said that a Greek Cypriot had crossed the boundary into the Turkish-controlled area and had been shot dead by his soldiers. I then asked him again whether he was dead or wounded, to which he replied that he was definitely dead. Then at 8.05 a.m. the army officer showed me the deceased, who was about 150 metres within the Turkish-controlled area. I saw the body from a distance of ten metres lying on the ground in a prostrate position with the head facing west. I saw blood on the left-hand side of the body; it was pale and looked dead...”

(x) Statement by Police Constable Petros Kamaris

46. The witness is a police constable stationed at the SBA Police in Ayios Nikolaos. He was on duty at the time of the killing of Petros Kakoulli. On the instructions of Police Sergeant Serghiou the witness went to the Achna roundabout, along with Police Constable Duru Chorekdjioglou, to inquire into the arrest of Petros Kakoulli. On the way to the Achna roundabout the witness met Panikos Hadjiathanasiou, who told him that his father-in-law had been shot dead by Turkish soldiers. He informed his colleagues at the Ayios Nikolaos Police Station and Dhekelia about the impugned incident.

(xi) Statement by Superintendent Theofanis Anastasiou

47. The witness is a police superintendent in Nicosia. He was the head of the police squad which visited the scene of the killing of Petros Kakoulli. Following his visit the witness concluded that Mr Kakoulli had been kidnapped by armed Turkish soldiers, transferred into the Turkish-occupied areas and shot dead. He was involved in the preparation of topographical sketches and plans of the scene of the killing and attended the post-mortem examination of the deceased.

(xii) Statement by Chief Superintendent Nathanael Papageorgiou

48. The witness was involved in the investigation into the killing of Petros Kakoulli. He stated that Mr Kakoulli had been shot dead by Turkish soldiers while collecting snails 40 metres inside the Turkish-occupied areas. He attended the post-mortem examination of the corpse of Mr Kakoulli at Larnaca Hospital.

(xiii) Statement by Police Inspector Marcos Christou

49. The witness is a police inspector in the Famagusta Police Division in the village of Paralimni. He was appointed as the investigator in the case of the killing of Petros Kakoulli. He visited the scene of the killing and supervised the taking of statements in connection with the incident. With reference to the statements of Panikos Hadjiathanasiou and Georgios Mishis, the witness found that Petros Kakoulli had been shot dead by Turkish soldiers while collecting snails in the Turkish-occupied area. He noted that on 14 October 1996, approximately 27 hours after the killing, an autopsy had been carried out on the body of the victim in the presence of Turkish and United Nations officials and that a garrotte, consisting of two metal handles attached to a string of wire, and a 33-centimetre bayonet had fallen down when the boots of the deceased had been removed.

(xiv) Statements by Police Constables S. Aristidou and H. Hadjiyasemi

50. The witnesses are specialist photographers attached to the Criminal Investigation Division at the Famagusta Police Division. They took various photographs of the scene of the impugned incident on 14 October 1996.

(b) Press releases issued by the United Nations Peacekeeping Force in Cyprus (UNFICYP)

51. The UNFICYP issued two press releases on 14 and 16 October 1996 concerning, respectively, the killing of Petros Kakoulli and the deaths occurring in the United Nations Buffer Zone.

52. In the press release of 14 October 1996 it expressed concern that an innocent life, namely that of Petros Kakoulli, had been lost as a result of deplorable and unnecessary force. The UNFICYP qualified the incident as a

disproportionate response and stressed that lethal force should not be used by either side against persons who crossed the respective ceasefire lines or entered the United Nations Buffer Zone. It was further noted that the commander of the UNFICYP had requested the commander of the Turkish forces in Cyprus to instruct soldiers under his command not to shoot unless their own lives were threatened.

53. In the press release dated 16 October 1996 the UNFICYP noted that five deaths in as many months in the United Nations Buffer Zone or adjacent to the ceasefire lines underscored the urgent need for arrangements to avoid the recurrence of similar tragic incidents. It further pointed out that these incidents had highlighted the need to ensure that the rules of engagement applied along the ceasefire lines prevented the use of lethal force except in clear situations of self-defence.

(c) Post-mortem examination report

54. Dr Peter Vanezis, from the Department of Forensic Medicine and Science at the University of Glasgow, carried out a post-mortem examination at Larnaca General Hospital on 14 October 1996 on the body of Petros Kakoulli. In his report dated 16 October 1996, in which he summarised his findings, Dr Vanezis stated:

“The deceased suffered three gunshot wounds to the body as follows:

One to the right side of the neck, which entered at a position just below the ear, exited at the back of the neck and did not cause any damage to any vital organs.

The second entered through the right side of the trunk and exited at the back at approximately the same level and appeared to have caused soft tissue damage with some minor associated internal injury to the lung, but was not in my view fatal.

The third wound was on the left side of the trunk towards the back. It entered the body and its trajectory was steeply upwards into the body at an angle of 45 degrees. It then exited from the left side of the front of the chest, causing a large exit wound. This wound was the fatal wound, causing severe damage to the left lung and the heart with consequent extensive internal bleeding.

The first two wounds mentioned were from approximately the same direction and both had approximately horizontal trajectories on entering the body.

The third wound was on the other side of the body and had a steep upward trajectory. The position of this wound indicates that the deceased, at the time of receiving this wound, was in a horizontal position either on the ground or crouching.

The first two wounds appeared to have been fired at approximately the same time, bearing in mind that their direction and their position on the body are from the same side...”

(d) Sketch maps and photos

55. The applicants provided the Court with sketch maps and photographs of the scene of the killing of Petros Kakoulli and with the photographs taken during the post-mortem examination carried out by Dr Peter Vanezis.

56. It is to be noted that Dr Vanezis's observations concerning the deceased's body correspond to the photos taken during the post-mortem examination.

(e) Newspaper reports

57. Between 14 and 17 October 1996 the daily newspapers *Fileleftheros*, *Agon*, *Cyprus Mail*, *Alithia* and *Simerini* reported the killing of Petros Kakoulli. The aforementioned newspapers extensively covered the impugned incident and reported the details of the killing of Petros Kakoulli and the investigation conducted into the impugned incident.

2. Documents submitted by the Government

58. The following documents furnished by the Government pertain to the investigation carried out by the "TRNC" authorities into the killing of Petros Kakoulli.

(a) Work schedule

59. This document sets out, in chronological order, the course of action taken by the investigating authorities in relation to the killing of Petros Kakoulli. It includes statements by various witnesses, reports, and decisions by the authorities. It appears that the investigation into the death of Petros Kakoulli was mainly carried out by Inspector Ömer Tazeoğlu, who at the relevant time worked at the Legal Branch of the Gazi Magusa Police Directorate.

(i) Preliminary investigation

60. Inspector Ömer Tazeoğlu commenced his investigation immediately after he had learned about the death of Mr Kakoulli, namely at 8.45 a.m. He visited the scene of the incident along with five other police constables at 10.45 a.m. on 13 October 1996. He observed that the incident had taken place on a slope about 300 metres to the south of the guard post code-named Haşim 8, which was under the responsibility of the 2nd Infantry Company of the 6th Infantry Battalion. The area was a first-degree military prohibited area where there were warning signs. At the site on the slope a dead person was lying face down. There was a large pool of blood.

61. Having completed his preliminary investigation, Inspector Tazeoğlu established that at 6.45 a.m. on 13 October 1996 Privates Harun Avşar and Rezvan Topaloğluları of the Infantry had begun their guard duties.

10 minutes later, they had seen a person about 300 metres from the guard post inside the military prohibited area. Private Avşar was in possession of a weapon. He had approached the person in question and concluded that he was a Greek Cypriot because he spoke Greek. He had signalled to the person to stop. But the person had attempted to run away towards the border fence. Private Avşar had first fired one shot in the air, one shot at the ground and one shot at his legs. Having seen that the person in question had failed to stop, Private Avşar had aimed at him and fired and killed him.

62. According to the work schedule, Police Constable Osman Pekun took the necessary photographs of the scene of the incident. Police Sergeant Mehmet Deniz drew a plan of the location. Inspector Ömer Tazeoğlu collected five cartridges and took samples from the pool of blood. SBA police officers Engin Çelebi and Bülent Nihat and inspectors and soldiers from the Peace Force visited the location but left without doing anything, given that the incident had taken place within the boundaries of the "TRNC". At the scene of the incident, the military doctor Ömer Gür examined the body and found two entry holes and two exit holes caused by bullets. The body was then transferred to Gazi Magusa State Hospital for an autopsy. Following the preliminary examination carried out by Dr Sadık Aslansoyu of the State Hospital, the body was put in the morgue and placed under police surveillance.

(ii) Post-mortem examination

63. On 14 October 1996 the Gazi Magusa District Court issued an interim order allowing the investigating authorities to carry out a post-mortem on the body of Petros Kakoulli. The same day at 9.58 a.m. a team comprising Inspector Ömer Tazeoğlu, Assistant Director H. Gurani, Police Sergeants H. Özdoğdu and H. Erkurt, Police Constable O. Pekun and Peace Force officials Major Martin Enk, Sergeant Dalle Robert, Inspector Mathias Cosgrave and Inspector Richard Duggan, as well as Dr İsmail Bundak and Erdal Özçenk, arrived at the morgue of Gazi Magusa State Hospital. The same day at 10.30 a.m. the body was taken out of the refrigerator by the morgue official Hamza Ulusu and was placed on the post-mortem table in the presence of the aforementioned persons. As the morgue official was removing the boot from the left foot of the body, a garrotte wire (both ends of the laundry wire, which was 68 centimetres long, were attached to a 14.5 cm long iron handle) fell to the ground. The Peace Force officials examined the said object on the spot. Then the Peace Force photographer and Police Constable O. Pekun photographed the object. When the boot was removed from the right foot a bayonet with a brown handle in a scabbard was seen to have been inserted between the right side of the leg and the interior of the boot. In this instance too the Peace Force officials and Police Constable O. Pekun photographed the object. Then the boot was removed and the bayonet and its scabbard measured. The bayonet,

together with its scabbard, was 33 cm long. The objects were taken as exhibits.

64. Between 10.30 a.m. and 12.30 p.m. on the same day Dr İsmail Bundak and Dr Erdal Özçenk carried out the post-mortem examination on the body in the presence of the above-mentioned persons. Twelve X-rays of the body were taken. Doctors took two 10 cc blood samples from the chest cavity of the body and placed them in two separate 10 cc containers for examination. They observed a total of four gunshot wounds; two entry wounds and two exit wounds. Police Constable Osman Pekun took fingerprints and palm prints of the deceased for examination. The autopsy examination established that the cause of death was internal bleeding as a result of shots fired by a firearm. The shots had shattered the left ventricle of the heart and the left lower lobe of the lung. Following the autopsy, the body, the photos, X-rays and the belongings of the deceased were handed over to the Peace Force officials.

(iii) Statements and reports

65. Between 14 October 1996 and 20 March 1997 statements were taken from SBA officials, Police Constables Temel Aydın, Türkeş Ergüder, Ahmet Bulduklar, Halil Öztugay, Ahmet Ceylani and Osman Pekun, Private Mehmet Deniz and Inspector Ömer Terzioğlu. Furthermore, witness testimonies were obtained from Infantry Private Rezvan Topaloğluları, the non-commissioned officer Sergeant Ali Ogdu, Infantry Lieutenant Necmettin Ateş, Dr Ömer Gür, Dr Sadık Aslansoyu, Dr İsmail Bundak, Dr Erdal Özçenk, the chemist Hatice Kale, Chief Inspector Abdullah Iraz, Inspector Ömer Tazeoğlu and Inspector Ules Gümüşel.

66. In a letter of 3 April 1997 Mehmet Özdamar, who was at the relevant time the Deputy Director and Acting Director of the Legal Branch at the Gazi Magusa Police Directorate, submitted a detailed report about the killing of Petros Kakoulli. Mr Özdamar stated, in so far as relevant, the following:

“[Petros Kakoulli], despite the presence of warning signs, secretly crossed into the TRNC territory near border stone no. 155 and advanced 200 metres inside...

Infantry Private Harun Avşar first verbally warned Petros Kakoulli and asked him to stop. But the said person attempted to escape by walking away speedily. Following that, Infantry Private Harun Avşar got 10 metres closer to the victim and first fired a single warning shot into the air. When [Petros Kakoulli] continued to run away, Harun Avşar fired another warning shot to the ground. But when he again tried to escape, Harun Avşar fired a single shot in the direction of his legs and then two shots below the waist. Petros Kakoulli was stopped after being shot...

During the removal of Petros Kakoulli's boots, a garrotte wire hidden in the left boot and a 33 cm bayonet hidden inside the right boot were discovered. Both have been seized as exhibits...

The ballistic examination revealed that 5 empty cartridges had been fired by a G3 infantry rifle with the serial number 259550.

The comparison of the fingerprints of the victim with the fingerprints found on the bayonet which was found in his right boot showed that the fingerprints on the bayonet belonged to the victim...

A charge of manslaughter can be brought against someone in the event of a criminal offence or negligence. However, as the testimonies show, Infantry Private Harun Avşar made all the necessary moves to apprehend the person but as a last resort, after giving warnings, opened fire on Petros Kakoulli and shot him.

In my opinion, in the light of the existing testimonies, the incident qualifies, under Article 15 (3) (b) and Chapter 154 Article 17 of the Criminal Code, as an act of causing death which does not constitute a criminal offence..."

67. In a letter of 23 May 1997 Osman T. Naim Enginsoy, who was a Deputy Assistant Attorney-General, instructed the Director General of Police to take no further action on the case and to close it.

68. In June 1997 the police authorities decided to classify the case concerning the killing of Petros Kakoulli as "no case" and to discontinue the investigation.

(iv) The Coroner's decision of 25 August 1998

69. Having completed the judicial inquest, the Gazi Magusa district judge concluded that Petros Kakoulli had died of injuries caused by shots fired by Infantry Private Harun Avşar after illegally entering the "TRNC" and failing to obey warnings to stop.

(v) Statement by Inspector Ömer Tazeoğlu

70. In his statements concerning the conclusions he had reached at the end of the investigation into the killing of Petros Kakoulli, Inspector Tazeoğlu expressed the view that Private Harun Avşar had acted in accordance with the instructions given to him. Private Avşar had given the necessary warnings and had shot and killed Petros Kakoulli because of the latter's failure to stop. Inspector Tazeoğlu thus concluded that this was a justified killing since Private Harun Avşar had done what his duty dictated. Inspector Tazeoğlu recommended that the case should be classified as "no case".

(b) Report by Superintendent Mathias Cosgrave of the Irish Civilian Police (IRCIVPOL), UNFICYP, in Pyla, Cyprus

71. This report describes the sequence of events concerning the involvement of IRCIVPOL in the investigation into the killing of Petros Kakoulli. It appears that immediately after the killing of Mr Kakoulli, at 11.15 a.m., IRCIVPOL members including Superintendent Cosgrave and Inspector R. Duggan visited the scene of the incident. The IRCIVPOL

members did not investigate the incident but merely observed the conduct of the investigation by the “TRNC” authorities from 13 June to 15 June 1996.

(c) Statement by Infantry Private Harun Avşar

72. In his statements to the investigating authorities, Infantry Private Harun Avşar claimed the following, in so far as relevant, in relation to his killing of Petros Kakoulli:

“...Today, on 13.10.1996, Rezvan Topaloğluları and I were on guard duty at Haşim 8... After 5-10 minutes from the time we started our shift, we – I and Rezvan Topaloğluları – saw, approximately 300 or 400 metres from our guard post, a person walking inside our territory. This person was walking in a south-north direction, in other words in the direction of a trail we describe as the patrolling trail. We did not know who this person was. As soon as I saw this person I informed Duty Officer Ali Ogdu via the wireless (radio). He told us over the wireless to continue to keep the person under observation. Then I told my companion, Infantry Private Rezvan Topaloğluları: ‘You stay here; I will go and look at this person.’ And, holding my rifle with a loaded magazine attached to it, I came down from Haşim 8 guard post and joined the trail, advancing towards the border fence... After approaching to about 50 metres from the person, I shouted and asked him what he was doing there. Without saying anything the person continued walking on the slope in the direction of the patrolling trail. Until that moment I could not firmly determine whether this person was a Turk or a Greek Cypriot. So I moved closer to him. The distance between us was about 5-6 metres. This person was high on the slope. At that moment, I sensed that the person could well be a Greek Cypriot. The look of the person was one of bad intent and unease. After that, through hand signals I asked him where he was coming from. Initially the person gave no verbal reply, but he signalled with his right hand and indicated the Turkish side and said something in Greek. But I did not understand what he said. When I was sure that the person was a Greek Cypriot, I removed the safety catch of my weapon and aimed at him. At that moment, the person, while speaking in Greek and making hand signals, started coming towards me. Faced with this situation I shouted in Turkish, telling him to stop, and with my left arm I signalled to him to stop. The person did not stop and continued walking towards me. I, for my part, stepped back a few metres and shouted at my colleague Rezvan and told him to inform the exchange about the situation...

The guard Rezvan Topaloğluları heard me. Then I again turned my head towards the person. I shouted and warned the person to stop. After that he stopped walking towards me and started walking towards the border fence. I again shouted and warned him to stop. But this person continued walking away in the direction of the fence while moving his arms and hands saying something in Greek. The distance between this person and the border fence was 200 metres. Following that, I went up to the slope to have a better view of him. The person was still walking towards the border fence. I shouted again and asked him to stop. But he went on walking, waving his hands at the same time. After that the distance between the person and me was about 15 metres. At that point I fired a shot into the air. After hearing the firing of the gun the person quickened his steps. After that I turned my weapon in his direction and fired another shot towards the ground. He again failed to stop and further increased his speed. The distance between us at that moment was about 30 metres. When I realised that the person would not heed my warnings and would cross over to the Greek-Cypriot side, that is I would not be able to catch him, I decided to stop the person by shooting and wounding him. Therefore, while he was walking I aimed my

gun roughly at his legs and fired. After that the person stopped momentarily. Until that moment I was not sure if my shot had found its target. Following that, and while he was in a walking position, I fired two rounds, aiming at the person. And the person was shot and fell to the ground. Naturally, the person fell on his right side. I realised that the person was shot. But I did not go near him. I thought there could be others hiding in the area. Therefore, I went up to the hilltop and, hiding behind the rock, began observing and monitoring the area. After that I did not hear any sound coming from the said person.

The shooting incident took place at around 7.30 a.m. After 10-15 minutes Company Duty Officer Ali Ogdu arrived at the scene of the incident along with a team of soldiers. I told him what had happened. The soldiers took security measures in the area. As I said, I fired five rounds in this incident...”

(d) Statement by Infantry Private Rezvan Topaloğluları

73. At the time of the impugned incident Infantry Private Rezvan Topaloğluları was on guard duty along with Private Harun Avşar at Haşim 8 guard post. In his statements to the authorities he mentioned, in so far as relevant, the following:

“...Today, on 13.10.1996 at around 6.45 a.m., the duty officer of the company, Non-commissioned Officer Ali Ogdu, drove Harun Avşar and me to the guard post and we began our guard duties there. Five to ten minutes after the start of our guard duties, we saw a person in civilian dress between our guard post and the border fence and 300 metres away from the post. Immediately after seeing this person my colleague Harun Avşar notified the situation to the exchange via the wireless. However, I am not sure who he talked to. Over the wireless he was told ‘OK, keep an eye on it’. Following that, we continued to keep the person in question under surveillance... This person was approximately 250-300 metres from the border fence inside our territory. After that my colleague told me: ‘I will go and find out who that person is. You stay here and watch...’ The person we saw was to the south of the patrolling trail inside the ‘TRNC’ territory, which was a military prohibited zone. No one is allowed to enter the area where we saw the person without permission... When we first arrived at our post no information was given to us about the presence of a person there. Therefore, we realised that that person could not be someone with permission. As a result, [Harun Avşar] left the post to find out who that person was. Harun left the post holding the G-3 infantry rifle, registered in his name, with one magazine attached to it and another one inside his belt, and directly joined the patrolling trail from the top and crossed the trail in a southerly direction and started walking in the field as if he wanted to get away from the person, but he was going to approach the person from behind. The way he was moving he would prevent the person from escaping or getting closer to the border fence. What I saw from the guard post was this: Harun got closer to the person and the distance between them was about 15 metres. First I saw that person on the slope and Harun was in the field. Then I saw Harun climbing up the slope. I do not know if there was any conversation between the person and Harun; I could not hear them from my post. At that moment, as I was watching them Harun got nearer to the person, about 10-15 metres away. Then I saw Harun Avşar turn towards the guard post and signal by hand and shout, telling me to inform the exchange. Right at that moment I understood that Harun had found out that the person was a Greek Cypriot. At that moment – the time was about 7.35 a.m. – I lifted the telephone receiver in the guard post, while watching them. I saw that the

person that Harun was trying to get closer to was starting to walk speedily away and trying to escape. Naturally, that person was walking in the direction of the border fence. Then I saw Harun raise his gun into the air and fire a single shot. But that man was still walking away. This time Harun lowered his gun and aimed at the man, and in a very short period he fired four single shots, and as the man was walking he fell down. Naturally, it was not possible for me to discern how many shots Harun fired at the man and how many shots at the ground. But when the man fell down I realised that he had been shot... Harun Avşar shot that person inside the military prohibited zone..."

II. RELEVANT LAW AND PRACTICE

A. Military instructions concerning Haşim 8 Guard Post

74. Guards on duty at Haşim 8 guard post are required to follow the instructions mentioned below, among others. Paragraph 8 of the General Instructions reads:

"In the event of any danger the guard shall fully load his weapon, shall open the safety catch and if need be shall use the weapon without hesitation but in accordance with the rules of engagement."

75. Paragraph 10 of the Special Instructions reads:

"Guards shall always stop any person approaching them at night. They shall ask for a password and a signal. Unless they are sure, they shall not allow anyone to approach them."

76. Paragraph 19 of the Special Instructions provides:

"When armed or unarmed military persons enter the buffer zone or cross the confrontation line, the guard on duty shall immediately inform the company's telephone exchange and take up position. If enemy personnel are inside the buffer zone and continue to approach after a warning is given for them to stop, they shall be aimed at and fired at. If the enemy personnel intend, after entering the buffer zone, to cross the confrontation line, the guard on duty shall not allow the removal of wounded or dead personnel from the buffer zone or inside the confrontation line. The guard shall not allow the destruction of evidence. If need be he shall take aim and open fire. No personnel, in such a situation, shall enter the buffer zone."

B. International legal materials

77. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("UN Force and Firearms Principles") were adopted on 7 September 1990 at the Eighth United

Nations Congress on the Prevention of Crime and the Treatment of Offenders. Paragraph 9 of the Principles provides:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

78. Paragraph 5 of the Principles provides, *inter alia*, that law enforcement officials must “exercise restraint in [the] use [of force and firearms] and act in proportion to the seriousness of the offence and the legitimate objective to be achieved”. Paragraph 7 provides: “Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law”. Paragraph 11 (b) states that national rules and regulations on the use of firearms should “ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm”.

79. Paragraph 10 of the Principles reads as follows:

“... law enforcement officials shall identify themselves as such and shall give a clear warning of their intent to use firearms, with sufficient time for the warnings to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION CONCERNING NON-EXHAUSTION OF DOMESTIC REMEDIES

The submissions of the parties

1. The respondent Government

80. The Government averred that the applicants had failed to comply with the exhaustion of domestic remedies rule in Article 35 § 1 of the Convention. In this connection they reasoned that the applicants had filed their application without having recourse to the local remedies which were

effective, sufficient and accessible to them and capable of providing redress for their complaints within the judicial system of the “TRNC”.

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

82. The Government noted that all prosecutions were carried out by the Attorney-General, who enjoyed all judicial guarantees of independence (Article 158). The criminal justice system in Cyprus was based on the English “accusatorial system”, and the standard of proof was that of “beyond reasonable doubt”. As to civil cases, the “TRNC” courts applied the provisions of the Civil Wrongs Law, which was a codification of the English common law.

2. The applicants

83. The applicants disputed the respondent Government’s submissions and claimed that there had been no failure on their part to comply with the requirements of Article 35 of the Convention. They stressed that the “TRNC” courts were not properly established under the law applicable in northern Cyprus, but by the “TRNC” in the part of Cyprus which was under illegal Turkish occupation.

84. Moreover, the claim of the “TRNC” to statehood had been rejected not only by the United Nations Security Council but by every State in the world with the exception of Turkey. Accordingly, the courts to which the respondent Government referred in their observations had not been properly constituted by the Republic of Cyprus. That being so, institution of proceedings in the “TRNC courts” would inevitably involve a degree of

recognition by the applicants of the legitimacy of those courts and thus of the “TRNC” itself, which would amount to a denial of the sovereignty of the Republic of Cyprus over northern Cyprus. Any such action would also be in direct conflict with the applicants’ status and duties as citizens of the Republic of Cyprus.

85. The applicants further asserted that even if there was in principle a duty to make use of any remedies which might exist in the “TRNC”, the courts there did not offer a remedy which was effective and available to them.

3. The Cypriot Government

86. The Cypriot Government endorsed the applicants’ submissions and contended that the respondent Government’s objection on non-exhaustion should be dismissed. They maintained that the applicants could not be required to exhaust the remedies provided by a subordinate local administration whose existence was dependent upon the control of an occupying power. With reference to their earlier observations in the fourth inter-State case of *Cyprus v. Turkey* ([GC], no. 25781/94, §§ 83-85, ECHR 2001-IV), they submitted that no valid Convention remedies existed within the “TRNC” and that the illegality of those remedies in international law amounted to a special circumstance absolving the applicants from the requirement of exhaustion.

4. The Court’s assessment

87. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

88. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicant has not had recourse and to satisfy the Court that the

remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicants' complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68).

89. Bearing in mind the foregoing principles, the Court observes at the outset that, for the purposes of Article 35 § 1, remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises (see *Cyprus v. Turkey*, cited above, § 102). However, this conclusion is not to be seen as in any way putting in doubt the view of the international community regarding the establishment of the "TRNC" or the fact that the government of the Republic of Cyprus remains the sole legitimate government of Cyprus (*ibid.*, §§ 14, 16 and 90).

90. That being so, the Court notes that in its admissibility decision of 4 September 2001 it considered that the question whether the criminal investigation at issue could be regarded as effective under the Convention was closely linked to the substance of the applicants' complaints and that it should be joined to the merits. Noting the arguments submitted by the parties on this question, the Court considers it appropriate to address these questions in its examination of the substance of the applicants' complaints under Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

91. The applicants alleged that the killing of Petros Kakoulli by Turkish soldiers in Cyprus constituted a violation of Article 2 of the Convention, which provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Submissions of the parties

1. *The applicants*

92. The applicants alleged that the circumstances in which the late Petros Kakoulli had met his death suggested that those who had shot him had intended to kill him. In their opinion, the acts which had caused the death of Petros Kakoulli went far beyond anything which might have been justified under Article 2 § 2 (a), if indeed any use of force at all could have been “absolutely necessary” in those circumstances.

93. The applicants maintained that Petros Kakoulli had been killed while acting in a manner which no reasonable person could have believed posed a threat of violence to anyone. The only object which he had been holding in his hands was a red plastic bucket and he had dropped that before he had been shot. At the time of his death he had not been holding anything which could have been mistaken for a weapon by the soldiers who killed him, who had been close enough to observe his movements, dress and appearance in detail.

94. The applicants also submitted that the garrotte and bayonet which had been found on Mr Kakoulli’s body at the time of the first post-mortem had obviously been planted by members of the Turkish forces in a clumsy attempt to justify their actions. Even if Mr Kakoulli had been in possession of those weapons concealed in his boots at the time of his death, that fact would not have justified the action of the soldiers in killing him. With such weapons he could not even have threatened two soldiers armed with rifles. Furthermore, the eyewitness accounts showed that the deceased had been doing nothing that might reasonably have been interpreted as threatening. On the contrary, he had had his hands raised in a gesture of surrender. The post-mortem examination conducted by Dr Vanezis had confirmed that one of the shots had been fired when Petros Kakoulli had his hands raised and that the fatal shot had been fired while he had been lying on the ground.

95. Referring to the considerations of the Court in the case of *McCann and Others v. the United Kingdom* (judgment of 27 September 1995, Series A no. 324, p. 59, § 201), the applicants contended that the respondent Government had fallen short of their obligations under Article 2 on account of the use of lethal force by their armed forces against an individual who had been doing no more than collecting snails in a peaceful area at a time when there were no reasonable ground for expecting violence.

2. *The respondent Government*

96. The Turkish Government submitted that the unfortunate killing of Petros Kakoulli should not be seen as an isolated incident; a number of violent incidents which had taken place in the border area prior to the impugned incident should also be taken into consideration. In this

connection, they noted that on 8 September 1996 two Turkish-Cypriot soldiers on sentry duty had been shot by persons who had penetrated the area of Güvercinlik (near Ayios Nikolaos) at night. This had been part of a carefully planned murder operation which had resulted in the death of one of the soldiers and serious wounding of the other. The Greek-Cypriot newspaper *Stochos* had reported in its edition of 16 September 1996 that the attack on the Turks had been carried out by Greek commandos as reprisals for the deaths of two Greek Cypriots during violent demonstrations which had taken place at the border area and the ceasefire lines on 11 and 14 August 1996. Thus, the period under consideration had seen a level of violence and an increase in tension along the ceasefire lines unparalleled since 1974, as had been observed by the UN Secretary-General in his report of 10 December 1996 (S/1996/1016) submitted to the Security Council. The incident forming the subject matter of the present application had occurred on 13 October 1996, when the situation was already tense.

97. Petros Kakoulli had crossed the Turkish-Cypriot ceasefire line into the territory of the “TRNC” in the same area which the attackers of the two Turkish-Cypriot soldiers had infiltrated to carry out their sinister operation. There were clear notices in Greek, Turkish and English indicating the boundary of the “TRNC” and warning that entry was prohibited. Mr Kakoulli had been warned to stop verbally and by hand gestures. But he had continued to run towards the boundary fence. One of the Turkish-Cypriot soldiers manning the sentry post had approached him and fired warning shots in the air. Petros Kakoulli had taken no notice and a second shot had been fired at the ground in order to stop him. As he continued to run away a third round had been fired towards him below his waist, which had apparently caused the fatal wound.

98. It was highly improbable that Petros Kakoulli, a trained fireman, would have crossed into the “TRNC” territory by mistake, particularly at a location where there were signs in Turkish and Greek indicating the border. He had been in possession of a garrotte and a bayonet at the material time, which constituted a strong presumption of a sinister motive, and the carrying of a bucket to collect snails had served to camouflage his actual motive. Given the tense situation following the killing of the two Turkish-Cypriot soldiers in the area, there had been no reason to take such a reckless action and to collect snails within the territory of the “TRNC”, when he could safely have done so in the open fields around him and away from the ceasefire line.

99. In the context of the dangerous situation created by the Greek-Cypriot authorities, the Turkish soldiers had been fully justified in having recourse to force in order to abate danger and threats of the ceasefire line being crossed and to protect the lives of others. Thus, the death of Petros Kakoulli had not been a deliberate act. It had occurred in an attempt (a) to maintain security in a highly tense environment and to defend people and

property in that area against any possible act of aggression by the intruder, and (b) to effect a lawful arrest. Such action was justified under Article 2 § 2 (a) and (b) of the Convention.

100. Furthermore, in the Government's opinion, the allegation that the "second set of wounds had been inflicted by a shot while the victim had his hand raised and the third set of wounds were consistent with a shot having been fired into the body while the victim was lying on the ground" was highly speculative and wrong. This was not a matter on which a pathologist could state the facts with any degree of certainty.

3. *The Cypriot Government*

101. The Cypriot Government disputed the respondent Government's arguments and claimed that the killing of Petros Kakoulli had not been justified on any grounds under Article 2 of the Convention. Even if Mr Kakoulli had been carrying a bayonet and a garrote and fleeing from a location where he should not have been, this could not justify killing him to effect his arrest. There was no indication that the weapons allegedly found on him had been used by him or that the soldiers had felt threatened by them. In the Cypriot Government's opinion, the only reason for the killing of Petros Kakoulli had been his Greek-Cypriot origin.

B. The Court's assessment

102. The Court notes that it has been presented with conflicting accounts as to the circumstances of the killing of Petros Kakoulli by Turkish soldiers on guard duty along the ceasefire lines in Cyprus. Accordingly, it must reach its decision on the basis of the available evidence submitted by the parties (see *Çağan v. Turkey*, no. 33646/96, § 61, 26 October 2004).

103. In assessing evidence, the Court reiterates that it adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161; *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts); and *Ülkü Ekinci v. Turkey*, no. 27602/95, §§ 141-42, 16 July 2002).

104. However, the Court is sensitive to the subsidiary nature of its function and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the

findings of domestic courts, in normal circumstances cogent elements are required for it to depart from the findings of fact reached by those courts (see *Klaas*, cited above, p. 18, § 30). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283), even if certain domestic proceedings and investigations have already taken place.

105. In the light of the foregoing, the Court will determine whether the facts of the instant case disclose a failure by the respondent State to protect the right to life of the applicants' relative and to comply with the procedural obligation imposed by Article 2 of the Convention to carry out an adequate and effective investigation into the incident.

1. Whether the killing of Petros Kakoulli was justified under Article 2

(a) General principles

106. Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention and enshrines one of the basic values of the democratic societies making up the Council of Europe. The Court must subject allegations of breach of this provision to the most careful scrutiny. In cases concerning the use of force by State agents, it must take into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances including such matters as the relevant legal or regulatory framework in place and the planning and control of the actions under examination (see *McCann and Others*, cited above, pp. 45-46, §§ 146-147; *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-; and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 93, ECHR 2004-).

107. As the text of Article 2 § 2 itself shows, the use of lethal force by State security forces may be justified in certain circumstances. However, any use of force must be no more than "absolutely necessary", that is to say it must be strictly proportionate in the circumstances. In view of the fundamental nature of the right to life, the circumstances in which deprivation of life may be justified must be strictly construed (see *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports* 1997-VI, pp. 2097-98, § 171, p. 2102, § 181, p. 2104, § 186, p. 2107, § 192, and p. 2108, § 193; and *McKerr v. the United Kingdom*, no. 28883/95, §§ 108 et seq., ECHR 2001-III).

108. Accordingly, and with reference to Article 2 § 2 (b) of the Convention, the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity. The Court considers that in principle there can be no such necessity where it is known

that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost (see the Court's approach in *McCann and Others*, cited above, pp. 45-46, §§ 146-50 and pp. 56-62, §§ 192-214, and, more recently, in *Makaratzis*, cited above, §§ 64-66; see also the Court's condemnation of the use of firearms against unarmed and non-violent persons trying to leave the former German Democratic Republic in *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, §§ 87, 96 and 97, ECHR 2001-II; and finally, as the most recent authority, *Nachova and Others*, cited above, § 95, where the Court condemned excessive use of force to arrest victims, which resulted in their death).

109. In addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis*, cited above, §§ 57-59, and the relevant provisions of the UN Force and Firearms Principles cited in paragraphs 77-79 above).

110. Furthermore, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms not only on the basis of the letter of the relevant regulations but also with due regard to the pre-eminence of respect for human life as a fundamental value (see the Court's criticism of the "shoot to kill" instructions given to soldiers in *McCann and Others*, cited above, pp. 61-62, §§ 211-214; and *Nachova and Others*, cited above, § 97).

(b) Application of these principles in the present case

111. It is undisputed that Petros Kakoulli was shot and killed by a Turkish soldier on guard duty in the border area within the territory of the "TRNC". The Court must therefore consider whether in the instant case the force used against the victim by the Turkish soldier could be said to have been no more than absolutely necessary and therefore strictly proportionate to the achievement of one of the aims set out in paragraph 2 of Article 2, the only relevant ones of which, in the circumstances of the case, are the "defence of any person from unlawful violence" and "to effect a lawful arrest".

112. In this connection, a number of key factual issues must be ascertained, in particular whether the soldiers were indeed at risk from Petros Kakoulli, whether any warnings were given before the shooting, and whether the deceased was shot when he was already injured and on the ground in circumstances where it would have been possible to carry out an arrest. Determining these issues should involve, among other things, careful

scrutiny of the account of the soldier in question as to the circumstances in which he fired his weapon and of the findings of the investigating authorities and pathologists who carried out the post-mortem examination. Assessment of the credibility and reliability of the various witnesses and the documents submitted by the parties, in particular pictures taken during the post-mortem, must also play a crucial role.

113. Before embarking upon the examination of these issues, it is to be noted that the respondent Government have placed great emphasis on the fact that there was a high level of violence and increased tension along the ceasefire lines during the period in question (see paragraphs 96-99 above). They argued that the soldier on guard duty at the time of the incident in the present case had used lethal force against the victim as he had been under stress caused by the dangerous climate. The use of lethal force was also explained by the failure of Petros Kakoulli to obey warnings to stop and the risk he posed to the soldiers on guard duty on account of his possession of a garrotte and a bayonet (see paragraph 96 above).

114. The Court notes that, at the time of the killing of Petros Kakoulli, the buffer zone between the two sides in Cyprus was not very peaceful, as appears from the press releases issued by the United Nations Peacekeeping Force in Cyprus, concerning the death of civilians and soldiers and violent demonstrations taking place along the ceasefire lines (see paragraphs 52 and 53 above). The Court accepts that border policing undoubtedly presents the authorities with special problems, such as unlawful crossings or violent demonstrations along the border lines. However, this does not mean that the law-enforcement officials have *carte blanche* to use firearms whenever they are confronted with such problems. On the contrary, they are required to have the ability to assess all parameters and to organise their actions carefully with a view to minimising a risk of deprivation of life or bodily harm. In this connection, the Contracting States have a duty to provide effective training to law-enforcement officials operating in border areas and to give them clear and precise instructions as to the manner and circumstances in which they should make use of firearms, with the objective of complying with international standards on human rights and policing (see paragraphs 77-79 above on the UN Force and Firearms Principles). Accordingly, the Court cannot accept the respondent Government's argument for justifying the use of lethal force against civilians who breach the border lines. The Court will return to this point when examining the proportionality of the use of lethal force in question.

115. The Court notes, further, that the respondent Government pointed to the fact that a garrotte and a bayonet were found on the body of Petros Kakoulli during the post-mortem examination, which in their submission proved that he had a sinister motive and posed a serious threat to the soldiers on guard duty (see paragraphs 63 and 98 above). This allegation was vehemently denied by the applicants (see paragraph 94 above), who,

relying on statements by a number of witnesses, claimed that Petros Kakoulli had been only in possession of a plastic bucket to collect snails in the area (see paragraphs 37, 38, 40, 42 and 93 above). The Court does not find it necessary to determine whether Petros Kakoulli was indeed in possession of the objects in question prior to his death or whether they were planted by the Turkish security forces subsequent to his death. In this connection, it suffices to note that its duty in the instant case is not to fulfil the functions of a criminal court as regards the apportionment of the degree of individual fault (see *Gül v. Turkey*, no. 22676/93, § 80, 14 December 2000). On that account, even assuming that the respondent Government are right in their assertions, this does not relieve their agents of the obligation to avoid using disproportionate force with the intention of killing or with reckless disregard for the life of Petros Kakoulli.

116. Turning to the circumstances of the killing of the victim, the Court notes that the soldier in question, namely Private Harun Avşar, claimed in his statements that, following his verbal warnings to Mr Kakoulli to stop, he had given one warning shot in the air, and then another towards the ground (see paragraph 72 above). Since Mr Kakoulli had failed to heed his warnings and had attempted to escape to the Greek-Cypriot side, Private Avşar aimed at the victim's legs and thus fired a third shot with a view to apprehending him (*ibid.*). After a while he aimed and fired twice at the victim, who had already stopped; these shots caused his death (*ibid.*). In his report, the principal investigator Ömer Tazeoğlu noted that he had found five cartridges at the scene of the incident, which confirms Private Avşar's version in so far as it concerns the number of shots (see paragraph 62 above). Furthermore, the military doctor who examined the body at the scene of the killing established the presence of two entry bullets and two exit holes caused by the bullets (*ibid.*). On the other hand, several witnesses claimed that the Turkish soldiers had fired three times at the victim and that the third shot had been fired a few minutes after the first two (see paragraphs 37, 38 and 41 above).

117. According to the post-mortem examination report prepared by Dr Vanezis, and regard being had to the photos of the deceased, it appears that Mr Kakoulli received three bullets: the first one to the neck, the second one to the right side of the trunk and the third one to the left side of the trunk (see paragraphs 54-56 above). In his report, Dr Vanezis also noted that the first two shots appeared to have been fired at the same time and that both had had horizontal trajectories on entering the body and had not been fatal, whereas the third one had entered the body of the victim whilst he was in a horizontal position either on the ground or crouching and had been the fatal one (see paragraph 54 above). The Court therefore concludes that, apart from the first shot, Private Avşar fired two or three shots with his gun, aimed directly at the victim, and that the last shot caused the victim's death.

118. In this connection the Court reiterates that, by definition, warning shots are fired into the air, with the gun almost vertical, so as to ensure that the suspect is not hit (see *Oğur v. Turkey* [GC], no. 21594/93, § 83, ECHR 1999-III). That was all the more essential in the instant case as the victim in question was a middle-aged man in civilian clothes and was not carrying any visible arms which could have posed a threat from a distance, such as a rifle or a pistol. Accordingly, even though it was subsequently discovered that there were a garrotte and a bayonet in Mr Kakoulli's boots, there was no basis for the soldiers on guard duty to reasonably consider that there was any need to resort to the use of their weapons in order to stop and neutralise the suspect.

119. Moreover, even assuming that Mr Kakoulli failed to stop promptly upon the verbal warning from the soldiers as he passed the border line, the Court finds that this does not disclose any basis for the use of force which, whether deliberately or owing to lack of proper aim, was lethal in its effects. As noted earlier, the Court cannot overlook the Government's argument that the location of the incident was not peaceful at the relevant time. However, the fact that unrest was prevailing in the area in question does not of itself give the soldiers the right to open fire upon people or persons whom they deem suspicious.

120. Nevertheless, the soldier in question had recourse to lethal force while there was no imminent risk of death or serious harm to him or other persons (see paragraphs 77-79 above, concerning the UN Force and Firearms Principles). On the contrary, the Court notes that in his statement to the investigating authorities Private Avşar stated at the time he shot and wounded Petros Kakoulli, the latter was about 30 metres away and was walking towards the border fence and that he (Private Avşar) decided to shoot him because he would otherwise not have been able to catch him. The Court is particularly struck by the fact that the last shot was fired several minutes after the two shots, which had already wounded the victim and neutralised him, at a time when it could have been possible to carry out an arrest (see paragraphs 37, 41, 54, 72 and 73 above). In this latter context, it cannot be said either that the use of fire in the instant case was in compliance with the rules of engagement (see paragraphs 74 and 76 above).

121. In the light of the above, the Court concludes that the use of force against Petros Kakoulli was neither proportionate nor absolutely necessary for the purpose of "defending any person from unlawful violence" or "effecting a lawful arrest".

There has therefore been a violation of Article 2 on that account.

2. Whether the investigation into the killing of Petros Kakoulli was adequate and effective, as required by Article 2 of the Convention

122. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under

Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Anguelova v. Bulgaria*, no. 38361/97, § 137, ECHR 2002-IV). Since often, in practice, the true circumstances of the death in such cases are largely confined within the knowledge of State officials or authorities, the bringing of appropriate domestic proceedings, such as a criminal prosecution, disciplinary proceedings and proceedings for the exercise of remedies available to victims and their families, will be conditioned by an adequate official investigation, which must be independent and impartial (see *Makaratzis*, cited above, § 73).

123. The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 96-97, 4 May 2001, and *Anguelova*, cited above, § 139).

124. In the present case, immediately after the impugned incident, the domestic authorities commenced a comprehensive investigation. To that end, the investigators visited the scene of the incident along with officers from the IRCIVPOL, a sketch map of the location was drawn up and photographs were taken (see paragraphs 60-62 above). Statements were taken from a number of police officers, SBA officials and the soldiers on guard duty, including the one who shot the victim (see paragraphs 65, 72 and 73). A post-mortem examination and other laboratory tests were also conducted (see paragraphs 63, 64 and 66 above). However, following the investigation no criminal or disciplinary proceedings were brought against the soldier who shot dead Petros Kakoulli because the investigating authorities concluded that he had done what his duties had dictated and that the killing had therefore been justified in the circumstances (see paragraph 70 above). The domestic authorities thus classified the case as “no case”, meaning that there would not be any further investigation or criminal proceedings (see paragraphs 68 and 70 above).

125. The Court observes that notwithstanding the seriousness of the incident, there were a number of significant omissions which raise doubts about the effectiveness and impartiality of the investigation in question. In that connection, the Court points out that the military doctor Ömer Gür, who examined the body at the scene of the incident, and Drs İsmail Bundak and Erdal Özçenk, who carried out the post-mortem examination, concluded that there were a total of two entry and two exit wounds on the body (see paragraphs 62 and 64 above). According to this conclusion, the victim must have received two bullets. On the contrary, from the photos taken during the post-mortem examination and according to the report by Dr Vanezis, there appear to be three entry and three exit wounds, which clearly indicates that the victim received three bullets to his body (see paragraphs 54-56 above). It is also remarkable that the investigating authorities concluded that, following the first shot in the air, Private Avşar fired two shots below the victim's waist, specifically at the legs; meaning that only two bullets out of five entered the body of the deceased (see paragraphs 61 and 65 above). However, again having regard to the photos of the body, there is no appearance of a bullet wound in the victim's legs. On the contrary, Dr Vanezis' report records that one of the three gunshots wounds entered the body just below the ear while the other two were in the trunk of the victim. Further, the third and fatal wound had, according to Dr Vanezis' report, a steeply upward trajectory at an angle of 45 degrees and its position indicated that the victim was in a horizontal position on the ground or crouching at the time he was hit.

126. Thus, the failure of the autopsy examination to record fully the injuries on Petros Kakoulli's body hampered an assessment of the extent to which he was caught in the gunfire, and his position in relation to the soldiers on guard duty. In this context, the Court reiterates that the purpose of a post-mortem examination is to elucidate the circumstances surrounding the death, including a complete and accurate record of possible signs of injury and an objective analysis of clinical findings (see in that connection the Model Autopsy Protocol annexed to the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions adopted by the United Nations in 1991, which emphasises the necessity in potentially controversial cases for a systematic and comprehensive examination and report to prevent the omission or loss of important details, and is referred to in *Gül*, cited above, § 89).

127. Furthermore, although the actions of the soldier who killed Petros Kakoulli required careful scrutiny of the circumstances with a view to determining the necessity and proportionality of the lethal force, the investigating authorities based their findings solely on the soldiers' account of the facts, without casting any doubt on it and without seeking any further eyewitnesses. They did not inquire into whether the victim could have posed a serious threat to the soldiers from a long distance with the alleged

weapons or whether the soldiers could have avoided using excessive lethal force. Nor did the investigators examine whether Private Avşar had complied with the rules of engagement laid down in the military instructions concerning the Haşim 8 Guard Post (see paragraph 74 above).

128. In the light of the foregoing, the Court considers that the investigation conducted by the “TRNC” authorities into the killing of Petros Kakoulli was neither effective nor impartial. It accordingly dismisses the Government’s objection of non-exhaustion (see paragraph 90 above) and holds that there has been a violation of Article 2 under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

129. The applicants alleged that the killing of Petros Kakoulli had deprived them of a family member, who was a husband and a father, and had therefore also given rise to a violation of Article 8 of the Convention, the relevant part of which provides:

“1. Everyone has the right to respect for his ... family ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety ... ”

130. The respondent Government submitted that the applicants’ allegation was devoid of any legal basis.

131. The Cypriot Government agreed with the applicants’ allegation and claimed that there had been a separate violation of Article 8, in addition to Article 2, on account of the killing of Petros Kakoulli.

132. In the circumstances of the present case, notwithstanding the tragic consequences for the family, the Court does not find that any issues arise separate from its above conclusion that there has been a violation of Article 2 of the Convention on account of the killing of Petros Kakoulli (see paragraph 121 above).

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

133. The applicants contended that the killing of Petros Kakoulli had also involved discrimination based upon his Greek-Cypriot origin and Christian religion, in violation of Article 14 of the Convention, which provides:

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

134. The respondent Government did not address this allegation beyond denying the factual basis of the substantive complaints.

135. The Cypriot Government also asserted that the killing of Petros Kakoulli had been perpetrated on account of his ethnic origin.

136. The Court has examined the applicants' allegation in the light of the evidence submitted to it, and considers it unsubstantiated. There has therefore been no violation of Article 14 of the Convention, taken in conjunction with Articles 2 and 8.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

137. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

138. The applicants sought an award of compensation in respect of non-pecuniary damage in the amount of 175,000 Cypriot pounds (CYP) (approximately 305,600 euros (EUR)), broken down into CYP 100,000 for the first applicant and CYP 25,000 for each of the other three applicants. They reasoned that at the time of his killing Petros Kakoulli had been just over 58 years old, had taken early retirement from the Fire Brigade and had been occupied with collecting mushrooms and snails in his village. His death had deprived the first applicant not only of a husband but also of a life companion for the rest of her days. Given the social conditions prevailing in Cyprus, especially in a village such as the one in which the applicants lived, she had been left at the age of 52 with no prospects of remarrying or starting a new life. The remaining three applicants had been deprived of a loving father and would have to raise their children without a grandfather.

139. The respondent Government did not comment on the applicants' just satisfaction claims. In their observations, they merely disputed the factual basis of those claims.

140. The Court has found a violation of Article 2 of the Convention on account of the killing of Petros Kakoulli and the failure of the national authorities to carry out an effective and independent investigation (see paragraphs 121 and 128 above). Accordingly, it considers that an award of compensation should be made in favour of the widow and three children of Petros Kakoulli since his death must have caused them considerable anguish and distress. In these circumstances, and having regard to the awards made in comparable cases, the Court, ruling on an equitable basis, awards the first

applicant Chriso Kakoulli the sum of EUR 20,000 and each of the remaining three applicants the sum of EUR 3,500 for the non-pecuniary damage sustained by them in their personal capacity. It holds that the above sums are to be converted into Cypriot pounds at the rate applicable at the date of payment.

B. Costs and expenses

141. The applicants claimed a total of 8,300 pounds sterling (GBP) (approximately EUR 12,000) in respect of the advisory work carried out by a leading counsel in the United Kingdom and CYP 10,070 (approximately EUR 17,500) in respect of the legal fees and expenses of their Cyprus-based lawyers.

142. The Government did not comment on the applicants' claims in respect of their costs and expenses either.

143. The Court reiterates that only legal costs and expenses necessarily and actually incurred can be reimbursed under Article 41 of the Convention. Furthermore, the amounts claimed must be reasonable as to quantum. In this connection, the Court notes that the present case involved complex issues of fact and law requiring detailed examination. However, having regard to the details of the schedule of costs and expenses, it is not satisfied that in the instant case all the costs and expenses were necessarily and actually incurred. Furthermore, the Court considers the sum of GBP 8,300 claimed in respect of the work done in the United Kingdom to be excessive.

144. Making its own estimate, based on the information available, the Court awards the applicants EUR 20,000 in respect of costs and expenses exclusive of any value-added tax that may be chargeable, such sum to be converted into Cypriot pounds at the rate applicable at the date of the payment.

C. Default interest

145. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection concerning the exhaustion of domestic remedies and *dismisses* it;

2. *Holds* that there have been violations of Article 2 of the Convention in both its substantive and procedural aspects;
3. *Holds* that no separate issue arises under Article 8 of the Convention;
4. *Holds* that there has been no violation of Article 14, taken in conjunction with Articles 2 and 8 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums, to be converted into Cypriot pounds at the rate applicable at the date of settlement, plus any tax that may be chargeable:
 - (i) to the first applicant Chriso Kakoulli EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;
 - (ii) to each of the remaining three applicants EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage;
 - (iii) EUR 20,000 (twenty thousand euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President