



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ANDREOU v. TURKEY

(Application no. 45653/99)

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 Andreou 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,

Ledi Bianku,

Işıl Karakaş, *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. 45653/99) 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 a British national, Mrs Georgia Andreou (“the applicant”), on 12 February 1997.

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

3. The applicant alleged that she was shot and injured during a demonstration in violation of Articles 2, 3 and 8 of the Convention.

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

5. By a decision of 3 June 2008, the Court declared the application admissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 12 August 2008 the applicant's representatives informed the Court that Mrs Georgia Andreou had died on 29 November 2005. No letters of administration having been granted for her estate, her lawful heirs were her husband, Mr Andreas Georgiou, and her two children, Mr Argyris Andreou and Mrs Angela Andreou Panayiotou. On 21 August 2008 the applicant's

heirs informed the Court that they wished to pursue the application on behalf of the deceased.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1936. At the time of the introduction of her application she was living in Larnaca.

A. The death of Anastasios Isaak

9. In 1996 the Cyprus Motorcycle Federation (CMF) organised a demonstration aimed at protesting against the Turkish occupation of the northern part of Cyprus. On 2 August 1996 a group of over one hundred Cypriot and other European motorcyclists set off from Berlin and made their way through Europe to Cyprus. Tensions arose when the authorities of the “Turkish Republic of Northern Cyprus” (the “TRNC”) announced that, should the demonstration take place, they would be organising “counter-rallies”. The President of the Republic of Cyprus made a special plea to the motorcyclists to disperse peacefully.

10. Notwithstanding this, on 11 August 1996 a group of motorcyclists and other civilians proceeded to various points along the United Nations (UN) buffer zone. Violent clashes took place between the demonstrators, the counter-demonstrators and the “TRNC” forces. One of the Greek-Cypriot demonstrators, Anastasios Isaak, was beaten to death in Dherynia. The events concerning the killing of Mr Isaak were brought to the attention of the Court in the context of application no. 44587/98 (*Isaak and Others v. Turkey*). In its judgment of 24 June 2008 the Court held, *inter alia*, that there had been a violation of Article 2 of the Convention in respect of the killing of Anastasios Isaak and in respect of the failure to conduct an effective investigation into the circumstances in which he had died.

B. The funeral of Anastasios Isaak and the shooting of the applicant

11. On 14 August 1996 the applicant attended the funeral of Anastasios Isaak, who was a friend of her son, in Paralimni.

12. After the funeral, a number of people went to the vicinity of the site where the events had taken place to pay their respects. The applicant's son, daughter and son-in-law were among those persons. The applicant remained

outside the UN buffer zone near Dherynia, close to the Greek-Cypriot National Guard checkpoint, and observed the events.

13. Tension arose between the Greek-Cypriot demonstrators and the “TRNC” authorities. One of the demonstrators, Solomos Solomou, crossed the Turkish-Cypriot ceasefire line and started to climb a flagpole. He was shot and later died from his injuries. The events concerning the killing of Mr Solomou were brought to the attention of the Court in the context of application no. 36832/97 (*Solomou and Others v. Turkey*). In its judgment of 24 June 2008 the Court held, *inter alia*, that there had been a violation of Article 2 of the Convention in respect of the killing of Solomos Solomou and in respect of the failure to conduct an effective investigation into the circumstances in which he had died.

14. Immediately after the shooting of Mr Solomou, the applicant saw soldiers firing their weapons in the area under the control of the Turkish armed forces. As a result, a number of people were wounded, including two British soldiers from the UN Forces in Cyprus (UNFICYP) and the applicant. The latter was hit by one bullet in the abdomen. She collapsed and was taken to Larnaca Hospital. She was operated on but lost one of her kidneys.

15. The applicant claimed that her life had been put in serious danger and had been saved only because she had received prompt medical attention. Even after the introduction of her application she was still suffering from her injuries, as a result of which she could not obtain employment and was under great psychological stress.

C. UNFICYP's press release and the UN Secretary-General's report on the events of 14 August 1996

16. The applicant underlined the following passages from UNFICYP's press release on the events surrounding the demonstration of 14 August 1996:

“By 14.20 hours, some 200 Greek Cypriots were inside the UN buffer zone, but UNFICYP was in control of the situation. The demonstrators were being rounded up and moved out of the UN buffer zone. The main group of Greek Cypriots were no closer than about 30 metres from the Turkish forces ceasefire line. ...

At about that time, a Greek-Cypriot male, later identified as Solomos Spyrou Solomou, broke free from the main group [of demonstrators] and ran towards the Turkish-Cypriot checkpoint. He was chased by two UNFICYP soldiers, who caught up with him at the guard post, but the demonstrator broke free again and began to climb the flagpole which was flying the Turkish flag just inside the Turkish-Cypriot checkpoint. The UNFICYP soldiers were pursuing him a few feet behind.

Solomou was some 3 metres off the ground ... when he was shot by a Turkish or Turkish-Cypriot soldier and fell to the ground with blood flowing profusely from his neck (the autopsy later revealed that Solomou was hit by five bullets). Turkish or

Turkish-Cypriot soldiers then proceeded to fire some 25 to 50 rounds indiscriminately into the crowd inside the buffer zone. The whole incident was witnessed by the UNFICYP Force Commander and the Commanding Officer of the Austrian Battalion who were in the UN buffer zone some 35 metres from the Turkish forces ceasefire line. They observed uniformed Turkish or Turkish-Cypriot military personnel kneeling down and firing in the direction of the demonstrators inside the UN buffer zone.

As a result of the indiscriminate shooting by Turkish or Turkish-Cypriot soldiers, two British UNFICYP soldiers were shot from behind and two Greek-Cypriot civilians were also hit by gunfire. Three were inside the buffer zone and one of the civilians, who sustained a serious gunshot wound to the abdomen, was standing outside the UN buffer zone close to the National Guard checkpoint.

The Force Commander of the UNFICYP accompanied by the Chief of Staff met with the Commander of the Turkish forces in Cyprus late in the afternoon of 14 August to strongly protest the totally unwarranted use of force by Turkish or Turkish-Cypriot military personnel which resulted in the killing of Solomou and in injuries to two peacekeepers and two civilians.”

17. In his report on the same events, the UN Secretary-General stated, *inter alia*:

“On 14 August ... some 200 Greek Cypriots entered the buffer zone at Dherynia and approached the Turkish forces' ceasefire line. Most were stopped by UNFICYP and were about to be moved out of the buffer zone when one demonstrator broke free from the main group [of demonstrators] and ran towards a Turkish-Cypriot checkpoint closely pursued by UNFICYP soldiers. While attempting to climb a flagpole flying a Turkish flag just behind the Turkish forces' ceasefire line, he was shot five times from the Turkish/Turkish-Cypriot side. In addition, Turkish and/or Turkish-Cypriot uniformed personnel proceeded to fire some 25 to 50 rounds indiscriminately into the crowd inside the buffer zone. As a result, two British UNFICYP soldiers and two Greek Cypriots were wounded ... The situation in Cyprus deteriorated in the last six months. There was violence along the ceasefire lines, including unnecessary and disproportionate use of lethal force by the Turkish/Turkish-Cypriot side, to an extent not seen since 1974.”

D. The medical certificates produced by the applicant's heirs

18. The applicant's heirs produced four medical certificates (in their original Greek version and in a translation into English) assessing the injuries sustained by Mrs Georgia Andreou and describing the treatment which had been administered to her.

19. The first certificate, issued on 3 September 2008 by Dr K. Papakiriakou, director of the surgical department of Larnaca General Hospital, reads as follows:

“Based on the hospital's medical records of Georgia Andreou (ID number 18700), aged 59, she was admitted at the Emergency Room of the Larnaca General Hospital on 14/8/1996 due to being shot during a protest in Derinia. She reported that the Turks

opened fire and she was shot by a bullet in her back. The patient was wounded by a semiautomatic weapon in her abdominal area and was in shock.

She went to surgery very urgently on 14.8.1996. During the surgery, it was found:

- 1) Wound on the navel coming from the right kidney area
- 2) Large amount of blood in the abdominal area with hematoma
- 3) Right kidney damage
- 4) Penetration of the large intestine
- 5) Wound on the backside of the right side of the liver
- 6) Hematoma of the pancreas

Due to the above, she underwent:

- 1) Removal of the right kidney
- 2) Removal of the pancreatic holder
- 3) Stitching of the liver
- 4) Colostomy
- 5) Wound care

Her post-surgery experience was extremely difficult and during the post-surgery period she developed pleuritis on the left side. She was also assessed by Dr Veresies where she was diagnosed with post-traumatic stress and depression. She was discharged on 2/9/1996.

On 30/9/1996 the patient was readmitted to the hospital due to her colostomy. She went under surgery on 2/10/1996 due to her colostomy. She also went under surgery on 11/10/1996 due to intestinal rupture where a right semicolectomy was conducted and intestine anastomosis. She was discharged from the surgery department on 21/10/1996.”

20. A second report was issued on an unspecified date by Dr A. Poullos, who stated:

“The deceased Georgia Andreou was repeatedly admitted to the pathological Department of Larnaca General Hospital after several brain strokes or side effects of previously inflicted brain strokes. As written in her medical folder, she was admitted a total of 7 times in this department at Larnaca General Hospital. It is concerned a familiar high blood pressure patient who was under medical care with reducing blood-pressure medication. The brain strokes resulted in lack of power on her left side, epileptic seizures and psychotic behaviour.

The last and critical episode reoccurred on 18/11/2005 after a serious endoencephalic bleeding. She died on 29/11/2005.”

21. Dr Giorgos Miliotis, a private practitioner, issued on 8 September 2008 a report entitled “Medical History of Georgia Andreou”. This document reads as follows:

“Based on my personal memories, she reported nephrectomy on her right side and colectomy after a medical wound from an automatic rifle in 1996. She is a mother of two children. She did not smoke and did not drink. She visited me for the first time on the 5th of September 2001 with symptoms of depression, phobias and paranoid feelings of being chased. Based on the clinical interview, I did not notice any pathological findings. I prescribed Seroxat 20 mg.

On the next visits (25/9/01 and 9/11/01) I noticed a slight improvement of her depression and I recommended the continuation of the medication.

On the 12th of December 2001 she visited me complaining of abdominal pain and constipation. The patient underwent a form of colonoscopy where her previous semicolectomy was identified but without any other pathological findings. Therefore, I determined that the symptoms were due to a malfunction of the intestine due to her previous colectomy. I prescribed Spasverin and Magnesia S. Pellegrino. On 8/7/2002, I prescribed medication for acute laryngitis and pharyngitis. On 7/8/2002, she complained of pain of her right hypochondrio with the movement of her body. She underwent an ultrasound where a small metallic element was detected on the right side of her liver, possibly due to the bullet from the gun. On 4/3/03 I noticed a relapse of her depression. I recommended the continuation of her medication. On 18/11/03 she complained of swelling of her eyelashes. On 30/6/2004 she complained of lack of energy and bodily power due to a change of her anti-depressants from another colleague (keep in mind that throughout this whole period, the patient was being seen by other colleagues at the Larnaca General Hospital). The last assessment I made was done on 15/11/2004 with a new relapse of her depression. I recommended the starting of Seroxat 20 mg again.”

22. The last certificate was issued on an unspecified date by Dr Kiriakos Veresies. It reads as follows:

“Subject: Georgia Andreou, DOB 06/12/1936.

The above lady was transferred to Larnaca General Hospital after being wounded from a gunshot that she received from Turkish individuals during the events at Derinia on 14/08/1996. She underwent surgery.

On the 17th of August 1996, I was called by her treating doctors as the psychiatrist of the General Hospital to assess her because they noticed that she was being quiet, reserved and negative concerning communicating with her family, friends and medical personnel. During the clinical interview, she seemed frightened from the events that occurred and very troubled by the surgery and the side effects. I believe there was an intense stressful reaction as well as indication of anxiety and depression. I administered anti-anxiety and anti-depressant medication and sleep-aids for her troubled sleep.

After her dismissal from the hospital, I continued seeing her as an outpatient in Larnaca and Paralimni. She exhibited depression with indication of phobias. Her sleep was disturbed and she developed panic attacks that were very hard to deal with and

treat. The events of the shooting were being revisited in her mind and her narration of the stressful, scary and painful events stigmatized her until her death.

Mrs Georgia was under medication management and psychiatric care without significant improvement until the end of her life.”

THE LAW

I. PRELIMINARY ISSUES

23. The Court notes at the outset that the applicant died on 29 November 2005, after the lodging of her application, while the case was pending before the Court. Her heirs (her husband and her two children) informed the Court that they wished to pursue the application lodged by her (see paragraph 7 above). Although the heirs of a deceased applicant cannot claim a general right for the examination of the application brought by the latter to be continued by the Court (see *Scherer v. Switzerland*, 25 March 1994, Series A no. 287), the Court has accepted on a number of occasions that close relatives of a deceased applicant are entitled to take his or her place (see *Deweer v. Belgium*, 27 February 1980, § 37, Series A no. 35, and *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A).

24. For the purposes of the instant case, the Court is prepared to accept that the applicant's husband and children can pursue the application initially brought by Mrs Georgia Andreou (see, *mutatis mutandis*, *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 85, 9 June 2005, and *Nerva and Others v. the United Kingdom*, no. 42295/98, § 33, ECHR 2002-VIII).

25. The Court further recalls that in its decision as to the admissibility of the application it held that the responsibility of the respondent State under the Convention was engaged. It observed that even though the applicant had sustained her injuries in territory over which Turkey exercised no control, the opening of fire on the crowd from close range, which was the direct and immediate cause of those injuries, had been such that the applicant should be regarded as “within [the] jurisdiction” of Turkey within the meaning of Article 1 of the Convention.

26. The Court sees no reason to depart from this conclusion.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

27. The applicant alleged that her shooting, although not fatal, was nevertheless a violation of her right to life.

She relied on 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.”

28. The Government disputed this claim.

A. Arguments of the parties

1. The Government

29. The Government alleged that responsibility for the incidents which led to the applicant's being shot lay with the Greek-Cypriot administration and the Greek Orthodox Church, which had deliberately encouraged the Greek-Cypriot demonstrators to breach the UN buffer zone. It was clear that such an action would inevitably incite hatred and hostility and would get out of control.

30. The Greek-Cypriot authorities had been irresponsible in encouraging the violent demonstrations by the Greek-Cypriot motorcyclists. This was confirmed by the fact that the then Greek-Cypriot President, Mr Clerides, had been photographed on a motorcycle, flanked by the then Archbishop of Cyprus, and by the widespread media coverage of the demonstration of 11 August 1996. The Government emphasised that the existence of the UN-controlled buffer zone separating the two parts of Cyprus had been internationally recognised. UNFICYP had asked the Greek-Cypriot authorities to take effective action to prevent any demonstrators from entering the buffer zone area. Notwithstanding this, the Greek-Cypriot police had escorted hundreds of motorcyclists to the ceasefire line and had then deliberately left the checkpoint unmanned in order to allow demonstrators to enter the buffer zone, knowing that there were insufficient numbers of UN personnel to keep the crowd under control. Had they acted differently, the violence in the area could have been avoided.

31. The sole intention of the “TRNC” authorities had been to prevent demonstrators from making incursions into their territory and to deter violent acts; this was a right secured to them in international law.

32. On 14 August 1996 the Greek-Cypriot demonstration had developed into a riot and the demonstrators had started rushing towards the Turkish-Cypriot ceasefire line. One of them (Solomos Solomou) had unsuccessfully tried to run towards a sentry post, and had then started to climb the flagpole marking the Turkish-Cypriot ceasefire line. The other demonstrators had thrown stones, bottles, iron bars and other missiles. According to eyewitnesses, shots had also been fired from the Greek-Cypriot side and at least one demonstrator posing as a cameraman had been seen with an automatic pistol firing shots. At this stage, the Turkish-Cypriot police team had come out from their position and fired in the air in order to stop the advance of the demonstrators and to prevent the situation getting out of control. There had then been crossfire as shots were fired from the Greek-Cypriot side.

33. Mr Solomou had been injured during the crossfire and had been immediately picked up by UN personnel. Greek-Cypriot demonstrators had prevented the UN from bringing an ambulance to the scene, thus hindering any chance of his survival. After having waited in the buffer zone, Mr Solomou had eventually been picked up by a jeep and taken across to the Greek-Cypriot side. He had later died from his injuries.

34. The Turkish-Cypriot authorities claimed that they were unaware as to how and under what circumstances the applicant had been hit by a stray bullet during the riot of 14 August 1996. While it was regrettable that the applicant had suffered injuries, she could not be regarded as an “innocent bystander”. She should have known that attending or watching such a violent demonstration near the Greek-Cypriot National Guard positions would inevitably carry some risk. If the purpose of the demonstration had been merely commemorative, it could have taken place in a church or somewhere else. There had been no justification for the demonstrators to commemorate or protest “in the forbidden zone”.

35. The Government submitted that the “TRNC” authorities had been fully justified under paragraph 2 of Article 2 of the Convention in taking all necessary precautions and using necessary force in order to avert the danger and protect the lives of others. An assembly of 150 persons throwing missiles at a patrol of soldiers to the point that they risked serious injury had been considered a “riot” by the Commission in the case of *Stewart v. the United Kingdom* (no. 10044/82, Commission decision of 10 July 1984, Decisions and Reports (DR) 39, p. 162). In that case, the Commission had also pointed out that the authorities had no obligation to retreat when quelling a riot. In any event, as no death had occurred in the present case, there could be no question of a violation of Article 2. The positive obligations arising from this provision entailed protecting “by law” the right to life, and there was no allegation that the laws of the “TRNC” failed to afford such protection.

2. *The applicant*

36. The applicant submitted that the Government's version of the facts was not accurate. In any event, even if that inaccurate account were to be accepted, there was no doubt that the Turkish forces had overreacted in a violent and lethal manner, displaying a complete disregard for life, safety and the principles of the Convention.

37. The applicant noted that the photograph showing the President of Cyprus on a motorbike had been taken at a State Fair in May 1996 at the Harley Davidson stand. Moreover, the “near-apocalyptic” version of the Government, who had described the demonstration as a riot, was contradicted both by UNFICYP's press release and by the UN Secretary-General's report, which stated that UNFICYP had been in control of the situation, that the main group of demonstrators had been positioned 30 metres from the Turkish forces' ceasefire line and that they had been about to be transferred out of the buffer zone. Under these circumstances, it could not be argued that a riot was taking place and/or that there were reasonable grounds to believe that it was necessary to protect any person from unlawful violence. In any event, the Turkish armed forces or the forces under their control could not take “lawful” actions in Cyprus without the permission of the Republic of Cyprus and their reaction could not be regarded as “absolutely necessary” within the meaning of the Court's case-law. Moreover, prior to the shooting, UNFICYP had contacted the Turkish armed forces and had requested them “to exercise restraint and not overreact”.

38. UNFICYP's press release and the UN Secretary-General's report also contradicted the Government's assertion that at the material time, shots had been fired from the Greek-Cypriot side and that this had resulted in crossfire which had led to the death of Solomos Solomou and injuries to four others. These documents clearly showed that there had been deliberate and indiscriminate firing by the members of the Turkish armed forces into a small crowd of unarmed civilians.

39. As the applicant had been watching the demonstration outside the buffer zone, she was the quintessential “innocent bystander”. The firing had been totally unwarranted; it had been so unnecessary and disproportionate that neither the demonstrators nor the applicant could have foreseen it.

40. The applicant also noted that according to the Court's case-law (she cited, in particular, *L.C.B. v. the United Kingdom*, 9 June 1998, *Reports of Judgments and Decisions* 1998-III), the question of a violation of Article 2 could arise even when no death occurred. She pointed out that none of those directly or indirectly involved in the “outrage of 14 August 1996” had been punished by the respondent Government. Furthermore, even assuming that the shooting had not been planned in advance, the deployment of fully armed military personnel trained to shoot and “trigger-happy” had created a

“real and immediate risk” to the life and physical integrity of the persons present in the area.

B. The Court's assessment

1. Applicability of Article 2 of the Convention

41. In the present case, the force used against the applicant was not in the event lethal. This, however, does not exclude in principle an examination of the applicant's complaints under Article 2, as it is established in the Court's case-law that physical ill-treatment by State agents which does not result in death may disclose a violation of that provision. In particular, the Court must determine whether the force used against the applicant was potentially lethal and what kind of impact the conduct of the officials concerned had not only on her physical integrity but also on the interest the right to life is intended to protect. In relation to this, the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant (see *Makaratzis v. Greece* [GC], n° 50385/99, §§ 49-52, ECHR 2004-XI, and *Evrin Öktem v. Turkey*, no. 9207/03, §§ 39-40, 4 November 2008).

42. In the present case, it results from the UNFICYP's press release (see paragraph 16 above) that, immediately after the shooting of Solomos Solomou, Turkish or Turkish-Cypriot soldiers proceeded to fire some 25 to 50 rounds indiscriminately into the crowd inside the buffer zone. The UNFICYP Force Commander and the Commanding Officer of the Austrian Battalion saw uniformed Turkish or Turkish-Cypriot military personnel kneeling down and firing in the direction of the demonstrators inside the UN buffer zone. As a result, two British UNFICYP soldiers and two Greek-Cypriot civilians (one of whom was the applicant) were hit by gunfire. This version of events is confirmed by the UN Secretary-General's reports on the events of 14 August 1996 (see paragraph 17 above).

43. The Court has no reason to doubt the independence and trustworthiness of sources such as UNFICYP and the UN Secretary-General. Moreover, their description of the events of 14 August 1996 is based on eyewitnesses' statements and is not contradicted by any objective fact put forward by the respondent Government.

44. Before the Court, the Government argued that the use of force was necessary in order to protect the lives of others and/or for the purpose of quelling a riot (see paragraph 35 above), these being two of the instances contemplated by the second paragraph of Article 2 when the resort to lethal, or potentially lethal, force may be legitimate (see, *mutatis mutandis*, *Makaratzis* cited above, § 53, and *Evrin Öktem* cited above, § 42).

45. The Court is of the opinion that the indiscriminate and unwarranted firing of rounds into the crowd which was gathering inside and outside the

buffer zone put at serious risk the lives of a number of persons, including the applicant. The fact that the latter was not killed was fortuitous (see, *mutatis mutandis*, *Makaratzis* cited above, § 54). The seriousness of her injuries is not in dispute between the parties. As shown by the medical certificates produced by her heirs (see paragraphs 18-22 above), she had to undergo three surgical operations, which included removal of the right kidney and of pancreatic tissue, stitching of the liver and a colostomy. She developed pleuritis and also post-traumatic stress and depression.

46. In the light of the above circumstances, and in particular the degree and type of force used, the Court concludes that, irrespective of whether or not the soldiers actually intended to kill her, the applicant was the victim of conduct which, by its very nature, put her life at risk, even though, in the event, she survived. Article 2 is thus applicable in the instant case. Furthermore, given the context in which her life was put at risk and the nature of the impugned conduct of the State agents concerned, the Court is satisfied that the facts call for examination under Article 2 of the Convention.

2. Alleged failure of the authorities to fulfil their positive obligation to protect the applicant's right to life

(a) General principles

47. 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).

48. 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) (*ibid.*, § 148).

49. The first sentence of Article 2 § 1 enjoins the State to take appropriate steps within its internal legal order to safeguard the lives of

those within its jurisdiction (see *Kılıç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III). This involves a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Makaratzis* cited above, § 57).

50. As the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident (see *Evrin Öktem* cited above, § 46, and *Hamiyet Kaplan and Others v. Turkey*, no. 36749/97, § 49, 13 September 2005).

51. In view of the foregoing, in keeping with the importance of Article 2 in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, § 150; *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII; and *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, § 142, 26 July 2007).

(b) Application of the above principles to the present case

52. The Court observes, firstly, that the shooting in which the applicant was injured took place a few moments after the killing of Solomos Solomou, who had been hit by five bullets while climbing a flagpole holding the Turkish flag. In the case of *Solomou and Others v. Turkey* the Court examined this incident and came to the following conclusions (see the judgment, cited above, §§ 69-79):

(a) Solomos Solomou had been killed by agents of the respondent Government;

(b) the shooting of Mr Solomou had not been justified “in defence of any person from unlawful violence” or “to effect a lawful arrest”;

(c) according to eyewitnesses, the opening of fire had been totally unwarranted and not even preceded by a warning shot;

(d) it was not for the Court to determine which party should bear responsibility for the facts which gave rise to the protest of the Greek-Cypriots and the subsequent demonstration of 14 August 1996;

(e) the demonstrators had sticks and iron bars and had been seen throwing stones at the Turkish forces; this had led to a situation of tension and to a risk of potentially more violent developments;

(f) as Mr Solomou had been the only demonstrator to cross the ceasefire line and had been unarmed, the shots directed at him could hardly be described as measures aimed at calming the violent behaviour of other demonstrators;

(g) potential illegal or violent action from a group of persons could not, as such, justify the immediate shooting and killing of one or more other individuals who were not themselves posing a threat;

(h) in view of the above, the use of force was not justified by any of the exceptions laid down in paragraph 2 of Article 2 of the Convention.

53. The Court does not see any reason to depart from the conclusions reached in the *Solomou* case.

54. As to the question whether the shooting was justified by the aim of quelling a “riot or insurrection”, the Court is of the opinion that the firing of rounds into the crowd constituted a disproportionate use of force in the circumstances surrounding the events of 14 August 1996. Even though the fact that the demonstrators, who had sticks and iron bars, were throwing stones at the Turkish forces carried the risk of potentially more violent developments, such firing could have caused serious injuries to demonstrators, bystanders or UN forces members. Indeed, the applicant, another civilian and two peacekeepers were hit by the bullets. In this connection, the Court attaches a certain weight to the fact that, according to the eyewitnesses, the opening of fire was totally unwarranted and not even preceded by a warning shot. It thus appeared to be a preventive measure, taken in order to discourage any possible recourse to violence before the crowd had the time to react to the shooting of Mr Solomou.

55. The Court further notes that it cannot be held that the shooting of the applicant was justified “in defence of any person from unlawful violence”. Nothing shows that she had been carrying weapons, had behaved in a violent manner, and offered any resistance to the police or was posing a threat to public order, let alone to an extent that could have justified putting her life at risk and inflicting on her a serious gunshot wound in the abdomen. Nor can it be argued that she was, at the material time, “lawfully detained” or that the use of force was “absolutely necessary” to “effect a lawful arrest”. Indeed, she had not crossed the ceasefire line and had been hit by the bullet while standing outside the UN buffer zone close to the National Guard checkpoint (see paragraph 16 above). It follows that the respondent State's agents used excessive force against the applicant which had not been rendered strictly necessary by the state of heightened tension surrounding the demonstration of 14 August 1996 and/or by the applicant's own behaviour.

56. Finally, the Court observes that the respondent Government failed to indicate whether the members of its security forces had been given clear instructions and appropriate training in order to avoid and arbitrary and/or abusive use of potentially lethal force.

3. Conclusion

57. In the light of the above, the Court is of the opinion that the use of potentially lethal force against the applicant was not “absolutely necessary” for pursuing one or more of the aims laid down in paragraph 2 of Article 2 and was therefore not justified by any of the exceptions laid down in this provision.

58. It follows that there has been a violation of Article 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

59. The applicant claimed that the use of excessive force against her during the shooting had reached the level of severity necessary to constitute inhuman treatment. She further alleged that the permanent effects of the shooting and injuries on her health, employment prospects and enjoyment of her life constituted a serious intrusion upon her physical and mental integrity and thus a violation of her right to respect for her private life.

The applicant relied on Articles 3 and 8 of the Convention. These provisions read as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8

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

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

60. The Government disputed these claims

A. The parties' submissions

1. The Government

61. The Government submitted that “torture” or “ill-treatment” necessitated an element of deliberate action, which was clearly lacking in the present case. For the same reasons, no violation of Article 8 could be found.

2. The applicant

62. The applicant pointed out that her complaint under Article 3 was not one of torture but of inhuman treatment. The intentional firing into the crowd should be interpreted as at least having been intended to cause intense physical suffering to anyone who might be caught in the path of the bullets.

B. The Court's assessment

63. The Court considers that, in the light of the conclusion reached under Article 2 of the Convention (see paragraphs 57-58 above), it is not necessary to examine whether there has also been a violation of Articles 3 and 8 (see *Makaratzis* cited above, § 83, and *Evrin Öktem* cited above, § 58).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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. Pecuniary damage

1. The applicant

65. Relying on an affidavit from the applicant's husband, the applicant's heirs observed that Mrs Georgia Andreou had suffered, until her death, as a result of the injuries sustained on 14 August 1996. As a consequence, she had been unable to work. As at the time of the shooting the applicant was 59 years old, she should be entitled to pecuniary damages for loss of income for the 41 months which were left before she reached the retirement age for women. At the material time she had been earning 414 Cypriot pounds

(CYP – approximately 707 euros (EUR)) per month as a hotel cleaner; the loss under this head therefore amounted to EUR 29,001.80, to which EUR 20,881.26 should be added by way of interest, calculated at a rate of 8% per annum for the period December 1999-December 2008.

66. The applicant's heirs also pointed out that Mrs Georgia Andreou had undergone three surgical operations and had eventually been discharged from hospital only on 21 October 1996. Thereafter she had been unable to look after herself or perform any household tasks. Until her death, her husband had therefore been obliged to employ part-time home help at a cost of CYP 160 (approximately EUR 273) per month. The whole cost of this help had been EUR 29,700, to which EUR 7,128 should be added by way of interest, calculated at a rate of 8% per annum for the period November 2005-November 2008.

67. Moreover, even though she was entitled to free medical care, the applicant had obtained two reports from Larnaca General Hospital (at a total cost of EUR 95.68) and one report from a neurologist, Dr Veresies (EUR 40); she had also consulted a private doctor, Dr Miliotis, on ten occasions, paying a total sum of EUR 450.

68. Thus, the overall sum claimed for pecuniary damage was EUR 87,256.74.

2. *The Government*

69. The Government submitted that there was no causal link between the applicant's natural death and the injuries she had sustained nine years earlier. They further pointed out that her heirs had failed to provide any information about their family links and family situation. Moreover, they should have promptly informed the Court of Mrs Georgia Andreou's death. It was only while in the process of submitting claims for just satisfaction that the applicant's heirs had felt the need to bring the applicant's demise to the attention of the Court, with some three years' delay. In the Government's view, their conduct could "raise some doubts as to their motive in the present proceedings".

70. The Government also pointed out that in the case of *Karner v. Austria* (no. 40016/98, ECHR 2003-IX), the Court had accepted that the proceedings could be continued after the applicant's death, but considered that in the absence of an injured party no award could be made under Article 41 of the Convention.

71. None of the sums claimed for pecuniary damage could be recovered by the applicant's heirs, as the relevant claims could not be transferred. Alternatively, the claim for loss of income was highly speculative and disregarded the vicissitudes of life. Moreover, it made no allowance for the social security benefits to which the applicant would have been legally entitled under the social insurance scheme available in Cyprus. As to the expenses allegedly incurred after the shooting, there was no evidence that

they had been actually incurred by any of the applicant's heirs. An award under this head would mean unjust enrichment of the heirs.

3. The Court's assessment

72. The Court first notes that the present case can be easily distinguished from that of *Karner*, cited by the Government, in which there were no heirs who wished to pursue the application. As noted above (see paragraphs 7 and 23 above), in the present case the heirs of Mrs Georgia Andreou expressed such a wish.

73. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant 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).

74. In the present case, the applicant's heirs did not provide any evidence substantiating their assertion that, at the time of the shooting, the applicant had been working as a hotel cleaner for a monthly salary of CYP 414 and that she had had to leave her job because of the injuries sustained. They also failed to furnish evidence that she had needed part-time home help or that this help had actually been provided at a cost of CYP 160 per month. Therefore, the Court does not find it appropriate in the circumstances of this case to make any award to the applicant's heirs under this head.

75. It observes, however, that the applicant's heirs submitted medical reports from Larnaca General Hospital and from Dr Veresies (see paragraphs 19, 20 and 22 above), and that Dr Miliotis certified that he had treated the applicant on a number of occasions (see paragraph 21 above). It is logical to assume that the applicant and/or her family had to bear the costs connected with the medical reports in issue and of the services of Dr Miliotis. As the sums claimed for medical expenses (totalling EUR 585.68) are reasonable as to quantum, the Court awards them to the applicant's heirs.

B. Non-pecuniary damage

1. The applicant

76. The applicant's heirs claimed that Mrs Georgia Andreou's injuries were a factor which had contributed to her death. In any event, they had caused great pain and suffering, which had also resulted in psychological problems. The applicant had undergone surgical operations which included the removal of one kidney and of the gallbladder and the resection of part of the colon. A metal fragment had been left in her liver.

77. In view of the above, and relying on a similar case decided by the Supreme Court of the Republic of Cyprus, the applicant's heirs claimed EUR 68,400 for non-pecuniary damage, to which EUR 38,304 should be added in interest, calculated at a rate of 8% per annum for the period 2001-2008. The total sum claimed under this head was thus EUR 106,704.

2. The Government

78. The Government observed that non-pecuniary damages should be awarded in respect of the anguish, feelings of helplessness and frustration suffered by the applicant personally. In the present case, it had not been established that any frustration or anxiety other than depression had been suffered by the applicant, or that the depression at issue had been caused by the wounds she had received. In view of the above, Mrs Georgia Andreou's claims under this head should be considered not to be transferable to her heirs.

79. The Supreme Court judgment cited by the applicant's heirs had no bearing on the present application and, in any event, concerned a case which was relevantly different. The amount claimed by the applicant's heirs (EUR 106,704) was not only excessive, disproportionate and exorbitant, but was also not in conformity with the established practice of the Court.

80. In refusing to award non-pecuniary damages, or in keeping the amount to a minimum, the Court could take into account the applicant's heirs' behaviour, and in particular the fact that they had concealed Mrs Georgia Andreou's death for almost three years.

3. The Court's assessment

81. The Court observes that it has found a violation of Article 2 of the Convention on account of the shooting of the applicant and considers that an award should be made under that head, bearing in mind the seriousness of the damage sustained, which cannot be compensated for solely by a finding of a violation. Making an assessment on an equitable basis, the Court awards EUR 40,000 to the applicant's heirs, plus any tax that may be chargeable on this amount.

C. Costs and expenses

82. Relying on bills from their representatives, the applicant's heirs sought EUR 11,711.25 for the costs and expenses incurred in the proceedings before the Court.

83. The Government argued that when the applicant's lawyers filed their observations in reply (November 2002) all the legal issues raised in the Government's observations (namely, those of Turkey's jurisdiction and responsibility) had been resolved in the Court's case-law. Therefore, they

had not necessitated detailed argumentation. The applicant's heirs' claim for costs and expenses was therefore excessive.

84. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicant 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. However, it considers that the amount claimed for the costs and expenses relating to the proceedings before it is excessive and decides to award the total sum of EUR 10,000 under that head, exclusive of any value-added tax that may be chargeable to the applicant's heirs.

D. Default interest

85. 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. *Holds* that the applicant's heirs have standing to continue the present proceedings in her stead;
2. *Holds* that there has been a violation of Article 2 of the Convention;
3. *Holds* that it is not necessary to examine whether there has been a violation of Articles 3 and 8 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant's heirs, 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 585.68 (five hundred and eighty-five euros sixty-eight cents), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 40,000 (forty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant's heirs, 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;

5. *Dismisses* the remainder of the applicant's heirs' 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