

FOURTH SECTION

**CASE OF ISAAK v. TURKEY**

*(Application no. 44587/98)*

JUDGMENT

STRASBOURG

24 June 2008

**FINAL**

*24/09/2008*

*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 Isaak v. Turkey,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Işıl Karakaş, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 28 September 2006 and on 3 June 2008,

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

## PROCEDURE

1. The case originated in an application (no. 44587/98) 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 five Cypriot nationals, Mrs Maria A. Isaak, Mr Isaak A. Isaak, Mrs Anastasia I. Isaak, Ms Kyriaki I. Isaak and Ms Andriani I. Isaak (“the applicants”), on 31 January 1997.

2. The applicants were represented by Mr C. Candounas, Mr P. Angelides and Mr A. Papacharalambous, lawyers practising in Nicosia. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicants alleged that the killing of one of their relatives, Mr Anastasios Isaak, amounted to a breach of Articles 2, 8 and 14 of the Convention.

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

5. By a decision of 28 September 2006 the Court declared the application admissible.

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

## THE FACTS

7. The applicants were born in 1977, 1944, 1951, 1974 and 1979 respectively. The first applicant lives in Ayia Napa and the remaining applicants live in Paralimni. The first applicant is the widow, the second and third applicants are the parents and the fourth and fifth applicants are the sisters of Mr Anastasios (Tassos) Isaak, a Greek Cypriot, who died on 11 August 1996.

8. The deceased, Anastasios Isaak, participated in a demonstration organised by the Cyprus Motorcycle Federation (CMF) that took place on 11 August 1996 at several points of the United Nations (UN) buffer zone east of Nicosia, including the area of Dherynia. The demonstration, details of which are in dispute between the parties, was the subject of a report by the UN Forces in Cyprus (UNFICYP) (report of 15 August 1996) and by the UN Secretary General (report S/1196/1016 of 10 December 1996).

### A. The applicants’ version of the facts

#### *1. Background to the demonstration*

9. The demonstration was organised by the CMF and was 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” (“TRNC”) announced that in the event the demonstration took place, they would be organising “counter-rallies” with the participation of the Turkish extremist “Grey Wolves” group and that they would fire at Greek-Cypriot demonstrators. Throughout the relevant period the Government of Cyprus and the competent authorities monitored developments and were in constant consultation with the UN. On 11 August 1996, in the morning, following an urgent appeal by the UN Secretary General, a meeting was held under the Chairmanship of the President of the Republic and it was decided to cancel the final part of the rally. Consequently, the President of the Republic made a special plea to the motorcyclists to disperse peacefully.

10. Notwithstanding that plea, on 11 August 1996, a group of motorcyclists and other civilians acting spontaneously proceeded to various points along the UN buffer zone. In the meantime, the Cypriot police had taken tight security measures in order to prevent the motorcyclists from entering the buffer zone.

## *2. The demonstration*

11. Anastasios Isaak was part of the above-mentioned group. He had joined the rally with a friend on his motorbike.

12. At about 2.30 p.m. the motorcyclists, including Anastasios Isaak, arrived at the Dherynia roadblock, where they left their motorcycles and proceeded to cross the National Guard ceasefire line on foot, after breaking through the police and UN cordon. The demonstrators, who were unarmed, entered the buffer zone.

13. Behind the ceasefire line of the Turkish forces, a mob gathered, comprised of Turkish-Cypriot and Turkish civilians, many of them carrying hunting rifles and air guns, iron bars, wooden sticks, batons, stones and catapults. There were also many Turkish soldiers and “TRNC” policemen armed with automatic and other military weapons. According to the report by UNFICYP, the Turkish forces allowed about 1,000 persons in buses to pass through their 3 km military zone and assemble there. Some of them belonged to the “Grey Wolves” organisation.

14. Between approximately 3 p.m. and 3.30 p.m. many stones were thrown on both sides. Shots were fired against the Greek-Cypriot demonstrators, some of whom suffered injuries as a result.

15. Between 3.30 and 4 p.m. the mob in the occupied area entered the buffer zone. They were armed with long sticks, batons and iron bars. At approximately 4.30 p.m. a group of the Turkish mob, together with uniformed policemen, managed to isolate several Greek-Cypriot demonstrators whom they started beating. A group of about 15-20 persons, including five uniformed policemen, surrounded Anastasios Isaak, who had been isolated in the buffer zone and was unarmed. Anastasios Isaak was thrown to the ground after having being chased. During a period of approximately five minutes he was kicked and beaten continuously on every part of his body and his head with metal and wooden batons. There were in total eight “TRNC” police officers in the vicinity.

16. When the UNFICYP police officer Frank Flood tried to intervene and started pushing some of the attackers away, Anastasios Isaak was already unconscious with blood coming out of his mouth and nose. Officer Flood was also attacked from behind. According to Officer Flood's statement (see paragraph 29 below), there had been approximately twelve people surrounding Anastasios Isaak at that moment, including a number of uniformed policemen. When the attackers eventually moved away, Officer Flood tried to trace signs of life. As the officer stood up, one of the attackers threw a large stone at Anastasios Isaak's head. This struck Anastasios Isaak on the right hand side of his head, causing him to jerk. The attacker then ran away.

17. UNFICYP officer Sergeant Lorraine Stack, who had been helping out another Greek-Cypriot demonstrator a few metres away, went to Officer Flood's assistance. The two UNFICYP officers then dragged Anastasios Isaak's body to the area controlled by the Cypriot Government. Greek-Cypriot demonstrators then took the body and put it in a car. The car was driven towards the guard room of the National Guard and Anastasios Isaak was transferred to Paralimni Hospital. On the way to hospital Anastasios Isaak had no pulse and was not breathing, despite the efforts of the medical staff in the ambulance. At the hospital the doctors' efforts to revive him continued but to no avail. Anastasios Isaak was pronounced dead at the hospital. His body was then transferred on the same day to Larnaca General Hospital.

### *3. The investigation into the killing*

18. On 12 August 1996, members of the police, escorted by members of UNFICYP and State pathologists Mr P. Stavrianos and Mr S. Sophocleous, visited the scene of the incident and carried out an examination. During this examination several exhibits were photographed and recorded on video by the police. UNFICYP Sergeant Dale Roberts examined the scene of the incident and detected drops of blood stains on the ground and on a stone. Various objects were found such as glass marbles, metal bars, shotgun cartridges, wooden sticks, blood stains on a rusty metal can and plate fragments, which were all taken as exhibits. Soil stained with blood was also recovered for further examination.

19. On 13 August 1996 Professor Peter Vanezis, from the Department of Forensic Medicine and Science of Glasgow University, arrived in Cyprus to perform the post-mortem examination. On the same day and before the post mortem, Professor Vanezis visited the scene accompanied by State pathologists Mr P. Stavrianos and Mr S. Sophocleous and members of the police. The team was escorted by members of UNFICYP. During the examination further exhibits were found, such as blood stains, a blood-stained piece of wood and a piece of piping. All the exhibits were photographed and recorded on video by the Cyprus police.

20. On the same date a post-mortem examination was performed by Professor Vanezis, assisted by two State pathologists. Members of the police and UNFICYP were also present. The entire process of the examination was photographed and recorded on video. During the examination various exhibits were taken by Professor Vanezis, which were later delivered by the police to him in Glasgow for further laboratory analysis.

21. According to the post-mortem examination, the cause of death was multiple blunt trauma to the head. The same conclusion appeared in the preliminary post-mortem report issued by Dr M. Enk of UNFICYP and also in Professor Vanezis's final report issued on 17 September 1996. Furthermore, according to the report issued on 9 September 1996 by Dr John S. Oliver, Senior Lecturer in Forensic Medicine (Toxicology) in the Department of Forensic Medicine and Science of the University of Glasgow, the results of the analysis of the blood and urine samples of Anastasios Isaak for alcohol and drugs were negative.

22. The forensic examination carried out by UNFICYP found that the blood on the rusty can, on the stone, in the soil and on the shirt worn by Officer Frank Flood during the incidents belonged to the same blood group as that of Anastasios Isaak.

## **B. The Government's version of the facts**

### *1. Background to the demonstration*

23. The demonstration was organised by Greek Cypriots as an alleged motorcycle rally and began on 1 August 1996 in Berlin. This rally was actively supported by the Greek-Cypriot authorities and had extensive media coverage. The aim of the rally was to forcibly enter the buffer zone, cross the ceasefire line and enter "TRNC" territory illegally in order to meet at the most northerly town of Kyrenia at all costs. As a result of the aggressive conduct of the organisers, tensions arose on both sides of the border. The Greek-Cypriot administration did nothing to prevent the rally in spite of appeals by the Turkish-Cypriot side and the UN Secretary-General. In view of this, the Turkish-Cypriot side announced that it would stop such provocative, hostile and aggressive action at its borders in order to prevent danger to the lives and properties of its citizens.

24. Upon representations from UNFICYP as to the possibility of such demonstrations having serious consequences, the President of the Republic of Cyprus issued a statement on 11 August 2006 declaring that the demonstrations had been prohibited and appealed to the demonstrators to disperse. Acting upon this, the Turkish-Cypriot demonstrators started to disperse peacefully.

### *2. The demonstration*

25. Nonetheless, on 11 August 1996, Greek-Cypriot demonstrators were involved in violent incidents at various places along the ceasefire lines within the UN buffer zone. Over a thousand Greek-Cypriot motorcyclists and demonstrators arrived at Dherynia escorted by the Greek-Cypriot police. The latter allowed the demonstrators to advance and to enter the UN buffer zone up to the border with the "TRNC". The UN personnel were unable to prevent the demonstrators' unauthorised entry into the buffer zone and to keep them under control. The situation then got out of control as Greek-Cypriot demonstrators threw stones and missiles and fired towards the counter-demonstrators. Skirmishes took place between the Greek-Cypriot mob and a group of Turkish-Cypriot counter-demonstrators, when the former crossed into the buffer zone and consequently into the Turkish-Cypriot-controlled area.

26. As a result of the clashes both Turkish-Cypriot and Greek-Cypriot demonstrators were injured. Anastasios Isaak was the leader of the group of Greek Cypriots who had entered the UN buffer zone and approached the barbed-wire fence at the Turkish Cypriot ceasefire line at Dherynia shouting abuse and throwing stones from close range at a line of Turkish-Cypriot policemen on the other side of the fence. One of the stones hit a policeman who was wounded on the temple and fell to the ground, bleeding profusely. It had not been possible for the Turkish-Cypriot police to prevent Turkish-Cypriot groups of civilians from entering the buffer zone to pursue the Greek Cypriots. The Turkish-Cypriot policemen also entered the buffer zone to bring back the Turkish Cypriots who had already gone into that area. However, Anastasios Isaak, who was a strong and well-built man, continued his aggressive attitude against the Turkish-Cypriot group, including the police, throwing stones and hitting them with a stick. Skirmishes continued between the Greek-Cypriot and the Turkish-Cypriot demonstrators, resulting in the unfortunate death of Anastasios Isaak, who had become entangled and trapped in spiral barbed-wire barriers that had been put up temporarily by the UN force and had prevented his escape from that area.

### **C. Documents and materials submitted by the parties**

#### *1. Documents and materials submitted by the applicants*

##### **(a) Report by UNFICYP concerning the demonstration**

27. In its report of 15 August 1996 UNFICYP set out the facts concerning the demonstrations held on 11 August 1996. The relevant extracts read as follows:

“8. The most serious incident took place in Dherynia. On Sunday morning, a peaceful demonstration by some 250 Greek Cypriots took place. They entered the United Nations buffer zone and requested to deliver a petition to the Turkish-Cypriot checkpoint. When the latter refused to receive the petition, the demonstrators left the United Nations buffer zone, but remained in the area. At 14.30 hours, some 300 motorcyclists together with some 700 persons in vehicles escorted by Cypol [Cyprus police] arrived at the NG [National Guard] ceasefire line checkpoint in Dherynia. Cypol deployed along the NG ceasefire line but left the checkpoint unattended, thus enabling the demonstrators to enter the United Nations buffer zone unimpeded.

9. In the meantime, the Turkish forces had allowed some 1,000 persons in buses to pass through their 3 km deep military zone and to assemble along the TF [Turkish Forces] ceasefire line, including persons carrying the flag of the Grey Wolves who had come from Turkey.

10. The situation soon became violent, after Greek-Cypriot demonstrators entered the buffer zone and approached the TF ceasefire line to provoke the TF, the TCPE [Turkish-Cypriot Police Element] and demonstrators assembled there with verbal abuse and throwing stones. Cypol was not effective in controlling the Greek-Cypriot demonstrators.

11. At about 16.00 hours, the Turkish Forces allowed the Turkish-Cypriot demonstrators to enter the United Nations buffer zone armed with bats and iron bars. The Turkish-Cypriot demonstrators, joined by the Turkish-Cypriot Police, proceeded to pursue the Greek Cypriots and mercilessly beat all those who they were able to catch. At the same time, there was shooting, including by Turkish-Cypriot police, from behind the Turkish Forces ceasefire line towards the Greek-Cypriot demonstrators.

12. During this period, a Greek-Cypriot demonstrator, Anastasios Isaak, was beaten to death by a number of Turkish-Cypriot demonstrators, including three Turkish-Cypriot policemen. By 18.00 hours the situation began to calm down. In addition to the one dead, it was reported that some 54 Greek Cypriots and 17 Turkish Cypriots were injured. 12 UNFICYP personnel suffered injuries.

13. The UNFICYP investigation revealed conclusively that the killing of Anastasios Isaak had occurred some 50 metres from the scene shown on television in which three Greek Cypriots were being severely beaten by Turkish-Cypriot demonstrators while helplessly entangled in barbed wire. Two UNFICYP Irish Civilian Police had done their best in trying to rescue Anastasios Isaak at considerable personal risk.

14. The two United Nations Civilian Police had observed two Greek-Cypriot demonstrators being set upon by two groups of Turkish-Cypriot demonstrators who proceeded to beat them with brutal force. The two United Nations Police went to the assistance of one of the Greek Cypriots and managed to facilitate his escape. When they turned to the second Greek Cypriot (Isaak), and were finally able to push aside the Turkish Cypriots, including three Turkish-Cypriot policemen, who were still beating him, it was too late. The location of the killing inside the buffer zone was about 95 metres from the National Guard ceasefire line and about 32 metres from the Turkish Forces ceasefire line.

15. A video broadcast on 'Euronews' *inter alia* clearly shows the killing of Anastasios Isaak and the intervention of the two United Nations police. The autopsy, attended by UNFICYP, which was performed later in the afternoon of 13 August, revealed that Anastasios Isaak died of 'multiple blunt trauma to the head'. UNFICYP has completed the collection of the evidence at the scene of the crime and is in the process of completing its investigation in cooperation with Cypol..."

**(b) Statements taken by UNFICYP**

28. Following the events, UNFICYP took statements from its officers who were on duty at the Dherynia checkpoint.

*(i) Statement by Garda (Police Officer) Frank Flood*

29. The witness was on duty at Dherynia checkpoint on 11 August 1996 between 3 p.m. and 8 p.m. In his statement of 13 August 1996 he reported, *inter alia*, the following:

"... At approximately 4.30 p.m. I observed approximately 100 Turkish-Cypriot protesters enter the buffer zone. They ran towards the Greek-Cypriot side of the buffer zone. They were accompanied by a number of TCPE policemen and Turkish Military personnel in camouflage uniform. I observed a number of Greek-Cypriot men running from the Turkish-Cypriot crowd in the direction of UN OP143. The Turkish Cypriots were armed with sticks and large batons. I observed one man being caught and beaten to the ground by the Turkish-Cypriot crowd. This man was immediately surrounded and attacked while he was on the ground. I would describe this man as having long black hair tied into a pony tail. He was wearing a black sleeveless jacket and dark trousers. I rushed forward to attempt to assist him. As I went forward I was accompanied by Sergeant Carney and Sergeant Stack. I heard Sergeant Carney shout at a TCPE policeman to leave the buffer zone. This policeman was armed with a metre-long baton and a riot shield. He appeared to hesitate for a moment but then he moved towards the group of people who were attacking the man on the ground. I moved into this group, Sergeant Stack was beside me. We pushed a number of people away from the man on the ground. I was struck by the baton of a TCPE policeman on my right shoulder. I am unable to describe this policeman except that he was wearing uniform. Eventually we managed to clear a small space around the man on the ground and Sergeant Stack managed to get this man on his feet while I pushed the crowd back. I then observed another man being knocked to the ground approximately 10 metres away. I observed that he was being kicked, punched and struck by a number of people including TCPE policemen. Sergeant Stack was pushing the first man towards the Greek-Cypriot side of the buffer zone. I ran over to assist the second man. I would describe this man as wearing a white T-shirt and faded blue jeans. As I approached this man I observed that he appeared to be unconscious and there was blood coming from his nose and mouth. I pushed one man away from the man on the ground and shouted at the crowd 'Stop. You'll kill him.' I was attacked from behind. There were approximately 10 or 12 people around the man on the ground at this stage including a number of TCPE policemen. I pushed some of these people away and eventually the attackers moved away. I briefly checked the man on the ground for signs of life. I observed no sign of life. I stood up and as I did so I observed a man who was wearing a grey sleeveless T-shirt, he had black hair and was approximately 5'5" in height, I would not be able to identify this man if I saw him again. This man had a large stone, held in both his hands, raised above his head. This man threw the stone at the man on the ground. The stone struck the man on the ground on the right hand side of his head causing him to jerk. The man who threw the stone immediately turned and ran away. I observed that the crowd of attackers appeared to be returning. I lifted the man on the ground into a sitting position and dragged him a short distance. Sergeant Stack came to my assistance and assisted me in dragging the man towards the Greek side of the buffer zone. We had covered

a distance of about 30 metres when I was attacked by a group of 5 or 6 Greek Cypriots. I was knocked to the ground and the man we were dragging was taken away from us. I moved back a short distance and I observed the injured man [being] taken towards the Greek-Cypriot side of the buffer zone...”

(ii) *Statement by Garda Sergeant Lorraine Stack*

30. The witness was on duty at Dherynia checkpoint on 11 August 1996 from 8 a.m. In her statement of 13 August 1996 she reported, *inter alia*, the following:

“...At approx. 03.30 hrs the people on the Turkish side of the CFL [Ceasefire Line] began to enter the BZ [Buffer Zone] in groups of 50 approx. I saw them charge at civilians who, after running towards the Turkish CFL, were running towards the NGCFL [National Guard ceasefire line] heaving stones and missiles. The people from the Turkish side had long sticks and batons and began savagely beating any civilian they could catch. I saw TCPE members enter the BZ with uniform and beat the civilians already in the BZ who were from the NG side. There was no difference between the behaviour of the Turkish civilians in the BZ and the TCPE there in uniform. They acted like a mob beating severely any person they could catch from the other side who was in the BZ. Again I ran to numerous incidents, however, these were spread over a large area of ground in the buffer zone. It was approx. 60 metres in depth and 200 metres in length. The attacks were sporadic again, the groups from the Turkish side would return to their CFL and regroup. These attacks were very violent. I was standing approx. 40 metres from the Turkish ceasefire line during these times changing position as the missiles were being aimed at the civilians close to me. Throughout these incidents I could hear shots being fired from the Turkish CFL, again not continuous but sporadic. This scene continued until approx. 17.00 hrs. At approx. 16.30 hrs I was standing approx. 40 metres from the Turkish ceasefire line in the Buffer Zone and approx. 40 metres from the road that links the Turkish Forces checkpoint with the National Guard check point at Dherynia. In front of me I saw a group of about 15 people chase a person (civilian) and begin to beat him with sticks and batons. I ran to his assistance. The group of approx. 15 were dressed in TCPE uniform and civilians from the Turkish side. The man beaten was from the NG side and he was attempting to get away. I saw him being beaten to the ground, he was kicked continuously and beaten savagely on the head and body. I got to him and saw Police Officer Flood to my left. I went over to him and pushed the attackers back. I was also assaulted by the attackers during this, however, the blows from the sticks that hit me on my arms and back, were not intended for UN personnel. I saw at least two TCPE in uniform there and when they desisted on seeing us the rest of the group began to move back. ... I pushed him towards the NGCFL and he then began running, ... As I turned to stop any more attackers I saw Police Officer Flood attempting to lift a person off the ground. It was a short distance forward towards the TCFL [Turkish-Cypriot Ceasefire Line] I went to his assistance. I looked at the man’s face and it was my opinion at the time that he was dead. I shouted (noise level) at PO Flood: ‘Give me half of him, we’ll drag him.’ At this time there were some people with batons in front of us. We dragged him back approx. 30 metres towards the NGCFL ensuring he was not beaten again. Approx. 30 metres back we were met by some civilians from the NG side. They verbally abused us and pushed us taking the body from us. Going to NGCFL we moved away slowly from them after letting go of the body. I would describe this man as follows: - 25 yrs of age approx., heavy built approx. five foot 10 inches. He had a stubbly face, he had long black hair and he was wearing jeans and a white t-shirt. He was very pale at the time and there was blood coming from his head, nose and mouth. There were no life signs during this removal. I went back to the scene of more incidents. ...

The times I have written into this statement are approximations. At 7.10. pm I went to Paralimni Hospital and viewed a body there. I can identify this body as being the second man whose assistance I went to and carried back 30 metres in the direction of the NGCFL. I spoke with Supt. Anastassiou of CYPOL who gave me the deceased name as being Tassos Isaak from Costa Palma, Paralimni. I also identified this body to my Deputy Commander Superintendent Cosgrave as being the man I dragged out of the Buffer Zone, who was in my opinion dead. ...”

(iii) *Statement by Sergeant John Carney*

31. The witness was on duty at Dherynia checkpoint on 11 August 1996 from 8 a.m. In his statement he reported, *inter alia*, the following:

“...At approximately 4.25 p.m. I observed a TCPE member who was armed with a baton assault a man who was dressed in blue jeans and a white t-shirt. I now know this man to be Anastasios Isaak. PO Frank Flood was near me at this moment. I ran towards the TCPE member and called out to him ‘You are a policeman, stop’. I shouted this at him several times. He then stopped. I was approx. 10 metres from this policeman, Anastasios Isaak ran to my right towards the road between OP 143 at the TKCYP [Turkish-Cypriot]



checkpoint. He was being pursued by a number of TKCYP civilians armed with long sticks and other weapons including metal poles. I ran towards where Anastasios Isaak was when a person whom I presume was a TKCYP attempted to assault me with a metal pole. I swerved to avoid him. He ran off. I then observed the same TCPE member run towards where Anastasios Isaak was being pursued by other TKCYP civilians. He was being continually hit from behind on the head and on the back by these people with wooden and metal poles. I observed the TCPE member also strike Anastasios Isaak with his baton. I was running towards this mob when I was struck by several missiles on my left hand side. I was then hit from behind with a plastic bottle of water. Two GKCYP youths then came from my side and knocked me to the ground. They kicked me several times while I was on the ground. I managed to get to my feet. These youths were shouting at me 'Why don't you save this man, you mother-fucking UN bastard?' They repeatedly kicked me and shouted abuse. Then a youth on a four wheel yellow motorcycle drove straight at me and struck me on my left-hand side. I was knocked to the ground. He turned his motorcycle and drove at me again. I got to my feet and he drove past me and went towards the GKCYP CFL. I looked towards where Anastasios Isaak was, he was surrounded by TKCYP civilians and the TCPE member who I had confronted a short while previously. There were other TCPE members and TF in military uniform. Anastasios Isaak was being repeatedly hit with batons and sticks by civilians and TCPE and TF. They also kicked him savagely on the ground. I saw PO Frank Flood go towards this mob. They began to disperse. I then was again confronted with several GKCYP youths who kicked and pushed me. They screamed abuse at me shouting 'why do the UN not help the GKCyps?'. I then observed Sgt Stack and PO Flood drag Anastasios Isaak to safety. A mob then took him from Sgt Stack and PO Flood. All this time the noise level was intense, missiles were being continually thrown from both sides..."

(iv) *Statement by Superintendent M. Cosgrave*

32. The witness, the deputy commander of the Irish Civilian Police (IRCIVPOL), was on duty at Dherynia checkpoint on 11 August 1996 from 8 a.m. In his statement he reported, *inter alia*, the following:

"...At about 4.20 p.m. I saw a man running along horizontally with the patrol track leading from UM OP 142. As he ran he was hit several times on the head by a group of four to five people who were running after him. He eventually fell to the ground and was kicked and beaten to the ground by the group who included at least one uniformed Turkish policeman. I was about 20 metres from this incident as it unfolded. There was continuous shouting and severe noise as both groups chased each other in the BZ. I moved towards the man on the ground in an effort to save his life. I also saw that Sgt Lorraine Stack was with this group and moved towards the injured man. As this stage Sgt Lorraine Stack and Garda Flood removed the injured man and he was taken away by his friends. I now know this man to be Anastasios Isaak, DOB [date of birth] 10/2/71 of Costa Palama 13, Paralimni. The Turkish police moved into the buffer zone and with the assistance of UN personnel the Turkish demonstrators were pushed out of the BZ and on to behind the CFL. At that stage the Greek demonstrators were moving back towards the Greek CFL with the assistance of UN personnel.

...

I then identified the area where the injured person was attacked and sometime later I was informed that he had died. At 7.10 p.m. accompanied by Sgt Lorraine Stack and Sgt George Kulmer AUSCON [Austrian Contingent], photographer, I went to Paralimni Hospital where the body of Anastasios Isaak was lying. I met the State Pathologist, Dr Panicos Stavrianos and D/Supt. Th. Anastasiou CID Police Headquarters Nicosia. I directed the photographer George Kulmer to take photographs of the body, which he did. ..."

33. Furthermore, in his statement, Superintendent M. Cosgrave noted that the following day he had visited the scene of the incident at Dherynia checkpoint with State pathologists Dr Panicos Stavrianos and Dr Sophoclis Sophocleous and members of the Cyprus police squad. He pointed out that at that stage the scene had been preserved and had not been examined or interfered with. He also noted that he had measured the area where the body had been lying – it had been 32 metres from the Turkish ceasefire line, 41 metres from the track in front of UN OP 143 and 95 metres from the wire on the Greek ceasefire line. He stated that on 12 August 1996 Dale Roberts, a UN photographer, had examined the scene and had taken samples from the area and that on 13 August 1996 he had accompanied

Dr P. Vanezis, the State pathologist and members of the police squad to the scene of the incident. He had then attended the post-mortem examination.

**(c) Statements taken by the Cyprus Police**

34. Between 11 and 29 August 1996 statements were taken by the Cyprus police at the Dherynia police station from ten persons who had been present at the Dherynia checkpoint during the incidents of 11 August 1996. These witnesses were Stelios Archimandritis, Antigonos Kaoulla, Panicos Christodoulou Tylliros, Georghios Aresti, Zenon Tavrou, Michalis Andrea Neocleous, Stephanos Stephanou, Floros Adamou Constanti, Zacharias Georghiou Sachariou, and Constantinos Kyriakides.

35. Furthermore, statements were taken from two Greek-Cypriot police officers concerning the investigation into the killing of Anastasios Isaak.

*(i) Statement by Constantinos Kyriakides*

36. The witness is a photographer who was present at the Dherynia checkpoint on 11 August and had taken photographs of the incident. In his statement of 29 August 1996 he claimed, *inter alia*, the following:

“...I then withdrew heading southwards towards our side and then saw the Turks from a distance of 40 metres chasing a Greek Cypriot wearing jean trousers and a white sweater. I approached within 20 metres and started to take photos of the incident. I approached within a distance of 20 metres because the lens I had on my camera at the moment could not take photographs from a long distance. I started taking photographs from the moment they chased him until the moment they stopped beating him and UN men took him away.

I took 16 photographs and another 4 while he was being taken by the UN man to the place the Greek Cypriots were.

From what I noticed, and this is shown also in the photographs I took, about 15 persons, most of whom wore civilian clothes and many wore the uniform of the pseudo-State, took part in the beating up and murder of the youth, who as I told you in my previous statement, was Tassos Isaak. They were armed with clubs, iron bars and water pipes and stones.

At first they chased him and while they were chasing him in a big stride he lost his balance and fell down. In his effort to defend himself he caught a Turk by the leg. The Turk sat on the ground and seized Tassos by the hair, while they were on the ground several hit him with offensive objects they held. Among them there were some ‘policemen’ with their batons.

At some moment I noticed that one of the Turks in civilian clothes held a stone in his right hand the size of an orange and was on the point of throwing it on the head of Tassos. I did not notice whether the Turk completed his effort. I was not able to photograph that scene. When Tassos was finally moved by the UN men and handed to the Greek Cypriots to be transported to the hospital, I left. ...”

*(ii) Statement by Police Inspector Andreas Spatalos*

37. The witness is a police inspector serving in the Central Information Service as second in command of Division A. On 9 December 1996 he gave a statement concerning the investigation into the killing of Anastasios Isaak as follows:

“As part of my duties I received information from reliable sources according to which the following Turkish settlers and Turkish Cypriots are among the perpetrators of the murder of Tassos Isaak which was committed on 11.8.1996, at Dherynia:

1. Fikret Veli Koreli, Turkish Cypriot, Identity Card No. 421344
2. Hasim Yilmaz, Turkish settler
3. Neyfel Mustafa Ergun, Turkish settler
4. Polan Fikret Koreli, Turkish Cypriot

5. Mehmet Mustafa Arslan, Turkish settler

6. Erhan Arikli, Turkish settler.

The above persons have been identified also from a comparison with photographs, an album of which I handed on 20.11.1996, together with a relevant explanatory memorandum, to the Police Division C Commander.”

38. An explanatory memorandum was attached to the statement containing additional information and documents about the persons identified.

(iii) *Statement by Acting Chief Superintendent N. Papageorghiou*

39. The witness is a police superintendent and commander of Police Division C at the Police Headquarters. On 11 August 1996 at about 6.45 p.m. he visited the scene of the killing of Anastasios Isaak with a team of men from CID Headquarters and the Forensic Service. In his statement he noted that he had given instructions on the spot to the Acting Superintendent in charge of CID (E) Headquarters concerning the investigation of the killing, asking that the scene be photographed and video-recorded. He had also attended the post-mortem examination of the corpse of Anastasios Isaak at Larnaca Hospital.

40. In his statement the witness further noted, *inter alia*, that he had received copies of two VHS videotapes; one on 3 September 1996 from Worldwide Television News (WTN) of London and one on 25 November 1996 from Reuters of London. These contained scenes from the demonstration and the killing of Anastasios Isaak.

**(d) Post-mortem examination report**

41. Professor Peter Vanezis, from the Department of Forensic Medicine and Science at Glasgow University, carried out a post-mortem examination at Larnaca General Hospital on 13 August 1996 on the body of Anastasios Isaak. In his report dated 17 September 1996, in which he summarised his findings, Dr Vanezis concluded the following:

“1. The body was that of a well-nourished man with no natural disease that could have contributed to or caused death at the time.

2. He had suffered multiple blunt impacts to the body, predominantly the head and the trunk.

3. From the characteristic nature of the injuries, the instruments causing them were most likely cylindrical shaped sticks and/or metal piping.

4. There were also injuries which had characteristics indicative of them being caused by square metal objects as found at the scene.

5. The marks on the arms indicated that he had tried to defend himself.

6. The severity and multiplicity of the injuries to the head indicate that he would have lost consciousness at or within a very short time of the infliction and died soon afterwards.

7. The injury to the genital area is consistent with a kick or a blow from an object as described above, to that region.

Cause of death

1a: MULTIPLE BLUNT HEAD TRAUMA.”

**(e) Sketch maps and photographs**

42. The applicants provided the Court with a sketch plan of the scene of the killing of Anastasios Isaak drawn up by the UN and a print of an aerial view of the location of the killing.

43. They also submitted a total of 37 photographs that had been taken by Mr Constantinos Kyriakides, a photographer, on 11 August 1996 during the events in Dherynia (see paragraph 36 above). Photographs numbered 18 to 37 depict the incident concerning Anastasios Isaak in chronological order.

44. In photograph 19 Anastasios Isaak is seen falling to the ground while civilian demonstrators are approaching him with batons and/or sticks.

45. Photographs 20 to 33 show Anastasios Isaak on the ground being beaten with batons, kicked on the head and other parts of his body, his hair being pulled and his head being banged on the ground. The photographs show “TRNC” policemen and members of the Turkish and/or Turkish-Cypriot police/military in camouflage uniform standing behind the Turkish ceasefire line.

46. In photograph 20 two UN officers can be seen helping a demonstrator lying on the ground, just a few metres from where Anastasios Isaak is being beaten. The photograph shows that four uniformed “TRNC” policemen and a Turkish or Turkish-Cypriot police/military officer in camouflage uniform were present in the vicinity.

47. In photograph 23 the above-mentioned police/military officer in camouflage uniform can be seen joining the civilian demonstrators that are beating Anastasios Isaak and appears to be passing his metal baton over to one of them.

48. In photograph 24 this civilian is holding the baton high up over Anastasios Isaak while the officer in camouflage uniform is standing next to him. The photograph shows five uniformed police officers in the vicinity, one of whom, with a baton, is making his way through the civilians surrounding Anastasios Isaak.

49. In photograph 25 the officer in camouflage uniform appears to have taken his baton back, whereas the police officer is beating Anastasios Isaak with his baton.

50. Photograph 26 shows the above-mentioned police officer beating Anastasios Isaak with his baton and the officer in camouflage uniform holding his baton over Anastasios Isaak. In photograph 27 the officer in camouflage uniform, the above-mentioned police-officer and a second police officer are beating Anastasios Isaak with their batons. In photograph 28 they are joined by a third police officer. In both photographs 27 and 28 these four officers are seen beating Anastasios Isaak with their batons together with the civilian demonstrators. Another four officers can be seen in the vicinity.

51. In photograph 29 the officer in camouflage uniform can be seen leaning over Anastasios Isaak with his baton.

52. In photographs 30 to 32 a civilian demonstrator in front of the officers is seen kicking Anastasios Isaak on the head.

53. In photographs 32 and 33 a UN officer can be seen intervening. This officer can also be seen in photographs 26 to 31 in which he is trying to make his way to Anastasios Isaak. Photograph 33 shows the UN officer taking hold of the arm of the officer in camouflage uniform holding the baton.

54. Photographs 34 and 35 show two UN officers dragging the body of Anastasios Isaak.

55. Photographs 36 and 37 show Greek-Cypriot demonstrators taking the body away.

**(f) Video recording by Reuters**

56. The applicants submitted a videotape received from Reuters covering the incident. This video recording contains, *inter alia*, scenes from the incidents at Dherynia and part of the beating of Anastasios Isaak by civilian demonstrators, the “TRNC” police and the Turkish or Turkish-Cypriot police/military officer in camouflage uniform. Furthermore, the recording shows a UN officer intervening with the aid of two policemen, one of whom is holding a riot shield, pushing back the crowd around Anastasios Isaak. The crowd then disperses. While the UN officer is standing over Anastasios Isaak, two civilians approach. One is seen throwing a stone towards Anastasios Isaak’s head and one of them a stone/rock at his mid to lower body.

*2. Documents submitted by the Government*

**(a) UN Secretary-General’s Report S/11900 of 8 December 1975**

57. The Government provided a copy of the above report pertaining to the UN Operation in Cyprus. This included a map showing the deployment of UNFICYP in December 1975 and the Forward Defence lines of the Turkish Forces and the Cypriot National Guard.

**(b) UN Secretary-General’s Report S/1996/1016 of 10 December 1996**

58. In his report on the UN Operations in Cyprus for the period from 11 June to 10 December 1996, the UN Secretary-General stated, *inter alia*, the following:

“1. ... Tension arose in early August 1996 in anticipation of a demonstration organised by the Cyprus Motorcycle Federation. First announced in January 1996, it was to take the form of a symbolic motorcycle ride, undertaken by Greek Cypriots and persons from other countries, originating in Berlin and ending in Kyrenia on 11 August. This meant that the demonstrators intended to cross the United Nations buffer zone as well as the Turkish forces ceasefire line, a course of action which was bound to cause the utmost provocation. During the period leading up to the demonstration, the media on both sides publicised a large number of increasingly acerbic statements by the demonstration’s organisers and by Greek-Cypriot political leaders, as well as counter statements by the Turkish-Cypriot side.

2. During this period, the United Nations was in frequent contact with the government authorities, including the Cyprus Police, urging them to prevent any violation of the ceasefire lines or of the United Nations buffer zone. On the eve of the demonstration, I appealed publicly to the Government of Cyprus to take effective measures in exercise of its responsibilities to prevent any unauthorised entry into the United Nations buffer zone.

3. On the morning of 11 August, however, the demonstrators proceeded from the stadium in Nicosia, where they had assembled, to points east of Nicosia. Cyprus police were on hand, but remained largely passive. In the meantime, a major counter-demonstration had begun in north Nicosia, including a significant number of members of the ‘Grey Wolves’, an ultranationalist Turkish organisation, who had arrived from Turkey.

4. The Greek-Cypriot demonstrators entered into the United Nations buffer zone at several points, approached the ceasefire line of the Turkish forces, and clashed with Turkish troops and Turkish-Cypriot police as well as with Turkish-Cypriot counter-demonstrators. The most serious clash occurred near Dherynia, where a large group of Greek Cypriots were allowed to cross the National Guard ceasefire line. In

the meantime, the Turkish forces allowed counter-demonstrators and Turkish-Cypriot police to cross a restricted military area and to enter the United Nations buffer zone. They proceeded to beat the Greek Cypriots with batons and iron bars, killing one civilian. ...”

## THE LAW

### I. THE GOVERNMENT’S PRELIMINARY OBJECTION

#### A. The Government’s objection

59. The Government maintained that the applicants had failed to exhaust domestic remedies as required by Article 35 of the Convention, as they had not had recourse to the local remedies within the judicial and administrative system of the “TRNC”. Those remedies were effective, accessible and capable of providing redress for their complaints.

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

61. Moreover, under the Constitution the Attorney-General, who was an independent officer, could, at his discretion and in the public interest, institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the State (Article 158).

62. The Government noted that the TRNC judicial system was based on English common law and also drew principles from the continental systems of administrative law.

63. The Government challenged the third-party intervener’s argument that the rule on exhaustion of domestic remedies did not apply to human-rights violations by Turkey which took place in the territory of the Republic of Cyprus. Accepting such an argument would be tantamount to holding that Turkey would be responsible under the Convention for any violation imputable to the “TRNC” authorities without being able to redress these violations. The characterisation of the “TRNC” as a “subordinate local administration” of Turkey was merely a legal device to attribute

responsibility for “TRNC” domestic remedies to Turkey, as a Contracting Party to the Convention. The Court had addressed all legal arguments concerning the domestic remedies in the “TRNC” in the case of *Cyprus v. Turkey* ([GC], no. 25781/94, §§ 89-102, ECHR 2001-IV). It had concluded that, for the purposes of Article 35 § 1 of the Convention, remedies available in the “TRNC” should be regarded as “domestic remedies” of the respondent State. The Grand Chamber’s conclusions on this point were *res judicata*.

64. The Government pointed out that the remedies to be exhausted under the Convention included not only judicial ones, but also administrative ones. The Court had taken into account police inquiries in the “TRNC” in cases similar to the present one and had examined whether such investigations were effective and sufficient. It would be illogical to argue, as the third-party intervener had, that, in violation of the procedural aspect of Article 2 of the Convention, no inquiry had been carried out in the “TRNC” into the death of Anastasios Isaak and that the “TRNC” could not carry out such an inquiry because it was not a legal State. In any event, an inquiry had indeed been carried out. However, it had not been possible to complete it since the Greek-Cypriot authorities had refused to cooperate, claiming that such cooperation would amount to recognition. For instance, no autopsy report had been forwarded to the Turkish-Cypriot authorities. In this connection, the Government pointed out that in a criminal prosecution the State should prove its case beyond reasonable doubt and that everyone should be presumed innocent until proved guilty.

#### **B. The applicants’ arguments**

65. The applicants disputed the respondent Government’s submissions and claimed that there had been no failure on their part to comply with the requirements of Article 35 of the Convention.

66. They stressed that the “TRNC” courts had not been properly established under the law applicable in the Republic of Cyprus but had been set up by the “TRNC” in the part of Cyprus which was under illegal Turkish occupation. Moreover, the claim of the “TRNC” to statehood had been rejected not only by the UN Security Council but by every State in the world with the exception of Turkey. That being so, the institution of proceedings in the “TRNC” courts would inevitably have involved a degree of recognition by the applicants of the legitimacy of those courts and thus of the “TRNC” itself, which would amount to a denial of the sovereignty of the Republic of Cyprus over northern Cyprus. Any such action would also have been contrary to international law and in direct conflict with the applicants’ status and duties as citizens of the Republic of Cyprus. The applicants asked the Court to reconsider its conclusions in the case of *Cyprus v. Turkey* (cited above). They underlined that “TRNC” tribunals could not be regarded as “Turkish courts” and that they were not inhabitants of the “TRNC” and did not reside in its territory.

67. The applicants further asserted that even if there was in principle a duty to make use of any remedies which might exist in the “TRNC”, the courts there did not offer a remedy which was effective and available to them. Nor had the Government indicated in their observations what remedy might exist before the “TRNC” courts in respect of military activity in an area controlled by the armed forces of Turkey,

which were not subject to the jurisdiction of those courts. Moreover, at the relevant time, Greek Cypriots were not allowed to go to the occupied areas of Cyprus. It was therefore not open to the applicants to go to the northern part of the island in order to use local remedies. The total lack of any investigation into the killing showed, in itself, that there were no effective remedies available to the applicants in the “TRNC”.

68. The applicants submitted that the killing of Anastasios Isaak was not an isolated incident but stemmed, like the other killings that had occurred in the summer and early autumn of 1996, from the practices adopted by the institutions of the “TRNC” and by the Turkish forces in patrolling the ceasefire line. There was also a general reluctance to deal with allegations of involvement of State agents in unlawful conduct.

69. It was also doubtful whether the “TRNC” courts would have been independent and/or impartial. The very *raison d'être* of these courts was to support the position taken by Turkey that the “TRNC” was not a part of the Republic of Cyprus. Any action on the part of the applicants was bound to fail. In the eyes of the “TRNC”, its police and military personnel did not belong to Turkey. Its courts would therefore have refused any claim based on a different point of view. If Turkey had been named as a defendant in an action before the “TRNC” courts, the latter would have treated Turkey as a sovereign independent State, entitled to sovereign immunity.

70. Finally, the respondent Government should not be permitted to allege a failure to exhaust domestic remedies in application of the principle *injuria non oritur jus*.

### C. The third-party intervener's arguments

71. The Government of Cyprus first submitted that the rule on exhaustion of domestic remedies could not apply to human-rights violations which took place in the territory of the Republic of Cyprus. This rule should permit a sovereign State to redress by its own legal system any alleged wrong only when such a State had a relevant connection to the victim. In the present case, Turkey had violated the applicants' rights outside its lawful borders and in the territory of the Republic of Cyprus.

72. In the case of *Cyprus v. Turkey* (cited above) the Grand Chamber had erred in considering that the remedies available in the occupied area were in principle domestic remedies within the meaning of Article 35 § 1 of the Convention. This statement was based on a misunderstanding of the so-called Namibia principle.

73. In any event, even if the principles expressed in *Cyprus v. Turkey* were correct, the applicants would fall outside their scope because they were not “inhabitants of the occupied territory of the ‘TRNC’”.

74. Moreover, Turkey had failed to identify the remedies which either existed or were capable of proving redress to the applicants for the murder of Anastasios Isaak.

75. Lastly, the potential remedies had not been effective in the present case. Applicants could not be required to exhaust remedies provided by a subordinate local administration whose existence was dependent upon the control of an occupying



military power and which could not be objectively trusted to administer independent and impartial justice against the power to which it was subordinate. The respondent State had remained totally passive *vis-à-vis* clear evidence of complicity of its agents in the murder of Anastasios Isaak and had totally denied responsibility for his death. Moreover, until 2003 it had not been possible for the applicants to enter the occupied area in order to avail themselves of any alleged domestic remedy.

#### **D. The Court's assessment**

76. In its decision on the admissibility of the application the Court observed:

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

77. The Court does not see any reason to depart from its previous finding on this point, which was based on its well-established case-law.

78. The Court further observed that in their objection the Government had raised issues that were closely linked to those raised by the applicants’ complaint under Article 2 of the Convention. Consequently, it decided to join the objection concerning the exhaustion of domestic remedies to the merits of the applicants’ complaint under Article 2. It will now proceed to examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a summary, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

79. The Court first notes that the Government failed to precisely indicate the remedies which were available to the applicants, confining themselves to mentioning the existence of judicial and administrative remedies, including police inquiries. In principle, legal systems provide two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

80. As regards criminal-law remedies, the Court observes that the Government alleged that an investigation into the killing of Anastasios Isaak had been carried out by the “TRNC” authorities, but it had not been possible to complete it because of the Greek-Cypriot authorities’ refusal to cooperate. However, no documents from this alleged inquiry have been produced before the Court. Moreover, it has been pending since August 1996 without achieving any substantial result notwithstanding the existence of photographic evidence of the actual beating and killing, which could have enabled the local authorities to identify the persons involved in it.

81. The Court considers that these circumstances cast doubt on the effectiveness of the above-mentioned inquiry and that the applicants are not obliged to await its conclusion before having the merits of their case examined by the Court. The preliminary objection in this regard is thus dismissed.

82. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, it has not been shown that,

without the benefit of the conclusions of an effective criminal inquiry, the civil courts in the “TRNC” would have been able to pursue any independent investigation and would have been capable of making any meaningful findings regarding the identity of the perpetrators of assaults, even less to establish their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005; *Estamirov and Others*, cited above, § 77; and *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, § 135, 26 July 2007). In the light of the above, the Court considers that the applicant was not obliged to pursue civil remedies.

83. It follows that the Government’s preliminary objection should be dismissed.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

84. The applicants alleged that the killing of Anastasios Isaak constituted a violation of Article 2 of the Convention.

This provision 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.”

85. The Government disputed this claim.

### A. Arguments of the parties

#### 1. *The Government*

86. The Government maintained that although the death of Anastasios Isaak had been a tragic event, it had not been just a matter of an individual demonstrator being killed whilst making an innocent protest. He had died as a result of the irresponsible action of the Greek-Cypriot demonstrators with the active support of the Greek-Cypriot authorities. He had actively participated in an unlawful assembly and riot during which the Turkish-Cypriot police had taken all necessary measures to try to disperse the demonstrators. In fact, Anastasios Isaak had died after he had become entangled and trapped in a spiral barbed-wire barrier that had been put up by the UN force. This had prevented his escape. Neither the Turkish-Cypriot police nor any other Turkish-Cypriot authorities had been involved in any act that had caused his death. Furthermore, they could not have prevented it.

87. The Government alleged that the Greek-Cypriot authorities and the Greek-Cypriot Orthodox Church had sponsored and encouraged in an irresponsible manner the violent demonstrations of the Greek-Cypriot motorcyclists, aimed at violating the ceasefire lines and borders of the “TRNC”. 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 wide media coverage of the demonstration of 11 August 1996. They emphasised that the existence of the UN-controlled buffer zone separating the 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 an insufficient number of UN personnel to keep the crowd under control. Had they acted differently, or had the call from the Greek-Cypriot President to disperse the demonstrators been made earlier, the violence in the area could have been avoided.

88. The sole intention of the “TRNC” authorities had been to prevent demonstrators from making incursions into their territory, thus exercising a right secured to them in international law. They had sought to deter violent acts and they had never shown “complicity” in the demonstration.

89. The Government also alleged that the Greek Cypriots had taken their revenge by shooting in cold blood two Turkish-Cypriot soldiers on sentry duty on 8 September 1996 and that since 2003 Greek Cypriots had had free access to the “TRNC” territory upon presentation of an ID document. A plan for settling the island’s problems, proposed by the former UN Secretary-General, had been rejected by the Greek-Cypriot community in a referendum held on 24 April 2004.

90. The Government lastly observed that the “TRNC” authorities had immediately carried out a substantive inquiry into the circumstances of the incident. However, it had not been possible to complete the investigation because of a lack of cooperation by the Greek-Cypriot side.

## *2. The applicants*

91. The applicants alleged that there was irrefutable evidence (the photographs, the video footage and the statements of eyewitnesses, including members of UNFICYP) proving the direct involvement of “TRNC” policemen in the killing of Anastasios Isaak. From the photographs, eight Turkish police officers in uniform could be distinguished in the immediate vicinity of Anastasios Isaak, five of whom had participated in the killing. Furthermore, the civilians involved in the attack had been encouraged by the police officers present in the area. In fact, neither the police nor the military had made any effort to prevent the Turkish and Turkish-Cypriot demonstrators from attacking Anastasios Isaak and from beating him whilst he was lying helpless on the ground, unarmed. Only UN Officer Frank Flood had come to his aid and restrained a Turkish officer from hitting him.

92. Although it was not possible to draw up an exhaustive list of who had struck the victim, how many times or in what way, the applicants noted that they had managed to ascertain the identities of one of the “TRNC” police officers and of five of the civilians involved in the attack.

93. In the applicants' submission, the death of Anastasios Isaak was not the unfortunate result of skirmishes between the groups as alleged by the Government. In that connection, they challenged the allegation that he had been caught in barbed wire. Before he had fallen, Anastasios Isaak and his attackers had been able to move freely.

94. In the applicants' view, a State should also be held responsible under Article 2 of the Convention when its officials stood back and allowed murder to be committed in front of them and, further, when such officials actively encouraged it as in the present case.

95. In any event, the acts which had caused the death of Anastasios Isaak could not be justified on the basis of the exceptions under Article 2. It was clear that the use of force could not be considered reasonable and proportionate. In particular, it had not been justified in the defence of any person from unlawful violence. At the time of the attack, the vast majority of Greek Cypriots had left the buffer zone. When he was caught by the mob, Anastasios Isaak had been trying to escape. When the soldiers and the policemen had arrived, he was already on the ground. Nor could it be said that the "TRNC" police had been effecting a lawful arrest or preventing the escape of a lawfully detained person, as the "TRNC" police or the Turkish military forces could not be regarded as "lawful" authorities. In any case, they had not been making any attempt to arrest Mr Isaak. Under the Convention, no illegal occupying force could be justified in murdering innocent civilians simply because they were demonstrating against the occupation. Finally, there had been no insurrection or riot going on. In any event, the violence used against the victim had manifestly not been "absolutely necessary" within the meaning of the Court's case-law. In his report for the relevant period, the UN Secretary-General had concluded that the violence which had occurred along the ceasefire lines in the second half of 1996 had "included the unnecessary and disproportionate use of lethal force by the Turkish/Turkish-Cypriot side". Furthermore, the respondent State had never produced any document showing the instructions concerning the use of force in respect of the demonstrations.

96. Furthermore, despite the fact that the killing of Anastasios Isaak had taken place in front of the "TRNC" police and the identity of those involved was known or could easily have been discovered, the Government had not carried out any investigations and no one had ever been tried. The Government's allegation that an inquiry had indeed been carried out was contradictory. In the first place, it had not been explained why the existence of this inquiry had been mentioned only in the observations on the merits. Moreover, since August 2000 the applicants had provided Turkey with photographs of Mr Anastasios Isaak's killing, material evidence which would have enabled the "TRNC" authorities to identify a number of individuals involved in the murder.

97. The applicants stressed that the counter-demonstration of Turkish nationalists, including a group of "Grey Wolves", had not been intended to be peaceful. The Turkish Government had facilitated and paid for the passage of the "Grey Wolves" to Cyprus. In principle, anyone who was a member of the Turkish military and tried to enter the military zone adjacent to the ceasefire line would be

arrested. However, on 11 August 1996 the Turkish army had allowed buses containing around a thousand armed counter-demonstrators to cross this zone in order to reach the ceasefire line. The counter-demonstrators had been armed with weapons including wooden sticks, metal bars, air-rifles and hunting guns. Members of the Turkish military and the “TRNC” police had also taken part in the counter-demonstration. The “TRNC” forces had been under the command of a Turkish brigadier-general, who was himself under the command of a Turkish lieutenant-general.

98. Moreover, the killing of Anastasios Isaak had been just one of a number of incidents in 1996 in which Turkish or “TRNC” forces had killed or seriously injured Greek Cypriots and others around the ceasefire lines. This showed the total lack, on the part of the Turkish or “TRNC” forces, of any effective policy of restraint towards the use of lethal force. Furthermore, to the applicants’ knowledge, in none of these cases had the respondent State conducted an investigation or prosecution satisfying the requirements of Article 2 of the Convention. The members of the Turkish Government or military had, at the time, openly advocated a policy of using excessive force. The applicants referred to the statements of Mrs Tansu Çiller, the then Foreign Minister and acting Prime Minister of Turkey (who had stated that Turkey would “undertake whatever was required to protect [its] borders” and would “break [the] hands” of anyone who laid a finger on the Turkish flag), and of Lieutenant-General Kundakci (who had stated that Turkey was “firm in not allowing anybody to enter its territory”, that “those who force their way in get this punishment” and that “no one can cross our borders by motorcycle. Those who try pay the price. What is necessary shall be done”). These statements demonstrated that there was no prospect whatsoever of any investigation being launched by Turkey into the killings and that no punishment would be imposed on the perpetrators as their behaviour was considered to be somehow justified.

#### **B. The third-party intervener**

99. The Government of Cyprus fully endorsed the applicants’ version of facts and alleged that the strong evidence produced before the Court showed that the present case concerned the brutal murder of an unarmed Cypriot national by agents of the respondent Government. They emphasised that the UN buffer zone could not be considered a neutral area, as stated in the Court’s decision on admissibility, but part of the territory of Cyprus, in which both sides had merely agreed not to exercise military jurisdiction. Cyprus had never agreed to the control of this area by UNFICYP or to the existence of the ceasefire lines and there were no internationally recognised borders between the north and the south of the island.

100. The Government of Cyprus challenged the Turkish Government’s allegation that the demonstration of the CMF had been sponsored and encouraged by the Greek-Cypriot authorities (see paragraph 87 above). The CMF was an independent organisation which had independently promoted and organised the demonstration. The photograph of the President of Cyprus on a motorbike had been taken at a State fair. Moreover, as Cyprus recognised freedom of speech and assembly, the President had had no power to call off the demonstration. Even if the Greek-Cypriot police

might have been ineffective in controlling the demonstrators, there was no evidence that they had intentionally facilitated their entry into the buffer zone. Turkey's assertion that "the police deliberately left the checkpoint unmanned ... knowing that there were an insufficient number of UN personnel to keep the crowd under control" (see paragraph 87 above) was incorrect. On the contrary, the Government of Cyprus had tried to stop the demonstration in an attempt to calm the situation. There was no evidence that Mr Isaak had been the leader of a group of Greek Cypriots or that he had committed any acts of violence. He had been involved in the tragic episode because he had tried to save another demonstrator, who was entangled in barbed wire, from the mob and from the "TRNC" police. Mr Isaak had not had any responsibility for the events except to the extent that he had, like other demonstrators, violated the ceasefire lines and entered the buffer zone.

101. In any event, provocation and the lack of control of the demonstration could not have been the cause of Anastasios Isaak's death. He had died, as shown by the photographic and video evidence, at the hands of the Turkish mob which included "TRNC" police. The allegations concerning the alleged attack on Turkish-Cypriot soldiers (see paragraph 89 above) were irrelevant.

102. As to the allegedly incomplete inquiry carried out by the "TRNC" authorities, the Government of Cyprus noted that no reports or statements had been produced before the Court and that it had not been indicated what precise further information was needed. Turkey had been provided with all the medical and photographic evidence. It had never made any request for assistance. The reality was that Turkey had done nothing, although the applicants had even identified the persons who were beating Anastasios Isaak. The bare truth was that Turkey had not investigated the matter because its own officials had murdered the victim in combination with a vicious mob including the Grey Wolves. Therefore, Turkey had failed to carry out an investigation satisfying the requirements of Article 2 of the Convention, as interpreted by the Court in the cases of *Hugh Jordan v. the United Kingdom* (no. 24746/94, §§ 115 and 141, ECHR 2001-III (extracts)) and *Imakayeva v. Russia* (no. 7615/02, §§ 146-148, ECHR 2006-... (extracts)).

### **C. The Court's assessment**

#### ***1. The alleged killing of Anastasios Isaak***

##### **(a) General principles**

103. 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*, judgment of 27 September 1995, Series A no. 324, §§ 146-147).

104. 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).

105. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts), and *Musayev and Others*, cited above, § 142).

106. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports of Judgements and Decisions* 1998-III, § 36). The State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, judgment of 8 October 1998, *Reports* 1998-VIII, § 115).

107. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. In this context, the conduct of the parties when evidence is being obtained has to be taken into account. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see, among others, the following judgments: *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 161; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, § 68; *Tanlı v. Turkey*, no. 26129/95, § 111, ECHR 2001-III (extracts); and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII).

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

109. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Ribitsch*, cited above, § 32, and *Avşar*, cited above, § 283).

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

110. In the present case, it is not contested that Anastasios Isaak voluntarily entered the UN buffer zone, where he died. However, the parties disagreed as to the facts which caused his death. According to the applicants and the third-party intervener, he had been attacked, thrown to the ground and beaten to death by a group of at least 15 persons, including members of the Turkish or Turkish-Cypriot forces (see paragraphs 15-16 above). Conversely, the respondent Government alleged that he had become entangled and trapped in the spiral barbed-wire barriers put up by the UN force (see paragraphs 26 and 86 above).

111. The Court is unable to accept the respondent Government's version of facts on this point. It observes that it is contradicted by the witness statements produced by the applicants (see paragraphs 29-36 above). The members of UNFICYP who testified about the events of 11 August 1996 unanimously declared that Anastasios Isaak had been attacked and beaten to death by a group of counter-demonstrators and that some members of the "TRNC" police had either watched the scene passively or had participated in the beating. The Court has no reason to doubt the independence and trustworthiness of the witnesses at issue.

112. The Court further notes that the applicants' version is confirmed by photographic evidence and by the video footage of the killing (see paragraphs 42-56 above). In those images, whose authenticity has not been contested by the respondent Government, it is possible to see a group of persons, armed with sticks, surrounding Mr Isaak, who was lying on the ground. The counter-demonstrators continued to beat the victim on numerous parts of his body with the sticks for several minutes. At least four uniformed soldiers belonging to the Turkish or Turkish-Cypriot forces are



seen in the vicinity of the victim. Far from attempting to stop the beating and to protect Mr Isaak's life, these soldiers actively participated in the mob. Photographs nos. 27, 28 and 29 show the soldiers beating the victim with metal batons. Nothing in the photographs suggests that, at the relevant time, Mr Isaak was carrying weapons or that he was entangled in barbed wire.

113. Lastly, in his post-mortem examination report, Professor Vanezis concluded that the cause of death was "multiple blunt head trauma" (see paragraph 41 above).

114. These elements are sufficient to reach the conclusion that Anastasios Isaak was killed by a group of persons which included agents of the respondent Government. It remains to ascertain whether the use of force was justified under any of the sub-paragraphs of Article 2 § 2 and/or whether these agents satisfied their obligation to take preventive operational measures to protect the life of the victim, in circumstances in which it was manifestly at risk.

115. The Court notes that it cannot be said that the killing was necessary "in defence of any person from an unlawful violence". At the moment of the attack, the deceased seemed unarmed and was not attacking anyone. In any event, once he was lying on the ground, he was not posing a danger to others. Nor can it be argued that he was, at the material time, "lawfully detained" or that the use of force was "absolutely necessary" to "effect a lawful arrest". Indeed, even assuming that the intrusion into the UN buffer zone and the deceased's alleged conduct before the attack (see paragraph 26 above) could justify depriving him of his liberty, it is obvious that, being surrounded by at least ten persons, he could hardly have escaped the control of the security forces. The use of lethal force was therefore manifestly disproportionate.

116. As to the question whether the beating was justified by the aim of quelling a "riot or insurrection", the Court observes that the parties disagreed as to the nature of the Greek-Cypriot demonstration. While the applicants alleged that the demonstration was being brought under the control of the UN personnel, as the vast majority of Greek Cypriots had left the buffer zone (see paragraph 95 above), the Government argued that there had been an escalation of violence, amounting to a "riot", and that this had been the result of the inconsiderate actions of the Government of Cyprus and of the representatives of the Orthodox Church (see paragraphs 87 and 88 above).

117. It is not for the Court to determine which party should bear responsibility for the facts which gave rise to the demonstration of the Greek-Cypriot motorcyclists on 11 August 1996 and to the counter-demonstration of the Turkish nationalist groups. In the context of the present case, the only question to be addressed is whether the actual killing of Anastasios Isaak amounted to a violation of Article 2 of the Convention. At the same time, the Court cannot ignore the fact that, as the applicants also acknowledged (see paragraphs 12 and 14 above), the demonstrators had entered the UN buffer zone and were throwing stones at the Turkish forces. This led to a situation of tension where there was a danger of more violent developments.

118. However, the attack on Anastasios Isaak, one isolated demonstrator, who, according to the photographic evidence, was unarmed, could not, in itself, be seen

as a measure aimed at quelling the violence generated by the protest. On the contrary, his savage beating in front of the other demonstrators could have led to even more violent reactions by the Greek-Cypriot side. Moreover, it does not appear that the action of the Turkish or Turkish-Cypriot forces was co-ordinated with the members of UNFICYP present on the scene; on the contrary, the latter tried to stop the soldiers' participation in the mob. In any event, the Court reiterates that the use of force should be "absolutely necessary" to pursue one or more of the aims laid down in paragraph 2 of Article 2 and that a potential illegal or violent action by a group of persons cannot, as such, justify the immediate killing of one or more individuals.

119. Lastly, the Court cannot ignore the fact that the Turkish or Turkish-Cypriot soldiers actively participated in the beating without making any attempt to apprehend Anastasios Isaak or to prevent the counter-demonstrators from continuing their violent behaviour. Thus, they manifestly failed to take preventive measures to protect the victim's life.

**(c) Conclusion**

120. In the light of the above, the Court is of the opinion that Anastasios Isaak was killed by, and/or with the tacit agreement of, agents of the respondent State and that the use of force was not justified by any of the exceptions laid down in paragraph 2 of Article 2 of the Convention. It follows that there has been a violation of the substantive limb of this provision.

*2. The alleged inadequacy of the investigation*

121. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, the *McCann and Others*, cited above, § 161; and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, § 105). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see, for example, *mutatis mutandis*, *Ilhan v. Turkey* [GC] no. 22277/93, § 63, ECHR 2000-VII). The Court recalls that the obligations of the State under Article 2 cannot be satisfied merely by awarding damages. The investigations required under Article 2 of the Convention must be able to lead to the identification and punishment of those responsible (see *Bazorkina v. Russia*, no. 69481/01, § 117, 27 July 2006).

122. For an investigation into alleged unlawful killing by state agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82; and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see, for example, *Kaya*, cited above, § 87) and to the identification and punishment of those responsible (*Oğur*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (with regard to autopsies, see, for example, *Salman v. Turkey* [GC], no. 21986/93, §106, ECHR 2000-VII; concerning witnesses, for example, *Tanrikulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling below this standard.

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

124. In the present case, the respondent Government failed to produce any evidence showing that an investigation had been carried out into the circumstances of Anastasios Isaak's death. Nor had they alleged that, more than eleven years after the incident, those responsible for the killing had been identified and arraigned before a domestic tribunal. In this context, the Court recalls its finding that the alleged inquiry has been pending since August 1996 without achieving any substantial result notwithstanding the existence of photographic evidence of the actual beating and killing, which could have enabled the local authorities to identify the persons involved in it (see paragraph 81 above).

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

### III. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION

126. The applicants complained that the death of Anastasios Isaak breached their right to respect for their private and family life under Article 8 of the Convention. They argued that he had been killed because of his Greek-Cypriot origin, in breach of Article 14.

The aforementioned provisions read as follows:

#### **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.”

#### **Article 14**

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

127. The Government disputed these claims.

#### **A. Arguments of the parties**

##### *1. The Government*

128. The Government submitted that there was no separate issue under Articles 8 and 14 of the Convention.

##### *2. The applicants*

129. The applicants claimed that the killing of Anastasios Isaak had deprived them of a family member. It had brought to an end the first applicant’s marriage and left the other applicants without a son and a brother. At the time of Anastasios Isaak’s death, the first applicant was only nineteen, recently married and eight months pregnant. Her husband’s death had had a devastating impact on her family life. It was very unlikely that she would ever remarry, since remarriage was not generally accepted in Cypriot culture, particularly in circumstances such as those of the present case.

130. Lastly, the applicants considered that Anastasios Isaak had been killed because he was of Greek-Cypriot origin and of Orthodox Christian religion. The extreme-right ultra-nationalist Turkish group known as Grey Wolves was clearly motivated by ethnic and religious hatred. In addition, Turkey’s actions in the occupied area were aimed at ensuring that it was inhabited exclusively or quasi-exclusively by ethnic Turks of the Islamic faith, to the exclusion of Cypriots of Greek extraction and Orthodox Christian religion. This amounted to the creation of a system of apartheid in Cyprus.

#### **B. The Court’s assessment**

131. The Court considers that, in the light of the conclusion reached under Article 2 of the Convention (see paragraphs 120 and 125 above), it is not necessary to

examine whether there has also been a violation of Articles 8 and 14 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. Article 41 of the Convention provides:

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

##### A. Damage

133. The applicants sought compensation for non-pecuniary damage. As to pecuniary damage, the first applicant observed that her husband had been the manager of his family restaurant in Paralimni. He had also had some income from working on a farm owned by his family. On the basis of a calculation of past and future losses, the first applicant claimed 488,000 Cypriot pounds (CYP) (approximately 836,822 euros (EUR)).

134. The Government submitted that the method of calculation on which the applicants' claims were based was not compatible with the Court's practice. The amounts sought were highly speculative, imaginary, excessive and exorbitant. The allegation that, being the wife of a national hero, the first applicant would not remarry was a matter of personal preference, not relevant in the context of the proceedings before the Court. In any event, it was to be expected that she would be well supported, both financially and morally, by the Greek-Cypriot authorities and by the Greek Orthodox Church.

135. In the Government's submission, the Court should refuse to make any award for pecuniary damage; the award for non-pecuniary damage, if any, should be minimal given the circumstances of the case. The Government drew the Court's attention to the amounts awarded in the cases of *Kakoulli v. Turkey* (no. 38595/97, 22 November 2005 – EUR 20,000 for the wife of the deceased and EUR 3,500 for each of the remaining applicants) and *Güleç v. Turkey* (cited above – 50,000 French francs).

136. The Government of Cyprus noted that the manner in which the claims for past and future losses had been quantified by the applicants was in accordance with that employed in all common-law systems in similar cases. Not to make any pecuniary award would be a gross injustice to a family which had lost its sole breadwinner.

137. 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). It has not been claimed that the second, third, fourth and fifth applicants were in any way dependent on Anastasios Isaak's earnings (see *Musayev and Others*, cited above, § 189). Therefore, the Court does not find it appropriate in the circumstances of this case to make any award to the second, third, fourth and fifth applicants under this head.

138. As to the claim brought by the first applicant, the Court finds that there is a direct causal link between the violation of Article 2 in respect of the first applicant's husband and the loss by her of the financial support which he could have provided. The Court further finds that it is reasonable to assume that, in view of his profession and young age, Anastasios Isaak would eventually have had some earnings from which his wife would have benefited (*ibid.*, § 190). Having regard to the applicants' submissions and deciding on an equitable basis, the Court awards EUR 80,000 to the first applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

139. As to non-pecuniary damage, the Court notes that it has found a violation of Article 2 of the Convention on account of the killing of the applicants' relative and the lack of an effective investigation and considers that an award should be made under that head, bearing in mind the family ties between the applicants and the victim and the seriousness of the damage sustained, which cannot be compensated for solely by the finding of a violation (see, *mutatis mutandis*, *Musayev and Others*, cited above, § 193). Acting on an equitable basis, the Court awards EUR 35,000 to each of the first, second and third applicants (the victim's widow and parents) and EUR 15,000 to each of the fourth and fifth applicants (the victim's sisters), plus any tax that may be chargeable on these amounts.

#### **B. Costs and expenses**

140. Relying on bills from their representatives, the applicants sought CYP 27,459.85 (approximately EUR 47,086) and 4,050 pounds sterling (GBP) (approximately EUR 5,394) for the costs and expenses incurred in the proceedings before the Court.

141. The Government argued that the legal fees claimed by the applicants were excessive and exorbitant. They observed that in the present case there had been no oral hearing and that the applicants' observations on the merits largely repeated earlier allegations. Moreover, some of the arguments submitted (especially those concerning the exhaustion of domestic remedies) were irrelevant as they ran counter to the established case-law of the Court. In the light of the above, the Government reached the conclusion that the costs which might have been incurred in the preparation of the applicants' observations were unnecessary.

142. The Government of Cyprus considered that it was appropriate for the applicants' lawyers to address at length the issue of domestic remedies, which had been raised by the respondent Government.

143. 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*, judgment of 25 March 1998, *Reports* 1998-II, § 49). 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 the amount claimed for the costs and expenses relating to the proceedings before it excessive and decides to award the total sum of EUR 12,000, exclusive of any value-added tax that may be chargeable.

### C. Default interest

144. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the killing of Anastasios Isaak;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Anastasios Isaak died;
4. *Holds* that it is not necessary to examine whether there has been a violation of Articles 8 and 14 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 80,000 (eighty thousand euros) to the first applicant in respect of pecuniary damage;
    - (ii) EUR 35,000 (thirty-five thousand euros) to each of the first, second and third applicants in respect of non-pecuniary damage;
    - (iii) EUR 15,000 (fifteen thousand euros) to each of the fourth and fifth applicants in respect of non-pecuniary damage;
    - (iv) EUR 12,000 (twelve thousand euros) in respect of costs and expenses;
    - (v) any tax that may be chargeable on the above amounts;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Nicolas Bratza  
Deputy Registrar President

ISAAK v. TURKEY JUDGMENT

ISAAK v. TURKEY JUDGMENT