



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

GRAND CHAMBER

**CASE OF GÜZELYURTLU AND OTHERS v. CYPRUS AND  
TURKEY**

*(Application no. 36925/07)*

JUDGMENT

STRASBOURG

29 January 2019

*This judgment is final but it may be subject to editorial revision.*



**In the case of *Güzelyurtlu and Others v. Cyprus and Turkey*,**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President*,  
Angelika Nußberger,  
Linos-Alexandre Sicilianos,  
Ganna Yudkivska,  
Robert Spano,  
Vincent A. De Gaetano,  
Işıl Karakaş,  
Kristina Pardalos,  
André Potocki,  
Aleš Pejchal,  
Yonko Grozev,  
Gabriele Kucsko-Stadlmayer,  
Pauliine Koskelo,  
Georgios A. Serghides,  
Marko Bošnjak,  
Jolien Schukking,  
Lado Chanturia, *judges*,

and Roderick Liddell, *Registrar*,

Having deliberated in private on 28 March 2018 and on 7 November 2018,

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

## PROCEDURE

1. The case originated in an application (no. 36925/07) against the Republic of Cyprus and the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Cypriot nationals of Turkish Cypriot origin, Mr Mehmet Güzelyurtlu (“the first applicant”), Ms Ayça Güzelyurtlu (“the second applicant”), Ms Deniz Erdinch (“the third applicant”), Ms Emine Akerson (“the fourth applicant”), Ms Fezile Kirralar (“the fifth applicant”), Mrs Meryem Özfirat (“the sixth applicant”) and Mr Muzaffer Özfirat (“the seventh applicant”), on 16 August 2007.

2. The applicants were represented by Mr A. Riza QC, barrister-at-law, and Ms E. Meleagrou, solicitor, both practising in London. The Cypriot Government were represented by two successive Agents, first Mr P. Clerides and later Mr C. Clerides, Attorneys-General of the Republic of Cyprus. The Turkish Government were represented by their Agent.

3. The applicants complained under the substantive and procedural aspects of Article 2 of the Convention that the Cypriot and Turkish authorities, including the authorities of the “Turkish Republic of Northern Cyprus” (the “TRNC”), had failed to conduct an effective investigation into the killing of their relatives, Elmas, Zerrin and Eylül Güzelyurtlu. Relying on Article 13 of the Convention, they complained of a lack of an effective remedy in respect of their Article 2 procedural complaint.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). On 13 May 2009 notice was given to the respondent Governments of the applicants’ complaints concerning the procedural aspect of Article 2, taken alone and in conjunction with Article 13. On 3 September 2009 the Centre for Advice on Individual Rights in Europe (the “AIRE” Centre) was granted leave to submit written comments as a third party (Article 36 § 2 of the Convention and Rule 44 § 3).

5. On 4 April 2017, a Chamber of that Section, composed of Helena Jäderblom, President, Branko Lubarda, Işıl Karakaş, Helen Keller, Pere Pastor Vilanova, Alena Poláčková, Georgios A. Serghides, judges, and Stephen Phillips, Section Registrar, delivered a judgment declaring, unanimously, the application admissible; holding, by five votes to two, that there had been a violation of Article 2 of the Convention in its procedural limb by Cyprus; holding, unanimously, that there had been a violation of Article 2 in its procedural limb by Turkey; and further holding, unanimously, that there was no need to examine separately the complaint under Article 13 of the Convention taken in conjunction with Article 2 of the Convention. The Chamber found that no issue arose under the substantive limb of Article 2 and that the entirety of the applicants’ complaints related in substance to the procedural limb. The partly dissenting opinion of Judge Serghides and the partly dissenting opinion of Judge Pastor Vilanova were appended to the judgment.

6. On 22 June 2017 both respondent Governments requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. On 18 September 2017 the panel of the Grand Chamber granted that request.

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. On 18 December 2017 the Grand Chamber rejected the applicants’ objection to the participation of Judge Serghides in the proceedings before it.

8. The applicants and both Governments each filed further written observations (Rule 59 § 1) on the merits of the case. In addition, third-party comments were received from the AIRE Centre.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 28 March 2018 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Cypriot Government*

Mr C. CLERIDES, Attorney-General of the Republic of  
Cyprus, *Agent,*  
Mrs C. MONTGOMERY QC, barrister-at-law *Counsel,*  
Mrs J. JONES, barrister-at-law,  
Mrs T. CHRISTODOULIDOU, Counsel A of the Republic  
of Cyprus, *Advisers;*

(b) *for the Turkish Government*

Mr S. TALMON, Professor of Law, University of Bonn, *Counsel,*  
Mr E. İŞCAN, Ambassador, Permanent Representative of  
Turkey to the Council of Europe,  
Mr Z. M. NECATIGIL, Legal Adviser, Ministry of Foreign  
Affairs of the “TRNC”,  
Mrs S. KARABACAK, Legal Adviser, Presidency of the “TRNC”,  
Mr A.M. BAŞÇERI, Deputy Director General, Minister  
Plenipotentiary, Ministry of Foreign Affairs of Turkey,  
Mr C. ÖZTAŞ, Deputy to the Permanent Representative  
of Turkey to the Council of Europe,  
Mrs N. FERİT VECHI, Deputy to the Permanent Representative  
of Turkey to the Council of Europe,  
Mrs D. KALYONCU, Deputy to the Permanent Representative  
of Turkey to the Council of Europe,  
Mrs B. BİLEN SOYDAN, Deputy to the Permanent Representative  
of Turkey to the Council of Europe,  
Mrs M. AKSEN, Legal Expert, Ministry of Foreign Affairs  
of Turkey, *Advisers;*

(c) *for the applicants*

Mr A. RIZA QC, barrister-at-law, *Counsel,*  
Mr C. PASCALIDES, solicitor of the Supreme Court, England  
and Wales, and member of the Cyprus Bar, *Adviser,*  
Mr M. GÜZELYURTLU,  
Mrs A. GÜZELYURTLU,  
Mrs E. AKERSON, *Applicants.*

The Court heard addresses by Mr Riza QC, Mrs Montgomery QC and Mr Talmon as well as their replies to questions put by Judges Sicilianos, Spano and Bošnjak.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

10. The application concerns the effectiveness of the investigation into the murder, committed on 15 January 2005, of Elmas, Zerrin and Eylül Güzelyurtlu, all Cypriot nationals of Turkish Cypriot origin.

11. The applicants are relatives of the deceased. The first, second and third applicants are the children of Elmas and Zerrin Güzelyurtlu and the brother and sisters, respectively, of Eylül Güzelyurtlu. The fourth and fifth applicants are Zerrin Güzelyurtlu's sisters, and the sixth and seventh applicants are her parents.

12. The first five applicants were born in 1978, 1976, 1980, 1962 and 1956 respectively. The sixth and seventh applicants were both born in 1933. The first, fifth, sixth and seventh applicants live in Cyprus, in the territory controlled by the "TRNC". The second, third and fourth applicants live in the United Kingdom.

#### **A. The background facts and the murders of Elmas, Zerrin and Eylül Güzelyurtlu**

13. Elmas Güzelyurtlu was a businessman and used to live with his wife Zerrin and daughter Eylül in the territory controlled by the "TRNC". In 2000, following the collapse of the bank that Elmas Güzelyurtlu owned, he fled to and settled in Larnaca, in the Cypriot Government-controlled areas. His wife and daughter joined him in 2001. In 2003 they moved to the Ayios Dometios district of Nicosia (in the Cypriot Government-controlled area).

14. On 15 January 2005 at about 8 a.m. on the Nicosia-Larnaca motorway, near the Athiainou exit (in the Cypriot Government-controlled area), a police officer spotted a black Lexus car parked on the hard shoulder. The engine was running, the left turn indicator light was flashing and the door of the front passenger seat was open.

15. Zerrin and Eylül Güzelyurtlu were found dead on the back seat of the car. Elmas Güzelyurtlu was lying dead at a distance of 1.5 metres from the car in a nearby ditch. All three were in pyjamas and slippers. Zerrin Güzelyurtlu had adhesive tape on her neck and two rolls of adhesive tape in her hands. Both Zerrin Güzelyurtlu and Eylül Güzelyurtlu had redness (*ερυθρότητα*) on the edges of their hands, which indicated that they had been tied with adhesive tape. They also had bruises on their shins which had been sustained in a struggle.

**B. The investigation and the measures taken by the Cypriot authorities, including the cooperation requests made to the Turkish authorities**

16. On 15 January 2005 the police officer who discovered the bodies informed Nicosia police headquarters. A number of police officers (some of them high-ranking), arrived at about 8.35 a.m. at the crime scene, which had already been secured and cordoned off.

17. A detailed on-the-spot investigation was immediately conducted by the police and a forensic pathologist. Photographs were taken and a video recording was made. Two bullets, two cartridge cases and a kitchen knife were found inside the car. A third cartridge case was found outside the car.

18. An investigation team consisting of eight officers was set up.

19. The car was taken away for further inspection.

20. The victims' bodies were taken to the mortuary at Larnaca General Hospital for a post-mortem examination. After being informed by the Cypriot police of the death of his parents and sister, the first applicant went to Larnaca morgue to identify the victims. Death certificates were issued.

21. At about 9.25 a.m. officers went to the victims' house in Ayios Dometios. The house was secured and cordoned off. A search was carried out by the investigation team and a forensic pathologist. The first applicant was present for part of the search. Photographs and fingerprints were taken and a video recording made at the scene. The investigation determined that the perpetrators of the murders had broken into the house through a window. A suction cup (*βεντούζα*) and pieces of adhesive tape were found outside the window. Adhesive tape was found in the victims' bedrooms, the living room and the car park. The security system had been switched off at 4.35 a.m. on that day and one of the cameras appeared to have been turned upwards at 4.29 a.m.

22. Numerous exhibits were collected from the scene of the crime and the victims' home. These were sent for forensic examination.

23. On 16 January 2005 post-mortem examinations were carried out by a forensic pathologist. It was determined that each of the three victims had died of severe craniocerebral injury caused by a shot from a firearm at close range and that their deaths had been the result of a criminal act. Photographs were taken and a video recording made of the post-mortem examinations. A diary of action/log book (*ημερολόγιο ενέργειας*) was kept by one of the police officers present during the post-mortem examinations, which recorded, *inter alia*, the actions and findings of the forensic pathologist.

24. On 17 January 2005 the first applicant took the victims' bodies to the "TRNC", where a funeral was later held.

25. The investigation included tracing and questioning numerous witnesses, including the victims' relatives, searching the records of vehicles that had gone through the crossing points between north and south, and

examining the security system of the victims' house and computer hard drives for relevant material concerning the movements of persons and vehicles near the house at the material time. The source of the suction cup and the adhesive tape was determined to be a shop in Kyrenia (in northern Cyprus).

26. From the evidence collected it appeared that on 15 January 2005, between 5.15 a.m. and 5.20 a.m., three shots had been heard from the area in which the car and the victims were found.

27. According to the witness statements taken by the police, at the time the murders were committed a BMW car without number plates was seen parked behind the victims' car. Four persons were seen standing around the cars and one person was seen in the passenger's seat of the Lexus car. It was further ascertained that on 14 January 2005, at 11 p.m., a red BMW car with "TRNC" number plates had passed through the Pergamos crossing point located in the British Eastern Sovereign Base Area of Dhekelia but without passing through the Base Area's checkpoint. At 5.45 a.m. the next day the same car had returned to the "TRNC" through the same crossing point – again without being checked. The driver of the car, who resided in the "TRNC", had been accompanied by another person.

28. From the evidence gathered, it was determined that the victims had been kidnapped at 4.41 a.m. on 15 January 2005 and had been murdered between 5.15 and 5.20 a.m.

29. According to the relevant police reports, five vehicles and more than eight people were involved in the murder; a fact which pointed to a well-planned and premeditated crime.

30. A ballistics examination established that the bullets had been fired from the same handgun; two of the cartridge cases had been of Romanian manufacture and one of Turkish manufacture.

31. The initial investigation resulted in the identification of five suspects: M.C. ("the first suspect"), E.F. ("the second suspect"), F.M. ("the third suspect"), M.M. ("the fourth suspect") and H.O. ("the fifth suspect"). The first, second, third and fourth suspects were Cypriot nationals and "TRNC" citizens according to the "TRNC" authorities. The fifth suspect was a Turkish national.

32. DNA belonging to the first, second and fourth suspects was found on exhibits taken from the crime scene and the victims' house. DNA belonging to the first suspect was found on the steering wheel of Elmas Güzelyurtlu's car. The police authorities already had DNA from these three suspects as they had taken genetic material from all of them in the past in connection with other offences (unlawful possession of a firearm and burglary). Moreover, the BMW car was found to be registered in the name of the fourth suspect and to have been driven by the first suspect.

33. Arrest warrants had already been issued in respect of these three suspects with regard to other offences; the first suspect was wanted in

relation to a drugs case and for obtaining a passport and identity card issued by the Republic of Cyprus under false pretences; the second suspect was wanted for the unlawful possession and transfer of a firearm, and the fourth suspect was wanted for the unlawful possession of a firearm.

34. The other two suspects were linked to the murder through other evidence. DNA belonging to two unidentified persons was also found.

35. On 20 January 2005 the Larnaca District Court issued arrest warrants in respect of all five suspects on the ground that there was a reasonable suspicion that they had committed the offences of premeditated murder, conspiracy to murder, abducting (*απαγωγή*) a person in order to commit murder (sections 203, 204, 217 and 249 of the Criminal Code, Cap. 154), and the illegal transfer of a category B firearm (sections 4(1) and 51 of the Firearms and Other Arms Law (Law 113/(I)/2004, as amended)).

36. On 21 January 2005 the police authorities sent “stop list” messages to the immigration authorities (that is to say messages asking them to add the suspects to their “stop list” – a register of individuals whose entry into and exit from Cyprus is banned or subject to monitoring) and to notify the police should they attempt to leave the Republic.

37. On 23 January 2005 the police submitted “Red Notice” requests to Interpol, in order to locate the suspects and have them arrested with a view to their extradition.

38. On 26 January 2005 Red Notices were published by Interpol in respect of the first four suspects and on 28 January 2005 in respect of the fifth suspect. These sought the provisional arrest of the suspects and stated that extradition would be requested from any country with which the Republic of Cyprus was linked by a bilateral extradition treaty, an extradition convention or any another convention or treaty containing provisions on extradition.

39. As the police authorities were not able to trace the suspects in the areas controlled by the Republic, on 27 January 2005 they applied for the issuance of European arrest warrants. On the same day the Larnaca District Court issued European arrest warrants in respect of all five suspects.

40. On 23 and 28 January 2005 the Cypriot bureau of Interpol sent emails to the Turkish Ministry of Internal Affairs stating that the Cypriot police were searching for the first, second, third and fifth suspects with a view to their arrest and that they should be arrested if they entered Turkey.

41. As the investigation continued, another three suspects were identified: A.F. (“the sixth suspect”), S.Y. (“the seventh suspect”) and Z.E. (“the eighth suspect”). The sixth and eighth suspects were Cypriot nationals as well as citizens of the “TRNC” according to the “TRNC” authorities. The seventh suspect was a Turkish national. The sixth suspect had been wanted by the authorities since 2003 in respect of a case involving an assault causing serious bodily harm. The relevant case file had been classified as “otherwise disposed of” (*Άλλως Διατεθείσα*) in 2004.

42. On 4 February 2005 the Larnaca District Court issued arrest warrants for all three suspects on the same grounds as those issued in respect of the other suspects (see paragraph 35 above).

43. On 10 February 2005 the same court issued European arrest warrants for those suspects.

44. On 11 February 2005, at the request of the Cypriot authorities, Red Notices were published in respect of the three suspects.

45. On the same day an email was sent to the Turkish Ministry of Internal Affairs by the Cypriot bureau of Interpol informing it that the bureau had information that the fifth suspect was going to travel to Mersin in Turkey and requesting the Turkish authorities to take the necessary measures.

46. On 15 February 2005 the police authorities transmitted “stop list” messages to the immigration authorities (see paragraph 36 above).

47. The Cypriot Government submitted that as the investigation had progressed more evidence had been collected implicating the suspects. More than 180 statements had been taken from various persons, including the relatives of the victims, persons who knew or had connections with the victims, and persons involved in the investigation. The authorities had also carried out DNA tests on a number of other possible suspects but no link to the crime had been found.

48. The applicants’ representatives had meetings about the case with the Attorney-General (in January 2006 and July 2006). On 15 March 2006 the applicants, upon their request, were given a progress report by the Cypriot police. The applicants submitted that they had requested all the evidential material but this had not been provided with the report.

49. On 12 July 2006 the eighth suspect was arrested by Cypriot police in Limassol (in the Cypriot Government-controlled area). The next day he was remanded in custody for eight days by order of the Larnaca District Court on the ground that there was reasonable suspicion that he had committed offences under sections 203, 204, 217 and 249 of the Criminal Code (Cap. 154) and sections 4(1) and 51 of the Firearms and Other Arms Law (Law 113/(I)/2004, as amended). He was released, however, upon the expiry of the remand period as the authorities, after questioning him, did not have enough evidence to link him to the offences. According to the relevant police report, some of the allegations he had made could not be looked into as the Cypriot police could not conduct investigations in the “TRNC”. Furthermore, DNA tests did not link him to the crime.

50. In a letter dated 26 July 2006 the Attorney-General of Cyprus assured the applicants’ representatives that the Republic was “doing everything within its power – bearing in mind that it [did] not have effective control over the areas of the Republic occupied by Turkey (in which persons who might be involved [were to be found at that time]) and taking into account the relevant Convention case-law – to investigate the ... murder and

bring the persons responsible to trial before the Courts of the Republic”. He also informed them that he would keep them informed of the progress of the investigation and reply to the queries that they had submitted on behalf of the victims’ family and that this could be achieved through meetings at his office between him, the applicants’ representatives and the police.

51. A report by the Larnaca police investigation department dated 1 July 2007 stated that the investigation had been extended to the British bases and the occupied areas of Kyrenia and Karavas. It also stated that the investigation was still ongoing as the authorities were waiting for replies from Interpol Ankara. The report also proposed that the officers in the investigation team be commended for their outstanding work on the case.

52. As the authorities were not able to execute the arrest warrants in the “TRNC” or undertake other steps through the United Nations Peacekeeping Force in Cyprus (“UNFICYP”, see below paragraph 106), and given that the issuance of international arrest warrants had not resulted in the suspects’ surrender by Turkey, the police officer in charge of the investigation suggested in a report dated 30 March 2008 that the case be “otherwise disposed of” (*Άλλως Διατεθείσα*) pending future developments.

53. On 7 April 2008 the case file was sent, along with the above-mentioned proposal by the Larnaca police investigation department, to the Attorney-General. The latter agreed with the Larnaca police investigation department’s proposal and on 24 April 2008 instructed the police to re-submit (*εναποβληθεί*) the investigation file if and when the arrest of all or any of the suspects was effected.

54. In a letter dated 25 June 2008 to the Chief of Police, the Attorney-General noted that, despite all efforts on the part of the authorities, the suspects had not been handed over to the Republic, that he had spoken to the President of the Republic and that he had had repeated meetings and telephone conversations with the applicants’ counsel. The Attorney-General noted that the latter had informed him of the applicants’ intention to lodge an application with the Court. The Attorney-General therefore considered that it was necessary – and counsel agreed – for international arrest warrants to be issued in respect of the suspects and that Turkey, which had, pursuant to the Court’s judgments, responsibility for whatever occurred in the occupied areas, should be requested to enforce them. He demanded that, if this had not been done already, international arrest warrants be issued as quickly as possible for the surrender (*Παράδοση*) of the suspects to the Republic of Cyprus.

55. On 3 August 2008 the fourth suspect was murdered in the “TRNC”. Following confirmation of his death by UNFICYP and pursuant to instructions by the Attorney-General, the arrest warrant in respect of him was cancelled by the Larnaca District Court on 29 August 2008.

56. On 6 August 2008 the Attorney-General gave instructions for the preparation of extradition requests to Turkey under the European

Convention on Extradition of 13 December 1957, to which both States were parties (see paragraphs 144-45 below).

57. On 23 September 2008, extradition requests in respect of the six remaining suspects (the first, second, third, fifth, sixth and seventh suspects; see paragraphs 49 and 55 above), together with certified translations of all documents into Turkish, were transmitted by the Cypriot Ministry of Justice and Public Order to the Cypriot Ministry of Foreign Affairs for communication through diplomatic channels to Turkey's Ministry of Justice. The requests were then sent to the Republic's embassy in Athens for communication to Turkey.

58. By a letter dated 4 November 2008 the embassy of the Republic of Cyprus in Athens informed the Director General of the Cypriot Ministry of Foreign Affairs that on that date the extradition requests and a *note verbale* from the Cypriot Ministry of Justice and Public Order had been delivered to the Turkish embassy in Athens in a sealed envelope. The usher of the embassy had given the envelope to the embassy security guard. No receipt of delivery had been given.

59. By a letter dated 11 November 2008 the embassy of the Republic of Cyprus in Athens informed the Director General of the Cypriot Ministry of Foreign Affairs that on that date an employee of the Turkish embassy had left an envelope with the Cypriot embassy's security guard on which only the address of the Cypriot embassy had been written and which had contained the extradition requests and the *note verbale* from the Cypriot Ministry of Justice and Public Order, which had been given to the Turkish embassy on 4 November 2008. The person had not stated his identity, but had simply left (*παράτησε*) the envelope and departed in haste.

60. By a letter dated 24 November 2008 the Director General of the Cypriot Ministry of Justice informed the Attorney-General of the return of all the above-mentioned documents and stated that it was clear that Turkey was refusing to receive requests for the extradition of fugitives made by Cyprus under the European Convention on Extradition, because of its refusal to recognise the Republic of Cyprus as a State.

61. In his reply dated 26 November 2008 the Attorney-General stated that the conduct of Turkey towards the Republic of Cyprus was not that expected of a State which had signed the European Convention on Extradition. It was not, however, for the Office of the Attorney-General to decide on the measures to be taken but it was an issue to be taken up on a political level, by the Cypriot Ministry of Foreign Affairs in particular.

62. The Cypriot Government submitted that the domestic arrest warrants were still in force and would remain in force until executed pursuant to section 21 (1) of the Criminal Procedure Law.

### **C. The investigation and measures taken by the Turkish, including the “TRNC”, authorities**

63. On 17 January 2005 the victims’ bodies were taken to the Dr. Burhan Nalbantoğlu State Hospital in Nicosia (“Lefkoşa”) for post-mortem examinations. The “TRNC” police were provided with the death certificates, which had been issued by the Republic of Cyprus.

64. Given that the cause of death required that a coroner’s inquest be held, the “TRNC” police sought a court order for post-mortem examinations.

65. Following a hearing before the “TRNC” Nicosia District Court, the “TRNC” Attorney-General’s office requested the court to waive the requirement for post-mortem examinations, as post-mortem examinations had already been carried out in the Republic of Cyprus. Having heard evidence from two police officers and the hospital’s forensic pathologist the court decided that post-mortem examinations were not required.

66. On 18 January 2005 the first applicant gave a statement to the “TRNC” police. His views were requested concerning potential suspects. In his statement he alleged that there were five likely suspects: M.C, E.F., F.M., M.M. and H.O. (see paragraph 31 above). The “TRNC” authorities checked the entry and exit records of the suspects and established that the first suspect had crossed to the Republic of Cyprus side on the night of the murders and had returned to the “TRNC” side in the early hours of the morning. There was no record of the entry and exit of the other suspects on that day.

67. On 18 January 2005 the first suspect was taken to Kyrenia (“Girne”) police headquarters (*Polis Genel Müdürlüğü*) for questioning by the “TRNC” police. The BMW car he had used to cross the border was seized as evidence. The Kyrenia District Court issued a summons on the same day in respect of both the first and second suspects for the purpose of bringing them before the court on suspicion of theft, vehicle importation and forgery of documents (*Hirsizlik Araç İthalı ve Evrak Sahteleme*). The first suspect was kept in detention.

68. The first suspect’s BMW car was inspected, but no evidence was found.

69. On the same day (that is to say 18 January 2005) the third and fourth suspects were also taken for questioning by police. An arrest warrant was issued in respect of the third and fourth suspects by the Morphou (“Güzelyurt”) District Court on the same day on suspicion of forgery of documents – specifically, providing falsified documents and statements for a falsely registered vehicle (*Sahte Belge Düzenleme – Yalan Belge ve Beyanlarla Sahte Kayıtlı Araç Temin Etme*).

70. On 19 January 2005 an arrest warrant was issued in respect of the first and second suspects by the Kyrenia District Court for two days

(*Mahkeme: Zanlilarin 2 gün tutuklu kalmasına emir venir*) on suspicion of theft, forgery of documents and “providing fake registration records, etc.” (*Hirsizlik, Sahte Belge Düzenlemek, Sahte Kayut Temin Etmek v.s.*).

71. The second suspect was arrested the next day and was detained at Lapithos (“Lapta”) police headquarters.

72. On 19 January 2005 the “TRNC” Nicosia District Court also remanded the third and fourth suspects in custody for two days on suspicion of theft and forgery of documents.

73. The “TRNC” police searched the houses of the first four suspects, as well as that of another person, on the basis of search warrants issued by the Morphou District Court on 18 January 2005 (in respect of the third and fourth suspects) and by the Kyrenia District Court on 19 January 2005 (in respect of the first and second suspects). No evidence was found.

74. Statements were taken from the four suspects while they were in detention. They all denied involvement in the murders. The “TRNC” police also took statements from a number of other persons, including public servants, mainly in relation to the BMW car that the first applicant had alleged had been used by the murderers. According to the evidence collected, the BMW car had been transferred to the first suspect on 17 May 2004.

75. On 21 January 2005, following an application by the “TRNC” police, the “TRNC” Nicosia District Court remanded the first four suspects in custody for a further three days on suspicion of premeditated murder.

76. On 22 January 2005 the “TRNC” Nicosia District Court issued a summons in respect of the fifth suspect for the purpose of bringing him before the court on suspicion of premeditated murder. “TRNC” Nicosia police headquarters informed all other district police offices that they were searching for this suspect and that a warrant had been issued.

77. On different dates statements were taken from a number of persons, including the first applicant, with a view to obtaining information concerning the fifth suspect.

78. On 23 January 2005 the fifth suspect was arrested.

79. On 24 January 2005 the first four suspects were remanded in custody for another three days by the “TRNC” Nicosia District Court on suspicion of premeditated murder, murder, and possession of an illegal firearm and explosives (*Taamüden Adam Öldürme, Adam Öldürme, Kanunsuz Ateşli Silah ve Patlayıcı Madde Tasarrufu*). An arrest warrant was also issued by that court in respect of the fifth suspect in order that he might be remanded in custody for three days.

80. On 25 January 2005 “TRNC” Nicosia police headquarters were informed by the Turkish Ministry of Internal Affairs that a Red Notice had been published by Interpol in relation to the first four suspects. That Ministry requested confirmation of Elmas Güzelyurtlu’s death as the Turkish authorities had been looking for him in order to extradite him to the

“TRNC”. They also enquired about the nationality status of the first four suspects, and in particular whether or not they had Turkish nationality.

81. On 27 January 2005 the first, second, third, fourth and fifth suspects were remanded in custody for another five days by the “TRNC” Nicosia District Court on suspicion of premeditated murder.

82. On the same day the “TRNC” Nicosia District Court issued a warrant in respect of the sixth and seventh suspects (see paragraph 41 above) for the purpose of bringing them before the court on suspicion of premeditated murder. Search warrants were also issued by the Kyrenia District Court in respect of the house of the fifth suspect and by the Nicosia District Court in respect of the houses of the sixth and seventh suspects.

83. On 28 January 2005 the “TRNC” Nicosia District Court remanded the sixth, seventh and eighth suspects (see paragraph 41 above) in custody for three days on suspicion of premeditated murder. It also issued a search warrant for the house of the eighth suspect.

84. On the same date the “TRNC” police also took a statement from the fifth suspect.

85. On 31 January 2005 the sixth, seventh and eighth suspects’ detention was extended by a further eight days by the “TRNC” Nicosia District Court on suspicion of premeditated murder.

86. On the same day “TRNC” Nicosia police headquarters requested further information from the Turkish Ministry of Internal Affairs about the criminal record of the fifth suspect. They were provided with his criminal record, photograph and fingerprints on 7 February 2005.

87. On 1 February 2005 the “TRNC” Nicosia District Court extended the first five suspects’ detention for seven more days on suspicion of premeditated murder.

88. On 2 February 2005 “TRNC” Nicosia police headquarters published a notice to all branches of police informing them that they were also looking for another person, M.K., whom they also considered to be a suspect in the case. It transpired that this suspect had left for Turkey on 19 January 2005.

89. On 7 February 2005 “TRNC” Nicosia police headquarters requested the Turkish Ministry of Internal Affairs to carry out a criminal record check on M.K. and to inform them whether or not he was in Turkey.

90. On 8 February 2005 the “TRNC” police took statements from the first, second, third, fifth, sixth and eighth suspects. An additional statement was taken on 11 February 2005 from the fifth suspect. They all denied involvement in the murders.

91. On or around 11 February 2005 all the suspects were released due to a lack of evidence connecting them to the crime.

92. On 11 February 2005, following an email sent to the Turkish Ministry of Internal Affairs by the Cypriot bureau of Interpol (see paragraph 45 above), the fifth suspect was arrested as he was entering Mersin.

93. On 14 February 2005 a message was sent by Interpol Ankara to Interpol Athens in response to the Red Notice in respect of the fifth suspect. This message stated that the fifth suspect was in police custody and that the Turkish Ministry of Justice had been informed of the crime that he had allegedly committed. They also noted that under the Turkish Criminal Code, a Turkish national who had committed a crime in a foreign country which was punishable with at least three years' imprisonment under Turkish law could be punished under Turkish law. Furthermore, pursuant to domestic law, it was not possible to extradite a Turkish citizen from Turkey. Consequently, the Ministry of Justice wanted to know if it was possible for the investigation documents to be sent to them via Interpol channels.

94. On 15 February 2005 the fifth suspect was taken to the office of the Mersin public prosecutor, where a preliminary file was opened in respect of the murders and he was questioned by the public prosecutor. The Turkish Government submitted that he had been released in the absence of any evidence connecting him to the crime in question and in the absence of an extradition request.

95. M.K. (see paragraph 88 above) was also traced and on 25 March 2005 he was questioned by police at Kyrenia police headquarters. He denied any involvement in the murders.

96. On 15 April 2006 the authorities investigated a well in the village of Myrtou (“Çamlıbel”) in the Kyrenia district for evidence. Nothing, however, was found.

97. Throughout the investigation the “TRNC” police questioned and took statements from numerous persons who knew or were somehow connected or related to the suspects. As can be seen from a document in the internal police files entitled “Time/Work Sheet” (*İs Cetveli*) and the copies of the statements provided, statements were taken from various witnesses, and also from the suspects. They also searched for evidence and took fingerprints.

98. According to a note/direction in the “Time/Work Sheet”, on 30 January 2006 the “TRNC” Police Chief Inspector (*Başmüfettiş - Tahkikat Memuru*) wrote to the “TRNC” Nicosia Judicial Police Director – Assistant Police Director (*Polis Müdürü Müavini – Adli Polis Müdürü*) that upon the oral instructions of the “TRNC” Attorney-General (*Başsavcı*) a copy of the file in respect of the murder of Elmas, Zerrin and Eylül Güzelyurtlu had been prepared and would be submitted for the opinion of the “TRNC” Attorney-General. A note bearing the same date from the “TRNC” Nicosia Judicial Police Director informed the “TRNC” Attorney-General’s Office that the file regarding the case was ready and had been submitted to the “TRNC” Attorney-General.

99. The Turkish Government submitted that, following a report by the “TRNC” Police Chief Inspector, the case had been classified as “unresolved”. They provided a copy of this report, which was not dated.

According to this report, the last action undertaken as part of the investigation appears to have occurred on 22 March 2007, when the fifth suspect's car, which had been inspected by the "TRNC" police, had been handed over to the "TRNC" Nicosia Customs and Tax Office (*Lefkoşa Gümrük ve Rüsumat Dairesi*). The inspection had not resulted in the collection of any evidence concerning the crime. In his report the "TRNC" Police Chief Inspector concluded that, on the basis of the investigation that the police had conducted from the date of the murders until the time when he wrote the report, the police had not been able to resolve the case. He therefore suggested that the case be logged as "unresolved for the time being".

100. On 19 August 2009 the "TRNC" Attorney-General's office sent a copy of the case file to the "TRNC" Ministry of Foreign Affairs. They informed the latter that the case had been classified as "unresolved for the time being" on the instructions of the previous "TRNC" Attorney-General.

101. The Turkish Government submitted that the case file was with the "TRNC" Attorney-General and remained open pending the submission of evidence by the Republic of Cyprus authorities.

102. The Turkish Government submitted that after they had received the investigation file from the Cypriot Government through the Court, having been given notice of the present case, the "TRNC" police had again questioned the first and second suspects on 24 February 2010. The suspects had denied their involvement in the killings.

103. Subsequently, in other proceedings, on 31 August 2010 the Kyrenia Assize Court found the first and second suspects guilty of, *inter alia*, the murder of the first applicant's bodyguard and passed sentences amounting to thirty years' imprisonment each. An appeal by the first and second suspects was dismissed by the "TRNC" Supreme Court on 4 January 2012. They are both currently serving their sentences.

104. The Turkish Government submitted that, in the context of those proceedings, the first suspect had written on a piece of paper that the second suspect had killed three people. In addition, after being cautioned by the Kyrenia Assize Court that if he made a self-incriminating statement under oath it could be used against him, the second suspect stated: "I saw this Güzelyurtlu incident personally myself. This is what I want to say. There is also one thing, that is what he told me, ... I did not see it, it is what he explained to me. At this stage, I do not want to talk about the Güzelyurtlu murder, your honour". In its judgment the Kyrenia Assize Court noted that it had to examine the voluntary statements made before it more carefully in the light of the fact that the first suspect had retracted the statements and submitted different statements. The first suspect did not give any further statement to the police.

105. Following the above-mentioned development, the "TRNC" Attorney-General reviewed the investigation file. Taking into account the

rules of evidence, he concluded that even if the first suspect had not retracted his statement, in the absence of other evidence, this statement would not have been sufficient for any charges against the suspects to be brought.

#### **D. Cooperation attempts through the United Nations**

106. Following the murders the Cypriot Government, the “TRNC” and the applicants were in contact with UNFICYP about the case. A number of meetings were held and there was also an exchange of telephone calls and correspondence. The meetings were held between UNFICYP and either the Cypriot police or the “TRNC” police and authorities, including the “TRNC” Prime Minister and Deputy Prime Minister. It appears from the file that the only meeting where both sides were involved was the one held on 24 January 2005 between the private secretary of the “TRNC” Prime Minister, UNFICYP’s Senior Police Adviser and Commander (“the SPA”), the head of UNFICYP’s civil affairs unit, and the envoy of the President of the Republic of Cyprus. Between 2005 and 2006, an exchange of correspondence concerning the investigation into the murders took place between the applicants’ representatives and UNFICYP officials.

##### *1. Information submitted by the parties*

###### **(a) Internal note dated 20 January 2005 (Cyprus)**

107. According to this note submitted by the Cypriot Government, the Cypriot authorities made contact with UNFICYP’s Special Representative (“SR”) to see whether UNFICYP could assist. They informed UNFICYP that they intended to carry out a complete investigation into the crime and that the police were working intensively to gather information and evidence. Some of this, however, would have to be collected from the occupied areas. UNFICYP’s SR said that UNFICYP was ready to provide help but suggested, acknowledging the difficulties, that it might be better for the two sides to be in direct contact with each other and to exchange information. The Cypriot authorities had informed him that this was not possible as the Cypriot police could not have direct contact with the “TRNC” police and that it was for this reason they had sought UNFICYP’s intervention.

###### **(b) Internal note by the Cypriot police dated 21 January 2005**

108. According to this note, a meeting was held on that day at UNFICYP headquarters in Nicosia on the initiative of the SPA between the SPA and the assistant of the Cypriot Chief of Police. The SPA stated that she had had, on the same day, a long meeting concerning the murders with the “TRNC” Attorney-General. She had informed the “TRNC” Chief of Police that the Cypriot police had in their possession genetic material

linking three of the suspects to the crime (although she was not in a position at that time to tell them who these suspects were), as well as other evidence linking another two persons to the crime, and that one of the cartridges found at the scene had been made in Turkey. She had also informed him that five arrest warrants had been issued by a Cypriot court against the suspects, four of whom were detained in “TRNC” prisons. She had expressed her concerns that if the suspects were released they might leave the “TRNC” and their future arrest would not be possible. The “TRNC” Chief of Police had informed her that these suspects had been detained for minor offences (car theft) and that it was possible that their detention would not be extended by the judge. Although the “TRNC” authorities would try to have their detention extended, they had no evidence to charge them with murder. Although the suspects had already been questioned about the murders and had given some information, this was not enough. No voluntary statements had been made. The “TRNC” Chief of Police had also told her that he was aware that the Cypriot police did not have enough evidence and that only if the two police forces cooperated could more evidence be collected. He had also asked her if, and how, UNFICYP could help; she had informed him that UNFICYP could only intervene if one of the two sides made an official request for assistance.

109. The “TRNC” Chief of Police had expressed his concerns in respect of the problems that had arisen and might also arise in the future and considered it advisable that the two police forces come to an agreement to enable cooperation in such cases. The “TRNC” Minister of Foreign Affairs was ready to discuss matters of policing and public safety with the Minister of Foreign Affairs of Cyprus and other members of the Cypriot police in order to facilitate cooperation without any political ramifications (*προεκτάσεις*).

110. UNFICYP’s liaison officer had asked if there was a possibility that Turkey could be involved, so that the suspects could be extradited to Turkey and from there to the Republic of Cyprus. The “TRNC” Chief of Police had answered in the negative; it appeared that the “TRNC” authorities had already examined the matter but could not take such action as it was not provided for by their legislation. The “TRNC” Chief of Police had suggested that the Cypriot police hand over the evidence to the “TRNC” police so that the latter could arrest and try the suspects. If the Cypriot police informed their authorities officially about the evidence and exhibits in respect of the case and officially requested the extradition of the suspects, the “TRNC” authorities could cooperate and possibly extradite them. One of the suspects was in Turkey but appeared not to be connected to the murders. The “TRNC” authorities also had information in their possession linking other persons to the murders.

111. According to the SPA the “TRNC” authorities were sincere and wished to cooperate. They had mentioned, *inter alia*, their concerns that

there could be more crimes of this nature – that is to say criminals going through crossing points, committing crimes and then returning to the other side in order to avoid arrest and punishment. UNFICYP was ready to provide advice as to how the Cypriot Government should act and to sit in any negotiations in order to see how UNFICYP could intervene so as to help investigate (*εξιχνιασσει*) the murders. The SPA had asked the Cypriot authorities whether Interpol could intervene as she considered it unfair that, although the perpetrators of an atrocious crime had been identified, they remained free because of a political problem. The “TRNC” police had requested to be kept informed by the United Nations (UN) of developments in the case and she had promised that they would be.

**(c) From the minutes of a meeting on 24 January 2005 (Turkey)**

112. On 24 January 2005 a meeting was held between the private secretary of the “TRNC” Prime Minister, the SPA, the head of UNFICYP’s civil affairs unit, and the envoy of the President of the Republic of Cyprus. According to the minutes of the meeting, the “TRNC” authorities needed the results of the DNA tests that been carried out by the Cypriot authorities, which were reluctant to transmit them on the pretext that this would constitute recognition of the “TRNC”. The “TRNC” authorities suggested that these could be transmitted through UNFICYP. A non-paper dated 24 January was given to the envoy. It stated as follows:

“According to the Constitution of Cyprus (article 159), any case confined among Turkish Cypriots should be taken by the Turkish Cypriot courts.

In the case of murder of Elmas Güzelyurtlu and his family, all the suspects are Turkish Cypriots hence the case should be heard by Turkish Cypriot courts by Turkish Cypriot judges.

Since the act took place in Greek Cypriot side and all of the evidences collected successfully by the Greek Cypriot police, cooperation is needed for the justice to be done.

This is an urgent situation therefore we need to act together immediately. As a first step the report concerning the DNA analysis is needed to get the court order to have the suspects in custody during the lawsuit.

This is a humanitarian issue and totally out of political concerns. The political concerns should not be in the way to prevent the justice to take place.”

**(d) Letter dated 24 January 2005 from the Diplomatic Office of the President of the Republic of Cyprus to the SPA**

113. This letter reaffirmed the Cypriot Government’s determination to bring the suspects to justice. The Cypriot authorities had collected sufficient evidence and requested UNFICYP to facilitate the handing-over of the suspects and evidential material to the Cypriot authorities. It stated that the Cypriot police had issued international arrest warrants in respect of four of the suspects, which had been forwarded to Interpol’s General Secretariat

and to all of Interpol's member States. The Cypriot police were in the process of issuing an international arrest warrant in respect of the fifth suspect.

**(e) Internal note dated 25 January 2005 (Cyprus)**

114. This note stated that the "TRNC" Attorney-General had notified UNFICYP that he did not intend to hand over to the Cypriot police the three suspects who were detained in the "TRNC" for the murders. He said that there was no legal or constitutional basis for handing over the accused to Cyprus, relying *inter alia* on the 1960 Constitution of Cyprus (Article 159(2)). The "TRNC" Attorney-General had notified UNFICYP of this position.

**(f) Police note dated 25 January 2005 (Cyprus)**

115. This note stated that the SPA had met the police at Nicosia police headquarters after she had met the "TRNC" Chief of Police on the same day. The latter had suggested that a meeting be organised with the Cypriot police, in secret, on neutral territory chosen by UNFICYP, so that the issue would not become the object of political manipulation. The "TRNC" Attorney-General had consented to such a meeting. According to the "TRNC" Chief of Police, there might be more suspects and the first applicant had given inaccurate information to the Cypriot police, including the wrong photo of the alleged fifth suspect. As a first step, the "TRNC" Chief of Police had suggested the participation in the investigation of an equal number of officers of the same grade from both sides and the presentation of all exhibits collected which could help solve the crime, such as photographs and fingerprints of the suspects and samples of genetic material. He had also mentioned that in order to ensure the continued detention of the suspects, the "TRNC" authorities would like to have the results of the DNA tests linking the suspects to the case. As a second step, the "TRNC" Chief of Police had suggested that the "TRNC" police be given information concerning the ballistics evidence in order to enable the "TRNC" authorities to compare that evidence with information in their database. The SPA had noted that there would be no discussion in any meeting held as to which side would bring the suspects to justice, as the matter at this stage would be limited to the investigation of the case, without giving rise to any political implications. That matter could be discussed later on a political level. The Cypriot police had expressed their hesitations as to the usefulness and repercussions of such a meeting. They undertook to inform the SPA of the Chief of Police's decision on the matter.

**(g) From the minutes of a meeting on 25 January 2005 (Turkey)**

116. The meeting between the SPA and the "TRNC" Chief of Police on that 25 January 2005 was also reflected in the minutes submitted by the

Turkish Government. According to these minutes, Elmas Güzelyurtlu had been known throughout Cyprus and had been suspected of many crimes; some had involved the suspects. The information in the hands of the Cypriot police was sufficient for the purpose of issuing arrest warrants in respect of the suspects. Although the “TRNC” police had already issued such warrants, they did not have evidence to bring proceedings against the suspects; more information was necessary. The SPA had asked for suggestions.

**(h) From the minutes of a meeting on 26 January 2005 (Turkey)**

117. On 26 January 2005 a meeting was held between UNFICYP officials and “TRNC” officials, including the “TRNC” Deputy Prime Minister. According to the minutes, the Deputy Prime Minister had mentioned that if the Cypriot authorities transmitted the evidence, the suspects’ detention would be extended; then if the “TRNC” courts considered the evidence to be credible, the suspects would be handed over to the Republic of Cyprus via UNFICYP.

**(i) From the minutes of a meeting on 31 January 2005 (Turkey)**

118. On 31 January 2005 another meeting was held between UNFICYP and “TRNC” officials. According to the minutes, the UNFICYP officials had submitted Interpol Red Notices in respect of three of the suspects detained in the “TRNC”. They had mentioned that the Cypriot authorities were reluctant to share the suspects’ DNA test results and did not want to collaborate with the “TRNC”.

**(j) From the minutes of a meeting on 7 February 2005 (Turkey)**

119. At a meeting held on 7 February 2005 UNFICYP officials and the “TRNC” Prime Minister discussed the reluctance of the Cypriot authorities to cooperate.

**(k) From the minutes of a meeting on 18 February 2005 (Turkey)**

120. On 18 February 2005 a meeting was held between the head of UNFICYP’s civil affairs unit and the Undersecretary of the “TRNC” Ministry of Foreign Affairs. The former stated that the Cypriot authorities’ attitude concerning their cooperation with the “TRNC” was changing and that they were planning to send the evidence through UNFICYP. He also asked the Undersecretary whether the suspects could be re-arrested and surrendered to the Cypriot authorities through UNFICYP. The Undersecretary replied that under the 1960 agreements if the suspects were Turkish, then they should be tried in a Turkish-Cypriot court.

**(l) Email dated 7 March 2005 from the Director of the Diplomatic Office of the President of the Republic of Cyprus to the Chief European Union negotiator for Cyprus**

121. According to this email, the Cypriot authorities around this time had forwarded to UNFICYP an interim report by the Laboratory of Forensic Genetics of the Cyprus Institute of Neurology and Genetics in order to facilitate its mediation of the handing-over of the suspects in the instant case. According to an internal note of a telephone conversation the Diplomatic Office was subsequently informed by UNFICYP that the above-mentioned report had been passed on to the “TRNC” authorities, who had found the evidence that it contained to be insufficient. The “TRNC” authorities had requested video tapes but had not clarified whether the suspects would be handed over if such tapes were given to them.

**(m) From the minutes of a telephone conversation on 30 March 2005 (Turkey)**

122. On 30 March 2005 the head of UNFICYP’s civil affairs unit had a telephone conversation with the “TRNC” Head of Consular Affairs. The former suggested that the courts of the Republic of Cyprus could sit at the British Sovereign Base areas and the hearing could take place there. The Head of Consular Affairs stated that the “TRNC” authorities were not planning to take any steps until the evidence and records were handed over to them because it was unacceptable to the “TRNC” authorities for the Cypriot authorities to work alone on this matter.

**(n) From the minutes of a meeting on 5 April 2005 (Turkey)**

123. On 5 April 2005 UNFICYP officials had a general meeting with the “TRNC” Head of Consular Affairs who mentioned that the DNA results given to them were not sufficient and that they needed more concrete evidence such as police investigation records and security camera recordings. The head of UNFICYP’s civil affairs unit promised to discuss this with the Cypriot side.

**(o) Letter dated 23 February 2006 from the SPA to the applicants’ representatives**

124. In reply to a previous letter where the applicant’s lawyer had requested the disclosure of any possible information relating to the UNFICYP’s efforts in the case, the SPA stated that the UNFICYP had become involved in the case on 16 January 2005 at the request of the Cypriot authorities, and that it had limited itself to a mediation role to facilitate the exchange of information between both sides.

**(p) Letter dated 18 May 2006 from the Cypriot Chief of Police to the Ministry of Foreign Affairs of Cyprus**

125. This letter stated that at meetings held with UNFICYP and the Deputy Senior Police Advisor (“the DSPA”), the SPA had suggested that meetings between the Cypriot police, the police of the British Sovereign Bases and the “TRNC” police be held at a technical services level in the mixed village of Pyla, which is located in the UN buffer zone. The Cypriot Chief of Police had rejected this as constituting a move towards recognising a “pseudo-state” which provided refuge to fugitives. He sought to obtain the Cypriot Government’s political position regarding this suggestion.

**(q) Note by the Cypriot police to the Chief of Police dated 18 May 2006**

126. This note stated that at a meeting held the day before between the SPA, the DSPA and members of the Cypriot police and investigation team, the DSPA had raised his concerns about an increased level of collaboration between Greek Cypriot and Turkish Cypriot criminals and their movements across the island. He had also enquired whether:

- the Cypriot police intended to give the evidence to UNFICYP for it to be forwarded to the “TRNC” authorities in order to enable the suspects’ prosecution;

- the Cypriot police could make the necessary arrangements for the suspects to be taken to a UNFICYP building at the Ledra Palace Hotel in the buffer zone and be questioned through “the video recording interview method”, and – if this was possible – whether such evidence would be admissible before a Cypriot court;

- if one of the suspects were to come over to make a statement against the other suspects, the Cypriot authorities would arrest him and bring criminal proceedings against him.

127. The Cypriot police had informed the DSPA that they would cooperate with UNFICYP but not with the “TRNC” authorities or police. They had also informed him that prosecution decisions were made by the Attorney-General. They had highlighted the fact that, despite the Red Notices, Turkey had refused to cooperate and had not surrendered the fifth suspect, who had gone to Turkey. They had arrested him but subsequently released him.

128. The DSPA had stated that the “TRNC” – pursuant to its own laws – could not surrender Turkish Cypriots. It had been stressed by the Police Chief Superintendent that the “TRNC” was not a State. The DSPA had also put forward the suggestion that the suspects could be surrendered to a third country such as Greece, and that steps to bring them to justice could be taken from there. The Police Chief Superintendent had informed him that this was not an option and that Turkey had an obligation to comply with international law. Finally, the DSPA had suggested that the matter could be discussed by the relevant technical committee in order to avoid the issue

taking on a political dimension, to find solutions for cooperation and to bring the perpetrators to justice. He had been informed that this was a sensitive matter and that the political aspects could not be ignored; if the “pseudo-state” authorities were interested in completing the investigation and bringing the perpetrators to justice, they should stop providing refuge to criminals.

**(r) Internal note about a meeting on 20 June 2006 between UNFICYP and the Cypriot police (Cyprus)**

129. This note stated that at this meeting, the DSPA had noted that he was trying to convince the “TRNC” authorities to surrender the suspects. The Cypriot police had informed him that they would not be providing any evidence to, or cooperating with, the authorities of the “pseudo-state” but that they were willing to cooperate with UNFICYP without this implying any recognition of an illegal entity.

**(s) Email dated 25 October 2006 sent by the DSPA to the applicants’ representative**

130. In an email sent by the DSPA to the applicants’ representative, Mrs Meleagrou on 25 October 2006, the following, *inter alia*, was stated:

“I note your request and assure you of the UN’s utmost cooperation in dealing with any matter of a criminal nature, particularly ... in this most serious case. While UNFICYP has been exhausting its efforts to reach some conclusion to this case, it is unfortunate that there is a stalemate at this present time due to the two sides not agreeing on a way forward. I note your comments that:

The [Republic of Cyprus] will hand over to the UN in Cyprus all the evidence on the suspects so that the UN legal team can evaluate the evidence and see whether or not there is a *prima facie* case against them. The [Republic of Cyprus] will only do so if the ‘TRNC’ authorities give an undertaking that they will hand the suspects over to the [Republic of Cyprus] to be tried if the UN is satisfied (*possibly after discussion with the ‘TRNC’* – the italicised parenthesis is not strictly speaking part of the proposal at this stage but might be what we will have to argue in order to facilitate matters) that there is such a *prima facie* case against the suspects:

1. The [Republic of Cyprus] will not hand over any evidence for the purposes of conducting a trial in the north. This is despite the fact that [an]other jurisdiction (United Kingdom) has in the past successfully caused a trial to be conducted in the north [in respect of] a serious crime committed in the UK.

2. The legal processes conducted in the north do not allow for the handing over of any [Turkish Cypriot] suspects to any authorities in the south or any other country in any other circumstances.

Therefore UNFICYP stands ready to facilitate [in any way] it can in this case, I can see no resolution being [arrived at] until such time as one side or the other cedes their current position. Either the [Republic of Cyprus] is willing to hand over all the evidence to the north and offer full police and evidentiary cooperation so that a trial can be conducted in that ‘jurisdiction’, or the north is willing to hand over suspects [on the basis of] sufficient evidence to cause the [issuance] of an arrest warrant in the

north, with a view to handling the suspects to UNFICYP for passing on the [Republic of Cyprus].

As always UNFICYP stands ready to cooperate in whatever manner it can.”

**(t) Email dated 16 November 2006 sent by UNFICYP to the applicants’ representative**

131. In an email sent by UNFICYP to the applicants’ representative Mrs Meleagrou on 16 November 2006 the following was stated:

“As stated in my previous email to you UNFICYP stands ready to facilitate negotiations between the two sides in respect of this matter and indeed continues in its efforts to find a solution. However, UNFICYP is not in a position to formally engage a suitably qualified expert to officially adjudicate on the evidence held by the Republic of Cyprus. It has already been stated that while the UNFICYP believes that there is enough evidence on face value for the two sides to reach a suitable position, it welcomes the delivery of any further or all evidence, copies or otherwise, from the Republic of Cyprus that can be used to further meaningful dialogue between the two sides. I again reiterate the following options that may in my view facilitate further useful negotiations:

The [Republic of Cyprus], without prejudice, [should] deliver to the UNFICYP all necessary evidence, allowing this to be used as UNFICYP sees fit, with a view to negotiating the alleged offenders’ arrest and handover to UNFICYP for delivery to the authorities in the south for the purposes of a trial. However, without a clear guarantee that the north will arrest and hand over the alleged offenders there is little chance of this being successful.

The only other solution is for the [Republic of Cyprus] to hand over all the evidence to UNFICYP for delivery to the relevant persons in the north with a view to having a trial conducted in the north. This option has already been rejected by the [Republic of Cyprus].”

*2. Other relevant documents: the UN Secretary-General’s reports on the UN operation in Cyprus*

132. The relevant parts of the UN Secretary-General’s reports on the UN operation in Cyprus are set out below:

133. Report of 27 May 2005:

“23. Official contact between the sides is hampered by a high degree of mistrust. On 15 January 2005, three members of a Turkish Cypriot family living in the south were killed ... . Eight suspects were arrested in the north while all the evidence remained in the south. UNFICYP’s efforts to assist the sides to bring the suspects to justice proved unsuccessful, and all suspects were released in the north. This case is an illustration of the growing number of crimes across the cease-fire line, such as smuggling, drug trafficking, illegal immigration and human trafficking. These problems are implicit in the expanding inter-communal contacts, which though positive, have also the potential for adverse consequences if the present lack of cooperation between the sides persists.

24. The continuing absence of official contacts between the sides has accentuated UNFICYP’s role in promoting bicomunal contacts. Although people from either side can meet freely since the opening of the crossings in 2003, the impartiality of the Ledra Palace Hotel venue and the United Nations umbrella are considered

indispensable for sensitive humanitarian and other meetings, including those of political parties from the north and the south. It is hoped that under the auspices of UNFICYP, contacts may be established between the sides, without prejudice to their political positions, on humanitarian and related issues generating a climate of trust and easing tensions. During the reporting period, UNFICYP provided facilities for 57 bicomunal events, including those implemented by the United Nations Development Programme (UNDP)/United Nations Office for Project Services (UNOPS) ...”.

134. Report of 2 June 2008:

“4. On 21 March [2008], ... the two leaders met in the presence of my then Special Representative and agreed on a path towards a comprehensive settlement (see annex II). The agreement entailed the establishment of a number of working groups, to consider the core issues pertaining to an eventual settlement plan, and of technical committees, to seek immediate solutions to everyday problems arising from the division of the island. They also agreed to meet again in three months to review the work of the working groups and the technical committees and, using their results, to start full-fledged negotiations under United Nations auspices. In addition, the leaders agreed to meet as and when needed prior to the commencement of full-fledged negotiations. ...

5. On 26 March [2008], representatives of the leaders agreed to establish six working groups on governance and power-sharing, European Union matters, security and guarantees, territory, property and economic matters, as well as seven technical committees on crime and criminal matters, economic and commercial matters, cultural heritage, crisis management, humanitarian matters, health and the environment. ... On 22 April [2008], the groups and committees began to meet. They have been coming together on a regular basis since then, as foreseen by the leaders, and facilitated by the United Nations.”

135. Report of 15 May 2009:

“9. On 14 April [2009], the leaders agreed to the implementation of 4 of the 23 confidence-building measures identified by the technical committees, which were aimed at improving the daily life of Cypriots across the entire island. They concern the passage of ambulances through crossing points in cases of emergency, the establishment of a communications and liaison facility (operating round the clock) to share information on crime and criminal matters, an initiative funded by the United Nations Development Programme (UNDP) on awareness-raising measures for saving water and the establishment of an advisory board on shared cultural heritage. ...”

136. Report of 9 January 2015:

“10. ... UNFICYP police facilitated meetings of the Technical Committee on Crime and Criminal Matters, and the Joint Communications Room continued to work actively, providing the police services of both sides with a forum for enhanced cooperation. The appointment for the first time of serving police officers as Greek Cypriot representatives to the Technical Committee signaled a significant step forward in cooperation. Over and above the exchange of information on criminal matters that have intercommunal elements, the Joint Communications Room focused on the investigation of crimes that took place within and across the buffer zone, the handover of persons of interest through the UNFICYP police and humanitarian cases.”

## II. RELEVANT DOMESTIC LAW

### A. Extradition

137. Article 9 § 1 of the former Turkish Criminal Code (Law no. 765) provided that:

“A request for the extradition to foreign States of a Turkish national on account of a criminal offence cannot be accepted.”

138. On 1 June 2005 a new Criminal Code (Law no. 5237) entered into force. Article 18 § 2 provided as follows:

“A citizen cannot be extradited on account of a criminal offence except under the obligations arising out of [Turkey] being a party to the International Criminal Court.”

139. The Law on International Judicial Cooperation in Criminal Matters (Law no. 6706), which entered into force on 5 May 2016, replaced Article 18 of Law no. 5237. Article 11 § 1 (a), concerning the extradition of Turkish nationals, provides as follows:

“1. In the circumstances listed below an extradition request shall be rejected:

(a) If the person whose extradition is requested is a Turkish citizen, except for the obligations arising out of [Turkey] being a party to the International Criminal Court; ...”

140. Section 5 of the “TRNC” Law on Extradition of Criminals, Mutual Enforcement of Court Decisions and Judicial Cooperation (Law 43/1988), in so far as relevant, provides that extradition will be refused when, *inter alia*, the person whose extradition is sought is a national of the country to which the request is addressed (section 5(1)(C)) or if the crime that is the subject of the extradition request was committed, wholly or partially, in the requested State or in a place/location under its jurisdiction (section 5(1)(F)). Section 19 of the above-mentioned law provides for the reciprocity principle and states that this law applies in respect of countries which have executed agreements with the “TRNC” regarding matters that fall within the scope of this Law, on the basis of reciprocity.

### B. Criminal jurisdiction

141. According to the law of the Republic of Cyprus, Assize Courts have jurisdiction to try all offences punishable under the Criminal Code or any other law, which were committed within the bounds of the Republic (section 20(1)(a) of the Courts of Justice Law 1960 (14/1960)).

142. Under the Constitution of the Republic of Cyprus of 16 August 1960, “a court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same Community<sup>1</sup>, or where there is no

person injured, shall be composed of a judge or judges belonging to that Community” (Article 159(2)). Following the inter-communal problems in 1963, the Administration of Justice (Miscellaneous Provisions) Law (“Law no. 33/1964”) was enacted in order to address an emergency situation and to set up the necessary judicial machinery for the continued administration of justice (see *Kamenos v. Cyprus*, no. 147/07, § 34, 31 October 2017). By virtue of section 12 of that law any subordinate court shall be composed of such judge or judges, irrespective of the Community of the litigants, as the Supreme Court may direct, and any District Judge may hear and determine any case within his jurisdiction, irrespective of the Community of the litigants. Provisions for the establishment, composition and jurisdiction of the Assize Courts can be found in the Courts of Justice Law, Law no. 14/1960 (as amended – sections 3, 5 and 20).

143. Section 31(1) of the “TRNC” Courts of Justice Law (Law no. 9/1976) provides that without prejudice to the constitutional provisions, the appropriate Assize Court has jurisdiction to try, *inter alia*, offences punishable under the criminal law or any other law which have been committed (a) in the “TRNC” (section 31(1)(a)); or (b) outside the “TRNC” but on the island of Cyprus (section 31(1)(b)).

### III. RELEVANT INTERNATIONAL LAW AND PRACTICE

#### A. Council of Europe instruments on extradition

144. The European Convention on Extradition of 13 December 1957 (“the Extradition Convention”) was ratified by Turkey on 7 January 1960 and entered into force in respect of Turkey on 18 April 1960. The four Additional Protocols to the Convention were ratified on 10 July 1992 (the Second Protocol) and 11 July 2016 (the Additional, Third and Fourth Protocols) and entered into force in respect of Turkey on 8 October 1992 (the Second Protocol), 9 October 2016 (the Additional Protocol), and 1 November 2016 (the Third and Fourth Protocols). Turkey has made a declaration in respect of the Additional Protocol and the Third and Fourth Additional Protocols concerning the Republic of Cyprus. It declared that its ratification of the above Protocols did not amount “to any form of recognition of the Greek Cypriot Administration’s pretention to represent the defunct ‘Republic of Cyprus’ as party” to these instruments, “nor should it imply any obligations on the part of Turkey to enter into any dealing with the so-called Republic of Cyprus within the framework” of these instruments.

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<sup>1</sup> “Community” means the Greek or the Turkish Community (Article 186 of the 1960 Constitution).

145. This Convention was ratified by Cyprus on 22 January 1971 and entered into force in respect of Cyprus on 22 April 1971. The First, Second and Third Additional Protocols to the Convention were also ratified on 22 May 1979, 13 April 1984 and 7 February 2014 and entered into force in respect of Cyprus on 20 August 1979, 12 July 1984 and 1 June 2014 respectively. On 6 December 2016 Cyprus entered an objection to the above declarations by Turkey (see paragraph 144 above), stating that these declarations were tantamount in essence to a reservation contrary to the object and purpose of the Protocols and that they prevented the realisation of cooperation between State Parties foreseen by them. Cyprus added that it considered the Turkish declarations to be null and void and that its objection should not preclude the entry into force of the relevant Protocols, in their entirety, between the Republic of Cyprus and Turkey.

146. The Extradition Convention has been ratified by all member States of the Council of Europe.

147. The relevant provisions of this Convention read as follows:

**Article 1 – Obligation to extradite**

“The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.”

**Article 2 – Extraditable offences**

“1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.

...”

**Article 6 – Extradition of nationals**

“1. (a) A Contracting Party shall have the right to refuse extradition of its nationals.

(b) Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term ‘nationals’ within the meaning of this Convention.

...

2. If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.”

### **Article 12 – The request and supporting documents**

“1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.

2. The request shall be supported by:

(a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;

(b) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and

(c) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.”

### **Article 13 – Supplementary information**

“If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof.”

### **Article 16 – Provisional arrest**

“1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2.a, exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.

3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.”

**Article 18 – Surrender of the person to be extradited**

“1. The requested Party shall inform the requesting Party by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.

2. Reasons shall be given for any complete or partial rejection.

...”

**Article 27 – Territorial application**

“1. This Convention shall apply to the metropolitan territories of the Contracting Parties.

...”

148. Some States Parties to the Convention (Turkey is not among them) have made specific reservations to the effect that they may refuse extradition if the requesting State does not produce sufficient evidence that the person claimed has committed the offence.

**B. Council of Europe instruments on other forms of cooperation in criminal matters**

*1. The European Convention on Mutual Assistance in Criminal Matters*

149. The European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (“the Mutual Assistance Convention”) was ratified by Turkey on 24 June 1969 and entered into force in respect of Turkey on 22 September 1969. Turkey ratified the two Additional Protocols on 29 March 1990 and 11 July 2016 respectively; they came into force in respect of Turkey on 27 June 1990 and 1 November 2016. Turkey made the same declaration as the one made under the Extradition Convention (see paragraph 144 above) in respect of the Second Additional Protocol concerning the Republic of Cyprus (declaration of 11 July 2016).

150. The Mutual Assistance Convention was ratified by Cyprus on 24 February 2000 and entered into force on 24 May 2000. Cyprus ratified the two Additional Protocols on 24 February 2000 and 12 February 2015 respectively; they came into force in respect of Cyprus on 24 May 2000 and 1 June 2015. On 6 December 2016 Cyprus made an objection to the above declaration made by Turkey, in the same terms as the one made under the Extradition Convention (see paragraph 145 above).

151. The Mutual Assistance Convention has been ratified by all member States of the Council of Europe.

152. The relevant provisions of this Convention read as follows:

**Article 1**

“1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings

in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

...”

### **Article 2**

“Assistance may be refused:

(a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;

(b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country.”

### **Article 3**

“1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

3. The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.”

### **Article 6**

“1. The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.

...”

### **Article 15**

“1. Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

2. In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.

...

7. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.”

**Article 19**

“Reasons shall be given for any refusal of mutual assistance.”

153. Some State Parties to the Convention (Cyprus is not among them) have made reservations reserving their right to refuse the assistance in case of pending criminal proceedings.

*2. The European Convention on the Transfer of Proceedings in Criminal Matters*

154. The European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 (“the Transfer of Proceedings Convention”) was ratified by Turkey on 27 October 1978 and entered into force in respect of Turkey on 28 January 1979. Turkey made at that time a reservation to the effect that it did not consider itself bound to carry out the provisions of the Convention “in relation to the Greek Cypriot Administration, which is not constitutionally entitled to represent alone the Republic of Cyprus”. This Convention was ratified by Cyprus on 19 December 2001 and entered into force in respect of Cyprus on 20 March 2002.

155. The Transfer of Proceedings Convention has been ratified by 25 member States of the Council of Europe. 10 other member States have only signed it.

156. The relevant provisions of this Convention read as follows:

**Article 3**

“Any Contracting State having competence under its own law to prosecute an offence may, for the purposes of applying this Convention, waive or desist from proceedings against a suspected person who is being or will be prosecuted for the same offence by another Contracting State. Having regard to Article 21, paragraph 2, any such decision to waive or to desist from proceedings shall be provisional pending a final decision in the other Contracting State.”

**Article 6**

“1. When a person is suspected of having committed an offence under the law of a Contracting State, that State may request another Contracting State to take proceedings in the cases and under the conditions provided for in this Convention.

2. If under the provisions of this Convention a Contracting State may request another Contracting State to take proceedings, the competent authorities of the first State shall take that possibility into consideration.”

**Article 8**

“1. A Contracting State may request another Contracting State to take proceedings in any one or more of the following cases:

- a. if the suspected person is ordinarily resident in the requested State;
- b. if the suspected person is a national of the requested State or if that State is his State of origin;

- c. if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;
  - d. if proceedings for the same or other offences are being taken against the suspected person in the requested State;
  - e. if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;
  - f. if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;
  - g. if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured;
  - h. if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so;
- ...”

### **C. The principle of non-recognition**

157. The International Law Commission (ILC), at its fifty-third session, in 2001, adopted a set of “Draft articles on Responsibility of States for Internationally Wrongful Acts”. This text was submitted to the United Nations General Assembly, which took note of it (Resolution A/RES/56/83 of 12 December 2001). The following Articles are of particular interest:

#### **Chapter III**

#### **Serious breaches of obligations under peremptory norms of general international law**

##### **Article 40**

##### **Application of this chapter**

“1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.”

##### **Article 41**

##### **Particular consequences of a serious breach of an obligation under this chapter**

“1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40 nor render aid or assistance in maintaining that situation.

...”

158. In its Commentary to Draft Article 41.2 the ILC observed in particular as follows (footnotes omitted):

“(4) Pursuant to *paragraph 2* of Article 41, States are under a duty of abstention, which comprises two obligations, first, not to recognize as lawful situations created by serious breaches in the sense of article 40 and, secondly, not to render aid or assistance in maintaining that situation.

(5) The first of these two obligations refers to the obligation of collective non-recognition by the international community as a whole of the legality of situations resulting directly from serious breaches in the sense of article 40. ... It not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition.

(6) The existence of an obligation of non-recognition in response to serious breaches of obligations arising under peremptory norms already finds support in international practice and in decisions of the ICJ [International Court of Justice]. The principle that territorial acquisitions brought about by the use of force are not valid and must not be recognized found a clear expression during the Manchurian crisis of 1931-1932, ...

(7) An example of the practice of non-recognition of acts in breach of peremptory norms is provided by the reaction of the Security Council to the Iraqi invasion of Kuwait in 1990. Following the Iraqi declaration of a ‘comprehensive and eternal merger’ with Kuwait, the Security Council, in resolution 662 (1990) of 9 August 1990, decided that the annexation had ‘no legal validity, and is considered null and void’, and called upon all States, international organizations and specialized agencies not to recognize that annexation and to refrain from any action or dealing that might be interpreted as a recognition of it, whether direct or indirect. ...

...

(9) Under article 41, paragraph 2, no State shall recognize the situation created by the serious breach as lawful. This obligation applies to all States, including the responsible State ... Similar considerations apply even to the injured State: since the breach by definition concerns the international community as a whole, waiver or recognition induced from the injured State by the responsible State cannot preclude the international community interest in ensuring a just and appropriate settlement. ...

(10) The consequences of the obligation of non-recognition are, however, not unqualified. In the *Namibia* advisory opinion the Court [International Court of Justice], despite holding that the illegality of the situation was opposable *erga omnes* and could not be recognized as lawful even by States not members of the United Nations, said that:

the non-recognition of South Africa’s administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international cooperation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.

Both the principle of non-recognition and this qualification to it have been applied, for example, by the European Court of Human Rights.

(11) The second obligation contained in paragraph 2 prohibits States from rendering aid or assistance in maintaining the situation created by a serious breach in the sense of article 40. ... It deals with conduct ‘after the fact’ which assists the responsible State in maintaining a situation ‘opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law’.

...

(12) In some respects, the prohibition contained in paragraph 2 may be seen as a logical extension of the duty of non-recognition. However, it has a separate scope of application insofar as actions are concerned which would not imply recognition of the situation created by serious breaches in the sense of article 40. ...

...”

#### **D. The international response to the establishment of the “TRNC”**

159. On 18 November 1983, in response to the proclamation of the establishment of the “TRNC”, the United Nations Security Council adopted Resolution 541 (1983) which provides, where relevant, as follows:

“The Security Council ...

1. *Deplores* the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus;

2. *Considers* the declaration ... as legally invalid and calls for its withdrawal;

...

6. *Calls upon* all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus;

7. *Calls upon* all States not to recognise any Cypriot State other than the Republic of Cyprus;

...”

160. Resolution 550 (1984), adopted on 11 May 1984 in response to the exchange of “ambassadors” between Turkey and the “TRNC” stated, *inter alia*, as follows:

“The Security Council ...

1. *Reaffirms* its Resolution 541 (1983) and calls for its urgent and effective implementation;

2. *Condemns* all secessionist actions, including the purported exchange of ambassadors between Turkey and the Turkish Cypriot leadership, declares them illegal and invalid and calls for their immediate withdrawal;

3. *Reiterates* the call upon all States not to recognise the purported State of the ‘Turkish Republic of Northern Cyprus’ set up by secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity;

4. *Calls upon* all States to respect the sovereignty, independence, territorial integrity, unity and non-alignment of the Republic of Cyprus;

...”

161. In November 1983, the Committee of Ministers of the Council of Europe decided that it continued to regard the Government of the Republic of Cyprus as the sole legitimate Government of Cyprus and called for respect for the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus (see *Loizidou v. Turkey* (merits), 18 December 1996, § 21, *Reports of Judgments and Decisions* 1996-VI).

#### IV. RELEVANT COMPARATIVE-LAW MATERIAL

162. The Court has considered it appropriate to conduct a comparative survey with regard to two sets of questions, namely extradition on the one hand, and other forms of cooperation in criminal matters on the other. The survey takes into account the domestic law of forty-five Contracting Parties to the Convention other than Cyprus and Turkey (Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine and the United Kingdom).

##### A. Extradition

163. It would appear that national laws generally provide for the possibility (rather than an obligation to do so) of extraditing a suspect to a State where the offence at issue has been committed. Moreover, extradition becomes possible only when certain statutory conditions are satisfied, such as double criminality and the minimum severity of the sentence. It is also common for national laws to lay down conditions under which extradition must or may be refused. In a number of States these conditions include situations where the crime in question is also subject to the jurisdiction of the requested State or the latter has already instituted proceedings in respect of the same acts. This is the position, for example, in Austria, Bulgaria, Greece, Liechtenstein, Monaco, Poland, Slovenia and Switzerland. The laws of some States make it expressly clear that, even when all the legal conditions for the extradition are satisfied, the final decision by the executive power includes the consideration of the State's interests, and is thus of a political and discretionary nature. This is the case in particular in Austria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Liechtenstein, Romania and Slovakia. In contrast to the discretionary approach adopted by the overwhelming majority of States, it appears that under Irish and United Kingdom law extradition must be ordered if the relevant statutory conditions are met, although this requirement applies to

countries specified in the law or with which there are extradition agreements.

164. The generally discretionary nature of an extradition decision under domestic law can be subject to exceptions arising from provisions of an international treaty, whether multilateral or bilateral (e.g. the Council of Europe European Convention on Extradition).

165. As regards nationals, forty-two out of the forty-five member States of the Council of Europe surveyed ban their extradition as a general rule. Only Denmark, Malta and the United Kingdom do not bar, as a matter of principle, the extradition of their nationals. The rule prohibiting the extradition of nationals is enshrined in the Constitution of at least eighteen member States: Armenia, Azerbaijan, Croatia, Estonia, Georgia, Germany, Italy, Latvia, Lithuania, Moldova, Montenegro, Poland, Portugal, Romania, Russia, Slovenia, the former Yugoslav Republic of Macedonia and Ukraine. The rule is also of a constitutional nature in Austria. However, it appears that only five member States (Azerbaijan, Moldova, Monaco, Russia and Ukraine) apply the ban on extradition of nationals in all circumstances, without exception. The rest allow extradition of nationals under certain conditions (e.g. consent of the person requested) or on the basis of an international treaty.

166. It appears that only two member States (Hungary and Romania) have in their laws specific rules authorising the extradition of nationals who also have the nationality of another State. In the remaining States (those which prohibit extradition of nationals), those with double nationality are also protected by the principle of non-extradition.

#### **B. Other forms of cooperation in criminal matters: mutual assistance and transfer of proceedings**

167. A number of member States (Belgium, Estonia, Georgia, Ireland, Luxembourg, Moldova, Sweden and the United Kingdom) provide in their legislation for the possibility of denying a mutual assistance request if the execution of the request would prejudice the essential interests of the State. The possibility or even the obligation to refuse legal assistance in case of ongoing domestic proceedings concerning the same facts is provided for in the law of many other States, including Azerbaijan, Croatia, the Netherlands, Poland, Romania, the former Yugoslav Republic of Macedonia and Ukraine.

168. In a number of member States it is also possible (but not mandatory) to transfer the proceedings or criminal files to a State to which the suspect has fled, especially if the suspect is a foreign national or is a resident of that State.

## THE LAW

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

169. The applicants complained that there had been a violation of Article 2 of the Convention by both the Cypriot and Turkish (including the “TRNC”) authorities on account of their failure to conduct an effective investigation into the deaths of their relatives, Elmas, Zerrin and Eylül Güzelyurtlu. They pointed to the failure of the respondent States to cooperate in investigating the murders and bringing the suspects to justice. Article 2, in so far as relevant, 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.”

#### **A. The Turkish Government’s objection of incompatibility *ratione loci***

170. In the light of the Turkish Government’s preliminary objection, it is first necessary to determine whether the applicants’ complaint in respect of Turkey is compatible *ratione loci* with the Convention.

##### *1. The Chamber judgment*

171. Having regard to the fact that the deaths of the applicants’ relatives had occurred in the territory controlled by and under the jurisdiction of Cyprus, the Chamber examined of its own motion the compatibility *ratione loci* of the application in so far as it was directed against the Turkish Government (see paragraph 183 of the Chamber judgment). The Chamber observed that the alleged perpetrators of the murder were or had been within Turkey’s jurisdiction, either in the “TRNC” or in mainland Turkey. The Turkish and “TRNC” authorities had been informed of the crime and Red Notices concerning the suspects had been published. These elements engaged Turkey’s procedural obligation under Article 2 and therefore justified a departure from the general approach based on territoriality. The Chamber further noted that the “TRNC” authorities had instituted their own criminal investigation and that their courts had criminal jurisdiction. The Chamber concluded that the applicants’ complaints against Turkey were compatible *ratione loci* with the provisions of the Convention (see paragraphs 184-89 of the Chamber judgment).

## 2. *The parties' submissions*

### (a) **The Turkish Government**

172. The Turkish Government pointed out that the purpose of the procedural obligation to investigate under Article 2 was to secure “the effective implementation of the domestic laws safeguarding the right to life” (referring to *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII). Since the domestic criminal law provisions to be put in place by States were to protect the right of life of persons “within their jurisdiction” only, Article 2 did not require States to put in place criminal-law provisions dealing with offences committed outside their jurisdiction, or to assume universal jurisdiction (referring to *Rantsev v. Cyprus and Russia*, no. 25965/04, § 244, ECHR 2010 (extracts), and *Emin and Others v. Cyprus, Greece and the United Kingdom* (dec.), nos. 59623/08 and 6 others, 3 June 2010). In the absence of “special features” in a given case (within the meaning of *Rantsev*, cited above, § 243; for instance, treaty commitments to investigate or to institute criminal proceedings in respect of a death occurring in another State Party as in the case of *Aliyeva and Aliyev v. Azerbaijan*, no. 35587/08, § 57, 31 July 2014), a State was obliged to investigate a death under Article 2 only if there was such a “jurisdictional link” between the victim and the State. In the present case, there was no “jurisdictional link” between the victims and Turkey either on the basis of territoriality, State agent authority and control, or effective control over an area. The presence of the suspects in the “TRNC” or Turkey and the fact that the Turkish and “TRNC” authorities had been informed of the crime (§ 187 of the Chamber judgment) could not qualify as “special features” justifying a departure from the general principle that the procedural obligation under Article 2 of the Convention fell on the State under whose jurisdiction the victim was to be found at the time of death. In the Turkish Government’s opinion, nor could it be said that by instituting its criminal investigation of its own motion Turkey had assumed the procedural obligations under Article 2 arising out of the jurisdictional link between the victims and Cyprus.

173. The Turkish Government further argued that there was no “jurisdictional link” with Turkey with regard to the obligation to cooperate, which could not be construed as a “free-standing obligation” on all Contracting States where suspects or evidence might be present. In their view, the Court’s case-law did not support the existence of such an obligation. The cases of *O’Loughlin* (*O’Loughlin and Others v. the United Kingdom* (dec.), no. 23274/04, 25 August 2005) and *Cummins* (*Cummins v. the United Kingdom* (dec.), no. 27306/05, 13 December 2005) did not deal with an obligation to cooperate but were limited to the question whether the State to which the suspected perpetrators had fled was under an obligation to investigate. *Rantsev* was first and foremost a case about human

trafficking under Article 4, and the jurisdictional link with Russia was based on the fact that it was the State of origin of the trafficking chain, which gave rise to an obligation to cooperate with the other States concerned.

174. For all these reasons, the Turkish Government invited the Court to declare the applicants' complaint under Article 2 against Turkey incompatible *ratione loci* with the Convention.

**(b) The Cypriot Government**

175. The Cypriot Government submitted that the applicants' complaint was compatible *ratione loci* with the Convention in respect of Turkey for at least four reasons. The first was because Turkey was in control of the northern part of Cyprus and the actions of the "TRNC" were attributable to Turkey. Secondly, because Turkey, as a third State with access to the suspects, had a duty under Article 2 to cooperate with the Cypriot investigation. Thirdly, Article 2 required a State where it was known that evidence or suspected perpetrators were located to take, of its own motion, steps to secure that evidence or the suspected perpetrators (relying on *O'Loughlin and Others*, cited above). Fourthly, by the "TRNC"'s initiation of an investigation, Turkey had assumed an obligation to conduct an Article 2-compliant investigation (relying on *Aliyeva and Aliyev*, cited above, § 57).

176. At the hearing, the Cypriot Government argued that the assertion of a right to investigate and prosecute in the "TRNC" should give rise to a sufficient jurisdictional link for the purposes of Article 2 of the Convention (referring to *Markovic and Others v. Italy* [GC], no. 1398/03, ECHR 2006-XIV). The Cypriot Government further noted that Turkey also had a jurisdictional link, by way of its effective control of the territory of northern Cyprus. In their opinion, there were two "special features" in the present case which placed an investigatory obligation on Turkey, notwithstanding the fact that the murder had been committed outside its jurisdiction: (a) the fact that Turkey occupied Cypriot territory and had deliberately obstructed Cyprus' investigation; and (b) the fact that Turkey knew that the suspects were within its jurisdiction.

**(c) The applicants**

177. The applicants argued that in the unique circumstances obtaining in Cyprus, Turkey had assumed jurisdiction within Article 1 of the Convention by being in effective control of northern Cyprus, notwithstanding that it was part of the sovereign territory of Cyprus. At the hearing, they added that the fact that Turkey's effective control prevented Cyprus from pursuing the murder suspects provided both a jurisdictional link and a special feature requiring cooperation from Turkey. The reason why there was a jurisdictional link and a duty to cooperate was because the two parts of Cyprus belonged to the same *de jure* jurisdiction.

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

#### (a) **Summary of the relevant case-law**

178. “Jurisdiction” under Article 1 is a threshold criterion. 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 *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 130, ECHR 2011, and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 103, ECHR 2012 (extracts)). As the Court has emphasised, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial (*ibid.*, §§ 131 and 104, respectively). However, the Court has also recognised in exceptional cases the exercise of jurisdiction under Article 1 by a Contracting State outside its own territorial boundaries (see *Al-Skeini and Others*, cited above, §§ 132-50, and *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 74-80, ECHR 2014).

179. One exception to the principle that jurisdiction under Article 1 is limited to a State’s own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that 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 the Contracting State’s own armed forces, or through a subordinate local administration (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 62, Series A no. 310; *Cyprus v. Turkey* [GC], no. 25781/94, § 76, ECHR 2001-IV; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 314-16, ECHR 2004-VII; *Al-Skeini and Others*, cited above, § 138; *Catan and Others*, cited above, § 106; and *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 98, 23 February 2016). Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State’s military and other support entails that State’s responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (see *Cyprus v. Turkey*, cited above, §§ 76-77, and *Al-Skeini and Others*, cited above, § 138).

180. In the vast majority of cases where the Court has had to rule on complaints under the procedural aspect of Article 2, the death had occurred within the jurisdiction of the Contracting State at issue, either within its

national territory (see, among many other authorities, *Rantsev* in respect of Cyprus), in an area under the effective control of that State (see *Adali v. Turkey*, no. 38187/97, 31 March 2005), or on board craft and vessels registered in, or flying the flag of, that State (see *Bakanova v. Lithuania*, no. 11167/12, § 63, 31 May 2016). The Court has also examined complaints under the procedural aspect of Article 2 where the death had occurred in another State's territory or in a neutral zone but had allegedly been caused by an agent of the Contracting State at issue, through the exercise of that agent's authority and control (see *Al-Skeini and Others*, cited above, §§ 149-50; *Jaloud v. the Netherlands* [GC], no. 47708/08, § 152, ECHR 2014; and *Isaak v. Turkey*, no. 44587/98, §§ 121-25, 24 June 2008, and decision of 28 September 2006, concerning the UN buffer zone in Cyprus). In all these cases, there was a clear jurisdictional link for the purposes of Article 1 between the deceased and the respondent State at issue.

181. To date, there have been very few cases in which the Court has had to examine complaints under the procedural limb of Article 2 where the death occurred under a different jurisdiction from that of the State in respect of which the procedural obligation is said to arise.

182. In the cases of *O'Loughlin and Others* (cited above), and *Cummins* (cited above), both concerning violent deaths (as a result of bombings) in the Republic of Ireland where the suspected perpetrators had fled to Northern Ireland in the United Kingdom, the Court did not expressly address the question of the compatibility *ratione loci* of the complaints against the United Kingdom and went on to establish general principles on the duty to investigate in relation to unlawful deaths occurring outside the jurisdiction of the respondent State. In this regard, the Court had occasion to observe that where there were cross-border elements to an incident of unlawful violence leading to loss of life, the authorities of the State to which the perpetrators had fled and in which evidence of the offence could be located might be required by Article 2 to take effective measures in that regard, if necessary of their own motion (see *Cummins*, cited above). However, the Court declared both cases inadmissible, the first one as the relevant complaint had been filed outside the six-month time-limit, and the second one since the complaints were considered to be manifestly ill-founded.

183. In the case of *Rantsev* (cited above, §§ 205-08), the Court examined an objection *ratione loci* raised by the Russian Government, based on the fact that the events forming the basis of the application (death of the victim, among others) had taken place outside its territory. The Court confined itself to noting that the applicant's Article 2 complaint against Russia concerned Russia's failure to take investigative measures, including securing evidence from witnesses resident in Russia. Although the extent of any procedural obligation incumbent on Russia under Article 2 was left for the examination of the merits, the Court accepted the compatibility *ratione*

*loci* of the complaint (ibid., §§ 208 and 212). When examining the merits of the complaint under Article 2, the Court noted that the death had taken place in Cyprus and that, as a rule, the obligation to ensure an effective investigation applied to Cyprus alone (ibid., § 243, referring *mutatis mutandis* to *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 38, ECHR 2001-XI, in relation to Article 3). Nonetheless, the Court accepted that “special features” in a given case would justify a departure from the general approach. As to the existence of “special features”, it considered that the Russian nationality of the deceased did not qualify as such and consequently found that Russia had no “free-standing” obligation under Article 2 to investigate her death (ibid., § 244).

184. In the case of *Emin and Others* (cited above), the applicants alleged that there had been a violation of Article 2 in its procedural aspect in that the United Kingdom had not investigated the disappearance of their relatives in Cyprus, although the victims had held British passports and had worked in the British sovereign base areas in Cyprus. The Court reiterated that generally the procedural obligation under Article 2 fell on the respondent State under whose jurisdiction the person was to be found at the time of death. It did not, in the particular case, find any special elements that would have supported the imposition of a duty on the United Kingdom to conduct its own investigation into disappearances which had taken place within the territory and under the jurisdiction of the Republic of Cyprus. The Court therefore declared this part of the application incompatible *ratione personae* and *ratione materiae*.

185. In *Gray v. Germany* (no. 49278/09, 22 May 2014), the German courts had exercised their criminal jurisdiction over a German national who had committed an offence of medical negligence in the United Kingdom, with the effect of preventing his surrender for the same offence to the United Kingdom under the European arrest warrant system. The applicants complained to the Court that by prosecuting the case through the summary penal order procedure, Germany had failed to discharge its procedural obligation, while the United Kingdom had failed to do what was necessary so that the proceedings could be conducted in the United Kingdom, where he might have faced a heavier penalty. The Court did not examine its competence *ratione loci* in relation to Germany and proceeded to examine whether Germany had discharged its procedural obligation under Article 2, thus implicitly accepting that the institution of criminal proceedings on the initiative of the German authorities under their national law was sufficient to establish a jurisdictional link for the purposes of Article 1.

186. In *Aliyeva and Aliyev v. Azerbaijan* (cited above, §§ 56-57), a complaint was brought before the Court by the parents of an Azerbaijani national who had been killed in Ukraine in circumstances involving two other Azerbaijani nationals. Based on a mutual legal assistance agreement between Ukraine and Azerbaijan, the case was transferred to Azerbaijan, but

the Azerbaijani authorities discontinued further proceedings against the suspects on the grounds of a lack of evidence. The Court raised of its own motion the issue of its competence *ratione loci*, considering that “regardless of where the death occurred, in so far as Azerbaijan assumed the obligation of conducting the investigation under the 1993 Minsk Convention and agreed to continue the criminal investigation commenced by the Ukrainian authorities, it was bound to conduct such an investigation in compliance with the procedural obligation under Article 2” (ibid., § 57). This implied that Azerbaijani jurisdiction under Article 1 was engaged only in so far as the Azerbaijani authorities had decided to take over the prosecution from Ukraine, in accordance with the applicable international treaty and their national law.

187. The Court observes that both respondent Governments, in their submissions before the Grand Chamber, referred also to the case of *Markovic and Others* (cited above), which concerned an Article 6 complaint. In that judgment the Grand Chamber examined the respondent Government’s objection *ratione loci* based on the fact that the civil action brought by the applicants in the Italian courts concerned events of an extraterritorial nature (air strike by NATO forces in the Federal Republic of Yugoslavia). The Court dismissed that objection and considered that once a person brought a civil action in the courts or tribunals of a State, there indisputably existed a “jurisdictional link” for the purposes of Article 1 (ibid., §§ 54-56). It also held that the extraterritorial nature of the events alleged to have been at the origin of the action could not, under any circumstances, affect the jurisdiction *ratione loci* and *ratione personae* of the State concerned (ibid., § 54), in the context of Article 6.

**(b) The Court’s approach**

188. In the light of the above-mentioned case-law it appears that if the investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law (e.g. under provisions on universal jurisdiction or on the basis of the active or passive personality principle), the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim’s relatives who later bring proceedings before the Court (see, *mutatis mutandis*, *Markovic and Others*, cited above, §§ 54-55).

189. The Court would emphasise that this approach is also in line with the nature of the procedural obligation to carry out an effective investigation under Article 2, which has evolved into a separate and autonomous obligation, albeit triggered by acts in relation to the substantive aspects of that provision (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009, and *Janowiec and Others v. Russia* [GC], nos. 55508/07

and 29520/09, § 132, ECHR 2013). In this sense it can be considered to be a detachable obligation arising out of Article 2 and capable of binding the State even when the death occurred outside its jurisdiction (see, *mutatis mutandis*, *Şilih*, § 159, in relation to the compatibility *ratione temporis*).

190. Where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link can, in any event, be established for the procedural obligation imposed by Article 2 to come into effect in respect of that State. Although the procedural obligation under Article 2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death, “special features” in a given case will justify departure from this approach, according to the principles developed in *Rantsev*, §§ 243-44. However, the Court does not consider that it has to define *in abstracto* which “special features” trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other.

**(c) Application of those criteria to the present case**

191. In the present case, the Court observes at the outset that the “TRNC” authorities instituted their own criminal investigation into the murder of the applicants’ relatives, under their own domestic law provisions, which gave the “TRNC” courts criminal jurisdiction over individuals who had committed crimes anywhere on the whole island of Cyprus (see paragraph 143 above). In the course of that investigation, several suspects were arrested and remanded in custody on suspicion of premeditated murder; statements were also taken from the applicants (at least the first applicant). In these circumstances, the Court finds that there was a “jurisdictional link” between the applicants, who complained under the procedural limb of Article 2 in respect of their relatives’ deaths, and Turkey, whose responsibility is engaged under the Convention by virtue of the acts and omissions of the “TRNC” authorities (see *Cyprus v. Turkey*, cited above, § 77, and, for example, *Adalı*, cited above, §§ 221-33).

192. In addition, and having regard to the parties’ submissions, the Court finds that there were “special features” related to the situation in Cyprus which justify in the present case a departure from the general approach established in *Rantsev* and therefore engaging Turkey’s procedural obligation under Article 2.

193. First, the Court notes that Turkey is regarded by the international community as being in occupation of the northern part of Cyprus (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 114, ECHR 2010) and that the international community does not

recognise the “TRNC” as a State under international law (see *Cyprus v. Turkey*, § 61; see paragraphs 159-61 above). The Court has already found that northern Cyprus is under the effective control of Turkey for the purposes of the Convention (see *Cyprus v. Turkey*, cited above, § 77). In this particular context it has also referred to the continuing inability of the Republic of Cyprus to fulfil its Convention obligations in northern Cyprus and to the general responsibility of Turkey for securing in that area the entire range of substantive rights set out in the Convention (see *Cyprus v. Turkey*, cited above, §§ 77–78). In the context of its general approach to the exercise of extraterritorial jurisdiction in unrecognised entities, the Court has had regard to the special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings and has thus pursued the aim of ensuring that Convention rights are protected throughout the territory of all Contracting Parties (see *Cyprus v. Turkey*, cited above, § 78, and *Mozer*, cited above, § 136).

194. Secondly, the Court observes that in the present case the murder suspects fled to the “TRNC” and that as a consequence, Cyprus was prevented from pursuing its own criminal investigation in respect of those suspects (except for the eighth suspect who was detained in the Cypriot-controlled area in 2006), and thus from fulfilling its Convention obligations. The Turkish and “TRNC” authorities were informed of the murder and Red Notices concerning the suspects were published by Interpol. The presence of the suspects in the territory controlled by Turkey was known to the Turkish and “TRNC” authorities, which kept them in detention on suspicion of premeditated murder for certain periods of time during the weeks following the murder.

195. Having regard to these two special features, the Court considers that Turkey’s jurisdiction under Article 1 of the Convention is established in respect of the applicants’ complaint under the procedural limb of Article 2. Any other finding would result in a vacuum in the system of human-rights protection in the territory of Cyprus, which falls within the “legal space of the Convention” (see *Cyprus v. Turkey*, cited above, § 78), thereby running the risk of creating a safe haven in the “TRNC” for murderers fleeing the territory controlled by Cyprus and therefore impeding the application of criminal laws put in place by the Government of Cyprus to protect the right to life of its citizens and, indeed, of any individuals within its jurisdiction.

196. The Court would emphasise that each of the two elements analysed above – on the one hand, the institution of a criminal investigation by the “TRNC” authorities and, on the other, the circumstance that the suspects fled to the part of the Cypriot territory which is under the effective control of Turkey – would suffice in itself to establish a jurisdictional link to Turkey.

197. The Court therefore concludes that the Turkish Government’s preliminary objection of incompatibility *ratione loci* must be dismissed. The

extent and scope of the procedural obligation incumbent on Turkey in the circumstances of the case, including whether it entailed an obligation to cooperate with Cyprus, remains to be determined in the Court's assessment of the merits of this complaint.

## **B. Merits**

### *1. The Chamber judgment*

198. The Chamber first examined the applicants' criticisms of the two parallel investigations carried out by the authorities of the respondent States (see paragraphs 264-81 of the Chamber judgment). In its view, it was clear from the facts of the case that the authorities of the respondent States had taken a significant number of investigative steps promptly. A considerable amount of evidence had been collected and eight suspects had quickly been identified, traced and arrested (see paragraphs 266, 269, 276, 277 of the Chamber judgment). As to the applicants' grievances against Cyprus concerning the extradition requests, the Chamber noted that there was no indication that the requests had not been made correctly or through the right channels and that the fact that they had been made more than three and a half years after the issuance of the Red Notices did not constitute any significant obstacle (see paragraph 272 of the Chamber judgment). The Chamber also stated that it was not persuaded that the applicants had been excluded from the investigation carried out by the Cypriot authorities (see paragraph 274 of the Chamber judgment). As regards the investigation carried out by the "TRNC" authorities, the Chamber noted that the investigation did not result in any prosecutions because of a lack of evidence (see paragraph 280 of the Chamber judgment). Therefore, the Chamber perceived no shortcomings that might call into question the overall adequacy of the respective investigations in themselves. It considered, however, that there was no need to make a finding under Article 2 on this matter, in view of its conclusion as to the failure to cooperate between the respondent States (see paragraph 281 of the Chamber judgment).

199. The Chamber then addressed the question whether the authorities of both respondent States had done all that could be reasonably expected of them in the circumstances. Where – as in the applicants' case – the investigation into the unlawful killing unavoidably implicated more than one State, the respondent States concerned were obliged to cooperate and take all reasonable steps necessary to facilitate and carry out an effective investigation into the case as a whole (see paragraph 285 of the Chamber judgment). Although, in the Chamber's view, the respondent States had had the opportunity to find a solution and come to an agreement under the brokerage of UNFICYP, they had not used that opportunity to the full. Any

suggestions made in an effort to find a compromise solution or so that the authorities concerned could meet each other half way (such as meetings on neutral territory between both sides, the questioning of the suspects in the UN buffer zone, an *ad hoc* trial at a neutral venue, etc.) had been met with downright refusal on the part of those authorities. This position arose from political considerations which reflected the long-standing and intense political dispute between Cyprus and Turkey. On the Cypriot Government's side it was evident that what had driven the unwillingness to cooperate was the refusal to lend any legitimacy to the "TRNC" – an argument that the Chamber rejected. The Chamber ruled in this respect that it did not accept that steps taken to cooperate in order to further the investigation in this case would amount to recognition, implied or otherwise of the "TRNC" (see paragraph 291 of the Chamber judgment). On the other hand, the Chamber found it striking that the extradition requests made by the Cypriot Government, the sole legitimate government of Cyprus, had been completely ignored by the Turkish Government (see paragraph 292 of the Chamber judgment).

200. The Chamber observed that the failure to cooperate directly or through UNFICYP had resulted in a situation in which both respondent States' investigations remained open and nothing had been done for more than eight years. This had also led to the suspects' release. In view of the failure of the respondent States to cooperate, the Chamber concluded that there had been a violation of Article 2 in its procedural aspect by both States.

## 2. *Submissions before the Grand Chamber*

### (a) **The applicants**

201. The applicants submitted that in a case of murder with a trans-jurisdictional element, the procedural aspect of Article 2 of the Convention required the Contracting States responsible for securing the right to life to cooperate in securing the evidence and to comply with human rights law in their dealings with each other's law enforcement agencies. This duty derived directly from the duty that each of the respondent States had to secure the procedural aspect of the right to life within the "legal space of the Convention" under Article 2 read together with Article 1 of the Convention. Since, under Article 15 § 2 of the Convention, no derogation from Article 2 was permitted, the duty to cooperate could not be derogated from. The applicants argued that both States should have adopted a pragmatic approach and put political considerations aside. They considered that the States had both failed to fulfil their obligation to cooperate, for the reasons set out in the Chamber judgment.

202. With regard to the responsibility of Cyprus, the applicants submitted that the Court had repeatedly ruled that engaging with the legal

system of the *de facto* administration in northern Cyprus in order to protect human rights did not amount to recognition, express or implied, of the “TRNC” (relying on *Cyprus v. Turkey*, cited above, § 238). Nor did engaging with the criminal procedure of a non-recognised entity imply recognition, as shown by the cooperation of the United Kingdom with the “TRNC” criminal justice system. In any event, the right to life was an absolute right under Article 15 § 2 of the Convention from which States could not derogate at all, even if in furtherance of the duty of non-recognition. In the applicants’ view, protecting the human rights of the members of the Turkish Cypriot community, who are also citizens of the Republic of Cyprus, was not capable of constituting a breach of any duty of non-recognition but rather an opportunity to assert Cyprus’ jurisdiction for the securing of human rights pursuant to Article 1 of the Convention over the whole territory of Cyprus. They could have done so by complying with their duty to cooperate and negotiate in good faith for a compromise.

203. At the hearing the applicants added that the Court in its case-law had made an exception to the duty of non-recognition when it came to protecting human rights (they referred, among other authorities, to *Cyprus v. Turkey*, cited above, §§ 90-101), in the sense that human rights override that duty. This exception should apply with greater force when the right at stake is the right to life. The handing-over of evidence by the Cypriot police to the *de facto* police of the “TRNC” for the purposes of detaining the suspects was not an act capable of renouncing sovereignty or jurisdiction. The applicants stated that they had never submitted that the evidence should be handed over so that the trial could take place in the “TRNC”.

204. With regard to the responsibility of Turkey, the applicants argued that Turkey had assumed jurisdiction under Article 1 of the Convention as it exercised effective control of northern Cyprus. Turkey was also obliged, as a State in belligerent occupation, to “take all such measures to ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country” (referring to Article 43 of the 1907 Hague Regulations attached to Convention IV respecting the Laws and Customs of War on Land). Turkey therefore had an obligation to cooperate with the legitimate Government of Cyprus to secure human rights in cross-border cases, in order to prevent the murder suspects, who had fled from the territory under the effective control of the Republic of Cyprus, from going unpunished. By refusing to engage at all with the extradition requests from Cyprus, Turkey had failed to engage in minimum cooperation. Furthermore, the “TRNC” authorities had refused to compromise, given their insistence that the trial should take place in the “TRNC”. They should, at the very least, have been prepared to negotiate in good faith the surrender of the suspects for trial outside the “TRNC” possibly by retired Turkish Cypriot judges and possibly in the UN buffer zone. Had they adopted such a flexible and pragmatic stance, this would

have diluted the recognition issues and made a compromise in securing the evidence from Cyprus easier to achieve.

**(b) The Cypriot Government**

205. The Cypriot Government submitted that they had taken all steps that could reasonably be expected of them to secure the applicants' rights under Article 2, given the unusual circumstances that pertained in a situation of unlawful occupation. The authorities had discharged their Article 2 obligation by conducting an effective investigation that identified the alleged perpetrators of the murder (see paragraphs 265-66 and 281 of the Chamber judgment) and the applicants were involved in that investigation. The lack of any convictions did not undermine the adequacy of the investigation because the procedural obligation under Article 2 was an obligation of means not of result. This procedural obligation only required States to take all reasonable steps in the circumstances. Cyprus had taken all steps reasonably possible to secure access to the suspects but it had no power over Turkey and the "TRNC"'s refusal to cooperate with its requests.

206. With regard to the obligation to cooperate, the Cypriot Government submitted that the *O'Loughlin* decision (cited above) did not stand as authority for a general duty to cooperate. Article 2 as interpreted by this decision did not place any obligation on Cyprus, which was the jurisdiction in which the murders had taken place. It imposed, however, an obligation to cooperate on the States to which the alleged perpetrators of a murder had fled, in this case on Turkey because it was in control of the territory of the "TRNC". Even if the Court were to consider that Article 2 required a State in which a lethal attack had occurred to cooperate with another State, Cyprus had done all that was reasonably required of it, by making an extradition request to Turkey. It had even gone beyond what was required by offering to provide evidence for independent assessment by UNFICYP to demonstrate that the requests for surrender or extradition of the suspects were supported by evidence.

207. In addition, the extent of any cooperation obligation on Cyprus under Article 2 should take into account what was reasonable in the context of this case, as well as the relevant applicable rules of international law. First, a requirement under Article 2 for Cyprus to hand over all its evidence to the "TRNC" would breach the customary international law obligation of non-recognition, as codified in the Articles of the International Law Commission (ILC) on the Responsibility of States for Internationally Wrongful Acts 2001 (Article 41.2) and upheld by the International Court of Justice (they referred to the Advisory Opinion concerning Namibia<sup>2</sup>). Since

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<sup>2</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16.

the situation in northern Cyprus was a situation of unlawful purported acquisition of territory, renouncing criminal jurisdiction in favour of the “TRNC” for a crime committed outside the occupied territory would have served to consolidate the “TRNC”’s claim to and control over the territory. It was also different from “recognition” of the administrative acts of the “TRNC”, to the extent necessary for Turkey to be held accountable for violations of the Convention in the occupied territory or for Turkey to be allowed to correct wrongs imputable to it (referring to *Foka v. Turkey*, no. 28940/95, §§ 83-84, 24 June 2008, and *Demopoulos and Others*, cited above). The mere fact that the United Kingdom had cooperated with the “TRNC” did not of itself make that cooperation lawful; what could reasonably be expected of an occupied State would inevitably be different from what could reasonably be expected of a third party State. Secondly, Article 2 could not require Cyprus, which had the strongest claim to jurisdiction (murder on the territory under Cyprus’s control and against Cypriot nationals), to hand over evidence to the “TRNC”, which, not being a State party to the Convention, was not capable of discharging Article 2 obligations. Furthermore, the provision of that evidence to the “TRNC” would have resulted in the trial of the suspects by unlawful “courts” which would then have resulted in their unlawful detention (relying on *Mitrović v. Serbia*, no. 52142/12, 21 March 2017). There could not be a duty under Article 2 to provide evidence in circumstances where it was reasonably foreseeable that the provision of that evidence would result in breaches of the Convention.

208. At the hearing before the Court the Cypriot Government submitted that the aim of the rules on non-recognition was no less important than the aims of the Convention. The function of non-recognition both in customary law and under the ILC Articles was to punish the violation of peremptory norms against State aggression, occupation and acquisition of territory by force, and therefore to prevent the death and destruction that these situations brought. It was also wrong to infer, from the requirement under the Convention that individual applicants might need to engage with domestic remedies provided within the “TRNC” (referring to *Demopoulos and Others*, cited above), that the Republic of Cyprus was under a similar obligation to do so. It was States and not individuals that were bound by the rule of non-recognition.

209. With regard to Turkey, the Cypriot Government submitted that Turkey’s failure to extradite or surrender the suspects to Cyprus had breached Article 2. At the hearing they added that the procedural obligation under Article 2 could be read as requiring *ad hoc* cooperation beyond existing treaty obligations, contrary to the Turkish Government’s submissions (see paragraph 211 below).

**(c) The Turkish Government**

210. The Turkish Government submitted that Turkey and the “TRNC” authorities had been willing, from the outset, to prosecute the suspects. The “TRNC” had conducted an in-depth investigation into the murders, and all suspects had been arrested and held in detention until they had to be released under domestic law owing to the failure of the Cypriot authorities to provide any evidence connecting them to the crime. These steps had led the Chamber to conclude that the investigation in itself had not been problematic. Turkey had responded to a request by the Cypriot authorities to arrest and to question the fifth suspect upon his return to Turkey. The “TRNC” authorities had held numerous meetings with UNFICYP in their efforts to ensure the exchange of information on the murders. Both Turkey and the “TRNC” authorities had indicated that they could not extradite their own nationals according to their domestic law.

211. As to the extent of the procedural obligation of a State to cooperate with criminal investigations conducted outside its jurisdiction, the Turkish Government contended that it should be determined by reference to the State’s existing international legal rights and obligations in the area of legal assistance in criminal matters. The State should take steps that are legally possible or legally available. In all cross-border cases the Court had made express reference to existing instruments binding upon the States concerned allowing for mutual assistance in criminal matters (referring to *Rantsev*, cited above, 241, and *Huseynova v. Azerbaijan*, no. 10653/10, § 111, 13 April 2017). The obligation to cooperate under the procedural limb of Article 2 thus required a State to exhaust in good faith all possibilities available to it under applicable international or supranational instruments on mutual legal assistance in criminal matters or under general international law. While the Court was not competent to assess whether a State had complied with its obligations under such agreements, it should verify whether the possibilities provided for therein had been exhausted by that State.

212. Even assuming that the applicants’ complaints were compatible *ratione loci* with regard to Turkey, the Turkish Government maintained that Turkey would not have been required to extradite or surrender the suspects under its existing international legal obligations. The Extradition Convention covered only the “metropolitan territories” of Turkey, which did not include the “TRNC”. The Convention thus could apply only to the fifth suspect who had been present in Turkey. There had not been a valid request for extradition under that Convention, which required that requests should be communicated “through the diplomatic channel” (Article 12 of the Extradition Convention). All that was before the Court was an assertion by the Cypriot authorities that an usher of the Cypriot embassy in Athens had handed an envelope to a security guard at the Turkish embassy in Athens. At the hearing the Turkish Government accepted, however, that the ordinary

diplomatic channel had not been available to Cyprus because there were no diplomatic relations between Turkey and Cyprus. They referred also to the fact that Turkey had attached declarations to several Council of Europe treaties to the effect that treaty membership could not create any legal obligations between Turkey and Cyprus.

213. In any event, Turkey was entitled to refuse extradition under Article 6(1)(a) of the Extradition Convention as the fifth suspect held Turkish nationality. Nor was Turkey under any customary international law obligation to extradite persons either in Turkey or in northern Cyprus. Both the law of Turkey and the law of the “TRNC” prohibited the extradition of their nationals. In addition, the Chamber’s suggestion of “an *ad hoc* arrangement or trial at a neutral venue” would not only have been contrary to the Constitution of Turkey and the Constitution of the “TRNC” but would also have been contrary to Article 6 of the Convention, which guaranteed a fair trial by a “tribunal established by law”. There was no legal basis in the law of Turkey or the law of the “TRNC” to detain and transfer persons to the UN buffer zone or to force them to be questioned by the authorities of a foreign State.

214. Finally, the Turkish Government submitted that the Cypriot authorities had had the possibility of providing the evidence of their investigation to Turkey within the framework of its existing rights and obligations under the Mutual Assistance Convention. In addition, the Cypriot police could have provided the evidence to the “TRNC” police authorities, without breaching any obligations under customary international law. State practice showed that other States cooperated with the “TRNC” in criminal matters and that such cooperation was not considered as amounting to implied recognition of the “TRNC” as a State. They referred to a recent case where the High Court of England and Wales had rejected the argument that police-to-police cooperation with “Northern Cypriot” authorities amounted to implied recognition (*R. (in the application of Akarçay) v. Chief Constable of West Yorkshire*, [2017] EWHC 159). They also referred to *Ilaşcu and Others* (cited above, §§ 177, 225 and 345), where the Court had taken the view that unofficial relations between the Republic of Moldova and the *de facto* Transdniestrian regime, on judicial and security matters, could not be regarded as support for that regime.

**(d) Third-party submissions by the AIRE Centre**

215. The AIRE Centre referred to its intervention before the Chamber as set out in the Chamber judgment (see paragraphs 252-56 of the Chamber judgment). It put forward additional submissions concerning ECHR/Council of Europe law, international law and EU law.

216. Firstly, the Convention’s special character as a collective enforcement treaty required the recognition – where appropriate – of a duty for Contracting States to act collectively to protect the rights they had

undertaken to secure. In other words they should cooperate where it was necessary to safeguard those rights. Whilst it was correct to say that the Court was not competent to rule on a State's compliance with other international instruments (see paragraph 288 of the Chamber judgment), the AIRE Centre invited the Grand Chamber to recall Article 53 of the Convention, which required that “nothing in this Convention shall be construed as limiting or derogating from any of the rights ensured... under any other agreement to which it is a party”. Thus where other international agreements imposed collective/joint cooperative obligations to assist in securing the proper implementation of Convention rights, Article 53 might require that the manner of adherence to those obligations was relevant to the determination of compliance with the Convention itself (*M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 249-50, ECHR 2011). In the field of procedural obligations under Article 2 in a cross-border or trans-jurisdictional context, the third-party invited the Grand Chamber to adopt the approach of the *Rantsev* case (§§ 241-42, 245-47), which required the Court to evaluate the adequacy of the execution of the duties of Contracting States to collaborate with each other so as to render an investigation fully effective and Article 2-compliant.

217. Secondly, the AIRE Centre emphasised developments in EU law (for instance, the European arrest warrant) which sought to strengthen cooperation between member States. There appeared to be a trend in Europe – in both Council of Europe law and EU law – towards requiring cross-border cooperation when offences raised issues under Articles 2, 3 and/or 4 of the Convention. This trend placed obligations on States to collaborate fully in investigating acts contrary to those Articles which had taken place outside their jurisdiction, if cooperation was necessary to carry out an effective investigation into those acts (referring, *mutatis mutandis*, to *Šilih*, cited above, § 159, in relation to the “detachable” nature of the procedural obligation under Article 2).

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

#### (a) **The procedural obligation under Article 2 and the investigations conducted within the respondent States' jurisdiction**

##### (i) *General principles*

218. The Court first reiterates that the right to life guaranteed under Article 2 of the Convention ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among many other authorities, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 164, 19 December 2017). Moreover 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", 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 *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015).

219. The general principles concerning the procedural obligation to investigate under Article 2 were restated in *Mustafa Tunç and Fecire Tunç* (cited above, §§ 169-81), as follows:

"169. ... The investigation must be, *inter alia*, thorough, impartial and careful (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 161-163, Series A no. 324).

170. The form of investigation required by this obligation varies according to the nature of the infringement of life: although a criminal investigation is generally necessary where death is caused intentionally, civil or even disciplinary proceedings may satisfy this requirement where death occurs as a result of negligence (see, *inter alia*, *Calvelli and Ciglio v. Italy*, cited above, § 51; *Mastromatteo v. Italy* [GC], no. 37703/97, § 90, ECHR 2002-VIII; and *Vo v. France*, cited above, § 90).

171. By requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction, Article 2 imposes a duty on that State 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 punishment of breaches of such provisions. This obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances, even where the presumed perpetrator of the fatal attack is not a State agent (see *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; *Pereira Henriques v. Luxembourg*, no. 60255/00, § 56, 9 May 2006; and *Yotova v. Bulgaria*, no. 43606/04, § 68, 23 October 2012).

172. In order to be 'effective' as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II). That is, it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible.

173. The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue (see *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014; and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII).

174. In any event, the authorities must take whatever reasonable steps they can 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. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 301, ECHR 2011).

175. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009).

176. Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria (see *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 101-110, ECHR 1999-IV; and *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI).

177. Moreover, the persons responsible for the investigations should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Anguelova v. Bulgaria*, no. 38361/97, § 138, ECHR 2002-IV).

178. A requirement of promptness and reasonable expedition is implicit in this context (see *Al-Skeini and Others*, cited above, § 167).

179. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, ECHR 2001-III). The requisite access of the public or the victim's relatives may, however, be provided for in other stages of the procedure (see, among other authorities, *Giuliani and Gaggio*, cited above, § 304; and *McKerr v. the United Kingdom*, no. 28883/95, § 129, ECHR 2001-III).

180. Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation (see *Ramsahai and Others*, cited above, § 348; and *Velcea and Mazăre v. Romania*, no. 64301/01, § 113, 1 December 2009).

181. The question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Dobriyeva and Others v. Russia*, no. 18407/10, § 72, 19 December 2013; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 147, 17 July 2014)."

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

220. The Chamber noted at the outset that the procedural obligation to investigate arose in respect of both respondent States, in the light of the fact that the deaths had occurred in the territory controlled by Cyprus and of its previous conclusion concerning jurisdiction *ratione loci* in respect of Turkey (see paragraph 262 of the Chamber judgment). It then examined the respective investigations and observed that the authorities of the respondent States had taken a significant number of investigative steps promptly. It perceived no other shortcomings that might call into question the overall adequacy of the respective investigations in themselves (see paragraph 281 of the Chamber judgment). The parties before the Grand Chamber have not

contested these findings and have focused in their submissions on the alleged failure of the respondent States to cooperate.

221. The Grand Chamber endorses the Chamber's findings concerning the overall adequacy of the parallel investigations conducted by the authorities of each respondent State. It accordingly considers that the crux of the problem in the present case is the existence and scope of a duty to cooperate as a component of the procedural obligation under Article 2. It will then have to consider the extent to which any such duty was fulfilled by the respondent States.

**(b) The duty to cooperate as a component of the procedural obligation under Article 2**

*(i) Summary of the relevant case-law*

222. There have been very few cases in which the Court has been called upon to consider the extent of the procedural obligation under Article 2 in a cross-border or transnational context and whether that obligation incorporated an obligation to cooperate with other States.

223. In *O'Loughlin* (cited above), the applicants complained under Article 2 of the Convention that the United Kingdom authorities had failed to assist in the investigations and the inquests carried out in Ireland concerning deaths resulting from the Dublin and Monaghan bombings of 17 May 1974. The suspects were in Northern Ireland. The Court stated that it did not have to decide whether, or to what extent, Article 2 could impose an obligation on one Contracting State to cooperate with inquiries or hearings conducted within the jurisdiction of another Contracting State concerning the use of unlawful force resulting in death, as the relevant complaint had been filed outside the six-month time-limit. In *Cummins* (cited above), which concerned bombings in Dublin in December 1972 and January 1973, the Court examined, however, whether the United Kingdom authorities had effectively cooperated with an investigation carried out in Ireland, but declared the complaint manifestly ill-founded as a failure to cooperate had not been established.

224. In *Agache and Others v. Romania* (no. 2712/02, 20 October 2009), the Court, in finding a procedural violation of Article 2, took into account *inter alia* the fact that the Romanian authorities had not taken the necessary steps to secure the extradition of three of the convicted persons for the attack leading to the victim's death (ibid., § 83; see, *mutatis mutandis*, *Nasr and Ghali v. Italy*, no. 44883/09, §§ 270 and 272, 23 February 2006, in relation to the procedural aspect of Article 3 and the failure to seek extradition from the United States).

225. In *Rantsev* (cited above), the Court observed that the procedural obligation under Article 2 required Contracting States to take such steps as were necessary and available in order to secure relevant evidence, whether

or not it was located in the territory of the investigating State. It found that the Cypriot authorities should have sought legal assistance from Russia in investigating the circumstances of the victim's death in Cyprus, by making a request to obtain the testimony of two witnesses who were present in Russia. It took account of the fact that both Cyprus and Russia were parties to the 1959 European Convention on Mutual Assistance in Criminal Matters and had, in addition, concluded a bilateral legal assistance treaty. Having regard, *inter alia*, to its failure to seek cooperation from Russia, the Court found that there had been a procedural violation of Article 2 by Cyprus (*ibid.*, §§ 241-42). It went on to say that the corollary of the obligation on an investigating State to secure evidence located in other jurisdictions was a duty on the State where evidence was located to render any assistance within its competence and means sought under a legal assistance request. However, the Court considered that in the absence of any request from Cyprus, Russia had no obligation to interview the two witnesses present on its territory, as requested by the applicants. It further observed that the Russian authorities had made extensive use of the opportunities presented by mutual legal assistance agreements to press for action by the Cypriot authorities, including by making a specific request to institute criminal proceedings. The Court therefore found that there had been no procedural violation of Article 2 by Russia (*ibid.*, §§ 245-47).

226. In *Palić v. Bosnia and Herzegovina* (no. 4704/04, 15 February 2011) and *Nježić and Štimac v. Croatia* (no. 29823/13, 9 April 2015), the Court found that both respondent States had complied with their procedural obligation under Article 2 in respect of the disappearance and death of the applicants' relatives. The Court noted in *Palić* that the domestic authorities had issued international arrest warrants, but that the investigation had been at a standstill ever since, as the suspects had moved to Serbia and as Serbian citizens could not be extradited. In *Nježić and Štimac*, although there had been no international arrest warrants issued, the extradition of the majority of the suspects would not have been possible because those that had become Serbian citizens could not be extradited from Serbia. The Court held that the respondent States (Bosnia and Herzegovina and Croatia, respectively) could not be held liable for that situation. It further considered that it was not necessary to establish whether those States had been obliged to request Serbia to take proceedings, since the applicants themselves could have reported their case to the Serbian authorities, who had jurisdiction over serious violations of international humanitarian law committed anywhere in the former Yugoslavia. Moreover, it was open to the applicants to lodge an application against Serbia if they considered that they were the victims of a breach by Serbia of their Convention rights (*ibid.*, §§ 65 and 68, respectively).

227. In *Aliyeva and Aliyev* (cited above), the Azerbaijani authorities had carried out an investigation into the killing of the applicant's son which had

occurred in Ukraine, following the transfer of the case under the Commonwealth of Independent States (CIS) Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 (the Minsk Convention), to which both States were parties. The Court found a procedural violation of Article 2 by Azerbaijan, noting, *inter alia*, that the investigator in charge of the case had not asked the Ukrainian authorities for legal assistance until more than a year and two months after instituting the criminal investigation (*ibid.*, § 78). It accepted, however, that in some situations, such as in that case, where a criminal offence had been committed on the territory of another State, there might be particular obstacles which would hinder the progress of the criminal investigation (*ibid.*, § 75).

228. More recently, in *Huseynova* (cited above), the Azerbaijani authorities had instituted criminal proceedings concerning the killing of the applicant's husband and two Georgian nationals had been identified as suspects. The Georgian authorities had refused to extradite them on the grounds that as they were Georgian nationals they could not be extradited to a foreign country. The Court reiterated that in some situations, where the suspects were on the territory of another State which refused to extradite them, there might be particular obstacles which could hinder the progress of a criminal investigation; Azerbaijan could not be held liable for another State's decision not to extradite its nationals (*ibid.*, § 110). It found, however, that that refusal had not prevented the Azerbaijani authorities from examining the feasibility of transferring the criminal case to the Georgian authorities. The Court noted in that connection that various international legal instruments, such as the European Convention on Extradition, the 1993 Minsk Convention and a bilateral treaty, to which both States were parties, clearly provided for such a possibility. Moreover, the Georgian authorities expressly referred to that possibility in their reply to the extradition request from the Azerbaijani authorities. However, there was no evidence that the Azerbaijani authorities had examined the possibility of prosecuting the alleged perpetrators of the murder in Georgia by transferring the criminal case there (*ibid.*, § 111). The Court also distinguished this case from *Palić* as well as from *Nježić and Štimac* (cited above), indicating that in those cases the applicants could have reported their case themselves to the Serbian authorities, which had jurisdiction over serious violations of international humanitarian law committed anywhere in the former Yugoslavia. In the *Huseynova* case the applicant did not have the possibility of applying directly to the Georgian authorities and the alleged perpetrators of the murder could have been prosecuted in Georgia only at the request of the Azerbaijani authorities following a transfer of the criminal case (*ibid.*, § 112). The Court took account of this failure of the Azerbaijani authorities to consider the transfer of the case as one of the grounds for concluding that there had been a violation of Article 2 under its procedural limb.

(ii) *The Court's approach to the obligation of Contracting States to cooperate in transnational cases under the procedural aspect of Article 2*

229. The above survey of the case-law shows that in the majority of the cases in which the Court has thus far examined a failure to cooperate or seek cooperation between States in transnational cases, it has done so when assessing the overall compliance by the State concerned with its procedural obligation to investigate under Article 2. In these cases the failure to cooperate was only one aspect among others in the Court's examination of the effectiveness of the investigation carried out by the State concerned, generally as a failure to seek cooperation from another State (for example, Cyprus in *Rantsev*, cited above, § 241, and *Aliyeva and Aliyev*, cited above, § 78), including where that cooperation entailed the possibility of transferring the proceedings to another State (see *Huseynova*, cited above, § 111). The Court has dealt specifically with the failure to cooperate or assist with an investigation conducted within the jurisdiction of another Contracting State in very few cases, namely in *O'Loughlin*, *Cummins* and *Rantsev* (see paragraphs 223 and 225 above).

230. The Court would observe that in a case such as *Rantsev* where a Contracting State has no free-standing obligation to investigate under Article 2, the obligation to cooperate of that State can only be triggered by a cooperation request made by the investigating State, which would be required to seek such cooperation of its own motion if relevant evidence or the suspects are located within the jurisdiction of the other State.

231. By contrast, in the present case the two States concerned claimed concurrent jurisdiction to investigate a death and a free-standing obligation to carry out an Article 2-compliant investigation arose in respect of both of them (see paragraphs 220-21 above).

232. The Court has previously held that in interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms (see *Ireland v. the United Kingdom*, 18 January 1978, § 239, Series A no. 25, referring to its Preamble; *Loizidou v. Turkey* (preliminary objections), cited above, § 70; and *Nada v. Switzerland* [GC], no. 10593/08, § 196, ECHR 2012). This collective character may, in some specific circumstances, imply a duty for Contracting States to act jointly and to cooperate in order to protect the rights and freedoms they have undertaken to secure within their jurisdiction (see for instance, in the area of cross-border human trafficking under Article 4 of the Convention, *Rantsev*, cited above, § 289). In cases where an effective investigation into an unlawful killing which occurred within the jurisdiction of one Contracting State requires the involvement of more than one Contracting State, the Court finds that the Convention's special character as a collective enforcement treaty entails in principle an obligation on the part of the States concerned to cooperate effectively with each other

in order to elucidate the circumstances of the killing and to bring the perpetrators to justice.

233. The Court accordingly takes the view that Article 2 may require from both States a two-way obligation to cooperate with each other, implying at the same time an obligation to seek assistance and an obligation to afford assistance. The nature and scope of these obligations will inevitably depend on the circumstances of each particular case, for instance whether the main items of evidence are located on the territory of the Contracting State concerned or whether the suspects have fled there.

234. Such a duty is in keeping with the effective protection of the right to life as guaranteed by Article 2. Indeed, to find otherwise would sit ill with the State's obligation under Article 2 to protect the right to life, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", since it would hamper investigations into unlawful killings and necessarily lead to impunity for those responsible. Such a result could frustrate the purpose of the protection under Article 2 and render illusory the guarantees in respect of an individual's right to life. The object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective (see *Al-Skeini and Others*, cited above, § 162, and *Marguš v. Croatia* [GC], no. 4455/10, § 127, ECHR 2014 (extracts)).

235. The Court notes, however, that the obligation to cooperate, which is incumbent on States under the procedural limb of Article 2, can only be an obligation of means, not one of result, in line with what the Court has established in respect of the obligation to investigate (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, 30 March 2016; *Palić*, cited above, § 65; and *Aliyeva and Aliyev*, cited above, § 70). This means that the States concerned must take whatever reasonable steps they can to cooperate with each other, exhausting in good faith the possibilities available to them under the applicable international instruments on mutual legal assistance and cooperation in criminal matters. In this connection, the Court is aware that Contracting States cannot cooperate with each other in a legal vacuum; specific formalised modalities of cooperation between States have developed in international criminal law. This approach is consistent with the previous transnational cases under the procedural limb of Articles 2, 3 and 4, in which the Court has generally referred to existing extradition and other mutual assistance instruments binding on the States concerned (see *Rantsev*, cited above, §§ 241, 246 and 307; *Agache and Others*, cited above, § 83; *Nasr and Ghali*, cited above, § 272; and *Huseynova*, cited above, § 111). Although the Court is not competent to supervise respect for international treaties or obligations other than the Convention (see *Aliyeva and Aliyev*, cited above, § 74), it normally verifies

in this context whether the respondent State has used the possibilities available under these instruments. The Court reiterates in this respect that it must take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties and that the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (see *Al-Adsani*, cited above, § 55; *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, ECHR 2008; and Article 31 § 3 (c) of the Vienna Convention of 23 May 1969 on the Law of Treaties).

236. In determining whether the State concerned has used all the legal possibilities available to it under the international instruments on cooperation in criminal matters, the Court cannot lose sight of the fact that these treaties do not tend to impose absolute obligations upon States, since they afford some discretion to the requested State and foresee a number of exceptions in the form of mandatory and/or discretionary grounds of refusal of the cooperation requested. Therefore, the procedural obligation to cooperate under Article 2 should be interpreted in the light of international treaties or agreements applicable between the Contracting States concerned, following as far as possible a combined and harmonious application of the Convention and those instruments, which should not result in conflict or opposition between them (see, *mutatis mutandis*, *X v. Latvia* [GC], no. 27853/09, § 94, ECHR 2013, concerning the interpretation of Article 8 of the Convention and of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction). In this context, the procedural obligation to cooperate will only be breached in respect of a State required to seek cooperation if it has failed to trigger the proper mechanisms for cooperation under the relevant international treaties; and in respect of the requested State, if it has failed to respond properly or has not been able to invoke a legitimate ground for refusing the cooperation requested under those instruments.

*(iii) The obligation to cooperate in transnational cases involving a Contracting State and a de facto entity being under the effective control of another Contracting State*

237. As the Court has indicated above (see paragraph 193 above), a special feature in this case is that the alleged lack of cooperation involved a *de facto* entity set up within Cyprus's internationally recognised territory but which is under the effective control of Turkey for the purposes of the Convention (see *Cyprus v. Turkey*, cited above, §§ 61 and 77). As the two respondent States have no formal diplomatic relations, the international treaties to which both States were parties (Council of Europe treaties, see relevant international law) cannot be the sole framework of reference in determining whether both States used all the possibilities available to them to cooperate with each other. In the absence of formal diplomatic relations,

formalised means of cooperation are more likely to fail and States may be required to use other more informal or indirect channels of cooperation, for instance through third States or international organisations.

238. In view of the above, the Court has to determine, in situations such as the present one, whether the States concerned used all means reasonably available to them to request and afford the cooperation needed for the effectiveness of the investigation and proceedings as a whole. This may require the Court to examine the informal or *ad hoc* channels of cooperation used by the States concerned outside the cooperation mechanisms provided for by the relevant international treaties. In this context the Court can and must be guided at the same time by those international treaties, since they reflect the evolution in the norms and principles applied in international law in the precise area of cooperation in criminal matters.

*(iv) Application of those criteria to the present case*

239. In the light of the principles set out above (see paragraphs 230-38), the Court finds that both States had an obligation to cooperate with each other which derived from their respective procedural obligations under Article 2 to investigate the deaths of the applicants' relatives. The Court must now determine whether each respondent State complied with that obligation, taking into account the particular circumstances of the case.

240. The Court is mindful that both States had, at the time, ratified the two major Council of Europe Conventions on extradition and cooperation in criminal matters, namely the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters. Although their applicability to the specific circumstances of the case has been partially contested by Turkey, in particular with regard to their territorial applicability, these two conventions were in force in respect of both States and Turkey had not yet made the declarations attached to some of their Additional Protocols excluding their applicability with regard to the Republic of Cyprus (see paragraphs 144 and 149 above). The Court does not, however, consider that it is competent to determine whether these conventions were applicable according to their provisions or to review whether the respondent States complied with their obligations in the specific circumstances of the case. As noted in paragraph 238 above, these treaties can also provide the Court with guidance for the purposes of interpreting the obligation to cooperate under the procedural limb of Article 2 (for examples where the Court has taken into account international instruments as an expression of evolving norms in international law, irrespective of whether they had been ratified by the States concerned or were binding at the material time, see *Demir and Baykara*, cited above, §§ 65-86; *Rantsev*, cited above, §§ 278, 282, 285-86 and 289; and *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 145, 8 November 2016). This applies *a fortiori* in the present case, where the conventions at issue have been ratified

by all member States of the Council of Europe, thus indicating that there is a clear measure of common ground amongst them in the area of extradition and cooperation in criminal matters (see paragraphs 146 and 151 above).

(a) Cyprus

*Did Cyprus use all the means reasonably available to it in order to seek the surrender/extradition of the suspects by Turkey?*

241. The first question that arises in respect of Cyprus's obligation to cooperate is whether its authorities had recourse to all the means reasonably available to them in order to seek the surrender/extradition of the murder suspects by Turkey, having regard to the fact they had fled to the "TRNC" or the territory of Turkey and that their presence was necessary in order to pursue the investigation and ultimately bring criminal proceedings against them. In their submissions before the Court the applicants contended that the Cypriot authorities had not done everything that could be expected of them.

242. The Court notes that following the identification of the possible suspects at the early stages of the investigation, the Cypriot authorities submitted "Red Notice" requests to Interpol in order to locate the suspects and have them arrested with a view to their extradition (see paragraphs 37, 38 and 44 above). These Red Notices were published by Interpol in respect of the eight suspects. The Cypriot bureau of Interpol also sent emails to the Turkish Ministry of Internal Affairs stating that it was searching for the suspects, and requesting that they be arrested if they entered Turkey (see paragraphs 40 and 45 above). It appears from the documents relating to meetings with UNFICYP that the Cypriot authorities knew that some of the suspects were already detained in the "TRNC" at that time (see paragraphs 108, 114 and 115 above). On the basis of all this, Cyprus tried to negotiate the surrender of the suspects by the "TRNC" through UNFICYP from the early stages of the investigation (see paragraphs 113, 118 and 121). It was, however, very clear early on that neither the Turkish nor the "TRNC" authorities were intending to surrender the suspects (see paragraphs 93, 110, and 114). In these circumstances and in particular in the light of the objections put forward by Turkey and the "TRNC" authorities, which were conveyed to Cyprus through UNFICYP, Cyprus cannot be criticised for first trying to obtain the surrender through UNFICYP, and only when those efforts eventually proved unsuccessful, submitting the extradition requests to Turkey (in respect of six suspects, all except the fourth suspect who had died and the eighth suspect who had already been detained in Cyprus in 2006 and released) more than three and half years after the Red Notices were published. There is moreover no indication that this lapse of time in any way affected the outcome of the extradition requests.

243. The Court further observes that the extradition requests were delivered to Turkey through the Turkish embassy in Athens on 4 November 2008. An usher of the Cypriot embassy in Athens gave the envelope containing the extradition requests and a *note verbale* to the Turkish embassy security guard, but no receipt of delivery was given (see paragraph 59 above). The Turkish Government did not contest this fact before the Chamber. Before the Grand Chamber, they stressed that the extradition requests were not valid since they had not been communicated “through the diplomatic channel” as required by Article 12 of the Extradition Convention.

244. The Court considers that, given the absence of diplomatic relations between Cyprus and Turkey, the delivery of the requests through the staff of their respective embassies in Athens can be accepted in the specific circumstances of the case as the only channel available to Cyprus. Indeed, the Turkish Government did not refer in their submissions to any alternative channel that Cyprus could have used and, at the hearing, they even conceded that the ordinary diplomatic channel was not available due to the absence of diplomatic relations between the two States. The Court cannot accept that the lack of diplomatic relations would release the respondent States from the obligation to cooperate imposed by Article 2.

245. The Court therefore concludes that the Cypriot authorities used all the means reasonably available to them to obtain the surrender/extradition of the suspects by Turkey.

*Was Cyprus under an obligation to supply all the evidence to the “TRNC” authorities or Turkey?*

246. The next point to be determined is whether, in compliance with its duty to cooperate under Article 2 of the Convention, Cyprus was required to supply all the evidence from the investigation file to Turkey or the “TRNC” authorities. The Court notes in this respect that Turkey, through the “TRNC” authorities and within the framework of the UNFICYP mediation, requested evidence from Cyprus for the purposes of the continued detention of the suspects and of its own investigation in the “TRNC” (see paragraphs 110, 115, 122, 123 and 126). This has not been disputed by the applicants or by Cyprus.

247. The Court notes at the outset that one of the arguments raised by Cyprus before the Court to justify its refusal to transmit all the evidence to the “TRNC” authorities was that the “TRNC” was not a State party to the Convention and that it was therefore not capable of discharging Article 2 obligations. Cyprus also stressed in this regard that the provision of evidence to the “TRNC” would have resulted in the suspects’ unlawful detention and trial by unlawful courts within the meaning of the Convention.

248. The Court has already accepted that Turkey is to be held responsible for the actions taken by the “TRNC” authorities in northern Cyprus and that it would be inconsistent with such position if the civil, administrative or criminal law measures adopted and enforced within that territory were to be denied any validity or regarded as having no “lawful” basis for the purposes of the Convention (see *Foka*, cited above, § 83). The Court has accordingly held that when an act of the “TRNC” authorities is in compliance with the laws in force within the territory of northern Cyprus, those acts should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention (see *Foka*, cited above, § 84, where the arrest of the Greek-Cypriot applicant by a “TRNC” police officer was found to be lawful for the purposes of Article 5; and *Protopapa v. Turkey*, no. 16084/90, §§ 60 and 83-89, 24 February 2009, where both the pre-trial detention and the detention after conviction imposed by the “TRNC” authorities were considered to be lawful for the purposes of Article 5 and a criminal trial before a “TRNC” court was found to be in accordance with Article 6).

249. The Court has also established in its case-law that the decisions taken by the courts of unrecognised entities, including by their criminal courts, may be considered “lawful” for the purposes of the Convention provided that these courts form part of a judicial system operating on a “constitutional and legal basis” reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees (see *Ilaşcu and Others*, cited above, § 460; see, in relation to the “TRNC” courts, *Cyprus v. Turkey*, cited above, §§ 236-237; compare and contrast *Mozer*, cited above, §§ 142-50). The Court does not see any reason to depart from those findings in respect of the “TRNC” courts and authorities, which in no way amount to a recognition, implied or otherwise, of the “TRNC”’s claim to statehood (see *Cyprus v. Turkey*, cited above, § 238).

250. The Court further observes that the main reason put forward by Cyprus to justify its refusal to supply all the evidence to Turkey or the “TRNC” authorities was that such cooperation would have breached the customary international law principle of non-recognition (see paragraphs 157-58 and 207-08 above). The Court does not consider it desirable or necessary in the present case to elaborate a general theory concerning the lawfulness of cooperation in criminal matters with unrecognised or *de facto* entities under international law. Nevertheless, the Court agrees with the Cypriot Government that the present case should be distinguished from previous cases in which the Court has accepted the validity for the purposes of the Convention of legal remedies established or measures adopted by the “TRNC” authorities with regard to “TRNC” inhabitants or persons affected by their actions (see *Cyprus v. Turkey*, cited above, §§ 61 and 238; *Demopoulos and Others*, cited above, §§ 95-96; and

*Foka*, cited above, §§ 83-84). In all those cases the Court recognised the validity of those remedies and acts to the extent necessary for Turkey to be able to secure all the Convention rights in northern Cyprus and to correct any wrongs imputable to it. The key consideration for the Court was to avoid a vacuum which would operate to the detriment of those who live under the occupation, or those who, living outside, may claim to have been victims of infringements of their rights (see *Demopoulos and Others*, cited above, § 96). In the present case, the question that arises is whether the Republic of Cyprus as the legitimate government of Cyprus, with no control over the northern part of the island, which is under the effective control of Turkey, can cooperate with the *de facto* authorities set up within that territory (the “TRNC”) without implicitly lending legitimacy or legality to them or to the occupation. In the Court’s view, this situation is also different from that in which a Contracting State other than Cyprus cooperates with those authorities (see, for instance, the cooperation between the United Kingdom police and the “TRNC” authorities referred to in paragraph 214 above).

251. The Court has already accepted, in *Ilaşcu and Others*, that unofficial relations in judicial and security matters in the interests of crime prevention between a Contracting State and a separatist regime set up within its territory could not be regarded as support for that entity, given their nature and limited character (see *Ilaşcu and Others*, §§ 177 and 345). This statement was made in the context of the Court’s assessment of whether the Republic of Moldova had discharged its positive obligations in respect of the applicants in that case, who were detained within the area controlled by the Transdniestrian *de facto* regime. These included the obligation on the part of Moldova to re-establish control over Transdniestria and to refrain from supporting the separatist regime. However, the Court would point out that those unofficial relations mostly concerned communications between Moldovan prosecutors or officers and their counterparts in Transdniestria, particularly to obtain information and summon witnesses.

252. In the present case, the question that has to be determined is whether Cyprus was required to supply all the evidence from its investigation file to the “TRNC” authorities, who were carrying out a parallel investigation into the murder pursuant to their domestic law. The Court notes that Cyprus sent some of the evidence to the “TRNC” through UNFICYP, namely the DNA results (see paragraphs 121 and 123 above), and was also ready to hand over all the evidence to UNFICYP so that the latter could see whether there was a *prima facie* case against the suspects, subject to an undertaking by the “TRNC” authorities that they would surrender the suspects to Cyprus in that event (see paragraph 130 above). Since there was no such undertaking by the “TRNC” authorities, Cyprus refused to hand over any more evidence. Furthermore, the “TRNC” authorities’ insistence on obtaining all the evidence from Cyprus (police

investigation records and security camera recordings) appears to be linked to their intention to prosecute and try the suspects before their courts, as shown also by their stance that the suspects should be tried by Turkish Cypriot courts (see paragraphs 110, 112, 114, 116 and 120 above). This became even more evident after notice of the present case was given to the respondent Governments in 2009 and the Cypriot investigation file was provided to Turkey through the Court. Indeed, the Turkish Government insisted before the Chamber that cooperation from Cyprus had been needed to ensure that witnesses, as well as those who had prepared the various reports, appeared before the “TRNC” courts to give evidence. They also confirmed that the “TRNC” was obliged to reject a request for the extradition of its nationals under the law of the “TRNC” (see paragraph 247 of the Chamber judgment). Turkey has further contended before the Grand Chamber that Cyprus should have requested the transfer of the criminal proceedings with regard at least to the fifth suspect, who was a Turkish citizen present in Turkey, a possibility provided for by both the Extradition Convention (Article 6(2)) and the Transfer of Proceedings Convention (Articles 6 and 8(1)(g)).

253. In this connection, and besides the fact that Turkey never suggested that possibility when receiving the Cypriot extradition requests in 2008 (contrast *Huseynova*, cited above, § 111, where the Georgian authorities had expressly referred to that possibility after refusing the extradition of their citizens requested by Azerbaijan), the Court considers that supplying the whole investigation file to the “TRNC” with the possibility that the evidence would be used for the purposes of trying the suspects there, and without any guarantee that they would be surrendered to the Cypriot authorities, would go beyond mere cooperation between police or prosecuting authorities (contrast *Ilaşcu and Others*, cited above, § 177). It would amount in substance to a transfer of the criminal case by Cyprus to the “TRNC” courts, and Cyprus would thereby be waiving its criminal jurisdiction over a murder committed in its controlled area in favour of the courts of an unrecognised entity set up within its territory. Indeed, the exercise of criminal jurisdiction is one of the main features of the sovereignty of a State. The Court therefore agrees with the Cypriot Government that in such a specific situation it was not unreasonable to refuse to waive its criminal jurisdiction in favour of the “TRNC” courts.

254. This position is also consistent with the tenor of the relevant Council of Europe instruments to which both States were parties. The Court notes that Article 2(b) of the Mutual Assistance Convention gives the requested State the possibility of refusing assistance if it considers that the execution of the request is likely to prejudice the sovereignty, security, *ordre public*, or other essential interests of the country (see paragraph 152 above). This ground for refusal can also be found in the legislation of some member States (see paragraph 167 above). Likewise, the Transfer of

Proceedings Convention does not impose an obligation on a State to waive jurisdiction and transfer the proceedings to another State. Nor does it establish a system of priorities of jurisdiction in the event of positive conflicts of jurisdiction between two States that would impose, for instance, a duty to transfer the case to the State where the suspects are located (see paragraphs 154-56 above; and Explanatory Report on the Convention, p. 31).

255. In the light of the foregoing, the Court finds that neither Cyprus's refusal to submit all the evidence to the authorities of the "TRNC" or Turkey, nor its failure to transfer the proceedings to the authorities of the "TRNC" or Turkey, amounted to a breach of its duty to cooperate in the context of the procedural limb of Article 2.

*Was Cyprus under an obligation to engage in other forms of cooperation as suggested by UNFICYP?*

256. The Court notes that in the context of the mediation efforts carried out by UNFICYP the following forms of cooperation were suggested in order to find a compromise solution between Cyprus and the "TRNC" authorities: meetings in the UN buffer zone between the police of both sides and the police of the British Sovereign Bases, the questioning of the suspects at the Ledra Palace Hotel in the UN buffer zone through "the video recording interview method", the possibility of an *ad hoc* arrangement or trial at a neutral venue, the transfer of the suspects to a third State, and dealing with the issue on a technical services level (see paragraphs 122, 125, 126, 128 above). However, the Court does not see how these other forms of cooperation could, in themselves, have facilitated the prosecution and trial of the suspects. It has not been established before the Court that these alternatives, in particular the possibility of arranging an *ad hoc* trial at a neutral venue, would have had a sufficiently solid basis in domestic or international law. In these circumstances, the Court does not consider that Cyprus was required under Article 2 to engage in forms of cooperation other than those discussed in paragraphs 241-255 above.

*Conclusion*

257. In conclusion, having regard to the duty to cooperate, the Court finds no breach by Cyprus of Article 2 of the Convention under its procedural limb, either in terms of its use of all reasonable means to secure the surrender of the suspects or on account of its refusal to submit all the evidence to the authorities of the "TRNC" or Turkey.

(β) Turkey

258. The Court must now determine whether Turkey complied with its obligation to cooperate with Cyprus, having regard to the fact that the

suspects were in the “TRNC” or Turkey and that Cyprus requested their surrender and later on their extradition.

259. The Court notes at the outset that during the attempts to find an agreement through UNFICYP, the “TRNC” authorities made clear early on that they could not surrender the suspects to Cyprus through UNFICYP or Turkey, since there was no legal or constitutional basis for doing so. They relied in particular on the 1960 Constitution of Cyprus, which required that Turkish-Cypriot accused be judged by Turkish Cypriot judges (see paragraphs 112, 114, 120 and 142 above). Turkey also indicated through Interpol that it was not possible to extradite the fifth suspect since he was a Turkish citizen, and that according to its domestic law, it was not possible to extradite Turkish citizens (see paragraph 93 and 138 above).

260. The Court further observes that the “TRNC” authorities mentioned at some point the need to obtain the evidence from Cyprus as a precondition for considering the extradition of the suspects (see paragraph 110 above). The Court would point out in this regard that there could not be a formal extradition procedure between the “TRNC” and Cyprus because the “TRNC” is not recognised internationally as a State. In any event, the “TRNC” authorities’ insistence on obtaining all the evidence from Cyprus was more related to their need to justify the continued detention of the suspects with a view to bringing proceedings against them. The Court has already determined that Cyprus was not required in those circumstances to supply all the evidence to the “TRNC” authorities, for the reasons set out in paragraphs 246-55 above.

261. To answer the question whether Turkey complied with its obligation to cooperate with Cyprus, the Court must focus its attention on the extradition requests by Cyprus in November 2008 in respect of six of the suspects, submitted after all the attempts to obtain their surrender from the “TRNC” through UNFICYP had proved unsuccessful. The Court has already rejected the Turkish Government’s argument that these extradition requests were not valid because they were not submitted through the appropriate channel (see paragraph 244 above). It cannot therefore accept this argument as a justified reason for not examining the extradition requests.

262. The Court would note, first, that Turkey ignored the extradition requests submitted by Cyprus on 4 November 2008. On 11 November 2008 the extradition requests and the *note verbale* from the Cypriot Ministry of Justice and Public Order were returned to the Cypriot embassy in Athens by an employee of the Turkish embassy, without any reply. The employee left the envelope and departed in haste. Secondly, the Turkish Government remained silent before the Chamber on the extradition requests of 2008. It was only before the Grand Chamber that they argued that the extradition requests were not valid under the Extradition Convention.

263. Having regard to the principles set out above (see paragraphs 238 and 240 above), and in so far as the silence of Turkey on the extradition requests could be understood as a refusal to extradite, the Court considers that the Turkish authorities would have been expected to indicate why they considered that the extradition was not acceptable under their legislation or under the Extradition Convention. In this respect, the Court notes that Article 18(1) and (2) of the Extradition Convention imposes an obligation on the requested State to inform the requesting State of its decision with regard to the extradition and in case of rejection to give reasons for such a decision. Article 13 of that Convention also establishes that if the information communicated by the requesting State is found to be insufficient to allow the requested State to make a decision on the extradition, the latter must request the necessary supplementary information (see paragraph 147 above).

264. The Court is of the opinion that the obligation to cooperate under Article 2 should be read in the light of these provisions and should therefore entail for a State an obligation to examine and provide a reasoned reply to any extradition request from another Contracting State regarding suspects wanted for murder or unlawful killings who are known to be present in its territory or within its jurisdiction.

265. This consideration suffices for the Court to conclude that Turkey did not make the minimum effort required in the circumstances of the case and therefore did not comply with its obligation to cooperate with Cyprus for the purposes of an effective investigation into the murder of the applicants' relatives. This finding makes it unnecessary for the Court to determine whether Turkey was required in the particular circumstances of the case to extradite some or all of the suspects requested by Cyprus.

266. The Court concludes that Turkey breached its duty to cooperate in the context of the procedural limb of Article 2, for the failure to provide a reasoned reply to the extradition requests by Cyprus.

**(c) Overall conclusion as to the procedural obligation under Article 2**

267. Having regard to its findings above (paragraphs 221 and 257), the Court concludes that there has been no violation by Cyprus of Article 2 of the Convention under its procedural limb.

268. In view of the grounds on which it has found that Turkey breached its obligation to cooperate with Cyprus (paragraph 266 above), the Court concludes that there has been a violation by Turkey of Article 2 of the Convention under its procedural limb.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 2

269. The applicants further complained under Article 13 of the Convention of the lack of an effective remedy in respect of their complaint under Article 2. They claimed that the prevailing political problems rendered any existing judicial domestic mechanisms ineffective and prevented any fruitful investigation from taking place.

270. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

271. The Chamber considered that, having regard to its finding that there had been a violation by both States of Article 2 under its procedural limb, there was no need to examine separately the applicants’ complaint under Article 13.

272. The respondent Governments did not address this allegation.

273. Having regard to the above conclusions (see paragraphs 267 and 268), the Court is of the opinion that there is no need to examine separately the applicants’ complaint under Article 13 in conjunction with Article 2 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

274. 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

#### 1. *Pecuniary damage*

275. In the Chamber proceedings, the applicants claimed 40,000 euros (EUR) in respect of pecuniary damage. This sum represented the expenses incurred by the first applicant to protect his life: home security, the employment of a bodyguard (who was murdered in 2009), travel expenses in respect of trips abroad following an attempt on his life and legal expenses incurred in proceedings that were brought against him for possessing a firearm in defence of his person. The applicants submitted that the above-mentioned sum had been calculated on “a rough and ready basis”, as they did not have any documents proving the expenses claimed. The Turkish Government submitted that there was no causal connection between the

pecuniary damage claimed and the subject matter of the application, which had nothing to do with the first applicant's right to life.

276. The Chamber held that the applicants' claim for pecuniary damage was unsubstantiated and rejected it.

277. The Turkish Government invited the Grand Chamber not to afford any just satisfaction to the applicants.

278. The Grand Chamber agrees with the Chamber's assessment. It therefore rejects this claim.

## 2. *Non-pecuniary damage*

279. In the Chamber proceedings, the applicants claimed the total sum of EUR 800,000, that is, EUR 400,000 from each respondent Government in respect of non-pecuniary damage. This sum comprised a claim in respect of each Government for EUR 100,000 by the first applicant and EUR 50,000 by each of the other applicants. The applicants stressed how much unbearable anguish, pain, trauma and frustration they had suffered due to the gravity of the crime against their family and the failure of the authorities of the respondent Governments to cooperate and bring the perpetrators to justice. The applicants underlined that they had been treated with utter insensitivity and indifference. They invited the Court to condemn the callous attitude of the respondent Governments through the award of a substantial amount, even though this could not make up for the huge loss they had suffered. Furthermore, as a result of the respondent Governments' failure to investigate, apprehend, prosecute and punish those responsible for the murders, all the applicants, and in particular the first applicant, feared for their lives and lived in a permanent state of fear and anxiety. There had been an attempt on the first applicant's life and his bodyguard had been murdered. He had also had to act as a conduit between the various authorities in the days and months immediately after the killings as they had not been cooperating. It was for these reasons that the first applicant's claim under this head was higher.

280. In the Turkish Government's submission before the Chamber, the Court should refuse to make any award in respect of non-pecuniary damage as there was no violation to be compensated for. If the Court, however, were to find otherwise, the finding of a violation would constitute in itself sufficient just satisfaction in respect of the alleged non-pecuniary damage. In any event, any just satisfaction should not lead to unjust enrichment. The sums claimed by the applicants were excessive, unjust and not compatible with those awarded by the Court in similar cases. They drew the Court's attention to the amounts awarded in the cases of *Solomou and Others v. Turkey*, no. 36832/97, § 101, 24 June 2008; *Isaak v. Turkey*, no. 44587/98, § 139, 24 June 2008; and *Kakoulli v. Turkey*, no. 38595/97, § 140, 22 November 2005.

281. The Chamber held that as a result of the violation found of Article 2 under its procedural head on the part of both respondent Governments the applicants had suffered non-pecuniary damage which could not be made good merely by the finding of a violation. Ruling on an equitable basis, it decided that an award of EUR 8,500 should be paid by each respondent Government to each of the applicants, plus any tax that might be chargeable on these amounts.

282. Before the Grand Chamber the applicants have not made any comments on their claim. The Turkish Government merely invited the Grand Chamber to reject any claim for just satisfaction.

283. The Grand Chamber notes that it has found a violation of Article 2 under its procedural head on account of Turkey's failure to cooperate for the purposes of an effective investigation into the death of the applicants' relatives. As a result of the violation found, the applicants suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation.

284. Regard being had to the reasons for which it has found a violation and the circumstances of the case, the Grand Chamber, ruling on an equitable basis, as required by Article 41 of the Convention, decides that an award of EUR 8,500 should be paid by Turkey to each of the applicants, plus any tax that may be chargeable on these amounts.

## **B. Costs and expenses**

285. The applicants claimed a total of 40,000 pounds sterling (GBP) in respect of their lawyers' fees for the proceedings before the Chamber. The applicants submitted that this was the amount they had agreed upon with their lawyers and produced a letter of engagement (in which their lawyers' fee was stipulated) dated 5 December 2005, which had been signed by the fourth applicant. According to this agreement, the above-mentioned amount was broken down as follows: a fee of GBP 20,000 for all the work carried out by their representatives before the authorities of the respondent Governments and UNFICYP; and the total sum of GBP 20,000 for the costs and expenses incurred before the Court in the event that an application was made. In this respect, the agreement stipulated that each stage of the proceedings would cost a total of GBP 7,000: the first stage comprised the filing of the application; the second stage comprised work to be done for the preparation of pleadings in the event that the application was declared admissible and for any negotiations for a friendly settlement; the third stage, failing a settlement, comprised the preparation of the observations and/or representation at a hearing of the case. The total of GBP 21,000 was rounded down to GBP 20,000. No VAT would be chargeable.

286. The Turkish Government submitted before the Chamber that the amounts claimed on the basis of the fee agreement were speculative or

abstract and unsubstantiated. No timetable accounting for the actual work carried out had been submitted, and neither had any receipts or documents proving these costs been submitted. They referred to the Court's judgment in *Mohd v. Greece* (no. 11919/03, §§ 29-32, 27 April 2006). In any event, the applicants could not claim costs incurred at the domestic level, while the amount claimed in respect of lodging the application form before the Court was excessive.

287. The Chamber noted that the fee agreement, which was signed only by the fourth applicant before the lodging of the application, only referred to aggregate sums that had not been itemised. No reference was made to the specific work actually carried out, the number of hours worked or the hourly rate charged. The applicants had failed to provide any other supporting documents – such as itemised bills or invoices – substantiating their claim. The Chamber accordingly made no award under this head.

288. Before the Grand Chamber, the applicants explained that the first fee of GBP 20,000 could only be recoverable under the head of damage to be paid. The second fee of GBP 20,000 was also recoverable, although only GBP 10,000 had actually been paid. The applicants additionally claimed a sum of GBP 20,000 for the proceedings before the Grand Chamber. In respect of these proceedings they submitted that their lawyer had spent 50 hours of work on the case at an hourly rate of GBP 300 as follows: 10 hours perusal of judgment; 10 hours perusal of referrals; and 30 hours drafting the observations. For the preparation and conduct of the hearing, there had been an additional charge of GBP 5,000.

289. The Turkish Government did not submit any observations on this issue before the Grand Chamber.

290. The Grand Chamber fully agrees with the Chamber's ruling in respect of the claim for costs and expenses in the domestic and Chamber proceedings. In respect of the Grand Chamber proceedings, the Court notes that according to the its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, costs and expenses are only recoverable to the extent that they relate to the violation found (see *Denisov v. Ukraine* [GC], no. 76639/11, § 146, 25 September 2018). In the present case, the Court has found that Cyprus was not responsible for any violation of the Convention. Accordingly, no award of compensation for costs and expenses is to be made with regard to this respondent State (see *Mozer*, cited above, § 239). Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 10,000 in respect of costs and expenses incurred before it, to be paid by Turkey and to be converted into GBP at the rate applicable on the date of settlement.

### C. Default interest

291. The Court considers it appropriate that the default interest rate 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,

1. *Dismisses*, unanimously, the Turkish Government's preliminary objection of incompatibility *ratione loci*;
2. *Holds*, by fifteen votes to two, that there has been no violation by Cyprus of Article 2 of the Convention under its procedural limb;
3. *Holds*, unanimously, that there has been a violation by Turkey of Article 2 of the Convention under its procedural limb, on account of the failure to cooperate;
4. *Holds*, unanimously, that there is no need to examine separately the complaint under Article 13 of the Convention taken in conjunction with Article 2 of the Convention;
5. *Holds*, unanimously,
  - (a) that the Turkish Government are to pay the applicants, within three months, the following amounts:
    - (i) EUR 8,500 (eight thousand five hundred euros) to each one of them, plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to them, in respect of costs and expenses, to be converted into GBP at the rate applicable on the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 January 2019.

Roderick Liddell  
Registrar

Guido Raimondi  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Serghides;
- (b) joint partly dissenting opinion of Judges Karakaş and Pejchal.

G.R.  
R.L.

## CONCURRING OPINION OF JUDGE SERGHIDES

1. I voted with the majority and am thus in agreement with all points of the operative provisions (nos. 1-6) of the judgment, which finds that only Turkey – and not Cyprus – has been in violation of the procedural limb of Article 2 of the Convention; a finding also reached by Judge Pere Pastor Vilanova and myself in our partly dissenting opinions in the Chamber procedure.

2. Though I am in agreement with the reasons and arguments on which the judgment is based, in finding no breach by Cyprus and a breach by Turkey of Article 2 under its procedural limb, I cannot, with all due respect, allow my attention to be diverted from the central issues, reasons and principles that I discussed in my partly dissenting opinion in the Chamber procedure, especially as they could provide additional but very strong reasons to support the conclusion of the Grand Chamber.

3. I therefore refer to all those issues, reasons, arguments and principles, which formed the basis of my partly dissenting opinion, in support of my present concurring opinion, without elaborating on them again apart from some issues that I wish to highlight further.

4. Having included a summary of the facts in my partly dissenting opinion in the Chamber procedure, I will not have to go into them all over again.

5. As will be explained in more detail below, the following two main reasons would suffice, in my view, to find only Turkey and not Cyprus to be in violation of the procedural limb of Article 2 of the Convention: (a) Turkey, for reasons not based on good faith, was not willing to cooperate with Cyprus regarding the unlawful killing which had taken place in the part of the territory of Cyprus not under Turkey's occupation and effective control, contrary to its obligation under Article 2 of the Convention, and (b) Cyprus did not have the obligation under the principle of non-recognition to transmit all its evidence to the "TRNC" authorities so that the "TRNC" courts could try the murder suspects.

### **Principles of good faith and effectiveness**

6. Having said the above, an important issue which needs further elaboration is the role of the principles of good faith and effectiveness in interpreting and applying Article 2 of the Convention and, in particular, in relation to the positive procedural obligation of a State under Article 2 (read also in conjunction with Article 1 of the Convention) to secure the right to life and also the specific obligations which may spring therefrom: (a) the procedural obligation to investigate, and (b) the procedural obligation to

cooperate. As will be seen, this issue is not at all theoretical in the present case, but is of great practical importance.

7. The procedural obligation to cooperate between two or more States regarding an unlawful killing is a specific aspect of the procedural obligation to investigate, which is, in turn, a specific aspect of the positive procedural obligation of the States concerned, under Articles 1 and 2 of the Convention, to secure the right to life. These obligations are derived from case-law developments based mainly on the principle of effectiveness, or in other words the principle of effective protection of rights<sup>1</sup>, which requires that the protection of the right to life be practical and effective. The relationship between these positive obligations and the principle of effectiveness can be said to resemble the affinity between offspring and their forebears.

8. Good faith is an indispensable element of interpretation under Article 31 § 1 of the Vienna Convention on the Law of Treaties (VCLT), which provides that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”<sup>2</sup>. The principle of effectiveness is implicit in the requirement of good faith<sup>3</sup>, though in my view they are not identical in terms of substance, but merely overlapping.

9. These principles of good faith and effectiveness, together with any other principles on which the Convention is based, like the principles of the

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<sup>1</sup>. See on this principle, *inter alia*, Daniel Rietiker, “‘The principle of effectiveness’ in the recent jurisprudence of the European Court of Human Rights: its different dimensions and its consistency with public international law – no need for the concept of treaty *sui generis*”, *Nordic Journal of International Law*, 79 (2010), 245 *et seq*; Georgios A. Serghides, “The Principle of Effectiveness as Used in Interpreting, Applying and Implementing the European Convention on Human Rights (its Nature, Mechanism and Significance), in Iulia Motoc, Paulo Pinto de Albuquerque and Krzysztof Wojtyczek, *New Developments in Constitutional Law – Essays in Honour of András Sajó*, The Hague, 2018, pp. 389 *et seq*.

<sup>2</sup>. In *Golder v. the United Kingdom*, no. 4451/70, § 29, 21 February 1975 (Plenary), the Court held that “Articles 31 to 33 enunciate in essence generally accepted principles of international law”. On the point that these provisions have the status of rules of customary or general international law, see also *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 118, 8 November 2016, and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 61, 29 January 2008. Professor John Merrills remarked that, “[t]hough its decisions have been very much influenced by certain characteristics of the European Convention, the Court’s approach to interpretation has its basis in the Vienna Convention” (see John G. Merrills, *The Development of International Law by the European Court of Human Rights*, Manchester, 1993, at p. 69). François Ost also argues that Articles 31 to 33 of the VCLT “seem to be a constant source of inspiration” for the Court (see François Ost, “The Original Canons of Interpretation of the European Court of Human Rights”, in Mireille Delmas-Marty (ed.), *The European Convention for the Protection of Human Rights: International Protection versus National Restrictions*, Dordrecht/Boston/London, 1992, 283, at p. 288).

<sup>3</sup>. See *Yearbook of the International Law Commission* 1964, II, p. 60, § 26, and p. 61, § 29.

rule of law and democracy, are aspects – or parts or elements – of the object and purpose of a Convention provision and must be taken into account when interpreting and applying it. The principle of good faith stems not only from the very object and purpose of a treaty, but is expressly referred to in Article 31 § 1 of the VCLT, as a manner by which a treaty provision, in the present case Article 2 of the Convention, must be interpreted in accordance with its ordinary meaning and in the light of its object and purpose.

10. All the principles referred to above are also rules or norms of international law and must be taken into account together with the context of a treaty provision, by virtue of Article 31 § 3 (c) of the VCLT<sup>4</sup>.

11. As noted in the Preamble to the VCLT, the principle of good faith is universally recognised. This principle demands honesty, fairness, and reasonableness; it prohibits the abuse of rights and the taking of any unfair advantage; and it means respecting, interpreting and applying the rule of law effectively<sup>5</sup>. It precludes “States parties from adopting views and positions that misrepresent the genuine content of what they have undertaken through the treaty”<sup>6</sup>. Also, as the International Law Commission (ILC) has stated: “[w]hen a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted”<sup>7</sup>. As rightly observed by Richard K. Gardiner, “[t]he ILC subsumed both elements of the principle of effectiveness under two elements in article 31(1) jointly, that is ‘good faith’ and ‘object and purpose’”<sup>8</sup>.

12. The ratification of a treaty by a State indicates its consent to be bound by the terms of the treaty and hence its awareness as to the existence of those terms. This gives rise to legitimate expectations by all other parties to the treaty. Therefore, an interpretation of the provisions of the treaty by one State which lacks one or more of the aforementioned elements of good

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<sup>4</sup>. See, *inter alia*, *Golder*, cited above, § 35, and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, §§ 55-56, 21 November 2001, where the Court referred to this provision. See also *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, §§ 40-43, ECHR 2014, where the Court applied the rules of international law on reparation in interpreting Article 41 of the Convention dealing with just satisfaction.

<sup>5</sup>. For these elements of the principle of good faith, see, *inter alia*, J. F. O’Connor, *Good Faith in International Law*, Aldershot, 1991, at pp. 42, 110, 124; and Mark E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Leiden-Boston, 2009, at pp. 425-26.

<sup>6</sup>. See Alexander Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law*, Oxford, 2008, repr. 2013, at p. 398, also acknowledging that the principle of good faith “indeed relates both to the fulfilment of treaty obligations and interpretation of treaty provisions” (*ibid.*).

<sup>7</sup>. See *Yearbook of the International Law Commission* 1964, II, p. 201, § 8, and 1966, II, p. 219, § 6.

<sup>8</sup>. See Richard K. Gardiner, *Treaty Interpretation*, Oxford, 2015, at p. 179.

faith, e.g. reasonableness, and thus results in a *contra legem* interpretation or an interpretation against the object and purpose of the provision, could automatically be regarded as an interpretation that is not made in good faith. As is rightly observed by one author “[i]nternational law does not attach great weight to the state of mind of sovereign states and it only seldom requires inquiring into it”<sup>9</sup>.

13. Apart from Article 31 § 1 of the VCLT, employing the principle of good faith in treaty interpretation, Article 18 of the VCLT further provides that “[a] State is obliged to refrain from acts which would defeat the object and purpose of a treaty” that has been signed and remains subject to ratification<sup>10</sup>. If a State is required to refrain from acts calculated to frustrate or obstruct the object of a treaty it has signed but not yet ratified, the same standard or an even higher one should apply when the State does ratify the treaty. Article 18 indicates that for a State to be a party to a treaty, it must genuinely be prepared and ready to abide by it<sup>11</sup>. This is another provision, apart from Article 31 § 1 of the VCLT, which indicates the importance of the object of a treaty in interpreting or performing it.

14. Though there is no such express mention of the principle of good faith in the Convention or any of its Protocols, the Preamble to the Convention speaks about “collective enforcement” of the rights, which, in my view, presupposes good faith<sup>12</sup>. Furthermore, the Convention, in Articles 17 and 18 respectively, prohibits the abuse of rights and the misuse of restrictions, those prohibitions also being elements of the principle of good faith. Moreover, Article 3 of the Statute of the Council of Europe (London, 5.V.1949) provides that “[e]very member of the Council of Europe must ... collaborate sincerely and effectively in the realisation of the aim of the Council” stated in Article 1 therein. Similarly, the Preamble to the Convention provides “that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the

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<sup>9</sup>. See Robert Kolb, “Principles as Sources of International Law (With Special Reference to Good Faith)”, in *Netherlands International Law Review* [NILR], 2006, vol. LIII 2006/I, 1 at p. 15.

<sup>10</sup>. Markus Kotzur rightly argues that Article 18 of the VCLT “gives proof that good faith shall not only apply during the performance and enforcement of a treaty but also at an earlier stage of its formation, the pre-ratification period” (see Markus Kotzur, “Good Faith (*Bona Fide*)” in *Max Planck Encyclopedia of Public International Law*: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1412>, at p. 7 (§ 21)).

<sup>11</sup>. Article 26 of the VCLT, dealing with the implementation of treaties, uses again the concept of good faith, but in a different context from that in which it is used in Article 31 § 1. Article 26, by providing that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith”, uses good faith not as a manner of interpretation but as a manner of performance of a treaty.

<sup>12</sup>. Also, in paragraph 232 of the judgment, the Convention’s special character as a collective enforcement treaty, which entails in principle an obligation on the part of the States concerned to cooperate effectively with each other, is rightly emphasised.

methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms”. The principle of “sincere” and “effective” cooperation is nothing less than cooperation based on good faith and effectiveness. In addition, Article 4 of the said Statute indicates that membership in the Council of Europe is premised on the ability of a candidate State to collaborate with all other members “sincerely” and “effectively”, as provided in Article 3. Finally, Article 8 of the Statute provides for serious penalties (e.g. suspension and expulsion) for member States that do not comply with the requirements of Article 3.

### **Principle of non-recognition**

15. The next issue which calls for some elaboration is the role of the principle of non-recognition in interpreting and applying Articles 1 and 2 of the Convention, as this principle is a rule of international law which must also be taken into account by virtue of Article 31 § 3 (c) of the VCLT. As will be explained, this issue is once again not at all theoretical in the present case, but is of great practical importance.

16. The rule or principle of non-recognition, apart from being a customary international rule, is also reflected in the International Law Commission’s Draft Articles on the “Responsibility of States for Internationally Wrongful Acts”. Two of these Articles, namely Articles 40 and 41 are quoted in paragraph 157 of the judgment under the heading “C. The principle of non-recognition”. Article 41 § 2 of these Draft Articles provides that “[n]o State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, *nor render aid or assistance in maintaining that situation*” (emphasis added). In the Commentary to Draft Article 41 § 2, quoted in paragraph 158 of the judgment, the ILC observed that the principle of non-recognition had been applied by the European Court of Human Rights (see paragraph 10 of that Commentary). Under Draft Article 30 “[t]he State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require”.

17. Cyprus is a victim of State aggression by Turkey. In addition to the international response to the establishment of the “TRNC” included in paragraphs 159-61 of the judgment, it is pertinent to note that the United Nations Security Council adopted a number of resolutions in the aftermath of the Turkish invasion in Cyprus, demanding an end to the foreign military intervention and requesting the withdrawal of foreign military troops<sup>13</sup>. Furthermore, the United Nations General Assembly has also expressly deplored the continuing occupation of Cyprus by foreign forces<sup>14</sup>.

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<sup>13</sup>. See UNSC Resolutions 353 (1974) of 20 July 1974 and 360 (1974) of 16 August 1974.

18. It is to be underlined that the illegal occupation of northern Cyprus by Turkey, which is an internationally wrongful act of a continuing character under Draft Article 14 § 2, must cease, and Turkey has an undiminished responsibility to bring an immediate end to this act in order to protect the interests of the international community as a whole in the preservation of, and reliance on, the rule of law. As a result, third States are required not to aid or assist Turkey in maintaining this unlawful situation and entrenching or normalising the occupation of Cypriot territory. That is exactly the evil that the rule of non-recognition aims at protecting against.

19. The obligation of non-recognition is itself intended to protect human rights. However, the fact that the case-law of the Court accepts that the “TRNC” courts have some limited jurisdiction, in particular over acts occurring within the part of the territory of Cyprus that is under the occupation and effective control of Turkey, is not contrary to the obligation of non-recognition. The reason behind this approach is to avoid a vacuum and protect the human rights of the persons concerned. In paragraph 250 of its judgment the Court rightly distinguishes the present case from its previous jurisprudence, on the ground that the unlawful killing in question took place in the territory of Cyprus which was not under the effective control of Turkey; therefore, the key consideration for the Court in other cases, namely to avoid a vacuum, did not apply in the present case.

### **The use of the above principles in interpreting Article 2**

20. Undoubtedly, an interpretation of Articles 1 and 2 of the Convention in disregard of the principles of good faith and effectiveness, and/or the principle of non-recognition, should not be accepted by the Court, since otherwise the Court would be considered as not paying due regard to fundamental Convention principles and rules of international law.

21. For this reason, it is highly regrettable that the judgment fails to deal with these issues, even though the principle of non-recognition was emphatically invoked by the Government of Cyprus. As is clear from

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<sup>14</sup>. See Resolutions 33/15 of 9 November 1978, 34/30 of 20 November 1979 and 37/253 of 16 May 1983. See also UNGA Resolution 3212 (XXIX) of 1 November 1974 which provides, *inter alia*:

“The General Assembly

1. Calls upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and to refrain from all acts and interventions directed against it;

2. Urges the speedy withdrawal of all foreign armed forces and foreign military presence and personnel from the Republic of Cyprus and the cessation of all foreign interference in its affairs”.

This Resolution was later endorsed by the Security Council in UNSC Resolution 365 (1974) of 13 December 1974.

paragraph 250 of the judgment, the Court decided not to deal with the principle of non-recognition by saying the following:

“The Court does not consider it desirable or necessary in the present case to elaborate a general theory concerning the lawfulness of cooperation in criminal matters with unrecognised or *de facto* entities under international law.”

22. However, with all due respect, what the Court states in the above paragraph is misplaced, because it precedes the Court’s argument and its finding that Cyprus was not under an obligation to supply all the evidence to the “TRNC” authorities or Turkey. This finding is only made at the end of paragraph 253, where the Court concludes that it was not unreasonable for Cyprus to refuse to waive its criminal jurisdiction – which is one of the main features of the sovereignty of a State – in favour of the “TRNC” courts, which in any event only have limited acknowledged jurisdiction. If the Court, at the end of paragraph 253 of the judgment, had stated that its above finding, by itself, made it unnecessary for it to examine any other arguments raised by Cyprus (including the argument based on the principle of non-recognition) to justify Cyprus’ refusal to transmit all the evidence to the “TRNC” authorities”, that would have been understandable for me. In any event, with all due respect, the said statement of the Court in paragraph 250, *a priori* and without examining the issue, renders meaningless the principle of non-recognition in interpreting and applying Articles 1 and 2 of the Convention, despite the fact that the Court includes one whole section under the “Relevant International Law and Practice” heading which deals with the “Principle of non-recognition” (see paragraphs 157-58 of the judgment).

23. Even though I would have been able to understand that it was not “necessary” for the Court to deal with the principle of non-recognition, had it been considered in the right order, I am unable to understand why the Court says that it does not find it “desirable” to deal with this principle. This is especially puzzling given that this principle is a mandatory and extremely important principle of international law, the legitimacy of which is recognised in the judgment by the fact of including a separate section on it, as stated above.

24. The Court should have emphasised, as I do now in my concurring opinion, that the Convention cannot require any State to do anything that would require it to breach a rule of customary international law, in the present case the rule of non-recognition. I also wish to stress that the procedural obligations under Article 2 of the Convention cannot mandate that Cyprus, or any other State, should take steps which contribute to the entrenchment of an unlawful occupation in Cyprus.

25. Neither did the Court deal in the present case with the principle of good faith in interpreting Articles 1 and 2 of the Convention, though what is said in paragraph 234, namely that the duty to cooperate “is in keeping with

the effective protection of the right to life as guaranteed by Article 2” was absolutely relevant and correct.

26. Hugh Thirlway observes that “it is ... difficult to conceive circumstances in which the Court would find it necessary to reject an interpretation advanced by a party on the sole ground that it was not made in good faith”<sup>15</sup>. He adds that “[s]uch interpretation would almost certainly offend at the same time against some specific canon of interpretation; and the Court will be slow to accuse a State in its judgment of bad faith”<sup>16</sup>. Similarly, Sir Gerald Fitzmaurice remarks that “[i]t may be useful ... to draw attention to – without attempting entirely to resolve – a difficulty that arises in the application of the principle of good faith”<sup>17</sup>. And he explains that “[t]here is always a natural reluctance to ascribe bad faith to States, in the sense of a deliberate intention knowingly to circumvent an international obligation”<sup>18</sup>.

27. Indeed, it appears that the Court has never rejected an interpretation advanced by a party on the ground that it was not made in good faith, whereas it has repeatedly rejected an interpretation as formalistic, or restrictive, or as being theoretical and illusory rather than practical and effective.

28. Despite the difficulty of conceiving circumstances in which the Court could find it necessary to reject an interpretation advanced by a party on the sole ground that it was not made in good faith, one cannot exclude such circumstances, and the present case represents one of the clearest situations where the Court should have rejected Turkey’s interpretative approach to Article 2 on such a ground.

29. The element of good faith which is referred to in Article 31 § 1 of the VCLT, as mentioned earlier, is an important element without which the interpretative approach under that provision collapses. This is so, because good faith as a manner of interpretation relates both to the ordinary meaning

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<sup>15</sup>. See Hugh Thirlway, “The Law and Procedure of the International Court of Justice 1960–1989”, part III, 62, *BYBIL* (1991), 1 at pp. 17-18.

<sup>16</sup>. *Ibid.*

<sup>17</sup>. Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Cambridge, vol. II, 1986, at pp. 610-11.

<sup>18</sup>. *Ibid.* at p. 611. He then asks the question “[i]s this subjective element an essential ingredient of the concept of bad faith?” (*ibid.*). In answering this question he says that “[p]ossibly, in the case of bad faith considered purely in and of itself, it is such an ingredient. But this would not seem necessarily to apply to an abuse of rights – and it is largely through abuses of rights that actions that may give the impression of being in (deliberate) bad faith are carried out” (*ibid.*). After further discussing the issue, Sir Gerald Fitzmaurice concludes that “[a] State which, though not with the actual object of breaking an international obligation as such, uses its right to apply certain laws, or to apply them in a certain way, in such a manner that the obligation is not in fact carried out, may be said to have committed an abuse of rights” (*ibid.*). This is in line with what has been said in paragraph 12 above, namely that “international law does not attach great weight to the state of mind of sovereign states”.

of a treaty provision and to its object and purpose, and is, in my view, the ingredient or element which assists in making the process of interpretation of a treaty, in terms of Article 31 § 1, “a unity, a single combined operation”<sup>19</sup>.

Thus the Court should not refer only to the text and/or object of a provision, as it usually does, while bypassing or neglecting “good faith” as an element or principle of interpretation.

30. Articles 1 and 2 of the Convention cannot be interpreted as allowing a member State, in the present case Turkey, to refuse to cooperate with another member State, in the present case Cyprus, in a manner which contravenes international law, in particular by not respecting the independence and integrity of the latter State and by acting in bad faith, with the effect of strengthening and normalising the illegal situation that has been imposed over part of the territory of Cyprus. In fact, Turkey did exactly the opposite to what was provided for in the United Nations Resolution<sup>20</sup>.

31. More specifically, it runs counter to international law and especially to the principle of good faith, for Turkey, an invading and occupying power in northern Cyprus which established there an illegal entity not recognised by the whole international community, to argue that it is entitled to refuse to cooperate with the Government of Cyprus in the present case, because it does not recognise it, ignoring the fact that the Government of Cyprus is regarded as the sole legitimate government in Cyprus by the international community. Based on the above, Turkey’s claim that the courts of its entity in the northern part of Cyprus – and not the courts of the Republic of Cyprus – are competent to deal with a trial of the murder suspects, despite the fact that the murder was committed in part of the territory of Cyprus that is not under the occupation and effective control of Turkey, violates the principle of good faith.

32. This stance of Turkey is clear from both its written and oral observations. Importantly, in response to a question from the Bench at the oral hearing as to what would be the proper diplomatic channel for a valid extradition request, the following was stated:

“The ordinary diplomatic channel in the present case was not available to the Greek Cypriot Authorities for the simple reason, not because of non-recognition, but because there are no diplomatic relations between Turkey and the Greek Cypriot Authorities. That is the reason why Turkey adds a proviso to any convention under the auspices of the Council of Europe, that treaty membership does not create or cannot create any legal obligations between Turkey and the Greek Cypriot Authorities in southern Cyprus.”

33. The reference to “Greek Cypriot Authorities” is in fact an indication in itself as to Turkey’s refusal to recognise the Republic of Cyprus. Neither in the request for referral, nor in their written or oral observations, have the

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<sup>19</sup>. See *Golder*, cited above, § 30.

<sup>20</sup>. See notes 13 and 14 above.

Turkish Government addressed even once the Government of Cyprus as such. Instead they have referred to the “Greek Cypriot Authorities”.

34. Turkey’s statement reproduced above (see § 32) is, with all due respect, misleading in that the lack of diplomatic relations between Turkey and Cyprus came about because Turkey decided so and is a corollary of the fact that it does not recognise the Government of Cyprus. It would therefore be misconceived to paint a picture in which both States refuse to have diplomatic relations with each other. This is especially so, as Cyprus does not dispute the statehood of Turkey, but only that of the “TRNC”, Turkey’s subordinate local administration established in the northern part of Cyprus. In addition, Cyprus has objected to Turkey’s reservations in both the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters within the 12-month limitation period under Article 20 § 5 of the VCLT. It is clear from the content of Turkey’s reservations to these two treaties that it does not recognise Cyprus and does not want to enter into any dealings with it. In particular, Turkey declared that its ratifications did not amount “to any form of recognition of the Greek Cypriot Administration’s pretention to represent the defunct ‘Republic of Cyprus’ as a party” to these instruments, “nor should it imply any obligations on the part of Turkey to enter into dealings with the so-called Republic of Cyprus...” (see paragraphs 144 and 149 of the judgment).

35. It is to be noted, in this respect, that the reservations of Turkey were not specific and were incompatible with the object and purpose of the Conventions to which they were made, contrary to what is provided respectively in Article 19 §§ (b) and (c) of the VCLT. Regarding the prohibition of broad reservations, Roslyn Moloney, referring to a judgment of the International Court of Justice, observed that “[i]n this case, the Court was concerned to protect the integrity of human rights instruments from erosion due to broad reservations which diluted the most fundamental provisions”<sup>21</sup>.

36. Turkey, a member of the Council of Europe, by unreasonably refusing to recognise and thus cooperate with the Republic of Cyprus, another member of the Council of Europe, as required under Articles 1 and 2 of the Convention, has violated these Convention provisions by disregarding the principle of good faith and the primary aims of the Council of Europe referred to in the Preamble to the Convention, namely the effective recognition and observance and the collective enforcement of the rights guaranteed by the Convention, the maintenance of the rule of law and effective political democracy. Turkey also violated Article 3 of the Statute of the Council of Europe, which requires sincere and effective cooperation

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<sup>21</sup>. See Roslyn Moloney, “Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent”, in [2004] *Melbourne Journal of International Law*, vol. 5, 155, at pp. 156-57.

between the member States of the Council of Europe in the realisation of its aims, as mentioned in paragraph 14 above. In effect, Turkey's stance undermines the role of the Court as one of the Council of Europe's organs. An indispensable component of the collective guarantee and enforcement of human rights is that each member State has to respect the sovereignty and independence of all other member States. Without this component, any kind of sincere cooperation is impossible.

37. It is an indispensable element, for any cooperation, that the parties involved should be willing to cooperate in good faith. Though the principle of good faith is not mentioned expressly in the judgment, this is acknowledged in paragraph 233 where it is said that “[t]he Court accordingly takes the view that Article 2 may require from both States a two-way obligation to cooperate with each other, implying at the same time an obligation to seek assistance and an obligation to afford assistance”. It would therefore be *ab initio* futile for a State, in the present case Cyprus, to cooperate with another State, in the present case Turkey, which has refused from the very beginning to do so and where its refusal is based on grounds which run counter to good faith and to international law. This stance has hermetically sealed the door for Cyprus to cooperate with Turkey. Even under these circumstances, Cyprus did provide some evidence to the “TRNC” through UNFICYP, namely the DNA results, and was also ready to hand over all evidence to UNFICYP so that the latter could see whether there was a *prima facie* case against the murder suspects, subject to the undertaking by the “TRNC” authorities that they would surrender the murder suspects to Cyprus in that event (see paragraph 252 of the judgment).

38. Cyprus was entitled to invoke the principle of non-recognition regarding the legitimacy of the “TRNC” and therefore not to transmit all the evidence to the “TRNC” or Turkey, which is an invading and occupying force in northern Cyprus. On the other hand, Turkey was not entitled to allege that it had a right not to extradite the murder suspects to the Government of Cyprus because it did not have diplomatic relations with it and did not recognise it. Such misuse of the principle of non-recognition by Turkey, which is attributable to its conquering and expansionist policy in respect of Cyprus, is contrary to international law and especially the principle of good faith and the primary, long and continuing aim of the Council of Europe to ensure the effective protection of human rights.

39. An interpretation of Article 2 of the Convention advanced by Turkey whereby a State may refuse to cooperate with another member State of the Council of Europe in a criminal case on the basis that it does not recognise that other State, or does not want to have any diplomatic relations with it, is, in my view, in total disregard of the principle of good faith, the principle of effectiveness or any other rule of international law, including the obligation to respect the sovereignty and integrity of another State.

40. Turkey's claim that it did not have to cooperate was also based on its demand that the courts of the "TRNC" should have jurisdiction over crimes committed everywhere in the territory of Cyprus<sup>22</sup>, thus entirely ignoring the legitimacy of the courts of the Republic of Cyprus.

41. This argument, to the effect that only "TRNC" courts are competent in Cyprus wherever a murder is committed in the territory of Cyprus, is an additional claim of Turkey that goes against the principle of good faith, because no State in the world apart from Turkey recognises the "TRNC". Thus it was not reasonable for Turkey to expect "TRNC" courts, which have a very limited jurisdiction according to the case-law of the Court, to have jurisdiction over crimes committed in part of the territory of Cyprus that is not under its effective control. Nor was it reasonable for it to expect from Cyprus that it would not refuse to waive its criminal jurisdiction, this being one of the main features of its sovereignty, in favour of the "TRNC" courts. As has been said above, the argument of the Court for not finding a violation on the part of Cyprus, in paragraph 253 of the judgment, is "that in such a specific situation it was not unreasonable [for Cyprus] to refuse to waive its criminal jurisdiction in favour of the 'TRNC' courts". Here, however, the point I am making is not what was reasonable for Cyprus to argue but what was unreasonable for Turkey to argue. Bad faith is demonstrated by unreasonableness on the part of a State.

42. A third claim raised by Turkey regarding the interpretation of Article 2 of the Convention – and one which breaches, in my view, the principle of good faith – is that Turkey does not have a duty of cooperation in the absence of any treaty commitments, in which case it applies its own domestic law. This claim is, with all due respect, unreasonable because Article 2 itself, as interpreted by the Court, imposes a duty of sincere cooperation; an obligation which emanates from the Convention to which Turkey is a committed State Party. Besides, as is stipulated in Article 27 of the VCLT, "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

43. A fourth claim by Turkey in refusing to comply with its positive obligation to cooperate was that Cyprus' extradition requests were not valid under the Extradition Convention. This argument was raised by Turkey only before the Grand Chamber (see paragraph 262 of the judgment). I am in complete agreement with what the Court says in paragraphs 261-66, in dealing with Turkey's stance. In particular, the Court, in paragraph 263 of the judgment, finds that Turkey did not comply with Articles 18 (1) and (2) of the Extradition Convention to inform the requesting State, Cyprus, of its decision with regard to the extradition. In paragraph 264 of the judgment the Court rightly says that it "is of the opinion that the obligation to cooperate

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<sup>22</sup> See a commentary on this expansionist policy of Turkey in §§ 34, 47 (n), 74 and 87 of my partly dissenting opinion appended to the Chamber judgment in the present case.

under Article 2 should be read in the light of these provisions [i.e. Articles 13 and 18(1) and (2) of the Extradition Convention] and should therefore entail for a State an obligation to examine and provide a reasoned reply to any extradition request from another Contracting State ...” Finally, in paragraph 265 of the judgment, the Court rightly says that the above consideration “suffices” for it “to conclude that Turkey did not make the minimum effort required in the circumstances of the case and therefore did not comply with its obligation to cooperate with Cyprus for the purposes of an effective investigation into the murder of the applicants’ relatives”.

44. The silence of Turkey further to Cyprus’ extradition request – which “could be understood” by the Court “as a refusal to extradite” (see paragraph 263 of the judgment) – and the fact that it failed to provide the Court with any reasoned reply to justify such a refusal, are, in my view, additional indications that Turkey breached the principle of good faith in interpreting and applying Article 2 together with Article 1 of the Convention.

45. It would be contrary to the principle of good faith to interpret Articles 1 and 2 of the Convention in such a way as to deny the right to life<sup>23</sup>. Turkey and the “TRNC” authorities, by refusing to cooperate on grounds which all fall outside the scope of the Convention and are contrary to international law, have automatically frustrated and rendered nugatory the purpose of Article 2 and the principles of good faith and effectiveness. They offered no protection at all to the applicants, because, as a result of their unreasonable claims the “TRNC” authorities ultimately released all the murder suspects.

46. It is to be observed that, when a State, as can be said of Turkey in the present case, totally disrespects<sup>24</sup> and fails to apply the principle of effectiveness, which is the legal basis, or source or substratum, of any positive procedural obligation that may arise from Articles 1 and 2 of the Convention, then compliance with any such obligation is doomed to be a complete failure.

47. Finally, for the reasons underlying the judgment, and for all the reasons on which my present concurring opinion and my partly dissenting opinion in the Chamber procedure are based, I conclude that only Turkey – and not Cyprus – has been in breach of the procedural limb of Article 2 of the Convention. Consequently, I am in agreement with the majority

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<sup>23</sup>. See a similar argument in Richard K. Gardiner, *Treaty Interpretation*, 2<sup>nd</sup> edn., Oxford, 2015, at p.176: “Clearly, it would be contrary to good faith to interpret the grant of powers as permitting their use to deny rights under the treaty.”

<sup>24</sup>. Even “[a]n attempt at ineffective interpretation of a treaty can in some circumstances be equal to breach of the treaty, thus triggering the remedies available to the contracting parties under Article 60 of the Vienna Convention on the Law of Treaties” (see Alexander Orakhelashvili, *op. cit.*, at p. 393).

regarding point two of the operative part of the judgment as well as with all the other points of that part.

## PARTLY DISSENTING OPINION OF JUDGES KARAKAŞ AND PEJCHAL

1. With all due respect to our colleagues, we disagree with the view of the majority that there has been no violation by Cyprus of Article 2 of the Convention under its procedural limb. For the reasons that will be explained briefly below, we consider that Cyprus has also failed in its duty to cooperate with Turkey and the “TRNC” authorities and that therefore there has been a violation by Cyprus of Article 2 of the Convention under its procedural limb.

2. We note that the Grand Chamber has endorsed the findings concerning the overall adequacy of the parallel investigations conducted by the authorities of each respondent State. It accordingly considered that the crux of the problem in the present case is the existence and scope of a duty to cooperate as a component of the procedural obligation under Article 2 (see paragraph 221).

3. In this connection, we fully subscribe to the general principles laid down in paragraphs 229-38 of the judgment, which has clarified the extent of the procedural obligation under Article 2 of the Convention in a cross-border context. In particular, the Grand Chamber has held that in certain circumstances (see paragraph 233):

“Article 2 may require from both States a two-way obligation to seek assistance and an obligation to afford assistance. The nature and scope of these obligations will inevitably depend on the circumstances of each particular case, for instance whether the main items of evidence are located on the territory of the Contracting State concerned or whether the suspects have fled there.”.

4. The Grand Chamber has found that both States had an obligation to cooperate with each other which derived from their respective procedural obligations under Article 2 to investigate the deaths of the applicants’ relatives.

5. As to the nature and scope of these obligations in the present case, the Grand Chamber has found as follows (see paragraph 237):

“... a special feature in this case is that the alleged lack of cooperation involved a de facto entity set up within Cyprus’s internationally recognised territory but which is under the effective control of Turkey for the purposes of the Convention (see *Cyprus v. Turkey*, cited above, §§ 61 and 77). As the two respondent States have no formal diplomatic relations, the international treaties to which both States were parties (Council of Europe treaties, see relevant international law) cannot be the sole framework of reference in determining whether both States used all the possibilities available to them to cooperate with each other. In the absence of formal diplomatic relations, formalised means of cooperation are more likely to fail and States may be required to use other more informal or indirect channels of cooperation, for instance through third States or international organisations.”

6. However, when it came to the application of the general principles with regard to Cyprus, the majority, in our view, failed to properly assess that State's compliance with its procedural obligation, taking into account the very special circumstances of the present case.

7. The Grand Chamber examined Cyprus' obligation to cooperate under three separate headings. Firstly, it examined the question whether Cyprus had used all the means reasonably available to it in order to seek the surrender/extradition of the suspects by Turkey and found that it had (see paragraphs 241-45). Secondly, it inquired whether Cyprus was under an obligation to supply all the evidence to the "TRNC" authorities or Turkey and ultimately held that it did not have to (see paragraphs 246-55). Finally, the Grand Chamber considered that Cyprus was also not under an obligation to engage in other forms of cooperation as suggested by UNFICYP (see paragraph 256).

8. We disagree with these conclusions, save for the conclusion reached as regards the first question, since the material before the Grand Chamber demonstrates clearly that, despite the ample evidence collected and suspects identified and arrested in connection with this horrible crime, the investigations both in Cyprus and in "TRNC" have reached a stalemate because both Cyprus and Turkey were not prepared to make any compromise on their positions and find middle ground owing to the long-standing and intense political dispute between them.

9. In particular, it is not in debate that Turkey, through the "TRNC" authorities and within the framework of UNFICYP mediation, requested evidence from Cyprus for the purposes of the continued detention of the suspects and of its own investigation in the "TRNC" (see paragraphs 110, 115, 122, 123 and 126). The reasons put forward by Cyprus to justify its refusal to supply all the evidence to Turkey or to the "TRNC" authorities was either that provision of evidence to the "TRNC" would have resulted in the suspects' unlawful detention and trial by unlawful courts within the meaning of the Convention (see paragraph 247) or that such cooperation would have breached the customary international law principle of non-recognition (see paragraph 250).

10. In order to lend support to these arguments, the majority attempt in paragraph 250 to distinguish the situation in the present case from the well-established case-law of the Court cited in paragraphs 248 and 249 (see, in particular, *Cyprus v. Turkey*, cited above, §§ 61 and 238; *Demopoulos and Others*, cited above, §§ 95-96; and *Foka*, cited above, §§ 83-84), where the Court has accepted the validity for the purposes of the Convention of legal remedies established or measures adopted by the "TRNC" authorities with regard to "TRNC" inhabitants or persons affected by their actions (see paragraph 250). Rather, it takes the following view:

"... in the present case, the question that arises is whether the Republic of Cyprus as the legitimate government of Cyprus, with no control over the northern part of the

island, which is under the effective control of Turkey, can cooperate with the de facto authorities set up within that territory (the ‘TRNC’) without implicitly lending legitimacy or legality to them or to the occupation. In the Court’s view, this situation is also different from that in which a Contracting State other than Cyprus cooperates with those authorities (see, for instance, the cooperation between the United Kingdom police and the ‘TRNC’ authorities referred to in paragraph 214 above).”

11. There is simply no support under international law (and the Court is therefore unable to back this claim with reference to international law), nor does it stem from the practice of other States, that such a cooperation would have been taken as recognition, implied or otherwise, of the “TRNC”. The United Kingdom, for example, has cooperated in criminal cases with the “TRNC” (see *Attorney General v. Ozgay Yorgun TRNC Nicosia Assize Court*, case no. 5719/99, Supreme Court appeal no. 67/99, in which the United Kingdom authorities had provided witnesses and evidence for the prosecution of the suspects, as referred to in the Chamber judgment, § 244) without affording it any recognition. In that sense the High Court of England and Wales had rejected the argument that police-to-police cooperation with “Northern Cypriot” authorities amounted to implied recognition (see *R. (in the application of Akarcay) v. Chief Constable of West Yorkshire*, [2017] EWHC 159). The majority’s approach is simply to tell Cyprus that it is not bound by the procedural obligation to cooperate under Article 2 when it comes to cooperation with the “TRNC”.

12. Finally, the majority, while acknowledging that in the present case, given the absence of formal diplomatic relations, formalised means of cooperation were more likely to fail and that States may be required to use other more informal or indirect channels of cooperation, for instance through third States or international organisations, refuses to take into account the validity or even the possibility of many suggestions put forward by the UNFICYP in order to facilitate the cooperation between Cyprus and the “TRNC”. Only the suggestion of an *ad hoc trial* at a neutral venue is dismissed by the majority as having an insufficient basis in domestic or international law. However, no reason is given in the judgment as to why other suggestions cited therein would not have elucidated further the facts and help establish those responsible for the murder of the applicants’ relatives.

13. In respect of both of these points, we subscribe to the findings of the Chamber judgment which read as follows:

“291. On the Cypriot Government’s side it is evident that what drove the unwillingness to cooperate was the refusal to lend (or the fear of lending) any legitimacy to the ‘TRNC’. However, the Court does not accept that steps taken with the aim of cooperation in order to further the investigation in this case would amount to recognition, implied or otherwise of the ‘TRNC’ (see *Cyprus v. Turkey*, cited above, §§ 61 and 238). Nor would it be tantamount to holding that Turkey wields internationally recognised sovereignty over northern Cyprus (see, *mutatis mutandis*, *Demopoulos*, cited above, §§ 95-96, and *Foka v. Turkey*, no. 28940/95, §§ 83-84,

24 June 2008). The United Kingdom, for example, has cooperated in criminal cases with the ‘TRNC’ without affording it any recognition.

...

293. Although the respondent States had the opportunity to find a solution and come to an agreement under the brokerage of UNFICYP, they did not use that opportunity to the full. Any suggestions made in an effort to find a compromise solution or that the authorities concerned meet each other half way were met with downright refusal on the part of those authorities. The options put forward have included meetings on neutral territory between the Cypriot and ‘TRNC’ police, UNFICYP and the Sovereign Base Areas police, the questioning of the suspects through ‘the video recording interview method’ at the Ledra Palace Hotel in the UN buffer zone, the possibility of an *ad hoc* arrangement or trial at a neutral venue, the exchange of evidence (under certain conditions), and dealing with the issue on a technical services level. While a number of bi-communal working groups and technical committees have been set up – including one on criminal matters – it appears that none of these committees has taken up the present case with the purpose of furthering the investigation.”

14. In view of the above, we are of the opinion that there has been a violation of Article 2 of the Convention under its procedural aspect by virtue of the failure of the Cypriot authorities to cooperate.