

FOURTH SECTION

CASE OF SOLOMOU AND OTHERS v. TURKEY

(Application no. 36832/97)

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 Solomou and Others 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 18 May 1999 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. 36832/97) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Cypriot nationals, Spyros, Antonis, Panayiotis, Maria, Costas, Niki and Paraskevi Solomou (“the applicants”), on 13 February 1997.

2. The applicants were represented by Mrs A.N. Pilidou and Mrs E.P. Georgiou, 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 Solomos Solomou, amounted to a breach of Articles 1, 2, 3, 8, 10 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 18 May 1999 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 FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicants are Cypriot citizens, born in 1941, 1964, 1966, 1972, 1975, 1974 and 1971 respectively. They all reside in Paralimni, Cyprus.

8. The first applicant is the father of Solomos Solomou, a Greek Cypriot who died on 14 August 1996. The remaining applicants are the first applicant’s children and Solomos Solomou’s siblings. Solomos Solomou was not married and did not have any children.

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

A. The applicants’ version of the facts

10. On 14 August 1996 Solomos Solomou attended the funeral of a man who had been killed during a demonstration against the Turkish occupation of part of Cyprus. With other persons, he entered the UN buffer zone near the spot of the killing. A road passed the buffer zone at that point, leading to checkpoints guarded by the Cypriot National Guard on the southern side and by officials of the “Turkish Republic of Northern Cyprus” (“TRNC”) on the northern side. At the Turkish checkpoint there were two military sentry boxes, one on either side of the road leading into the occupied territory. There was also a Turkish flag on a pole situated just behind the Turkish sentry box. Near the sentry box there was a Turkish observation post on a two-storey house.

11. Notwithstanding the efforts of the United Nations Force in Cyprus (UNFICYP) and the United Nations Civil Police (UNCIVPOL), some demonstrators,

including Solomos Solomou, entered the buffer zone. Solomos Solomou and a handful of other demonstrators ran to the Turkish side of the buffer zone, pursued by UNFICYP personnel. Solomos Solomou crossed the barbed wire at the Turkish ceasefire line and entered the occupied territory. He was pursued by a British soldier from UNFICYP, who attempted to pull him back.

12. Solomos Solomou broke free from the British soldier and attempted to climb the pole where the Turkish flag was flying. He was unarmed, was not acting in a manner which could have been considered threatening and was smoking a cigarette. While he was approximately three metres up the pole he was hit by five shots fired by at least three persons from the Turkish side and was fatally injured. He died almost instantly. The Turkish forces then opened fire in an indiscriminate manner, wounding two members of UNFICYP, a civilian in the buffer zone and a civilian who was standing behind the Cypriot Government's ceasefire line.

13. In order to support their version of facts, the applicants produced the following evidence:

(a) five statements from eyewitnesses (Lance Bombardier Sanders, Garda O'Reilly, Sergeant Hayward, Sergeant Whiley and Garda Brennan – see paragraphs 15-20 below);

(b) a collection of photographs prepared by the Cyprus police (see paragraph 31 below);

(c) a video film of the shooting (see paragraph 31 below);

(d) a pathologist's report (see paragraph 29 below).

14. As to the identity of the perpetrators, the evidence pointed, in particular, to three persons: a man in civilian clothes who fired from the balcony of the Turkish observation post; a man in uniform standing near the Turkish check point; and a third man in Turkish uniform who fired from a distance of approximately 10 metres.

B. The witness statements produced by the applicants

15. Before the Court, the applicants produced a number of statements from eyewitnesses. The relevant parts of these statements read as follows.

16. Statement of Lance Bombardier Michael John Sanders from UNFICYP:

"... Between two and three hundred Greek-Cypriot demonstrators were in the buffer zone and approached our formation. These people were in an agitated state, abusive, were singing patriotic songs and several were carrying Greek flags. I also saw several television cameras amongst the crowd. ...

The demonstrators were becoming more agitated and were throwing missiles towards UN personnel and Turkish forces. ...

A short time later ... I saw a male person previously unknown to me, this person was between myself and the road and was jogging towards the Turkish-Cypriot fire line [TCFL]. This person was wearing black jeans and a black T shirt ... I also saw that this person was smoking.

This person appeared to be extremely agitated and was verbally abusing UN and Turkish troops. I saw Lance Bombardier Booth run after this person and heard Booth yell out to the person to 'stop' and also to 'get back'. The male person ran to a Turkish sentry box on the western side of Dherynia road where he got in between the coiled barbed wire and the sentry box. Booth caught the male person at this stage and held him by the shirt with one hand. The male person then broke free of this hold and ran around the eastern side of the sentry box where I briefly lost sight of him. I next saw this person attempting to climb on the top of the sentry box which was unsuccessful. I then turned my back and attempted to prevent another person from going towards the TCFL. I heard a shot fired and turned around and saw the same male person attempting to climb a flagpole on the Turkish side of the TCFL.

I saw a Turkish Police officer with a drawn handgun aimed at the male person standing on Dherynia road, I saw this officer walk towards the male person and saw several muzzle flashes from the gun and heard

several shots, I saw a wound on the male person's neck and a large amount of blood from that wound. The male person then slid down the flagpole where I lost sight of him. The same police officer was firing at this time.

A volley of shots then rang out from the Turkish side of the TCFL. I ran towards the cover of two UN barrels, about 40 to 50 metres south of my location. I lay prone next to the barrels with my head turned and facing the TCFL. At this time I saw numerous muzzle flashes emanating from one or two positions within a grove of trees on the western side of the Derenya road behind the TCFL. ...

Several rounds hit the barrels and the ground close to us whilst the volley of shots continued. .. I ... saw that Hudson had sustained a wound to his buttock. At this time shots were still being fired from the Turkish side of the TCFL. I administered first aid.

The volley of shots ceased. I estimate that the volley of shots lasted between ten and twenty seconds ...

I approached the TCFL where I saw the male person who had attempted to climb the flagpole being carried under the TCFL coiled wire by members from IRCIVPOL. I saw that the person had sustained wounds on either side of the neck and chest.

The Greek-Cypriot crowd that were still in the buffer zone became very aggressive towards UN personnel claiming that they could not get the required medical assistance for the person who had been shot. The situation did not settle until an ambulance had arrived and conveyed the person from the scene."

17. Statement of Garda Pauroic O'Reilly, from UNFICYP:

"... A large crowd of people had gathered at this stage and the crowd was hostile. ... At this stage the crowd of people were making efforts to break through the barrier. The crowd were also throwing stones and other missiles at the UN personnel. They were advised on several occasions not to enter the buffer zone. A number of people then broke through the barrier and stated they wanted to lay a wreath where Tassos Isaak had died. They were advised they could not.

At this time more people came through the barrier and started to head towards the ceasefire line. Efforts were been made to try and stop them but they continued onwards and would not listen to anybody. Some of the crowd carried iron bars, stones, sticks and flags. When the crowd got close to the Turkish position they started to throw stones at the Turkish position.

I would say there were 300 people in the buffer zone. A group of these people got to the murder scene and planted a Greek and Cyprus flag where he had been killed. They also removed the iron stakes which had marked the murder scene. The crowd [was] still hostile and angry.

They started to sing and shout insults towards the Turkish forces. After planting the wreath and flags they moved over towards the road which leads to the Turkish checkpoint. They were still throwing stones and chanting insults. One of the group broke through and run up to the barbed wire and planted a Greek flag on it. When the flag was planted, Turkish forces appeared from a group of trees. I removed this flag ... The Turkish forces members returned to the trees when the flag was removed. I was continually telling people not to enter the buffer zone as it was dangerous and to return behind the UN barrier.

I noticed a man break through the UN lines and run towards the Turkish forces checkpoint. A member of BRITCON was in pursuit and caught the man at the barrier, the soldier appeared to lose his grip and let this man go and he crossed into [the] Turkish occupied area. He started to climb the flagpole with the Turkish [flag] on it. I then saw a Turkish soldier with a pistol fire shots, maybe two towards this man.

I saw blood spurt from this man's neck and he slumped on the pole and fell to the ground. There was a burst of firing as this man fell to the ground and I saw two other Turkish soldiers firing rifles. I was 10 to 15 metres approximately from the shooting. I then took cover and remained on the ground till the shooting stopped. When I got up after the shooting I noticed members of BRITCON attending one of the men who had been shot. ...

We removed the body from its position under the flagpole and passed it under the barrier to members of the UN and people in the crowd of demonstrators. The crowd took the body out of my view and placed it in a jeep ... When the body was passed under the barrier there was a Cyprus doctor there [who] started to render aid to this man who had been shot. ... There were no further incidents after the shooting ..."

18. Statement of Acting Station Sergeant Bruce Ihian Hayward, from UNFICYP:

"... I noticed that a group of Greek-Cypriot demonstrators, in my estimation to be in excess of 300, were at the CYPOL line attempting to break through. After a token effort by CYPOL, the demonstrators broke

through the line with ease and approached the Southern barrier of the buffer zone. This barrier was manned by members of BRITCON and AUSCON. After numerous attempts to breach this line, the demonstrators were eventually successful and at the same time a large group of these demonstrators had run around the Western flank of the UN members and ran into the buffer zone. I saw that the majority of these demonstrators were carrying pieces of wood, metal and other objects.

... On numerous occasions, I was spat upon, verbally abused and pushed out of the way by the Greek-Cypriot demonstrators. In one instance I was threatened by a male demonstrator carrying a 10cm bladed knife, whom I have no doubt would have used it if I had not relinquished my position. At this stage, I saw a red flare overhead that had been fired from a southerly direction towards the Turkish side. When the demonstrators reached an area about 30 metres from the Turkish lines, they commenced to throw a barrage of rocks at the Turkish soldiers and police and at a building situated on the eastern side of the entrance barrier. All attempts to negotiate with the demonstrators by the UN personnel within the buffer zone failed both verbally and physically.

I was positioned at an area approximately 20 metres' distance from the northern entrance barrier and 10 metres from the barbed wire barrier on the northern extremity of the buffer zone, when I saw a male demonstrator wearing black trousers and a black T-shirt with white writing on the front, run towards the entrance barrier of the Turkish-Cypriot side, closely pursued by a member of BRITCON.

As the male person attempted to get between the barbed wire and a guard box on the western side of the entrance, a member of BRITCON grabbed hold of his shirt and attempted to pull him back. However, the BRITCON member was struck on his helmet by a rock thrown by one of the demonstrators and as a result, released his hold of the male demonstrator.

The male demonstrator then attempted to climb onto the guard box but was unable to, so then started to climb a flagpole flying the Turkish flag which was situated on the western side of the entrance, several metres inside Turkish-Cypriot territory. I saw the male climb about three metres up the flagpole when I noticed a Turkish Army officer remove his pistol and commence shooting towards the male person on the flagpole. This Turkish officer was standing in the middle of the road facing in a southerly direction about 30 metres distance from the buffer zone barrier. I then saw two other Turkish army soldiers step out of some bushes on the western side of the barrier, about 25 metres away, and started firing their rifles in the direction of the male person on the flagpole. At this stage I saw an amount of blood appear on the male person's neck just below the jaw line on the left hand side. The male then appeared to slide back down the flagpole onto the ground. I remember seeing the Turkish army officer who had fired his pistol running off into some bushes on the eastern side.

At this stage, myself and other UN personnel immediately lay down on the ground. I believe I heard continual gunfire for a period of between 10 and 15 seconds and on several occasions, heard bullets passing over my head. At no time did I hear bullets being fired from the direction of the Greek-Cypriot demonstrators, nor did I see any of the demonstrators with firearms. The majority of the demonstrators then ran back towards the southern barrier of the buffer zone. When the gunfire had ceased, I saw that the Turkish army officers and police had left their original locations and could not be sighted.

Shortly after, I saw IRCIVPOL members ... enter through the Turkish barrier and remove the body of the male person whom I had seen climbing the flagpole and had been subsequently shot. ...

... I was made aware that two BRITCON members had sustained gunshot wounds.”

19. Statement of Sergeant Geoffrey William Whiley, from UNFICYP:

“... After numerous attempts to breach this line [the UN barriers], the demonstrators were eventually successful and at the same time a large group of these demonstrators, numbering approximately 100 persons ran around the western flank of the UN members and into the buffer zone. I saw that many of these demonstrators were carrying pieces of wood, metal stakes, rocks and other objects. There were no visible firearms amongst the demonstrators.

All UN members including all CIVPOL continually formed lines in an attempt to prevent the demonstrators from reaching the northern side of the buffer zone ... The Greek-Cypriot demonstrators were extremely agitated and violent towards UN members. I saw several UN soldiers get hit by rocks thrown from south to our position. The demonstrators then forced their way to a position about 15 metres south of the Turkish barbed wire barriers. There two flags were planted using a small rock cairn, apparently as a memorial. The demonstrators paused briefly at this point singing and shouting before moving generally back towards the roadway and continuing their yelling and rock throwing at the Turkish positions. There were many rocks thrown at Turkish positions which hit the buildings just north of the Turkish forces barriers.

... The UN soldiers and CIVPOL made many attempts to push the demonstrators back ..., all to no avail. I saw a red flare come from the demonstration group, fired into the sky over Turkish positions.

I was standing about 10 metres to the south of the Turkish barbed wire demarcation, approximately 15 metres to the west of the roadway. The roadway passes to the north between two guard posts located on either side of the roadway. There was a barbed wire barrier between the two guard posts. Beyond this position there were no further barriers to the Turkish positions.

I saw a demonstrator who was wearing a black shirt run towards the guard house located at the Turkish checkpoint. A BRITCON UN member chased this person. The demonstrator made his way through a gap between the guard house and [the] barbed wire gate. The BRITCON soldier grabbed hold of the demonstrator; however [he] lost his grip. The demonstrator ran past the barbed wire gate and was briefly lost from my sight. I then had a partial view of the demonstrator as he stood beside a flagpole located to the north of the guardhouse on the western side of the roadway. I saw a Turkish forces soldier approach from bushes further to the north and walk to a position about 10 metres from the flagpole. I saw he was carrying a firearm, which appeared to be some form of assault rifle. I saw him drop to one knee and raise his rifle to his right shoulder. I heard two spaced shots as this was happening.

At this point the demonstrator had begun to climb up the flagpole and I had a clear view of him as he climbed higher. He did not appear to react to the first two shots as he continued to climb. I then heard a third shot and saw the demonstrator fall from the flagpole to the ground. I turned away at this point to look for some cover to move to. As I did this I heard a volley of rapid fire shots and I moved a few steps away from the firing line to a depression in the ground where I sought cover. After the firing ceased I stood up and moved back to the roadway area, I saw a BRITCON soldier lying on the ground and being attended by several other BRITCON soldiers. Myself and other UN soldiers began forcing media persons away to clear the area of the casualty. A short time later UN ambulances arrived.

... I saw the body of the wounded demonstrator taken by demonstrators who gradually moved off to the south.”

20. Statement of Garda Fidelma Brennan, from UNFICYP:

“... I saw approximately 25 uniformed Turkish police and 50 Turkish riot police in the area around the Turkish checkpoint. I also saw that these troops were well armed.

[At] about 13h56 I saw between thirty and forty demonstrators moving towards the Greek National Guard checkpoint on Dherynia Road. ... I saw no Cyprus police in that area.

... This group was joined by other demonstrators. As the number of demonstrators grew they eventually got past UN personnel at that location.

... [At] about 14h05 I saw the Greek-Cypriot demonstrators throw rocks towards the Turkish forces. The demonstrators at this stage were on the southern side of UN personnel deployed in crowd control formation. The demonstrators were throwing stones that were landing in the building TK34. UN soldiers and UNICIVPOL members were making every effort to prevent demonstrators getting past their position.

At this time I was advised by Major Ilerici from the Turkish forces that if demonstrators went past the Turkish ceasefire line they would be shot. I attempted to relay this information but could not do so as I could not use my portable radio. I believe the reason for this was interference from Cyprus police channels.

I saw a man I would describe as fit and well built run towards a sentry box at the Turkish checkpoint on the right hand side of Dherynia road. This man attempted to climb the roof of the sentry box and then got down. I then saw this same man run towards the flagpole, I took cover and heard a shot fired. A short time later I heard a volley of shots fired. I made a note that I heard shots fired at 14h25. After the shots had ceased I looked down to the flagpole area, I saw the same man lying on the ground with his head pointing towards the Greek national guard checkpoint, he was facing towards UN OP 142.

After 14h30 I saw IRCIVPOL members ... remove the body of the man.”

C. The Government’s version of the facts

21. According to the Government, the chain of events which led to the death of Solomos Solomou might be described as follows.

(a) On 11 and 14 August 1996 serious disturbances occurred in the buffer zone.

(b) The Greek-Cypriot Motorcycle Federation, with the support of the Greek-Cypriot authorities, had organised a rally which was meant to cross the ceasefire line and perform an illegal entry into the territory of the “TRNC”. The organisers had used abusive and degrading language and expressed violent intentions against the Turkish people in general.

(c) These acts, accompanied by media coverage, led to tensions on both sides of the border.

(d) The Turkish-Cypriot side repeatedly invited the Greek-Cypriot leadership to persuade the organisers of the rally to abandon the idea of illegally trespassing across the border and to enter the “TRNC” through the official entry point. These appeals were ignored.

(e) The “TRNC” announced that it would stop such a provocative and aggressive action in order to protect its citizens.

(f) The UN Deputy Special Representative in Cyprus and the UN Secretary-General called for respect for the integrity of the buffer zone. However, UNFICYP did not have sufficient personnel or means to effectively control and prevent large-scale demonstrations.

(g) On 11 August 1996 thousands of Greek-Cypriot demonstrators, escorted by the Greek-Cypriot police, arrived at the Greek-Cypriot ceasefire line in Dherynia. The Greek-Cypriot police deliberately left the checkpoint unguarded in order to allow the demonstrators to enter the UN buffer zone. The situation developed into a violent riot when the demonstrators entered Turkish-Cypriot territory. They became involved in clashes with Turkish-Cypriot counter-demonstrators. Hundreds of people were injured and a Greek Cypriot died.

(h) The funeral of that person took place on 14 August 1996, in a climate of anti-Turkish feeling. The same day, at about 10 a.m., hundreds of Greek-Cypriot demonstrators once again entered the buffer zone and approached the ceasefire line.

(i) In order to avoid further clashes, the “TRNC” authorities prevented counter-demonstrators from approaching the area. They also took all necessary measures to prevent forcible entry into their territory.

(j) The Greek-Cypriot demonstrators carried the Greek flag and started throwing missiles into the Turkish-Cypriot area. As a precautionary measure, a Turkish-Cypriot police team was positioned, out of sight, in the vicinity of the ceasefire line.

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

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

D. The third-party intervener's version of facts

22. The Government of Cyprus observed that the Cypriot police had conducted an in-depth investigation into the circumstances surrounding the killing of Solomos Solomou, in cooperation with UNFICYP. Having regard to the results of these investigations, the facts of the case can be described as follows.

23. On 11 August 1996 demonstrations occurred in the Dherynia area of Cyprus. Many of the demonstrators were Greek-Cypriot motorcyclists. At one of those demonstrations, which took place inside the UN buffer zone, a certain Anastasios Isaak was bludgeoned to death by persons who had entered the buffer zone in circumstances making Turkey responsible for that death.

24. The funeral of Anastasios Isaak took place on 14 August 1996 at 11 a.m. A crowd of 3,000 people attended the funeral, including about 100 motorcyclists. At about 1.47 p.m. around 700 demonstrators came into the southern side of the buffer zone area, following the funeral service. A group of demonstrators sought to enter the buffer zone in order to lay a wreath at the site of the killing, but was refused permission by the UN forces. The group forced its way past the UN barrier and went into the buffer zone near the site of Mr Isaak's death. Around 200 to 400 demonstrators entered the buffer zone, but almost all were contained by the security forces. Some demonstrators had sticks or iron bars; one was seen to have a knife. No demonstrator had a firearm. Stones were thrown at the Turkish forces.

25. Solomos Solomou, who was unarmed and not carrying a stick, bar or other implement, broke through a line of UN personnel and ran towards the Turkish ceasefire line. He was chased by a member of UNFICYP, Mr Booth, who tried to prevent him from going further. Mr Solomou escaped Mr Booth's grip. He then ran around the sentry box inside the Turkish ceasefire line. He started to climb a pole holding the Turkish flag which was positioned six metres behind the sentry box. When he was about 3 metres up the pole (less than one-quarter of the way to the top) he was shot and fell to the ground. He was hit by five bullets and died almost instantaneously.

26. The Turkish forces then opened fire indiscriminately. Four other persons (two UN personnel and two civilians) were wounded. From the balcony of the Turkish observation post (a two-storey house), Lieutenant General Hasan Kundakci (the Commander of the Turkish occupation forces), Major General Mehmet Karli (Commander of the 28th Turkish Division) and Attila Sav (the Chief of Police) were surveying the operations. Next to them was Kenan Akin, a minister in the "TRNC" administration.

27. According to the Cypriot Government, at least three persons from the Turkish side (two of whom were wearing Turkish military uniforms) fired directly at

Solomos Solomou. Even if it was not possible to say who inflicted the fatal wound, each of them intended to kill him.

E. The evidence produced by the third-party intervener

28. In support of their version of facts, the Government of Cyprus produced the following evidence: a pathological report, a ballistic report, photographs, a videotape and witnesses' statements. Their content may be summarised as follows.

29. A forensic investigation established that: (a) Solomos Solomou had been struck by five bullets; (b) one bullet had entered his head behind the right ear, and exited to the left of the nose. The position of the firearm must have been above ground level at a point higher than the victim's head and behind the victim. This was not the fatal bullet; (c) one bullet had entered the deceased's body behind the left nipple and had come to rest by the right scapula. This wound was the direct cause of death; (d) another bullet had been recovered from below the skin of the middle of the back; it had entered by the upper left buttock; and (e) bullet fragments had been recovered from the right thigh. The forensic doctors came to the conclusion that the bullets had been fired with an intention to kill, that the first wound had been inflicted while the victim was climbing the flagpole and that the other bullet had hit him while he was falling or while he was lying on the ground.

30. The bullets and fragments recovered from Mr Solomou's body were of 9 mm P calibre. This type of bullet is used by the Turkish-Cypriot forces and by the Turkish military forces.

31. One photograph showed Mr Solomou starting to climb the pole and with one foot still on the ground. A man in Turkish uniform (Mr Erdal Emanet, who was the Commander of the Special Forces of the Turkish-Cypriot police) was aiming his pistol at him. Other photographs and extracts from the videotape showed Mr Emanet levelling his pistol, cocking it and aiming it at Mr Solomou. Another man in civilian clothes (Mr Kenan Akin) was on the balcony of the Turkish observation post and had not yet drawn a weapon. In another picture, Mr Solomou had climbed about one metre up the flagpole and Mr Akin was aiming a pistol directly at him. The videotape showed a uniformed soldier, whose identity was not established, shooting directly at Mr Solomou with an automatic weapon (a rifle).

32. Numerous eyewitnesses (Nectarios Zalistis, Tasos Anastasiou, Floros Constanti and Kyriakis Pomilorides) declared that they had seen Mr Akin shooting at Mr Solomou from the balcony of the observation post. Other witnesses (Lance Bombardier Michael Sanders, Garda Pauroic O'Reilly, Garda Michael Fitzpatrick, Acting Sergeant Hayward, Photis Photiou, Nectarios Zalistis and Kyriakos Pomilorides) identified Mr Emanet as one of the shooters. The soldier with an automatic rifle was seen or heard firing at Mr Solomou by Sergeant Geoffrey Whiley, Acting Sergeant Brian Hayward, Georgios Aresti and Costas Charalambous.

33. The Government of Cyprus underlined that no witness had reported any warning being issued to the demonstrators by the Turkish forces either verbally or by warning shots. Nor was any warning apparent from the filmed footage.

34. On 26 August 1996, AUSTCIVPOL sought the assistance of the Turkish forces in providing information about the incident involving the killing of Solomos Solomou. A list of detailed questions was forwarded to the “TRNC” authorities. The Government of Cyprus were not aware of any answer given to these questions or of any investigation carried out by the “TNRC” authorities. The latter had denied access to the crime scene.

35. The Government of Cyprus furthermore drew the Court’s attention to the following statements and press articles.

At the beginning of August 1996, Lieutenant-General Kundakci (the Commander in Chief of the Turkish Forces in Cyprus) declared to a local newspaper:

“No one can cross our borders by motorcycle. Those who try pay the price. What is necessary shall be done.

Without permission it is not possible to cross the TRNC borders, either by motorcycles or by any other means, and if they come, of course we will not welcome them with flowers. If they want to try let them do so. Those who try pay the price.”

On 7 August 1996 the Turkish-Cypriot newspaper *Kibris* reported that Turkish military sources had said:

“Our basic aim is to deter the Greek Cypriots from resorting to such provocations. However, if the Greek Cypriots insist on the action, then we will teach them a lesson so that they will never ever attempt such a thing again.”

On 13 August 1996 the Turkish-Cypriot newspaper *Halkin Sesi* published the following declaration by Mrs Çiller, the Turkish Foreign Minister and Acting Prime Minister:

“If an attempt is made not to recognise the TRNC borders, we will do whatever is necessary. Those who attempt to cross over the border will be immediately pushed back and the legitimacy of our borders shall be re-established again.”

On 15 August 1996 the Turkish-Cypriot newspaper *Yeni Demokrat* wrote:

“Lieutenant-General Kundakci has said that the Turkish side did not issue any invitation to anybody, and that it had no eyes on others’ territory. Against this, stressed Lieutenant-General Kundakci, ‘we do not let anybody with bad intentions enter our territory. Those who force their way in get their punishment. Everybody should know this.’”

On the same day, a recording by Mrs Çiller was played on Turkish television. It contained, *inter alia*, the following passage:

“The world should know that we will not allow anyone to raise his hand against the flag. We will break the hands that are raised against the flag. For us, this is a matter of honour.”

36. The Government of Cyprus also underlined the following passages of UNFICYP’s report on the events surrounding the demonstration of 14 August 1996:

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

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The Government's objections

37. The Government objected that the applicants could not be granted victim status as no act by the authorities had been directed against them personally. They underlined that Solomos Solomou had been an unmarried adult. They moreover objected that Turkey had no jurisdiction or control over the "TRNC", which was an independent State.

B. The applicants' arguments

38. Relying on the case-law developed by the Court in the case of *Loizidou v. Turkey* (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), the applicants alleged that the facts complained of were imputable to Turkey for the purposes of the Convention. They had been carried out in northern Cyprus either directly by the Turkish army or by the authorities of the "TRNC". It was not possible to determine whether all those who had fired the shots which had killed Mr Solomou were members of the Turkish forces or whether some of them were members of the Turkish-Cypriot police or of the Turkish-Cypriot Security forces. The Turkish authorities had rejected the UN's request to cooperate in investigating the killing. However, all Turkish-Cypriot police present that day had been acting under the control of the military. Moreover, two of those who had fired at Solomos Solomou were in uniform. The man in civilian clothes had been on the balcony of the Turkish observation post and some witnesses had indentified him as a minister in the "TRNC" Government. Moreover, on the balcony of the Turkish observation post there had been Lieutenant-General Hasan Kundakci, Commander of the Turkish forces in Cyprus and Major General Mehmet Karli, Commander of the Turkish 28th Division (see paragraph 26 above). None of them had made any effort to prevent or halt the shooting.

C. Third party intervener's arguments

39. The third-party intervener observed that in the case of *Loizidou v. Turkey* (cited above) the Court had determined that Turkey had control, and therefore jurisdiction, over the northern part of Cyprus. Moreover, in the present case senior Turkish military personnel had overseen the incident, the Commander-in-Chief of the Turkish Forces in Cyprus had been in charge of the relevant operations and the conduct of those involved in the shooting had been controlled by the Turkish military.

D. The Court's assessment

40. In its decision on the admissibility of the application, the Court noted:

"the respondent Government have not provided any observations on the admissibility of the case, although they have been given ample opportunity to do so. It must, therefore, be assumed that they do not contest the admissibility of the application."

41. The Court does not see any reason to depart from this finding. In any event, even assuming that the Government are not estopped from raising preliminary objections, the Court reiterates that where a violation of the right to life is alleged, the Convention institutions have accepted applications from relatives of the deceased. For example applications have been brought by a deceased person's wife (*Aytekin v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VII), a deceased person's mother (*Çiçek v. Turkey*, no. 25704/94, 27 February 2001), a deceased person's father (*Hugh Jordan v. the United Kingdom*, no. 24746/94, ECHR 2001-III (extracts)) and a deceased person's brother and sister (see, respectively, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, and *Şemsi Önen v. Turkey*, no. 22876/93, 14 May 2002). The Court further notes that the applicants' complaints under Articles 8 and 14 of the Convention relate to the death of their relative, in respect of which, as stated above, they can claim to be victims. Indeed, the Convention institutions have declared admissible applications from relatives of the deceased where similar complaints relating to the death have been raised under these provisions (see, *inter alia*, *Ergi v. Turkey*, no. 23818/94, Commission decision of 2 March 1995; *Kakoulli v. Turkey* (dec.), no. 38595/97, 4 September 2001; and *Bazorkina v. Russia* (dec.), no. 69481/01, 15 September 2005).

42. In the light of its established case-law, the Court considers that the complaints lodged by the applicants, as the father and siblings of the deceased, constitute a valid exercise of the right of individual petition (see *Isaak v. Turkey* (dec.), no. 44587/98, 28 September 2006).

43. As concerns the objection that Turkey lacked jurisdiction, the Court reiterates that in accordance with Article 1 of the Convention, Contracting States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their "jurisdiction". The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 311, ECHR 2004-VII). Furthermore, the words "within their jurisdiction" in Article 1 of the Convention must be understood to mean that a State's jurisdictional competence is primarily territorial (see *Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, § 59, ECHR 2001-XII).

44. In exceptional circumstances the acts of Contracting States which are performed outside their territory or produce effects there ("extra-territorial acts") may amount to the exercise by them of their jurisdiction within the meaning of Article 1 of the Convention (see *Loizidou*, cited above, § 52; and *Issa and Others v. Turkey*, no. 31821/96, §§ 68 and 71, 16 November 2004). According to the relevant principles of international law, a State's responsibility may be engaged where, as a consequence of military action – whether lawful or unlawful – that State in practice exercises effective control of an area situated outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control, whether it be exercised directly,

through its armed forces, or through a subordinate local administration (see *Loizidou*, cited above, § 52).

45. Moreover, a State may also be held accountable for a violation of the Convention rights and freedoms of persons who are in the territory of another State but who are found to be under the former State's authority and control through its agents operating – whether lawfully or unlawfully – in the latter State (see, *mutatis mutandis*, *W. M. v. Denmark*, no. 17392/90, Commission decision of 14 October 1992, Decisions and Reports (DR) 73, p. 193; and *Illich Sanchez Ramirez v. France*, no. 28780/95, Commission decision of 24 June 1996, DR 86, p. 155). Accountability in such situations stems from the fact that Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State which it could not perpetrate on its own territory.

46. In addition, the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention. Any different conclusion would be at variance with the obligation contained in Article 1 of the Convention (see *Cyprus v. Turkey* [GC], no. 25781/94, § 81, ECHR 2001-IV). This is particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community (see *Ilaşcu and Others*, cited above, § 318).

47. Finally, in the particular situation concerning Cyprus, the Court found in the case of *Cyprus v. Turkey* (cited above) that since it had effective overall control over northern Cyprus, Turkey's responsibility could not be confined to the acts of its own soldiers or officials in northern Cyprus but had also to be engaged by virtue of the acts of the local administration which survived by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's jurisdiction must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified, and that violations of those rights are imputable to Turkey (see *Cyprus*, cited above, § 77).

48. At the outset, the Court notes that the area in which the acts complained of took place was partly situated in the neutral UN buffer zone. Solomos Solomou violated the ceasefire lines and entered the buffer zone. To this limited extent, he bears responsibility for the tragic course taken by the demonstration (see, *mutatis mutandis*, *Isaak* (dec.), cited above). Moreover, the flag pole on which the victim was climbing when he was shot was situated in the "TNRC" territory. In this connection, the Court also notes that the UNFICYP report, submitted by the third-party intervener (see paragraph 36 above), confirms that the killing of Solomos Solomou was the result of the "use of force by Turkish or Turkish-Cypriot military personnel".

49. In the present case, the Court must therefore ascertain whether Mr Solomou came under the authority and/or effective control, and therefore within the jurisdiction, of the respondent State as a result of the acts of the Turkish and "TRNC" soldiers and/or officials.

50. The Court notes that the applicants provided written statements from independent eyewitnesses describing the alleged course of events leading to the killing of Solomos Solomou. In particular, UNFICYP members Lance Bombardier Sanders, Garda O'Reilly, Acting Station Sergeant Hayward, Sergeant Whiley and Garda Brennan were unequivocal in their statements that the bullets which had hit Mr Solomou had been fired by the members of the Turkish-Cypriot forces (see paragraphs 15-20 above). This is also confirmed by the aforementioned reports of UNFICYP and, further, the video recording and photographs submitted by the applicants.

51. In view of the above, the Court considers that in any event the deceased was under the authority and/or effective control of the respondent State through its agents (see, *mutatis mutandis*, *Isaak* (dec.), cited above). It concludes, accordingly, that the matters complained of in the present application fall within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State's responsibility under the Convention.

52. It follows that the Government's preliminary objections should be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

53. The applicants alleged that the killing of Solomos Solomou 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."

54. The Government disputed this claim.

A. Arguments of the parties

1. The Government

55. In the Government's submission, the death of Solomos Solomou should be seen against the background of the historical developments in Cyprus, which had resulted in the separation of the Greek and Turkish communities and the creation of ceasefire lines. The Government's observations contained a detailed and extensive description of that background. They emphasised the circumstances which had led to the creation of the "TRNC" and pointed to the independent and democratic nature of its Government, which could not be described as a "subordinate local administration" of Turkey. They also underlined that the UN buffer zone was a line intended to divide the communities in Cyprus and an element in the ceasefire arrangements accepted by both sides. In the summer of 1996 the situation had

deteriorated in the island, and violent demonstrations had been organised in the vicinity of the buffer zone.

56. The Government considered that the responsibility for the death of Solomos Solomou should be imputed to the Greek-Cypriot administration. The latter and the Greek Orthodox Church had deliberately encouraged the demonstrators to violate the UN buffer zone. It was clear that such action would inevitably incite hatred and hostility, and would become out of control.

57. The death of Mr Solomou was undoubtedly a tragic event. However, he had not been a demonstrator killed during a peaceful protest. He had died as a result of irresponsible actions by Greek-Cypriot demonstrators with the active support of the Greek-Cypriot authorities, which had created a highly dangerous situation. Under these circumstances, the Turkish-Cypriot police had been fully justified in using the force necessary to abate the danger, to protect the lives of others and to maintain the integrity of the buffer zone and of the ceasefire line. Their actions had been justified under paragraph 2 of Article 2 of the Convention. The killing of Solomos Solomou was not intentional. Furthermore, considering that the flag was a symbol of a nation's pride and honour, Mr Solomou should have known that he was engaging in a very provocative and dangerous act which could even have led to a dangerous conflict in the area.

2. The applicants

58. The applicants alleged that Solomos Solomou had been deliberately killed by a number of persons on the Turkish side of the buffer zone. The circumstances of the case strongly suggested that those firing the shots had intended to kill him. In any event, even assuming that there was no intention to kill, the use of lethal force had not been proportionate. The Turkish armed forces had not displayed the caution necessary to avoid harm. They had opened fire at a time when there had only been a group of unarmed civilians protesting in the buffer zone in the presence of a large contingent of UNFICYP troops. No warning shots had been fired and only live rounds had been used. Moreover, after having hit Mr Solomou, they had fired shots in an essentially random fashion, injuring two members of UNFICYP and two civilians.

59. In the applicants' submission, the use of force had not been justified under sub-paragraphs (a) and/or (b) of paragraph 2 of Article 2 of the Convention. Solomos Solomou had not been threatening anyone with unlawful violence. He had been shot while climbing a flagpole manifestly unarmed. There had been no danger for any of the other demonstrators, almost all of whom had been restrained by UN personnel. Moreover, the situation in the buffer zone had not constituted a riot. The demonstrators had largely been brought under the control of the UN and had posed no threat of any kind to the large number of heavily armed Turkish soldiers and police. In any event, the use of force had not been "absolutely necessary" in the circumstances of the case.

60. Finally, deficiencies could be found in the planning and control of the operation in which the shots had been fired. The Turkish officers had failed to ensure

that the troops deployed at the scene of the demonstration did not jump too readily to the conclusion that there was a threat of violence or disorder, and that there was no automatic recourse to force.

B. The third-party intervener

61. The Government of Cyprus submitted that the evidence produced before the Court established that Turkey had adopted a policy of opening fire on any person entering the territory of the “TRNC” without previous warnings. Solomos Solomou had been shot and killed by at least three Turkish men, two of whom were dressed in military uniform. He had been unarmed and the only person who had crossed the Turkish ceasefire line and could not have represented any threat to Turkey’s position in the occupied area. He had not caused any physical injury to any Turkish person and could have been apprehended with almost no force at all. No warning had been given before the shooting, which had been followed by indiscriminate firing in the direction of UN personnel and demonstrators, who had all been beyond the Turkish ceasefire line. The Turkish authorities had failed to offer any assistance or medical aid to Mr Solomou or to the other injured persons and to carry out any investigation into the facts of the case.

62. In the view of the Government of Cyprus, the killing of Solomos Solomou amounted to a violation of Article 2 of the Convention. The victim had been killed intentionally by persons for whom Turkey bore responsibility. The use of lethal force had clearly not been “absolutely necessary” in the circumstances of the case. Moreover, the exceptions provided in paragraph 2 of Article 2 were not relevant in Mr Solomou’s situation. No person had been in danger from the use of unlawful violence by him. There had been no question of effecting a lawful arrest or of preventing an escape. The trespassing of the ceasefire line by one unarmed man could not amount to an insurrection or a riot.

C. The Court’s assessment

1. The alleged killing of Solomos Solomou

(a) General principles

63. 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).

64. 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).

65. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII; and *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, § 142, 26 July 2007).

66. 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; and *Ilaşcu and Others*, cited above, § 26).

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

68. Lastly, the Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for

example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Ribitsch*, cited above, § 32; and *Avşar*, cited above, § 283).

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

69. In the present case, it is not contested that Solomos Solomou voluntarily entered the UN buffer zone and crossed the Turkish-Cypriot forces' ceasefire line. After having passed the sentry box, he started to climb the pole holding the Turkish flag. The respondent Government did not allege that Mr Solomou was carrying a weapon.

70. However, the parties disagreed as to the origin of the five bullets which hit Solomos Solomou and caused his death. According to the applicants and the third-party intervener, these bullets were fired by two men in Turkish uniform and by another man in civilian clothes who was on the balcony of the Turkish observation post (see paragraphs 14 and 31-32 above). On the contrary, the respondent Government alleged that Mr Solomou had been the victim of the crossfire which had broken out when the Greek-Cypriot demonstration developed into a riot (see paragraph 21 (k) and (l) above).

71. The Court is unable to accept the respondent Government's version of the facts on this point. It observes, first, that it is contradicted by the witnesses' statements produced by the applicants (see paragraphs 16-20 above). None of the members of UNFICYP who testified about the events of 14 August 1996 mentioned the existence of a crossfire before the shooting of Mr Solomou. On the contrary, Lance Bombardier Sanders, Garda O'Reilly, Acting Station Sergeant Hayward and Garda Brennan clearly stated that, from different positions, two soldiers in Turkish uniform and a man in civilian clothes standing on the balcony of the Turkish observation post had aimed their weapons at Solomos Solomou and had fired in his direction while he was climbing the flagpole. The Court has no reason to doubt the independence and trustworthiness of the witnesses in question.

72. The Court further notes the applicants' version is confirmed by the photographic evidence and by the video film of the shooting (see paragraph 31 above). In these images, whose authenticity has not been contested by the respondent Government, it is possible to see the man on the balcony and the two men in Turkish uniforms pointing their pistols and rifles in the direction of Mr Solomou. Nothing in the video film and/or in the photographs suggests that, at that moment, there was a crossfire in progress.

73. Lastly, it is worth noting that the victim was hit by five bullets, a fact which is hard to reconcile with the theory that his shooting was not intentional.

74. These elements are sufficient to reach the conclusion that Solomos Solomou was killed by agents of the respondent Government. It remains to be ascertained whether the use of force was justified under any of the sub-paragraphs of Article 2 § 2.

75. The Court notes that it cannot be held that the shooting of Mr Solomou was justified “in defence of any person from unlawful violence”. The deceased was unarmed and had not attacked anyone; he was climbing a pole and smoking a cigarette, two actions which were not compatible with violent action against other individuals. 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 fact that he had crossed the ceasefire line could justify depriving him of his liberty, it is obvious that he could hardly have escaped from the control of the security forces and that the authorities could have awaited his descent from the flagpole before arresting him. In this connection, the Court attaches a certain weight to the fact that, according to the eyewitnesses, the opening of fire was totally unwarranted and not even preceded by a warning shot.

76. As to the question whether the shooting was justified by the aim of quelling a “riot or insurrection”, it is to be observed that the parties disagreed with regard to the nature of the Greek-Cypriot demonstration. While the applicants and the third-party intervener alleged that the demonstration had largely been under the control of the UN personnel, the respondent Government argued that there had been an escalation of violence and that this had been the result of inconsiderate actions on the part of the Greek-Cypriot demonstrators.

77. It is not for the Court to determine which party should bear responsibility for the facts which gave rise to the protest of the Greek Cypriots and the subsequent demonstration of 14 August 1996. In the context of the present case, the only question to be addressed is whether the actual killing of Solomos Solomou amounted to a violation of Article 2 of the Convention. At the same time, the Court cannot ignore the fact that, as has also been acknowledged by the third-party intervener (see paragraph 24 above), the demonstrators had sticks and iron bars and were seen throwing stones at the Turkish forces. This led to a situation of tension and to a risk of potentially more violent developments.

78. However, the decisive factor in the Court’s view is that it was not contested that one demonstrator only – Mr Solomou – had crossed the ceasefire line and had been unarmed. The first shots were directed at him and not at the other demonstrators. Under these circumstances, they could hardly be described as measures aimed at calming the violent behaviour of the other demonstrators, who were still in the UN buffer zone. In this context, the Court reiterates that the use of force should be “absolutely necessary” for pursuing one or more of the aims laid down in paragraph 2 of Article 2 and that a potential illegal or violent action from a group of persons cannot, as such, justify the immediate shooting and killing of one or more other individuals who are not themselves posing a threat.

(c) Conclusion

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

2. *The alleged inadequacy of the investigation*

80. 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 capable of leading to the identification and punishment of those responsible (see *Bazorkina v. Russia*, no. 69481/01, § 117, 27 July 2006).

81. 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.

82. 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).

83. In the present case, the respondent Government failed to produce any evidence showing that an investigation had been carried out into the circumstances of Solomos Solomou'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.

84. 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 Solomos Solomou. The Court accordingly holds that there has been a violation of Article 2 also in this respect.

III. ALLEGED VIOLATION OF ARTICLES 1, 3, 8 AND 14 OF THE CONVENTION

85. The applicants alleged that the killing of Solomos Solomou also violated Articles 1, 3, 8, 10 and 14 of the Convention.

These provisions read as follows:

Article 1

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Article 3

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

Article 8

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

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

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."

86. The Government disputed these claims.

A. Arguments of the parties

1. The Government

87. The Government considered that no violation of Article 1 of the Convention could be found in the circumstances of the case. The Turkish-Cypriot authorities had

acted in a proper and justifiable manner *vis-à-vis* a dangerous situation created by the Greek-Cypriot authorities. Moreover, no inhuman treatment had been administered and the killing had not been intentional; it was hard to see how the death of Solomos Solomou could amount to an interference with family life.

88. Since any person could have met Mr Solomou's fate in the situation created by the violent demonstration, no issue of discrimination could arise.

89. Lastly, the Government observed that Greek-Cypriot demonstrators had proved to be very violent in the past and that the demonstration had been aimed at creating political propaganda against the Turkish-Cypriot and Turkish side. The death of Solomos Solomou had been quickly avenged by the Greek Cypriots: on 8 September 1996 two Turkish-Cypriot soldiers (one of whom had died) had been shot in a planned murder operation meant as reprisals for the deaths of 11 and 14 August 1996.

2. The applicants

90. The applicants alleged that the wilful inflicting of injuries which had proved fatal and the repeated shooting of a man who was already injured constituted inhuman treatment. Moreover, the applicants had been arbitrarily deprived of a member of their family, in breach of Article 8 of the Convention.

91. The applicants also submitted that the killing of Solomos Solomou had involved discrimination based upon his Greek-Cypriot origin and Christian religion. The Turkish armed forces, who had excluded Greek Cypriots from northern Cyprus, had tolerated violent disturbances in that part of the country provided that the perpetrators were Turks or Turkish Cypriots. Solomos Solomou would not have been killed had he not been a Greek Cypriot, approaching the area under Turkish control from the part of Cyprus where Greek Cypriots were living freely.

B. The third-party intervener

92. The Government of Cyprus submitted that the killing of Solomos Solomou, a member of the applicants' family, was a deliberate action destroying the family unit as such, which violated Article 8 of the Convention. They furthermore submitted that, in breach of Article 14 of the Convention, the Turkish authorities had adopted a discriminatory policy with regard to Greek Cypriots. It was hard to believe that Turkey would have acted in the same murderous way if Solomos Solomou had been a Turk.

C. The Court's assessment

93. The Court considers that, in the light of the conclusion reached under Article 2 of the Convention (see paragraphs 79 and 84 above), it is not necessary to examine whether there has also been a violation of Articles 1, 3, 8 and 14 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicants observed that at the date of his death, Solomos Solomou had been 26 years old. He had been employed as a construction worker and was earning approximately 7,000 Cypriot pounds (CYP) (approximately 11,900 euros (EUR)) per year. In addition, he had assisted the first applicant by working as a waiter in his restaurant. The living costs of Solomos Solomou were approximately CYP 4,000 (approximately EUR 6,800) per annum. The applicants therefore sought CYP 3,000 (approximately EUR 5,100) per annum for pecuniary damage (loss of financial contribution to the family). They alleged that this sum should be multiplied by 20, making a total of CYP 60,000 (approximately EUR 102,000).

96. Taking into account the gravity of the case, the applicants sought the following sums for non-pecuniary damage: CYP 50,000 (approximately EUR 85,000) for the first applicant and CYP 10,000 (approximately EUR 17,000) for each of the second to seventh applicants. They also claimed interest at a rate of 8% per annum with effect from 14 August 1996 on all the sums awarded to them.

97. The Government considered 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. It could not be alleged that Solomos Solomou, an unmarried construction worker, had contributed to the family income or had supported the applicants financially.

98. 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. Account should be taken, in particular, of the responsibility of the Greek-Cypriot authorities, of the Orthodox Church and of the deceased himself in the chain of events which had led to the tragic incidents of 14 August 1996.

99. The Government of Cyprus fully supported the applicants' claims for just satisfaction.

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

101. As to non-pecuniary damage, the Court observes that it has found a violation of Article 2 of the Convention on account of the killing of the applicants' 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 of the killing and the seriousness of the damage sustained, which cannot be

compensated for solely by a finding of a violation (see, *mutatis mutandis*, *Musayev and Others*, cited above, § 193). Acting on an equitable basis, the Court awards EUR 35,000 to the first applicant (the victim's father) and EUR 15,000 to each of the second to seventh applicants (the victim's siblings), plus any tax that may be chargeable on these amounts.

B. Costs and expenses

102. Relying on bills from their representatives, the applicants sought CYP 10,108 (approximately EUR 17,200) and 2,740.62 pounds sterling (GBP) (approximately EUR 3,650) for the costs and expenses incurred in the proceedings before the Court.

103. The Government submitted that the legal fees claimed were excessive and had not been actually incurred by the applicants themselves. They observed that the applicants' observations largely repeated the allegations made in the cases of *Isaak, Loizidou* and *Cyprus v. Turkey* (cited above). Moreover, as the deceased was regarded as a "martyr", it might be assumed that the applicants had received legal and financial assistance from the Greek Orthodox Church and from the Government of Cyprus and had not paid any legal fees.

104. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicants only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see *Belziuk v. Poland*, 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 that the amount claimed for the costs and expenses relating to the proceedings before it is excessive and decides to award the total sum of EUR 12,000 under that head, exclusive of any value-added tax that may be chargeable.

C. Default interest

105. 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 objections;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the killing of Solomos Solomou;
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 Solomos Solomou died;

4. *Holds* that it is not necessary to examine whether there has been a violation of Articles 1, 3, 8 and 14 of the Convention;
5. *Holds*
- (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 35,000 (thirty-five thousand euros) to the first applicant in respect of non-pecuniary damage;
 - (ii) EUR 15,000 (fifteen thousand euros) to each of the second to seventh applicants in respect of non-pecuniary damage;
 - (iii) EUR 12,000 (twelve thousand euros) in respect of costs and expenses;
 - (iv) 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

SOLOMOU AND OTHERS v. TURKEY JUDGMENT

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