AS TO THE ADMISSIBILITY OF

Application No. 25052/94
by Andreas and Paraskevoula ANDRONICOU and
Gregoris and Yiolanda CONSTANTINOU
against Cyprus

The European Commission of Human Rights sitting in private on 5 July 1995, the following members being present:

MM. C.A. NØRGAARD, President
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
H.G. SCHERMERS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
N. BRATZA
E. KONSTANTINOV
A. PERENIC
C. BÎRSAN

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 August 1994 by Andreas and Paraskevoula ANDRONICOU and Gregoris and Yiolanda CONSTANTINOU against Cyprus and registered on 31 August 1994 under file No. 25052/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to :

- the Commission's decision of 17 October 1994 to communicate the application ;

- the observations submitted by the respondent Government on 4 January 1995 and the observations in reply submitted by the applicants on 13 February 1995;

- the parties' oral submissions at the hearing on 5 July 1995

Having deliberated;

Decides as follows:

THE FACTS

The first applicant is a Cypriot citizen, born in 1938 and living in Paphos. He is a farmer by profession.

The second applicant is a Cypriot citizen, born in 1961 and living in Paphos. She is a housewife by occupation.

The third applicant is a Cypriot citizen, born in 1945 and living in Limassol. He is a carpenter by profession.

The fourth applicant is a Cypriot citizen, born in 1947 and living in Limassol. She is a housewife by occupation.

The facts of the case, as they have been submitted by the parties, may be summarized as follows:

The first and second applicants are the father and sister of Lefteris Andronicou, deceased, who was engaged to be married to Elsie Constantinou, deceased, the daughter of the third and fourth applicants. Lefteris at the time of his death was thirty three years old and Elsie twenty two.

The incident

In the morning of 24 December 1993 the police were informed that screams were heard coming from Lefteris's one-bedroom flat in the village of Chloraka in Paphos. It emerged that Elsie was in the flat with Lefteris and that the latter would not allow her leave the premises.

Police officers arrived at the scene at around 11:00. It was then realized that Lefteris was carrying a hunting gun which could carry two cartridges. The police together with a number of civilians, among whom Lefteris's relatives and his personal doctor (a general pathologist), engaged in protracted negotiations with Lefteris with a view to obtaining the release of Elsie. Although the Deputy Police Director of Paphos acted as the principal negotiator on behalf of the police, the Police Director of Paphos had the overall responsibility of the operation.

In the afternoon the Head of Police, who had been briefed in the meantime by telephone, decided to dispatch on the scene a platoon of the Special Forces of the Police (Michanokiniti Monada Amesis Drasis - hereafter "the MMAD"). At 18:15 the Head of Police briefed the Minister of Justice and Public Order. During a second telephone conversation between the two men, the Minister was of the view that "an intervention of the MMAD should be decided by the police on the basis of their appreciation of the situation at the time after having reviewed all relevant information and eliminated all other possibilities".

At 23:10 the Police Director of Paphos informed the Deputy Head of Police that, having held a conference with all his staff officers, he had formed the view that Lefteris was planning to kill Elsie and commit suicide at around midnight. The Deputy Head of Police consulted with the Head of Police and at 23:40 he informed the Police Director of Paphos that it had been decided that the flat should be raided by the MMAD some minutes before midnight.

At about midnight four officers of the MMAD, carrying machine guns, made a forceful entry into the flat using the front door. Four other officers stayed outside and fired teargas bullets into the flat. At the time Lefteris and Elsie were in the small living room of the flat. It was subsequently realized that they had not consumed the food, containing hypnotic drugs, which the police had earlier on provided them with.

When the door of the flat was forcibly opened, Lefteris used his gun causing minor pellet injuries to a member of the MMAD in the shoulder and to Elsie. Two other agents of the MMAD opened fire. Lefteris was killed on the spot, the upper part of his body having been riddled with bullets. Elsie received two bullets. She was transferred to the hospital in a police car, given that no ambulance was present on the scene. She succumbed to her wounds some hours later.

The appointment of a Commission of Inquiry

Immediately after the incident an application for an inquest into Lefteris's and Elsie's deaths was filed with the Coroner of the District Court of Paphos. On 26 December 1993 the families of Lefteris and Elsie requested that a criminal investigation be opened, in accordance with Article 4 of the Criminal Procedure Law.

On 27 December 1993 the Council of Ministers mandated the President of the Supreme Court to carry out an inquiry, in accordance with the Commissions of Inquiry Law. The terms of the mandate were "to investigate in full the circumstances under which the death of Lefteris and Elsie in Chloraka Paphos during the night of 24 to 25 December 1993 had been caused, to determine who, if any, was responsible and to make any recommendations and observations which would be, in their view, necessary".

On 29 December 1993 the Council of Ministers decided to grant the applicants ex gratia legal aid for the purposes of the inquiry which would cover their legal representation and the obtaining of expert testimony.

The hearings before the one-member Commission of Inquiry opened on 3 January 1994. The applicants promptly objected to the appointment of the Commission of Inquiry, considering that the matter should have been dealt with by way of a criminal investigation. The Commission considered that it was not competent to examine the legality of the decision of the Council of Ministers setting it up. It stressed, however, that the investigation it was conducting was neither a substitute for any other procedure provided for by law, including a coroner's inquest and a criminal investigation, nor did it suspend the right to have access to a court, in accordance with Article 30 of the Constitution or Article 6 of the Convention.

The Commission of Inquiry held forty six hearings, which were attended by the Attorney General on behalf of the Republic and counsel on behalf of the families of the deceased, the police and the MMAD. One hundred and thirteen exhibits were examined and 72 witnesses were heard, including all the agents of the MMAD who took part in the operation. The witnesses testified under oath and were examined and cross-examined by all interested parties. One of the agents of the MMAD refused to answer any questions invoking his right not to incriminate himself. Although the proceedings were public, the agents of the MMAD who took part in the operation testified in camera. Their identities were disclosed only to the President of the Supreme Court who conducted the inquiry. However, the minutes of the relevant hearings were made public.

Submissions of the applicants before the Commission of Inquiry

In his closing statement, counsel for the families of the applicants submitted the following:

First, the Deputy Police Director of Paphos should not have acted as principal negotiator on behalf of the police, as he was not qualified to do so. An attempt should have been made to protract the negotiations. Instead of threatening the applicant that he would starve and be beaten, a "soft" approach of "give and take" should have been adopted. The police conducted the negotiations in an entirely unprofessional manner. It allowed a big crowd of people to gather outside the flat. The Police Director of Paphos, who was in charge, was absent from the scene of the operation between 17:00 and 21:20. While a number of non-authorised persons became involved in the negotiations and operation, the police failed to secure the presence of a psychologist. They did not take advantage of several opportunities to neutralise Lefteris which arose in the course of the negotiations. No ambulance or fire-engine were available on the scene. Moreover, the

police failed to keep a proper record of the negotiations, in order to be able to evaluate the information emerging therefrom before deciding on the action to be taken.

Second, the MMAD should not have been used in this case. The Head of the Police decided to dispatch on the scene the MMAD on the basis of inadequate information and without calling a meeting first. Moreover, the plans for the deployment of the platoon of the MMAD were made on the phone between the Assistant Head of Police and the head of the platoon, while the latter was driving to Paphos.

Third, the police decided to try to administer drugs to Lefteris and Elsie, without first consulting an expert. The food containing the drugs was given to Lefteris and Elsie after 23:35. The MMAD raided the flat before the drugs could have taken effect.

Fourth, the final decision to raid the flat was based on misleading information. The police acted on the false assumption that Lefteris had kidnapped Elsie. They failed to collect any information on the relationship between Lefteris and Elsie, the character of Lefteris and his past. Disproportionate weight was attached to the opinion of Lefteris's doctor that Lefteris was planning to kill Elsie. As the doctor herself admitted, Lefteris had never told her that he was contemplating such a course of action. No account was taken of the repeated requests of both Lefteris and the family of Elsie that the police leave to enable them to settle the matter "within the family".

Fifth, the raid was planned in an extremely sloppy manner. The inspection of the scene by the head of the platoon of the MMAD was perfunctory. The latter was never informed that an attempt had been made to administer drugs to Lefteris and Elsie. The time of the raid was wholly inappropriate, as it coincided with the expiry of the ultimatum that Lefteris had purportedly given the police. Lefteris could not have been taken by surprise, as the police decided to disperse the crowd which had gathered outside the flat only ten minutes before the raid. It was a mistake to try to make a forcible entry through the front door, instead of using more than one entry point. It was a mistake not to place an observer by the skylight who could have informed them of the movements of Lefteris. One of the officers of the MMAD who had remained outside the flat during the raid, instead of firing tear gas bullets through the bedroom window, fired real ones.

Sixth, contrary to what the police officers alleged during the investigation, it was clear from the start that the only weapon that Lefteris was carrying was a hunting-gun with two cartridges. By calling Lefteris on the phone and firing tear gas bullets, the police gave Lefteris sufficient notice of the raid. The police had failed to prove their thesis that the telephone call which they made with a view to distracting Lefteris's attention had been preceded by another call which alerted Lefteris to the danger. In any event, the police were to be held responsible for having allowed the third person who made the unauthorised call to know their plans.

Lefteris was forced to use his gun as a result of the miscalculated actions of the police. He injured Elsie accidentally, when she found herself in the line of fire. Lefteris used both cartridges with which his gun was armed when the first officer of the MMAD attempted to enter the flat. When the other two officers of the MMAD entered the flat and started shooting at him he was effectively defenceless. The argument that the officers of the MMAD were under the impression that only one cartridge had been fired was untenable. In a video-tape, which a journalist shot during the raid, two waves of smoke appeared quite clearly to emerge from the flat. Moreover, an expert, who had examined the tape, testified before the Commission of Inquiry that O.8 seconds passed between the first and second shot. Neither of the two officers of the MMAD who shot at Lefteris testified that he had seen Lefteris carrying a gun, although they had used the special

torches on their guns to illuminate the place before shooting. Lefteris was, moreover, half naked. As a result he could not be hiding any other weapons on him. The gun Lefteris was carrying was found lying on an arm-chair, some distance away from his body, on which it could not have fallen accidentally. No one of the police officers involved testified that he had placed the weapon there himself and no fingerprints were found on it apart from those of Lefteris. No bullets or blood stains were found on either the gun or the armchair. All the above constitutes evidence that Lefteris had deposited his gun before the members of the MMAD started shooting at him. Twenty nine shots were fired one by one at a very short range at an unarmed man in an eighteen square metres room. Lefteris was shot exclusively at the upper part of his body. This clearly indicates that the members of the MMAD were shooting to kill. As the state pathologist testified, Lefteris continued being shot when he was lying down. The officers of the MMAD did not act in self-defence. They carried out a premeditated attack against Lefteris in order to kill him.

Finally, according to the state pathologist, the principal cause of Elsie's death was a wound in her right lung, liver, stomach and spleen caused by a shot fired by the officers of the MMAD. A second wound in her abdominal area, similarly inflicted, contributed to her death. An expert witness refuted the state pathologist's position that the wounds caused in Elsie's chest and arms by pellets fired from Lefteris's gun contributed to her death.

The investigation was concluded on 27 April 1994 and the Inquiry Commission's report was published on 15 June 1994.

Findings of the Commission of Inquiry

The main findings of the Commission of Inquiry were the following:

First, the negotiations between the police and Lefteris were conducted in the best possible manner under the circumstances, given in particular Lefteris's stance. Lefteris was granted all he had requested, ie a telephone, cigarettes and food. Although the latter arrived with a certain delay, this had been done on purpose to exhaust Lefteris and make him surrender. Lefteris would not ask for anything less than the departure of the police. It would have been, however, extremely improvident to leave Elsie in the hands of Lefteris. The non-involvement of psychologists in the negotiations, who had been sought but not found, does not affect the validity of the above-mentioned conclusion. The police used the Deputy Police Director of Paphos as principal negotiator, an officer with great experience in dealing with people, who won Lefteris's confidence immediately and who communicated with him until the end. Trained negotiators were present as well, whose knowledge was used and who could have intervened if mistakes had been made. Moreover, the police used all available persons who could have influenced Lefteris in the direction of abandoning his plan. No attempt to extend the negotiations further could be made, as there were grounds to believe that Lefteris was determined to abide by his deadline. The symbolic importance of the time chosen by him, the midnight between the 24th and the 25th of December, could not be easily ignored. There was nothing reproachable in the Paphos Police Director's acting as chief of the operation. An attempt was made to disperse the crowd. The suggestion of counsel for the families of the deceased that the police missed several opportunities to neutralise Lefteris was entirely unrealistic. In accordance with expert testimony, the availability of an ambulance would not have made any difference to Elsie's fate.

Second, when deciding to dispatch the MMAD the Head of Police acted responsibly, correctly and within his competence. All necessary information had been made available to him. There was not any indication that the involvement and deployment of the MMAD had been decided and planned in a sloppy manner. The MMAD was a body specially

trained to deal with similar situations, which could not be handled by ordinary police officers. It was wrong to assume that the MMAD could only be used against terrorists or in war-time operations.

Third, despite some testimony to the contrary, the Commission was satisfied that the food in which the drugs would be placed arrived at 23:00. In accordance with expert testimony, the hypnotic drugs would have produced the intended effect within half an hour.

Fourth, the police formed the view that Lefteris was planning to kill Elsie and commit suicide at midnight on the basis of all necessary and available information. This was the opinion of Lefteris's doctor who had discussed extensively with him. Lefteris had told the Police Director of Paphos verbatim that "there is no Christmas for us, I will celebrate Christmas with Elsie and at 00:05 you will come inside and take her". Elsie had told the Director that Lefteris would kill her. The fact that the police had not been informed about the particulars of Lefteris's relationship with Elsie and the fact that the police had mistakenly considered that Elsie had been found in Lefteris's flat against her will could not have affected the validity of their assessment of the situation.

Fifth, the head of the platoon of the MMAD was in possession of all the necessary information when he planned the raid. That the sole aim of the operation was to save the life of Elsie was proven by the fact that no explosives were used to break through the door and no stun grenades were thrown. The use of a water hose, multiple entries or an observer by the skylight would not have been advisable in the circumstances. The operation was planned for around midnight in the hope that Lefteris could be persuaded to release Elsie. The head of the platoon of the MMAD had relied on surprise, quickness and accuracy to ensure success for the rescue operation. No disproportionate importance should be attached to the fact that some of the expert witnesses would have planned the operation in another manner. The test to be applied was whether the head of the platoon of the MMAD planned the raid in a "reasonable" manner, which he did.

Sixth, Lefteris was not taken by surprise because of the unauthorised telephone call he received just before the attack. When the first officer of the MMAD entered the flat he found Lefteris hiding behind Elsie and pointing a gun at him. Lefteris fired two shots, one at the agent of the MMAD and one at Elsie. The shots were fired immediately one after the other, so the officers of the MMAD could not exclude that the second bullet in Lefteris's gun had not been used. Moreover, it could not be excluded that Lefteris was in possession of other guns. When the two other officers of the MMAD entered the flat, Lefteris moved holding Elsie in front of him with her back turned at the door. They were under the impression that their lives and that of Elsie were in danger. They shot him repeatedly at the chest and head. All the shots were fired within a very short period of time and this explains why Lefteris was shot while lying down. No inferences could be drawn from the exercise by one member of the MMAD of his right not to incriminate himself.

Finally, although the state pathologist was right in considering that the wounds inflicted on Elsie by the pellets fired from Lefteris's gun contributed to her death, the principal cause of her death were the injuries she received when she was fired on by the agents of the MMAD. Elsie was injured because she had moved when the agents of the MMAD were shooting to save her.

In the light of all the above and relying, among others, on the findings of the European Commission in application No. 18984/91 McCann, Farrell and Savage v. United Kingdom, the Commission of Inquiry concluded that the use of force by the officers of the MMAD, as a result of which Lefteris and Elsie died, was no more than absolutely necessary for the rescue of Elsie and the self-defence of those who

carried out the rescue operation and fell within the exceptions of Article 7 para. 3 (a) of the Cyprus Constitution and Article 2 para. 2 (a) of the Convention. There was no intention to kill either Elsie or Lefteris. The officers of the MMAD had acted in accordance with a reasonably formulated perception of risk and their reaction was not disproportionate. In the McCann, Farrell and Savage case the European Commission considered that firing nine shots against a person lying on the ground engaged no responsibility when the aim of the person who was firing the shots was to neutralise a perceived risk. Neither was there any lack of due care in the planning of the operation. Although no criminal acts had been committed and the police could not be criticized in any way for its handling of the case, the Commission of Inquiry recommended that the Government should examine the possibility of making an ex gratia payment to the families of the deceased, on the basis of the judgment of the European Court of Human Rights of 26 April 1994 in the Diaz Ruano case.

Subsequent Developments

By letter of 28 September 1994 the Attorney General informed the applicant's lawyer that, in the light of the findings of the Commission of Inquiry, no criminal proceedings would be instituted in connection with the deaths of Lefteris and Elsie. He indicated, however, that he would propose to the Government the ex gratia payment of "full and substantial compensation" to the heirs of the two deceased and invited the applicant's lawyer to present his views on this issue.

On 21 October 1994 the Attorney General met with the applicants' lawyer.

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

On 28 December 1994 the lawyer of Lefteris's former wife wrote to the Attorney General proposing a friendly settlement.

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

On 17 May 1995 the Attorney General offered the applicants legal aid for the proceedings before the Coroner in Paphos which would be resumed on 29 May 1995. A fee of 120 Cyprus pounds was offered for each day in court. The hearing of 29 May 1995 was adjourned at the request of the applicants' lawyer.

On 7 June 1995 the Attorney General informed the applicants' lawyer that "the State (would) cover any advocates costs that the dependants of the deceased may sustain if and when they decide to bring a civil action for damages against anyone on the basis of the facts which led to the tragic death of Elsie Constantinou and Lefteris Andronicou". The sum be paid would be assessed in accordance with the court scales in force and would have to be approved by the Attorney General. The registrar of the court would resolve any dispute concerning the assessment.

COMPLAINTS

1. The applicants complain that the right to life of Lefteris and Elsie, as guaranteed under Article 2 of the Convention, was violated. Their principal argument is that no force at all was necessary to

resolve a domestic dispute between two persons who were engaged to be married. The police instead had resort to their Special Forces (the MMAD).

Their subsidiary argument is that the force used by the MMAD was by far more than absolutely necessary in the circumstances. Lefteris's gun could carry only two cartridges both of which had been fired before the officers of the MMAD started shooting. 29 bullets were shot one by one, without warning, against two unarmed civilians in a room of 5 to 3.6 metres. All the wounds on Lefteris's body were above his waist-line and some bullets were fired when Lefteris was already lying on the floor.

The applicants further argue that the laws of Cyprus on the use of lethal force are vague and general, in violation of Article 2 of the Convention. Moreover, the competent authorities did not exercise in this case the strict operational control over the use of lethal force required by Article 2 of the Convention. The officers of the MMAD are trained to shoot to kill and the operation in Chloraka was neither planned nor executed in a manner which would have minimised the need for the use of lethal force.

2. The applicants also complain of a violation of Article 6 of the Convention. No legal aid system is available for civil litigation and, as a result, the applicants, who have no sufficient financial means, cannot sue the police. This amounts to a denial of their right of access to a court for the determination of their civil rights.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 22 August 1994 and registered on 31 August 1994.

On 17 October 1994 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 4 January 1995. The applicants replied on 13 February 1995.

On 20 January 1995 the Commission granted the applicants legal aid.

On 10 April 1995 the Commission decided to invite the parties to submit oral observations on the admissibility and the merits of the application at a hearing.

The hearing took place on 5 July 1995.

At the hearing the parties were represented as follows :

For the Government:

Mr. Alecos Markides, Agent, Attorney General of the Republic of Cyprus

Mrs Leda Koursoumba, Counsel, Senior Counsel in the Law Office of the Republic of Cyprus

Mrs Toula Polychronidou, Counsel, Counsel in the Law Office of the Republic of Cyprus

Mrs Marianna Santama-Patsalidou, Adviser, Ministry of Justice and Public Order

For the Applicant:

Mr. Michael Kyprianou, Representative, Barrister

Ms Maria Kyrmizi, Representative, Barrister

Mr. Menelaos Kyprianou, Representative, Barrister

THE LAW

1. The applicants complain under Article 2 (Art. 2) of the Convention about the deaths of the two deceased.

Article 2 (Art. 2) of the Convention provides 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 (Art. 2) 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) The Commission must first examine the Government's claim that the first two applicants cannot claim to be victims of the alleged violation of Article 2 (Art. 2) of the Convention.

The Government rely on the fact that only the two underage children of Lefteris Andronicou are his heirs under domestic law. The Government have entered into negotiations with their legal representatives with a view to paying a generous ex gratia compensation. In accordance with domestic law, the first two applicants could claim damages for the death of Lefteris Andronicou only if they could prove that they were his dependents. However, this was a question for the domestic courts to decide.

The first two applicants submit that they can claim to be victims of the alleged violation, since they were the only ones who considered themselves sufficiently affected by the death of Lefteris to institute proceedings before the domestic courts. In any event, the question of the administration of Lefteris's estate has now been settled by the appointment of one administrator from the side of the first two applicants and another from the side of Lefteris's former wife.

The Commission notes that the Government have not argued that the parents of Elsie Constantinou could not claim to be victims within the meaning of Article 25 (Art. 25) of the Convention of an alleged violation of Article 2 (Art. 2) of the Convention.

The Commission recalls that it has always and unconditionally considered in its case-law that the parents of a person whose death is alleged to engage the responsibility of the respondent Government could claim to be victims of an alleged violation of Article 2 (Art. 2) of the Convention (see, inter alia, No. 11257/84, Dec. 6.10.86, D.R. 49 p. 213 and No. 9833/82, Dec. 7.3.85, D.R. 42 p. 53). The siblings of the deceased were also accepted as victims in cases concerning alleged violations of Article 2 (Art. 2) where the deceased were unmarried (No. 9348/81, Dec. 28.2.83, D.R. 32 p. 190; No. 9360/81, Dec. 28.2.83, D.R. 32 p. 211). The lack of closer relatives, however, is not a condition sine qua non for the acceptance of a sibling as victim of an alleged violation of Article 2 (Art. 2) of the Convention. The

Commission has in fact declared admissible several applications alleging a violation of Article 2 (Art. 2) brought by the brothers or sisters of deceased persons who had been married and some of whom had children, without inquiring into the reasons why the applications had not been lodged by the deceased's closer relatives (see No. 21895/93, Dec. 19.10.94, unpublished, and No. 23657/94, Dec. 15.5.95, unpublished).

The Commission further recalls that the conditions governing individual applications under Article 25 (Art. 25) of the Convention are not necessarily the same as the national criteria relating to locus standi in legal proceedings. National rules in this respect may serve purposes different from those contemplated by Article 25 (Art. 25) and, whilst those purposes may sometimes be analogous, they need not always be so (Eur. Court H.R., Norris judgment of 26 October 1988, Series A no. 142, p. 15, para. 31).

Taking the above into consideration, the Commission considers that the fact that the two underage children of Lefteris Andronicou are not represented in the present proceedings does not preclude it from considering his father and sister, i.e. the first and second applicants, as victims of the alleged violation of Article 2 (Art. 2) of the Convention. The fact, moreover, that the first and second applicants do not stand to inherit from the estate of their son and brother under domestic law and could only claim compensation before the domestic courts for his death if they proved that they were his dependents cannot deprive them of their capacity to bring a claim under Article 25 (Art. 25) of the Convention. In any event, the Commission notes that the first and second applicants were offered legal aid by the Government in order to take part in the proceedings before the Commission of Inquiry and the Coroner in Paphos.

The Commission concludes, therefore, that all four applicants can claim to be victims of an alleged violation of Article 2 (Art. 2) of the Convention.

b) The Commission must then examine the Government's claim that the application is abusive because it was lodged notwithstanding the Government's declared intention to negotiate a friendly settlement on an ex gratia basis.

The Government stress in this connection that at least some discussions were held with the representatives of the families of both deceased.

The applicants claim that they made it clear to the Attorney General that they would only accept compensation if the Government officially admitted responsibility for the deaths of the deceased.

The Commission recalls that it has held in respect of certain applicants who had received reasonable compensation in the context of a friendly settlement at the domestic level that they could no longer claim to be victims of a violation of the Convention (Nos. 5577-5583/72, Dec. 15.12.75, D.R. 4 p. 4; Preikhzas v. FRG, Comm. Report 13.12.78, D.R. 16 p. 5).

However, the Commission observes that a friendly settlement is by its very nature a contract freely entered into and negotiated by the two parties. In the circumstances of the case, the applicants never accepted the proposal of the Government for reasons which it is not for the Commission to criticise. Moreover, a domestic friendly settlement would have constituted an obstacle for the examination of the application by the Commission only if it had provided complete redress for the applicants' grievances (Eur. Court H.R., Inze judgment of 28 October 1987, Series A no. 126, p. 16, para. 32). In the circumstances of the case, however, the Government refused to admit liability for the deaths of the two deceased.

The Commission cannot, therefore, find any basis on which to conclude that the application is an abuse of the right of petition under Article 27 para. 2 (Art. 27-2) of the Convention.

c) The Commission must further examine the respondent Government's argument that the applicants have not exhausted domestic remedies.

The Government submit that the coroner's inquest, which is pending, is an effective remedy. A coroner can summon witnesses and exercise the same evidence-taking powers as an investigating judge in a preliminary criminal inquiry. Any interested party may appear before the coroner and examine witnesses. If the coroner is of the opinion that sufficient grounds are disclosed for preferring a charge against any person in connection with the death, he may issue a summons before any court having jurisdiction. Naturally, the Attorney General is in complete charge of all criminal prosecutions with power to initiate them and interrupt them. If, however, the Coroner in Paphos came to the conclusion that a crime had been committed, the Attorney General would act on his conclusion.

Moreover, the Government stress that the applicants did not institute civil proceedings against the State. The first two applicants' assertion that they did not have sufficient means is disproved by the fact that they were able to institute proceedings against Lefteris's former wife and her lawyer on the maximum scale known in Cyprus entailing maximum legal fees. In any event, the social conditions and the legal practice in Cyprus are such that no person has ever been prevented from participating in a coroner's inquest or lodging a civil action as a result of the lack of a legal aid system. Furthermore, the Government have offered legal aid in respect of both the coroner's inquest and an eventual civil action.

The applicants submit that the institution of criminal proceedings was the only effective remedy in the case. However, the Attorney General has formally declined their request to hold a criminal investigation. Applicants who have exhausted one effective remedy are not required to exhaust another.

Furthermore, the applicants submit that the coroner's inquest is not an effective remedy, since, in accordance with domestic law as interpreted by the courts, it is not the function of the coroner to determine any question of criminal or civil liability, to appear to do so, or to attribute blame or responsibility. As regards civil proceedings, the applicants claim that a civil action would have lasted eight years approximately through all instances.

The applicants insist that they lack sufficient means. This is proved by the fact that they had to rely on legal aid in the proceedings both before the Commission of Inquiry and the Commission. The action instituted by the first two applicants against Lefteris's former wife and her lawyer was very simple. The cost of a civil action was, on the other hand, expected to exceed the cost of the proceedings before the Commission of Inquiry which amounted to USD 70,000. The applicants further argue that they could not rely on the ex gratia offer of legal aid unprecedented in the legal history of Cyprus, because the exercise of their rights would be made dependent on political considerations and the discretion of their opponent and will not in any case be legally safeguarded. In any event, there was no provision in the budget for such an expense and the legal aid they received for the proceedings before the Commission of Inquiry was inadequate.

The Commission recalls that in accordance with its case-law and the case-law of the Court, an applicant who has exhausted a remedy which is apparently effective and sufficient cannot be required also to have tried others which would have been directed to the same end and

would in any case not have offered a better chance of success or which are probably ineffective (Eur. Court H.R., A v. France judgment of 23 November 1993, Series A no. 277, p. 48, para. 32; No. 11932/86, Dec. 9.5.88, D.R. 56 p. 199).

The Commission notes that the applicants requested the Attorney General to institute criminal proceedings. He refused to do so in the light of the findings of the Commission of Inquiry. The Commission of Inquiry had the opportunity to hear all the evidence which was available in the particular case. Having taken note of the parties' submissions regarding the evidence-taking power and competence of the coroner, the Commission considers that the scope of the inquest in Paphos will not be broader than that of the Commission of Inquiry. Moreover, the Government have not disputed the applicants' claim that proceedings before the civil courts of Cyprus normally last eight years approximately through all instances.

In the light of all the above, the Commission considers that the applicants have exhausted domestic remedies in accordance with Article 26 (Art. 26) of the Convention.

d) As regards, finally, the substance of the applicants' complaint, the Government submit that, in the absence of any new evidence, the conclusions of the Commission of Inquiry, which heard all the witnesses and addressed directly the issue whether the use of lethal force in the particular case was lawful under the Convention, can be safely relied on. The Commission cannot act as a court of appeal.

The applicants re-iterate their submissions before the Commission of Inquiry.

Having taken note of the parties' observations, the Commission considers that the complaint regarding the right to life under Article 2 (Art. 2) of the Convention raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The complaint cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and no other ground for declaring it inadmissible has been established.

2. The applicants further complain that they could not have access to a court for the determination of their civil rights in accordance with Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention provides the following:

> "In the determination of his civil rights and obligations ...., everyone is entitled to a ..... hearing .... by an independent and impartial tribunal established by law. ...."

The Government argue that the applicants were not precluded from instituting civil proceedings for damages. The applicants claim that they did not have adequate means.

Having taken note of the parties' observations, the Commission considers that the complaint regarding the right of access to a court under Article 6 para. 1 (Art. 6-1) of the Convention raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The complaint cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)