



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KALLIS AND ANDROULLA PANAYI v. TURKEY

(Application no. 45388/99)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

27/01/2010

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 Kallis and Androulla Panayi v. Turkey,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Işıl Karakaş,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 6 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 45388/99) 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 two Cypriot nationals, Mr Kallis Panayi and Mrs Androulla Panayi (“the applicants”), on 29 November 1996.

2. The applicants were represented by Mr A. Demetriades and Mrs V. Loizides, two lawyers practising in Nicosia. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicants alleged that the killing of their son by members of the Turkish-Cypriot armed forces amounted to a violation of Articles 2, 8 and 14 of the Convention.

4. On 13 May 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The applicants and the Government each filed written observations. In addition, third-party comments were received from the Government of Cyprus, who had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1947 and 1950 respectively and live in Nicosia. They are a married couple.

7. The parties disagree as to the facts of the case.

A. The applicants' version of the facts

8. On 3 June 1996 Stelios Kalli Panayi, the applicants' son, who at that time was nineteen years old, was serving in the Cyprus National Guard as a private soldier. Early that morning he entered the United Nations (UN) buffer zone in Nicosia. He wanted to exchange his hat with one belonging to a soldier of the Turkish-Cypriot armed forces. He was off duty and unarmed. The Turkish armed forces shot him.

9. When members of the UN force in Cyprus (UNFICYP) attempted to reach Stelios Kalli Panayi in order to provide medical treatment and try to save his life, the Turkish armed forces opened fire, thus preventing medical aid from being administered.

10. According to the applicants, who cited articles published in the *Cyprus Mail* newspaper of 5, 6 and 7 June 1996 in this connection, had access not been denied to the persons seeking to provide medical assistance there would have been a good chance of saving Stelios Kalli Panayi's life.

B. The UN Secretary-General's report

11. The applicants produced a report from the UN Secretary-General dated 7 June 1996. In so far as relevant, this document reads as follows:

“The third incident took place on 3 June 1996. An unarmed National Guard soldier was shot and killed inside the UN buffer zone in central Nicosia. The investigation has revealed that the lethal round was fired by a Turkish-Cypriot soldier whom UNFICYP had observed entering the buffer zone with his rifle strung across his back. Shortly thereafter a single shot was heard and the Turkish-Cypriot soldier was seen running back in a crouched position to the Turkish ceasefire line holding his rifle in his right hand. UNFICYP soldiers were prevented from reaching the National Guard soldier by Turkish-Cypriot soldiers who fired shots in the direction of the UNFICYP soldiers each time the latter tried to move forward. UNFICYP strongly protested to the Commander of the Turkish forces in Cyprus the unauthorised entry of an armed Turkish Cypriot soldier into the buffer zone, the shooting incident and the hostile action, including live fire against UNFICYP. UNFICYP is pursuing with the Turkish forces in Cyprus and with the Turkish-Cypriot authorities the question of appropriate action and has requested that UNFICYP police investigating the killing be able to interview the Turkish-Cypriot soldier involved in the incident. The military authorities

on both sides have been urged once again to respect the UN buffer zone and ensure its integrity.”

12. The applicants' lawyer requested a copy of the relevant reports from UNFICYP. However, his request was refused as the documents in question were considered to be internal UN documents.

C. The Government's version of the facts

13. According to the Government, the chain of events which led to the death of Stelios Kalli Panayi could be summarised as follows.

14. The incident took place in a part of Nicosia where the Pedios River marked the boundary of the “Turkish Republic of Northern Cyprus” (the “TRNC”). In the Turkish part of the buffer zone were the Yıldırım sentry post and the positions of the Turkish-Cypriot security forces. The positions of the Greek-Cypriot army (the National Guard) were on the Greek-Cypriot administration's defence line, 2-3 metres west of the UNFICYP patrol road. The UN-60 observation post was about 250 metres south of the sentry positions of each of the two sides. The Yıldırım sentry post was located on high ground which ran down steeply to the river bed; the latter was marshland, covered with high reeds; on the Greek-Cypriot side there were huge eucalyptus trees.

15. The UN patrol road was on the other side of the river and entry into “TRNC” territory by UNFICYP soldiers was possible only by crossing a wooden bridge. The area starting five metres west of the Yıldırım sentry post in the direction of the Greek-Cypriot sentry post could not be observed from the UN observation post building, which had a view over the Turkish and Greek-Cypriot positions but not the area in between.

16. On the day of the incident it was observed from the Yıldırım sentry post that a fully armed soldier of the National Guard, who was wearing army uniform, had come out of his duty station and had entered the buffer zone. He made gestures by hand and called to the Turkish-Cypriot soldiers on sentry duty to go over to him. One of the Turkish-Cypriot soldiers on duty warned him in a loud voice in Turkish, English and Greek not to approach; another Turkish-Cypriot soldier asked the Turkish-Cypriot patrol to come to the area. Ignoring the verbal warning, Stelios Kalli Panayi proceeded into the buffer zone and descended towards the river bed; a Turkish-Cypriot soldier came out of his sentry post and walked about 5 metres in a westerly direction in order to be able to observe the National Guard soldier advancing. At this moment another Turkish-Cypriot soldier took up position on the southern side of the communication trench; a soldier was also located above the trench at a point where he could have a better view of the vicinity of the river. He shouted once more to the Greek-Cypriot soldier, using the Greek word “*Ochi*” (“No”), and instructed him to leave the area.

17. In spite of this Stelios Kalli Panayi entered into “TRNC” territory by crossing the wooden bridge which only UNFICYP soldiers were allowed to use. Two warning shots were fired by a Turkish-Cypriot soldier (one into the air and one towards the ground); as Stelios Kalli Panayi proceeded further into “TRNC” territory, causing a serious threat to the lives of the Turkish-Cypriot soldiers, one more shot was fired to stop him.

18. On hearing the gunshots, a UNFICYP soldier came out of his observation post, located 250 metres south of the scene of the incident and started to look around; as he did not have a clear overall view, he proceeded towards the place where the gunshots had been heard and was about to cross the bridge. However, he was warned by means of two shots fired into the air by the Turkish soldiers not to advance any further. In fact, the situation was still critical as it was not known whether Stelios Kalli Panayi had adopted a more advantageous crawling position.

19. At 7.01 a.m. an ambulance arrived in the area by the Peace Force patrol road. Stelios Kalli Panayi was placed in the ambulance, which left for the hospital. Later, the Turkish-Cypriot authorities were informed that he had died.

D. The documents produced by the Government

20. The Government produced a number of documents, including:

(a) a map and some photographs of the area where the incident had taken place;

(b) a list of the “incidents that took place at the Greek-Cypriot Guard Post”, giving details of 69 episodes, including firing into the air, provocation by throwing stones and use of abusive language;

(c) several articles published by Turkish and/or Turkish-Cypriot newspapers concerning the circumstances of the killing of Stelios Kalli Panayi, the differences between the versions of the facts given by the two sides and political reactions to the incident.

21. The Government further produced the following documentary evidence¹:

(a) A note dated 6 June 1996 from the “TRNC” Ministry of Foreign Affairs and Defence addressed to the Office of the Prime Minister (with a copy to the Director of Intelligence, Counter-Intelligence and Security), which reads as follows:

“Upon being informed that a Greek Cypriot pathologist accompanied by UNFICYP will conduct an investigation at the scene of the incident whereby on 3rd June 1996 a GCNG soldier was shot, the UNFICYP has been contacted so that a pathologist from our side could also conduct a similar investigation at the scene of the incident on the basis of the principle of equality as well as reciprocity.

¹ Translation into English provided by the Government and revised by the registry of the Court.

In accordance with the agreement reached with UNFICYP, the same day Dr. Engin Arkan from Dr. Burhan Nalbantoğlu State Hospital has conducted an investigation at the scene of the incident and the report that he prepared is enclosed herewith.”

(b) The following note dated 6 June 1996 signed by Dr Engin Arkan and addressed to Dr Burhan Nalbantoğlu of Lefkoşa (Nicosia) General Hospital (with a copy to the Director of Intelligence, Counter-Intelligence and Security):

“Regarding the shooting of a Greek-Cypriot soldier today in the buffer zone, accompanied by UNFICYP I went to the scene of the incident. In order to reach the scene of the incident, we crossed the bridge known as the Normandy bridge in the buffer zone by vehicle, went to the vicinity where the GCNG and UNFICYP positions are located and stepped out of the vehicle. From there we proceeded to the north by crossing a wooden bridge and from right after there we reached the scene where the incident took place, which is approximately 50-75 meters from the Turkish positions in the North. At the said place there were [a] trail of blood with 15cm diameter and a GCNG cap. According to the explanation given to me the bullet entered from the side of the right rib cage and exited from the left and it was also explained that the bullet also smashed the right arm from below the shoulder.

Also according to the explanation given to me, the corpse [was] found lying with his head towards North-West and foot South-East direction.

After having this information, accompanied by UNFICYP, [I] returned to Ledra Palace and entered TRNC by walk.”

(c) A statement by the “TRNC” Ministry of Foreign Affairs and Defence, which reads as follows:

“This morning at 6.30 hours in Köşklüçiftlik area of Lefkoşa a fully equipped GCNG soldier was observed approaching the Turkish position in the area, upon which he was warned to stop by our guard first in Turkish, then in Greek and English. GCNG soldier continued to proceed towards our guard and our guard fired two warning shots, one in the air and one to the ground. Despite numerous verbal warnings and warnings by fire, the GCNG soldier continued to proceed and violated the border, a shot was fired and he was observed to fall down. At 7.00 hours with the arrival of UNFICYP ambulance to the scene the GCNG soldier was evacuated.

We protest and condemn this irresponsible act which resulted in the violation of the borders of TRNC and remind once more the necessity for application of required measures by the parties concerned to prevent recurrence of such incidents.”

(d) An “information document on death incident”, a copy of which was addressed to the Director of Intelligence, Counter-Intelligence and Security and which contained the following information:

“1. TYPE OF INCIDENT: Firing on the Greek-Cypriot National Guard (GCNG) soldier who violated the Turkish Contact Line.

2. PLACE OF INCIDENT: Northeast of YILDIRIM Guard Post (317.5 – 931.9).

3. PLACE OF UNIT WHERE INCIDENT OCCURRED: 1st Infantry Regiment 3rd Infantry Battalion 8th Infantry Company.

4. DATE/TIME OF INCIDENT: 030630 C June 1996.

5. DETAILS OF INCIDENT: On the 3rd of June, 1996 at 6:30, the guards situated at the YILDIRIM Guard Post, in the 3rd Infantry Battalion, saw a fully equipped GCNG soldier approaching the wooden bridge on KANLI DERE, which only UNFICYP Patrol is permitted to use. Then, the guards at the post called the Patrol guards, who were 250 meters to the south of the Guard Post and at the same time they verbally warned the GCNG soldier. Since the GCNG soldier suddenly disappeared, one of the guards from the Guard Post moved 10 meters forward from the post and continued observing.

One of the Patrol Guards, who came to the area warned the GCNG soldier verbally and by gun, and then fired and shot him, while he was passing the wooden bridge and violating the TRNC border. After the arrival of UNFICYP and Turkish officers to the area, the GCNG soldier, who fell down, was taken by ambulance at 07:05 and it was found out that he was dead.

The guards of ZYAD Guard Post, which is to the south of the YILDIRIM Guard Post, Infantry Private Ecevit AKSU and Infantry Private Dogan GURCE observed the acts of UN-60 UNFICYP Guard, when the incident occurred. They stated that the UNFICYP Guard was sitting at the guard post when the incident occurred and he went out after he heard the first gun shot. Then he started to observe the YILDIRIM Guard Post. 3-5 seconds later, he heard 2 gun shots and he ran to the area of the incident. After 5-6 minutes, 2-3 more bullets were fired. The total number of shots heard was 6 or 7.

During the incident, the Patrol Guards Infantry Corporal Zafer Ali SECKIN fired 5 times (one bullet into the air as a warning, one bullet at the ground as a warning, one bullet to the target, and 2 bullets into the air as warning to stop the UNFICYP soldier). The other Patrol Guard Infantry Corporal Ibrahim OGUT fired 2 times (as warning to prevent the UNFICYP soldier from approaching), so 7 bullets were fired in total.

6. THE REASON FOR THE INCIDENT: The GCNG soldier's persistent violation of the Buffer Zone and the Turkish Contact Line despite the verbal warnings and warnings by fire.

7. PERSONNEL INVOLVED IN INCIDENT: The guards of the YILDIRIM Guard Post, Infantry Private Kemal GIYINER and Infantry Private Huseyin CUMBUSCU were present during the incident; however, the personnel who fired were Infantry Private Zafer Ali SECKIN, the son of Ahmet, born in 1977 and registered in Magosa, and the other patrol was Corporal Ibrahim OGUT.

8. CONDITION OF THE AFFECTED PERSON: It was observed that the GCNG soldier, who fell down after being shot was taken by ambulance and it was found out that he died.

9. THE IDENTIFICATION OF THE AFFECTED PERSON: GCNG soldier was STELYOS PANAYI.

10. PROCEDURE FOLLOWED AFTER INCIDENT:

a. The GCNG soldier who was shot was taken from the place of incident by ambulance and was brought to the Greek-Cypriot Hospital in Southern Cyprus.

b. Rapid Reaction Squad was sent to the place of incident.

c. All units were informed about the incident, steel vests and steel helmets were distributed especially to all the guards at the contact line, guard posts were reinforced and observation activities were increased."

(e) A note from the "TRNC" Security Forces Command (1st Infantry Regiment) dated 5 June 1996 concerning "the National Guard soldier who was shot for violating the line of contact", which reads as follows:

"The incident that took place at 06.30 on 3 June 1996 at the YILDIRIM observation post – (coordinates 31750-93190); located within the area under the control of the 8th Infantry Division of the 1st Infantry Regiment's 3rd Infantry Battalion – during which a GCNG soldier was shot dead, is described below.

1. On the day of the incident a fully equipped GCNG soldier, whose weapon was not visible, came out of the GCNG squad post – which is located 100 metres to the west of the YILDIRIM observation post at the Southern Cyprus Greek Administration's line of contact (coordinates 31750-93100) – and entered the buffer zone. He then waved at two guards at the YILDIRIM observation post and called them by saying "come here brother". The guards warned the GCNG soldier by shouting in Greek "OXI" and asked him, in Turkish, Greek and English, to stop. After the Greek Cypriot soldier had entered the buffer zone, one of the guards radioed patrols who at the time were 100 metres away to the north, and asked them to come to the area. One of the guards then walked 10 metres to the west of the YILDIRIM observation post in order to be able to observe the GCNG soldier who, by then, had gone into the river bed and was out of sight. In the meantime, the patrols who came from the communication trenches and who took up positions told the guard to return to his post and shouted at the Greek Cypriot soldier to leave the area.

When the Greek Cypriot crossed the wooden bridge, which had been built on Kanlı River in the 1980s for the exclusive use of the P.F. patrol personnel, and started advancing into the TRNC territory, one of the patrols fired two warning shots, first into the air and then at the ground. When the GCNG soldier ignored the warning shots and continued to advance, he was fired upon. When the Greek Cypriot soldier fell to the ground the patrols thought that he had taken up a position and continued to observe him. The patrols also reported the incident to the duty officer by radio.

2. A P.F. soldier at the UN 60 observation post – which is located at approximately 250 metres to the south of the place of the incident – heard the shots and came out of his observation post and then started looking around. He saw our guard, who had been warned by the patrols, running back to the YILDIRIM observation post. [The P.F. soldier], unable to see the incident from his position, advanced in the direction of the shooting and arrived at the place of the incident. The patrols were concerned about a possible attack by the Greek Cypriot soldier and they warned, first orally and then by firing two warning shots into the air, the P.F. soldier who, by then, had been attempting to cross the wooden bridge. [The patrols] thus prevented the P.F. soldier from approaching the place of the incident. A P.F. officer then arrived in the area.

3. At 06.55, when the ambulance arrived at the scene using the P.F. patrol road, it was established that the Greek Cypriot soldier had been injured. With the permission of a Delegation of Guards and the Commanding Officer who had arrived at the scene

in the meantime, [the ambulance] was allowed to take the Greek Cypriot soldier away. This was photographed by the Commanding Officer.

4. The subsequent investigation of the place of the incident and of the relevant personnel [revealed that] the GCNG soldier who crossed into the TRNC soil and who was deemed to be carrying an assault weapon which could have posed a risk to our guards, was warned and then shot in accordance with the existing orders, instructions and rules of engagement.”

(f) Two notes which read as follows:

“THE POSSIBILITY OF THE P.F. GUARD AT THE UN 60 GUARD POST
WITNESSING THE INCIDENT

The UN 60 guard post is located at a 250 metre distance from the place of the incident and 200 metres away from the YILDIRIM S.F.C. guard post. 3 metre-long reeds covering the river bed and the trees in the area prevent the place of the incident from being seen from the UN guard post. However, the P.F. guard can see the actions of the Turkish soldiers at the YILDIRIM guard post within a radius of 5 metres. At the time of the incident the Turkish guard at the YILDIRIM guard post advanced 10 metres away from his post in order to observe the GCNG soldier and asked the GCNG soldier to stop and leave the area. When the GCNG soldier insisted in continuing, the patrols who arrived at the scene warned the GCNG soldier and asked the Turkish guard – a corporal – to return to his trench. The guard then returned to his guard post. It might have been possible for the P.F. guard to see the Turkish soldier returning to his guard post. The Turkish soldier in ZİYAD guard post, which is at a distance of 20 metres from the UN 60 guard post, saw the P.F. guard sitting in the UN 60 guard post. Both the P.F. guard and the Turkish guards left their posts after the first shot was fired. The P.F. guard, who is said to have witnessed the incident, then continued to observe the incident. Furthermore, it is not possible to go down to the scene of the incident from the YILDIRIM guard post because the river bed is too steep and is covered with 3 metre-long reeds. Even entering the river bed from another direction would not enable the P.F. guard to see.”

“THE TAKING AWAY OF THE GCNG SOLDIER FROM THE AREA BY THE P.F.
PERSONNEL

The incident took place at 06.30. As stated in the UN report, the P.F. guard called for an ambulance only at 6.45 and reported the incident. The P.F. personnel arrived in the area at 06.50 and were given permission to approach the scene of the incident by the duty Turkish officer, commander of the duty [soldiers] and the commander of the Division. The ambulance arrived at 7.01, the GCNG soldier was put in the ambulance immediately and the [ambulance] left the area at 7.05.”

E. The UN Force and Firearms Principles

22. The Government drew the attention of the Court to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter “the UN Force and Firearms Principles”), adopted on 7 September 1990 at the Eighth UN Congress on the Prevention of Crime

and the Treatment of Offenders. The relevant provisions of this document read as follows:

Paragraph 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

Paragraph 7

“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 9

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

Paragraph 10

“In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

Paragraph 11

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

23. The applicants complained that the killing of Stelios Kalli Panayi amounted to a violation of Article 2 of the Convention, which reads as follows:

“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.”

24. The Government contested that argument.

A. Admissibility

1. Preliminary remark

25. The Court first observes that the Government did not dispute Turkey's liability under the Convention for the violations alleged in the application. It remains nevertheless to be ascertained whether Turkey had “jurisdiction” over the facts complained of within the meaning of Article 1 of the Convention.

26. In this connection, the Court points out that in the case of *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001-IV) it found that since it had effective overall control over northern Cyprus, Turkey's responsibility could not be confined to the acts of its own soldiers or officials in northern Cyprus but had also to be engaged by virtue of the acts of the local administration which survived by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's jurisdiction must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified, and that violations of those rights are imputable to Turkey (see *Cyprus v. Turkey*, cited above, § 77).

27. According to the Government's own version of the facts, Stelios Kalli Panayi died as a result of the use of lethal force by Turkish or Turkish-Cypriot soldiers. Moreover, when he was hit by the bullets, he was entering the territory of the “TRNC”. Under these circumstances Stelios Kalli Panayi must be regarded as “within [the] jurisdiction” of Turkey within the meaning of Article 1 (see, *mutatis mutandis*, *Solomou and Others v. Turkey*, no. 36832/97, §§ 48-52, 24 June 2008). The responsibility of the respondent State under the Convention is accordingly engaged.

2. The Government's objection of non-exhaustion of domestic remedies

(a) Arguments of the parties

(i) The Government

28. The Government submitted that the applicants had failed to have recourse to the remedies existing in the “TRNC”, which were available to them and capable of providing redress for their complaints. As was clear from the “TRNC” Constitution, an independent and effective judicial system existed in Northern Cyprus and the Turkish-Cypriot courts were the guardians of individuals' rights. The Convention formed part of the laws of the “TRNC”. Administrative action was subject to judicial review on the grounds of illegality or errors of law and excess and/or abuse of power. In particular, Article 152 of the “TRNC” 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 executive or administrative authority was contrary to one of the provisions of the Constitution or of any laws or subsidiary legislation thereunder, or exceeded or abused the powers vested in such body or authority or person. The Government relied on the principles laid down by the Court in the case of *Cyprus v. Turkey* (cited above) and considered that in the present case there had been no justification for not submitting any petition or complaint to the local authorities.

(ii) The applicants

29. The applicants argued that there were no effective remedies available to them in the northern part of Cyprus, which was under the effective control of the Turkish Government and from where the acts complained of emanated. Moreover, even assuming that such remedies existed in theory, they would not have been effective in practice in the applicants' case because of their ethnic origin and religious beliefs. They were not aware of even one case of unlawful killing by the Turkish armed forces where a decision had been given in favour of a victim of Greek-Cypriot origin by the courts of the "TRNC". In addition to that, at the relevant time the applicants would not have been allowed to cross the ceasefire line and commence legal proceedings or attend court hearings in the "TRNC".

30. Moreover, as there had been no independent criminal investigation into the circumstances of the killing, it was doubtful whether any civil court in the "TRNC" could have investigated the matter in a way that would have led to meaningful results for the applicants. Finally, the Government had failed to prove the existence of effective and accessible remedies.

(iii) The third-party intervener

31. The Government of Cyprus noted that Turkey had failed to indicate the precise remedies which were, in theory and practice, available to the applicants. In any event, given the existing legal and political context, it would have been unrealistic to expect the parents of Stelios Kalli Panayi "to seek justice at the hands of a State which ha[d] killed their son, which ha[d] put forward a wholly false account of the circumstances and which ha[d] not conducted any form of investigation into the death". The "TRNC" was not a valid and legal State and its courts were not "established by law" within the meaning of Article 6 of the Convention, as they had not been established by Turkey through legal acts of its democratic institutions, but rather as a result of invasion and continuing military control. Turkey did not exercise control over the "TRNC" by rule of law, but simply by means of military

occupation; as a consequence, the remedies available in the “TRNC” could not be considered remedies of the respondent High Contracting Party.

(b) The Court's assessment

32. In its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 14, 16, 90 and 102) the Court held that for the purposes of Article 35 § 1 of the Convention, remedies available in the “TRNC” could be regarded as “domestic remedies” of the respondent State and that the question of their effectiveness was to be considered in the specific circumstances where it arose. However, this conclusion was 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 remained the sole legitimate government of Cyprus. The Court does not see any reason to depart from its previous finding on this point, which was based on its well-established case-law.

33. The Court further notes that the Government failed to indicate precisely the remedies which were available to the applicant, confining themselves to mentioning the existence of judicial and administrative remedies. In principle, legal systems provide two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies (see *Andreou v. Turkey* (dec.), no. 45653/99, 3 June 2008).

34. As regards criminal-law remedies, the Court observes that the Government have not provided any information concerning an investigation into the circumstances of the shooting on 3 June 1996 carried out by an authority of the “TRNC” which was independent from the military forces and competent to assess the criminal liability of the individuals involved in the incident. No documents from any such inquiry have been produced before the Court. Moreover, even assuming that an independent body had started an investigation, in the context of which the applicants could have claimed their rights as victims, it would have been pending since June 1996 without achieving any substantial results.

35. The Court considers that these circumstances cast doubt on the effectiveness of any such inquiry and that the applicants are not obliged to await its conclusion before having the merits of their case examined by the Convention institutions. The preliminary objection in this regard is therefore dismissed.

36. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, it has not been shown that, without the benefit of the conclusions of an effective criminal inquiry, the civil or administrative courts in the “TRNC” would have been able to pursue any independent investigation and would have been capable of making any meaningful findings regarding the identity of the perpetrators of the shooting, still less of establishing their responsibility

(see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005; *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006; and *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, § 135, 26 July 2007). In the light of the above, the Court considers that the applicants were not obliged to pursue civil remedies (see, *mutatis mutandis*, *Andreou*, decision cited above).

37. It follows that the Government's objection should be dismissed.

3. *Other grounds for inadmissibility*

38. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Arguments of the parties*

(b) The Government

39. The Government argued that the circumstances of the present case did not disclose any breach of Article 2 of the Convention. They relied on their version of the facts and on the principles laid down by the Court in the cases of *Andronicou and Constantinou v. Cyprus* (9 October 1997, *Reports of Judgments and Decisions* 1997-VI); *Bubbins v. the United Kingdom* (no. 50196/99, ECHR 2005-II); and *Olah v. Hungary* ((dec.), no. 56558/00, 14 September 2004).

40. Contrary to the allegations of the applicants, their son had been armed and, in spite of oral warnings and warning shots, had entered into "TRNC" territory across the bridge which was used by the UN peacekeeping forces only. The border areas had been a source of problems in Cyprus and at the time of the incident there had been considerable tension, with provocative acts (such as abusive language and gestures, throwing of stones, pointing with guns, opening fire into the air, starting fires and reinforcing fortifications) being carried out by Greek-Cypriot soldiers. On 3 November 1995 a National Guard soldier had breached the Turkish-Cypriot defence lines; he had been apprehended and returned to southern Cyprus. In the present case, the Turkish soldiers had had to use force in self-defence in order to stop Stelios Kalli Panayi, whose intentions were unknown and who was ignoring the warnings, acting suspiciously and posing a threat to them. According to "TRNC" law (section 53 of Law No. 35/1986), military personnel were allowed to use weapons as a last resort after having given a warning, *inter alia*, in order to repel an act of

aggression, to secure the submission of persons who disobeyed orders to abandon their weapons and in cases of self-defence. In the present case, the use of lethal force had been “absolutely necessary” within the meaning of Article 2 of the Convention.

41. The Government submitted that the allegation in the UN Secretary-General's report (see paragraph 11 above) that the Turkish-Cypriot soldier had also breached the UN buffer zone was somewhat speculative. In fact, the UN observation post could not have had a clear view of the area in question.

42. According to the Government, it was not true that the UN soldier had been fired at in order to prevent medical aid from being provided to the applicants' son. The UN soldier had been informed that due to the possibility of interference with evidence and the potential threat posed by Stelios Kalli Panayi, he could have approached the latter if he had come with his commanding officer. The UN soldier had not complied with this warning and had tried to enter “TRNC” territory alone. He had again been warned by means of a shot fired into the air. There had been no firing at UN personnel.

43. When, at 6.50 a.m., the UN commander responsible for the area had arrived, he and the UN soldier had been allowed access to Stelios Kalli Panayi; at 7.05 a.m. the latter had been taken to hospital for treatment by ambulance (which had arrived without undue delay at 7.01 a.m.). It followed that the opening of fire had not prevented medical aid from being administered; on the contrary, it had been aimed at protecting the UN soldier against the threat that Stelios Kalli Panayi might have posed. In addition, had he approached the applicants' son, the UN soldier might not have been able to inform his superiors immediately about the need for an ambulance and might have lost time.

44. As to the procedural protection of the right to life, the Government observed that an independent and effective judicial system existed in the “TRNC” and that the incident had been investigated by the commander of the security forces; detailed reports had been produced giving a minute-by-minute account of events (see paragraph 21 (d), (e) and (f) above). A request had been made to UNFICYP to allow a Turkish-Cypriot pathologist to visit the scene and report on his findings (see paragraph 21 (a) and (b) above). The authorities had also issued a public protest against the breach of the ceasefire line by Stelios Kalli Panayi (see paragraph 21 (c) above) and no attempt had been made to keep the incident a secret; on the contrary, it had been reported by the national media (see paragraph 20 (c) above) and freely discussed in the public domain. Stelios Kalli Panayi had been immediately transferred to the Greek-Cypriot side, thus depriving the “TRNC” authorities of any possibility of performing an autopsy. As they had been denied the opportunity of carrying out an examination of the

incident, it would be unfair to find them responsible for failing to provide redress.

(b) The applicants

45. The applicants alleged that the killing of their son had been the result of deliberate acts by members of the Turkish armed forces. The circumstances of the case strongly suggested that the persons who shot Stelios Kalli Panayi had intended to kill him. Moreover, even assuming that this had not been the case, the use of force had not been “absolutely necessary” within the meaning of Article 2 of the Convention. In this connection the applicants emphasised the following:

(a) there had been no attacks on the Turkish armed forces in the period before the incident of 3 June 1996 and the ceasefire line was constantly patrolled by members of UNFICYP;

(b) although wearing the uniform of the National Guard, Stelios Kalli Panayi had approached the position of the Turkish armed forces unarmed, shouting the Turkish word for “friend” and behaving in a manner which no reasonable person could have regarded as posing a threat of violence to anyone;

(c) in any case, the immediate recourse to lethal force had been a wholly inappropriate response which went far beyond what could be regarded as “absolutely necessary”;

(d) no steps had been taken to ensure that the troops on guard duty did not jump too readily to the conclusion that there was a threat and did not have automatic recourse to lethal force;

(e) the decision to prevent medical assistance being given to Stelios Kalli Panayi was taken when any possible threat of violence against the Turkish armed forces had manifestly come to an end.

46. According to the applicants, the shooting of an unarmed man could not, in any circumstances, be described as “proportionate” to a purported legitimate aim. The UN Force and Firearms Principles (see paragraph 22 above) could not, therefore, be invoked in favour of the Government. Moreover, the purpose of the opening of fire on UNFICYP personnel had been to prevent emergency medical aid from being administered to the victim, a fact which had directly contributed to the fatal outcome of the incident. Stelios Kalli Panayi had been shot at 6.30 a.m. and the ambulance had not arrived until 7.01 a.m.

47. The applicants challenged the Government's assertions that their son had been armed and that warning shots had been fired. On these points, the Government's version of the facts was contradicted by the UN Secretary-General's report (paragraph 11 above). The reports produced by the Government were somewhat ambiguous on this point, as it was said that Stelios Kalli Panayi had been fully equipped but that his rifle was not visible (see paragraph 21 (e) above). The UN Secretary-General had also

declared: “I was dismayed at the attempts by the Turkish-Cypriot Security Forces to prevent UNFICYP by threats of force from fulfilling its duties in the buffer zone.”

48. The applicants further observed that no independent investigation had been carried on into the circumstances of their son's death. The so-called “investigation report” attached to the Government's observations clearly indicated that the “inquiry” had been carried out by members of the Turkish armed forces into the actions of other members of the same armed forces.

49. Finally, the cases cited by the Government (see paragraph 39 above) had a different factual background.

(c) The third-party intervener

50. The Government of Cyprus observed that Turkey's version of the facts was contradicted by the UN Secretary-General's report, based on the direct witnessing of Stelios Kalli Panayi's murder by UNFICYP officers, who had been able to see the incident clearly. They endorsed the applicants' version of the facts in substance and argued that Turkey had made false submissions in order to avoid responsibility for a distressing murder committed in cold blood. Seeking to prevent someone from entering an area could not be regarded as a purpose recognised by Article 2 § 2 of the Convention. In any event, the use of force had not been proportionate to the purported aim: the victim had not posed a direct armed threat to the Turkish soldiers and the area was constantly patrolled by UNFICYP. The ambulance and the UN personnel who came to help Stelios Kalli Panayi did not find any weapon on him and Turkey had failed to produce the rifle which he had allegedly been holding. Moreover, there had been no legitimate purpose in preventing UNFICYP from entering the area. The UN personnel had not posed any threat to the Turkish troops and the explanations given by Turkey on this point were wholly false and unconvincing.

51. Finally, no independent investigation had been carried out into the circumstances surrounding the use of lethal force, as only a cursory military investigation had been carried out by the commanding officer of the soldiers who had shot the victim. The statements of those soldiers had not been made available and the actions taken by the “TRNC” criminal investigation authorities in order to ascertain that the shooting had been a case of homicide in self-defence had not been specified. The media coverage of the killing could not absolve the State from its duty to conduct its own rigorous investigations.

2. *The Court's assessment*

(a) **The alleged killing of Stelios Kalli Panayi**

(i) *General principles*

52. The Court reiterates that Article 2, which safeguards the right to life and sets out those circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324).

53. The exceptions delineated in paragraph 2 indicate that this provision extends to, but is not concerned exclusively with, intentional killing. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than “absolutely necessary” for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c) (*ibidem*, § 148).

54. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII, and *Musayev and Others*, cited above, § 142). It should be kept in mind, however, that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others (see *Andronicou and Constantinou*, cited above, § 192).

55. In assessing evidence, the Court has adopted the standard of proof “beyond reasonable doubt”. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Moreover, the level

of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. In this context, the conduct of the parties when evidence is being obtained has to be taken into account. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see, among others, the following judgments: *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25; *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336; *Akdivar and Others v. Turkey*, 16 September 1996, § 68, Reports 1996-IV; *Tanlı v. Turkey*, no. 26129/95, § 111, ECHR 2001-III; and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII).

56. The Court has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005; *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II; and *Musayev and Others*, cited above, § 144).

57. Lastly, the Court is sensitive to the subsidiary nature of its role and recognises that it 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). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Ribitsch*, cited above, § 32; *Avşar*, cited above, § 283; *Solomou and Others*, cited above, § 68; and *Isaak and Others v. Turkey*, no. 44587/98, § 109, 24 June 2008).

(ii) *Application of the above principles to the present case*

58. In the present case, it is not contested that Stelios Kalli Panayi voluntarily crossed the UN buffer zone. The respondent Government accepted that, as indicated in the UN Secretary-General's report (see paragraph 11 above), the bullet which hit Mr Panayi and caused his death was fired by a Turkish or Turkish-Cypriot soldier on duty at the Yıldırım sentry post and that the shooting was intentional. These elements are

sufficient to reach the conclusion that Stelios Kalli Panayi was killed by an agent of the respondent Government (see, *mutatis mutandis*, *Solomou and Others*, cited above, §§ 70-74). It remains to be ascertained whether the use of force was justified under any of the sub-paragraphs of Article 2 § 2.

59. The Court will first examine whether the shooting of Mr Panayi was justified “in defence of any person from unlawful violence”. In this respect, it is to be noted that the parties disagreed as to whether the victim was carrying a weapon. The Government alleged that he was, while the applicants and the third-party intervener denied this.

60. The Court is unable to accept the respondent Government's version of the facts on this point. It observes that it is contradicted by the UN Secretary-General's report, which unequivocally referred to “an unarmed National Guard soldier” (see paragraph 11 above). The Court has no reason to doubt the independence and trustworthiness of the UN authorities and of their sources (see, *mutatis mutandis*, *Solomou and Others*, cited above, §§ 71 *in fine*). Moreover, one of the documents produced by the Government themselves (see paragraph 21 (e) above) indicated that Mr Panayi's weapon “was not visible”. Under these circumstances, the Court concludes that at the moment of the shooting, the Turkish or Turkish-Cypriot soldiers on duty at the Yıldırım sentry post did not see any weapon being carried by the victim. However, as the latter was wearing the uniform of the National Guard – a fact which is not denied by the applicants (see paragraph 45 (b) above) – they could have had reasons to suspect that he might be armed. However, this fact cannot, in the circumstances of the present case, justify the use of lethal force.

61. The deceased was advancing alone, had shouted the words “Come brother” and was trying to cross a wooden bridge normally used by UN patrols. At that moment, he was outnumbered by the “TRNC” security forces and there was little likelihood that an isolated man openly crossing a controlled access route to the “TRNC” would attack the sentry post. In any event, the “TRNC” soldiers seemed to be in complete control of the area and it would have been possible for them to stop Mr Panayi without jeopardising his life (see, *mutatis mutandis*, *Anık and Others v. Turkey*, no. 3758/00, § 65, 5 June 2007). In particular, as he was not holding a weapon in his hands at the moment of the shooting (see paragraph 60 above), it would have been possible to observe his behaviour from a distance, avoiding recourse to lethal force until such time as clear indicators had shown that he had aggressive intentions.

62. The Court also attaches particular weight to the fact that, according to the UN Secretary-General's report (see paragraph 11 above), “a single shot was heard”. This statement is inconsistent with the Government's assertion that two warning shots were fired by a Turkish or Turkish-Cypriot soldier (one into the air and one towards the ground) (see paragraph 17 above). In this connection, the Court is struck by the fact that it appears

from the documents submitted by the Government (see paragraph 21 above) that, in spite of their inconsistency with the statements emanating from official UN sources, the domestic authorities do not seem to have challenged the soldiers' statements that the opening of fire had been preceded by warning shots. It is the opinion of the Court that opening of fire should, whenever possible, be preceded by warning shots (see Paragraph 10 of the UN Force and Firearms Principles, quoted in paragraph 22 above). The circumstances of the present case do not show that it was impossible to give such warning and also for that reason the conduct of the "TRNC" soldiers was hard to reconcile with the requirement of absolute necessity enshrined in Article 2 of the Convention.

63. Stelios Kalli Panayi breached the ceasefire lines and entered the buffer zone. To this limited extent, he bears responsibility for the tragic course taken by events (see, *mutatis mutandis*, *Isaak and Others v. Turkey* (dec.), no. 44587/98, 28 September 2006, and *Solomou and Others*, cited above, § 48). However, his behaviour does not, as such, appear to have posed a threat to the soldiers on duty at the Yıldırım sentry post such as to render absolutely necessary the use of lethal force.

64. Nor can it be argued that, at the material time, Stelios Kalli Panayi was "lawfully detained" or that the use of force was "absolutely necessary" to "effect a lawful arrest". Indeed, even assuming that the fact that he had crossed the ceasefire line could justify depriving him of his liberty, it is clear that he could hardly have escaped from the control of the security forces (see, *mutatis mutandis*, *Solomou and Others*, cited above, § 75). As to the question whether the shooting was justified by the aim of quelling a "riot or insurrection", the Court cannot but recall its findings that Stelios Kalli Panayi was an isolated individual, whose actions had not been followed by others.

65. In addition to that, the Court observes that the UN Secretary-General reported that UNFICYP soldiers had been prevented from reaching Stelios Kalli Panayi "by Turkish-Cypriot soldiers who [had] fired shots in the direction of the UNFICYP soldiers each time the latter [had] tried to move forward". This further incident, which was described as a "hostile action, including live fire against UNFICYP" (see paragraph 11 above), had the effect of preventing immediate medical care from being administered to the victim of the shooting.

66. Even though the Court does not have at its disposal any element capable of showing that such immediate help could have contributed to saving Mr Panayi's life, it cannot but regret that the Turkish or Turkish-Cypriot forces hampered the humanitarian intervention of the UNFICYP soldiers, thus acting in a manner which is incompatible with the obligation to protect life imposed by Article 2 § 1 of the Convention and with Paragraph 5 (c) of the UN Force and Firearms Principles (according to which law enforcement officials must "ensure that assistance and medical

aid are rendered to any injured or affected persons at the earliest possible moment” – see paragraph 22 above). In this connection, the Court has examined the Government's allegation that the firing of warning shots in the direction of the UN personnel was aimed at preventing interference with evidence and at protecting the UN soldier against the threat that Stelios Kalli Panayi might have posed (see paragraphs 42 and 43 above). However, it considers that the UN personnel were ideally placed and sufficiently trained to evaluate the dangerousness of the situation and to act in a manner that would have preserved the evidence. Moreover, a seriously injured man lying on the ground in Mr Panayi's circumstances would hardly have been capable of posing any threat whatsoever to armed UN soldiers.

(iii) *Conclusion*

67. In the light of the above, the Court is of the opinion that Stelios Kalli Panayi was killed by agents of the respondent State and that the use of force was not justified by any of the exceptions laid down in paragraph 2 of Article 2 of the Convention. It follows that there has been a violation of the substantive limb of this provision.

(b) The alleged inadequacy of the investigation

(i) *General principles*

68. 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”, also 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, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC] no. 22277/93, § 63, ECHR 2000-VII). The Court recalls that the obligations of the State under Article 2 cannot be satisfied merely by awarding damages. The investigations required under Article 2 of the Convention must be capable of leading to the identification

and punishment of those responsible (see *Bazorkina v. Russia*, no. 69481/01, § 117, 27 July 2006).

69. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports* 1998-IV, and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see, for example, *Kaya*, cited above, § 87). 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, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (with regard to autopsies, see, for example, *Salman v. Turkey* [GC], no. 21986/93, §106, ECHR 2000-VII; concerning witnesses, see, for example, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; as regards forensic evidence, see, for example, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling below this standard.

70. In this context, there must also be an implicit requirement of promptness and reasonable expedition (see *Tanrıkulu*, cited above, § 109, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-107, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Bazorkina*, cited above, § 119, and *Solomou and Others*, cited above, § 82).

(ii) *Application of the above principles to the present case*

71. In the present case, the Government confined themselves to producing a few notes emanating from the military authorities and describing the basic events surrounding the shooting of Stelios Kalli Panayi on the basis of the versions given by the soldiers involved in it (see paragraph 21 above). It does not appear that these versions have been challenged in the light of the material evidence available to the “TRNC” authorities or of the statements of the UN personnel.

72. In any case, an investigation carried out by the same body to which those implicated in the events belong can hardly be described as

“independent” and does not satisfy the requirements of Article 2. It is also worth noting that it does not seem that the question of the criminal liability of the “TRNC” soldier who killed Mr Panayi was even examined by the domestic authorities. The Government did not claim that the persons responsible for the killing and for the opening of fire against the UN personnel had been arraigned before a domestic tribunal.

73. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the death of Stelios Kalli Panayi. The Court accordingly holds that there has been a violation of Article 2 in this respect also.

II. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION

74. The applicants submitted that, contrary to Article 8 of the Convention, they had been deprived of a member of their family. Relying on Article 14, taken in conjunction with Articles 2 and 8 of the Convention, they further alleged that Stelios Kalli Panayi had been killed because of his Greek-Cypriot national origin and the fact that he was a Christian.

Articles 8 and 14 of the Convention insofar as relevant read as follows:

Article 8

“1. Everyone has the right to respect for his private and 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 or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 14

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

75. The Government contested that claim. They argued that the killing of Stelios Kalli Panayi had been unconnected to his origin and/or religion. The facts of the case consisted of a trespass incident by a foreign soldier trying to cross the border not only without permission but also in defiance of strong warnings.

76. The Government of Cyprus agreed with the applicants. They observed that was hard to think of a more serious interference with the right to respect for private life than the taking of the life of a son.

77. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

78. Having regard to the finding relating to Article 2 (see paragraphs 66 and 73 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Articles 8 and 14 of the Convention (see *Solomou and Others*, cited above, § 93).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicants noted that in Cyprus, as in other Mediterranean Member States of the European Union, children were supposed to take responsibility for their parents' care and social welfare in old age. As they had raised their son at a considerable cost until the age of 19, the applicants were entitled to expect that, in accordance with local tradition and in the absence of a developed welfare State, Stelios Kalli Panayi would have looked after them in their old age. The loss of financial support due to their son's killing could be calculated at 2,400 euros (EUR) per year for each of them. This sum should be multiplied by 15, the number of years between the age of 63 (at which people retired and/or began to have problems and support needs associated with old age) and the age of 78 (average life expectancy in Cyprus). The applicants therefore claimed EUR 36,000 each for pecuniary damage.

81. The applicants also claimed EUR 75,000 each for non-pecuniary damage. They stressed the pain, suffering and anguish that they had had to endure due to the loss of their son. They further stressed that they had been refugees since the 1974 Turkish military intervention.

82. The Government pointed out that the applicants had failed to produce any document, such as their son's payslips, supporting their claim for pecuniary damage. Furthermore, it was not certain that the applicants would have been dependent on their son's earnings.

83. As to non-pecuniary damage, the Government considered that the amounts claimed by the applicants were highly exaggerated and incompatible with previous awards made by the Court in similar cases. The finding of a violation would constitute, in the circumstances of the present application, sufficient just satisfaction.

84. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). However, in the present case it is not established that the applicants were in any way dependent on Stelios Kalli Panayi's future earnings (see, *mutatis mutandis*, *Solomou and Others*, cited above, § 100). Therefore, the Court does not find it appropriate in the circumstances of this case to make any award to the applicants under this head (see *Musayev and Others*, cited above, § 189).

85. As to non-pecuniary damage, the Court observes that it has found a violation of Article 2 of the Convention on account of the killing of the applicants' son and the lack of an effective investigation and considers that an award should be made under that head, bearing in mind the family ties between the applicants and the victim of the killing and the seriousness of the damage sustained, which cannot be compensated for solely by a finding of a violation (see, *mutatis mutandis*, *Musayev and Others*, cited above, § 193). Acting on an equitable basis, the Court awards EUR 35,000 to each of the applicants (see, *mutatis mutandis*, *Solomou and Others*, cited above, § 101, and *Isaak and Others*, cited above, § 139), plus any tax that may be chargeable on these amounts.

B. Costs and expenses

86. Relying on bills from their representatives, the applicants sought EUR 9,888.30 for the costs and expenses incurred in the proceedings before the Court.

87. The Government considered that the amount claimed was highly subjective and exaggerated. They pointed out that the applicants' representatives had failed to produce “receipts or documents” and had confined themselves to indicating rough figures which could not form the basis for any compensation claims.

88. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicants only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see *Belziuk v. Poland*, 25 March 1998, § 49, *Reports* 1998-II). The Court notes that the case was rather complex, involved perusing a certain amount of factual and documentary evidence and required a fair degree of research and preparation (see, *mutatis mutandis*, *Solomou and Others*, cited above, § 104). Moreover, the applicants' representatives have produced a detailed bill of costs indicating the out of pocket expenses and the sums due for attending the meetings with their clients, preparing the full text of the application and of the various submissions. In the light of the above, the Court considers the amount requested in respect of costs and

expenses for the proceedings before it (EUR 9,888.30) to be reasonable and sufficiently itemised and decides to award it to the applicants.

C. Default interest

89. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the killing of Stelios Kalli Panayi;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Stelios Kalli Panayi died;
4. *Holds* that it is not necessary to examine whether there has been a violation of Articles 8 and 14 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 in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, to each applicant in respect of non-pecuniary damage;
 - (ii) EUR 9,888.30 (nine thousand eight hundred and eighty-eight euros thirty cents), plus any tax that may be chargeable to the applicants, 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 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President