



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

FOURTH SECTION

CASE OF DENIZCI AND OTHERS v. CYPRUS

(Applications nos. 25316-25321/94 and 27207/95)

JUDGMENT

STRASBOURG

23 May 2001

FINAL

23/08/2001

In the case of Denizci and Others v. Cyprus,

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

Mr A. PASTOR RIDRUEJO, *President*,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr I. CABRAL BARRETO,

Mrs N. VAJIĆ,

Mr M. PELLONPÄÄ, *judges*,

Mr A.N. LOIZOU, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 3 May 2001,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in seven applications (nos. 25316-25321/94 and 27207/95) against the Republic of Cyprus lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by nine Cypriot nationals, Mr İlker Denizci, Mr Aziz Merthoca, Mr Hüseyin Mavideniz, Mr Yılmaz Mavideniz, Mr Doğan Davulcular, Mr Hasan Merthoca, Mr Erbay Kaptanoğlu, Mr Taşer Kişmir and Mr İbrahim Tufansoy ("the applicants"), on 12 September 1994. Mr İbrahim Tufansoy, who had lodged the application as the father and/or next of kin of the deceased Mr İlker Tufansoy, and/or as administrator of his estate, for and on behalf of the family and/or estate of the deceased, died on 3 January 1996. Mrs Rebiye Tufansoy, the wife of Mr İbrahim Tufansoy and mother of İlker Tufansoy, expressed her wish to continue the proceedings.

2. The applicants, who had been granted legal aid, were represented by Mr Z. Necatigil, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent, Mr A. Markides, the Attorney-General of the Republic of Cyprus.

3. The applicants alleged that they were unlawfully detained, ill-treated and then expelled to the northern part of Cyprus by agents of the Republic of Cyprus. Some of the applicants complained about the unlawful confiscation of their belongings upon their expulsion. The ninth applicant also complained about the killing of her son after his return to the south.

4. The applications were joined and declared admissible by the Commission on 20 January 1998.

5. On 23 January 1998 the Commission decided to take oral evidence in respect of the applicants' allegations. Evidence was heard by a delegation of the Commission in Nicosia from 31 August to 4 September 1998.

6. On 4 June 1999 the applicants filed their observations on the merits. The Government filed theirs on 30 June 1999.

7. On 1 November 1999 the applications were transmitted to the Court in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

8. The applications were allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr L. Loucaides, the judge elected in respect of Cyprus, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr A.N. Loizou as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

9. On 6 June 2000, at the Court's request, the applicants submitted their claims for just satisfaction under Article 41 of the Convention. The Government submitted their comments in reply on 24 November 2000.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The facts of the case, particularly the events between 4 and 22 April 1994, are disputed by the parties. For this reason, pursuant to former Article 28 § 1 (a) of the Convention, the Commission conducted an investigation with the assistance of the parties.

A delegation of the Commission heard witnesses in Nicosia from 31 August to 4 September 1998. These included all the applicants, with the exception of Mr Aziz Merthoca and Mr Doğan Davulcular; Mr Salih Ceyhan, a police officer in northern Cyprus, who took statements from the applicants; Mr Kemal Demir, a governor of the Central Prison in Nicosia (in northern Cyprus); Mr Öle Røinaas, a witness to Erbay Kaptanoğlu's living conditions at the material time; Mr Meriç Taydemir, a governor of the Central Prison in Nicosia (in northern Cyprus); Mrs Panayiota Papachristophorou, Aziz Merthoca's companion; Mr Marios Matsakis, a pathologist, who prepared the report of 30 July 1994 and who conducted the autopsy on the body of İlker Tufansoy; Mr Andreas Angelides, a public prosecutor in the Attorney-General's Office; Mr Andreas Christophides, a chief superintendent in the Police Research and Development Department; Mr Kyriakos Nikolau, a witness to İlker Tufansoy's murder; Mrs Dimitra Irodoutou, a close friend of

İlker Tufansoy at the time of the murder; Mr Andreas Spatalos, an acting chief inspector in the Central Intelligence Service (CIS); and Mr C., Mr A., Mr R. and Mr K., police officers in the CIS in Nicosia.

A. The facts as presented by the applicants

11. The various accounts of events as submitted in written and oral statements by the applicants are summarised in Section C below (“The evidence before the Commission and the Court”). The version as presented in the applicants’ final observations on the merits is summarised briefly here.

12. Between 4 and 22 April 1994, the applicants were arrested by Cypriot police officers and ill-treated. They were obliged to sign statements saying that they were leaving for the northern part of Cyprus of their own free will. They were then expelled to northern Cyprus, and told that they would be killed if they returned to the south. On 2 June 1994, upon his return to the south, the ninth applicant’s son, İlker Tufansoy, was shot and killed by unknown persons.

13. Nevertheless, certain applicants later returned to the south, where they were obliged by the police to give statements to the effect that they had been ill-treated by the authorities of the “Turkish Republic of Northern Cyprus” (the “TRNC”), who had forced them to sign application forms to the Commission.

B. The facts as presented by the Government

14. The Government’s account of events as based on their observations may be summarised as follows.

15. Following the sabotage of two Turkish mosques in Nicosia and the murder of Mr Theophilos Georgiades, the chairman of the Committee for Solidarity with Kurdistan, feelings of anger arose among the Greek Cypriots. Consequently, the Cypriot police advised Turkish Cypriots who had fled from the occupied area to avoid doing anything which would be likely to cause reaction among the Greek Cypriots.

16. However, between 7 and 22 April 1994, twenty-two of the said Turkish Cypriots, due to feelings of insecurity and on their own initiative, secretly crossed over to the Turkish-occupied area. Out of those twenty-two, five managed to return to the government-controlled area. They were: İlker Tufansoy, Aziz Merthoca, Süleyman Seyer, Taşer Kişmir and Murat Doksandokuz. Upon their return, they voluntarily gave signed written statements to the Cypriot police: İlker Tufansoy (the ninth applicant’s son) on 14 May 1994; Aziz Merthoca on 28 August 1995; and Taşer Kişmir on 26 January 1996 and 13 January 1998.

17. According to these statements, the applicants, upon their entry in the Turkish-occupied area, were apprehended by the occupation forces and taken to a police station, where they were severely beaten, ill-treated and injured. Under the threat of force by the “TRNC” police, they made false statements to the press as well as to the United Nations Peacekeeping Force in Cyprus (UNFICYP) to the effect that they had been arrested and ill-treated by the Cyprus police and then led to the occupied area against their will. They were further forced, under threat, to sign statements to that effect. A number of them, acting under threat, blackmail and promises, signed blank application forms to the European Commission of Human Rights.

18. At the request of the “authorities of the pseudo-State”, UNFICYP investigated allegations of assault and forcible return of Turkish Cypriots from the government-controlled area to the occupied area. All Turkish Cypriots who, according to their allegations, had been ill-treated by the Cypriot police were examined by two UNFICYP doctors, whose findings were included in a report by UNFICYP on the investigation into these allegations.

19. The above-mentioned United Nations report was transmitted to the Minister for Foreign Affairs, who forwarded it to the Minister of Justice and Public Order. The latter ordered an investigation and, for that purpose, appointed a forensic pathologist, Dr Matsakis, who proposed to examine each complaint in the presence of the complainant and a doctor of his choice. However, the complainants never came forward to be examined. In addition, the authorities of the “pseudo-State” refused to cooperate with Dr Matsakis and did not allow him access to the occupied area in order to carry out his investigations.

20. Dr Matsakis nevertheless prepared a report on 30 July 1994, together with a police officer, H. Argyrou. This report was based on a video-cassette provided by CIVPOL (UNFICYP’s civilian police) and the photographs relating to the medical findings of the UNFICYP doctors.

21. Concerning the death of İlker Tufansoy, the Government point out that the corpse was examined by Dr Matsakis, who arrived at the scene of death on 3 June 1994 at 12.25 a.m. Later the same day, an autopsy was performed at Paphos General Hospital. Dr Matsakis prepared a forensic report, stating that death had resulted from multiple wounds caused by shots of small and large shotgun pellets. The report was transmitted to the Cypriot police.

22. An investigation was opened (files Paphos ME 185/94 and Kouklie ME 17/94) in order to determine the circumstances of the death. More than seventy persons were exhaustively interrogated by the police and made written statements, and a number of items (the victim’s clothes and shotguns from various villages) were taken in for forensic examination. However, no incriminating evidence was found against anyone. On 11 July

1995 the police suggested to the Attorney-General that a coroner's inquest be held.

23. A coroner's inquest was fixed pursuant to Chapter 153 of the Coroner's Law. On 9 August 1996 the coroner gave his verdict that "the death [was] attributable to premeditated criminal acts committed by unknown persons". The investigation file is still open.

C. The evidence before the Commission and the Court

1. Documentary evidence

24. The parties submitted various documents. They included documents from the Cypriot authorities' investigations into the applicants' allegations, the final report of the UNFICYP's civilian police on those allegations and statements from the applicants and witnesses containing their version of the events in issue in this case. The applicants also submitted a number of articles from the "TRNC" press relating to the events in issue and documents relating to the application of Erbay Kaptanoğlu for political asylum in Norway, which included a statement from the Socialist Party of Cyprus – EDEK Left Wing – on the living conditions of Turkish Cypriots in Cyprus.

25. The Court had particular regard to the following documents:

(a) Statements by the applicants

(i) İlker Denizci

(α) Statement dated 12 September 1994 submitted in the application to the Commission

26. In February 1991 the applicant, who had previously been living in the northern part of Cyprus, moved to the territories under the control of the Republic of Cyprus, where he worked as a builder until June 1992. There, he was under strict surveillance by the Cypriot police. His movements were monitored and, sometimes, he was taken to the police headquarters, where he was severely beaten and intimidated. When it was found that he was working at Agia Napa, the police ordered him to leave his work, beat him and threatened to kill him if he did not leave the territories under the control of the Republic of Cyprus. On 12 June 1992 the applicant returned to northern Cyprus, but on 4 March 1994 he crossed over again to the territories under the control of the Republic of Cyprus. He first went to Larnaka and a few days later to Limassol. He started to work as a builder at Aghrodimou, a village within the British military base of Akrotiri.

27. On 4 April 1994, at about 7.30 a.m., two Cypriot policemen, whom he believed to be attached to the CIS, came to the applicant's place of work and ordered him to come with them. The applicant was forced into a car and

taken to Limassol police headquarters, which he believed to be those of the CIS.

28. There, he was interrogated about the murder in Nicosia of Theophilos Georghiades, the desk officer responsible for Turkish affairs at the Cypriot Public Information Office, who had been killed on 20 March 1994 by unknown persons.

29. The applicant was then taken to a two-storey building in the vicinity of Paphos Gate which he believed to be the main headquarters of the CIS. There, he was insulted and beaten by eight or nine policemen for about twenty minutes. He was then blindfolded and taken to the police headquarters in the Troodos/Kambos area. At these headquarters, two uniformed policemen seated the applicant on a chair, the wrong way round, and handcuffed him. He was then interrogated for approximately one hour about the murder of Theophilos Georghiades. During the interrogation, he was severely and continually beaten by hand and fist, received blows with an electric baton and was hit several times with an olive-wood stick and a pistol butt. The two policemen left the applicant in a helpless state for about half an hour. Then they came back and forced him to sign and affix his fingerprint on a statement to the effect that he had no complaints about the Cypriot police and had decided to go to the northern part of Cyprus of his own free will. When he refused, a club was pushed into his mouth, causing one of his teeth to fall out. He then signed the statement. His identity card certifying that he was a citizen of Turkish origin of the Republic of Cyprus was seized by the policemen. Then he was put in a cell.

30. On the same evening, at about 8 p.m., four armed policemen blindfolded the applicant and put him in a car. After a fifteen to twenty minute journey, the car stopped and the applicant was taken out of the car. When the blindfold was removed, the applicant realised that he was in the middle of fortifications under the control of the Republic of Cyprus near the United Nations buffer-zone. The policemen made the applicant take off his shoes, started stamping on his toes, crushing and making them bleed, and then extinguished their burning cigarettes on them. They took the sum of 380 Cyprus pounds which the applicant had in his pocket. The policemen then pulled the applicant by the handcuffs, released them and pushed him into a dry riverbed and trained their guns at him. They told the applicant to follow the river to the north and said that if he returned they would shoot him.

31. As the applicant had received blows on every part of his body, he could not walk. He crawled along the riverbed and reached the northern part of Cyprus at the village of Taşpınar (Angolemi).

32. In the northern part of Cyprus, the applicant was examined and treated at Cengiz Topel (Pendayia) Hospital, and later at the "Turkish-Cypriot State Hospital" in Nicosia.

33. In a report dated 8 April 1994, a doctor of the Cengiz Topel Hospital stated that there was evidence of abrasions in both zygomatic areas and also in the right mandibular region. According to the report, there were several wounds of various sizes on both hands and in both tibia areas. There was also evidence of abrasions and bruises of various sizes and width on the upper back and right shoulder. The applicant was also found to be diabetic.

34. One toe which the policemen had stamped on and crushed later became gangrenous and had to be amputated.

35. The applicant was also examined by a medical officer at the United Nations Ledra Palace headquarters.

(β) Statement dated 7 April 1994 submitted to an unidentified Cypriot police officer

36. The applicant's statement reads as follows:

"I, the undersigned, İlker [Denizci], declare that I wish to go to the Turkish side. I have taken this decision freely, without any pressure from anyone. I have been very well treated while staying on the Greek side. I have no complaints against the Cypriot government authorities."

(γ) Statement dated 29 April 1994 submitted to "TRNC" police officer Salih Ceyhan

37. The facts described by the applicant to the "TRNC" police are similar to those described in his application form to the Commission. In addition, he gave a description of the two police officers who took him from his work on the morning of 4 April 1994: one was 1.65 m tall, weighed 65 kg and had white hair, and the other was 1.65 m tall, weighed around 80 to 85 kg and was balding with white hair.

(ii) *Aziz Merthoca*

(α) Statement dated 12 September 1994 submitted in the application to the Commission

38. The applicant lived in the northern part of Cyprus until 1985. That year, together with another Cypriot citizen of Turkish origin, he crossed over to the territories under the control of the Republic of Cyprus in order to find work there and earn a living. They reported at a police station in Xylotymbou, where they were questioned about the military situation in the northern part of Cyprus. They were later taken to the CIS headquarters in Nicosia. They were detained for eighteen days, during which they were interrogated and beaten by the police. The applicant and his friend were later allocated a house by the police in the Turkish district of Limassol. The applicant started to work as a construction worker in Limassol. A few months later, the applicant met P.Y., a Greek-Cypriot woman with whom he rented a house in which they started living together. In 1987 the applicant and P.Y. had a daughter and in 1991 the couple had a son.

39. After the murder of Theophilos Georghiades, the applicant was taken to Limassol police station, where he was interrogated by Cypriot policemen attached to the CIS. A statement was taken from him.

40. On 17 April 1994 the applicant, together with another Turkish Cypriot, Yılmaz Mavideniz (see application no. 25318/94), helped some other Turkish Cypriots to cross from the northern part of Cyprus to the territories under the control of the Republic of Cyprus and tried to find accommodation for them in Limassol. Among these persons were Hüseyin Mavideniz, Nermin Mavideniz, Doğan Davulcular, and Hüseyin Davulcular, Selma Davulcular and their four children.

41. On 18 April 1994, when the applicant was getting ready to go to work, three Cypriot policemen from the CIS by the names of Theodoro, Rodis and Kostis came to his flat and told him that they were taking him to police headquarters. Yılmaz Mavideniz and the Turkish Cypriots whom they had helped to cross to the south were already there. The applicant and Yılmaz Mavideniz were taken into another room and beaten with hands and fists for helping other Turkish Cypriots to come to the territories under the control of the Republic of Cyprus.

42. On the same day, towards noon, they were all put in a minibus and driven to the CIS headquarters in Nicosia. There the applicant and other men were beaten by six or seven policemen, amongst whom the applicant recognised Christakis and Beniko. Then they were all driven to a police station in a mountain village called Kambou. There, the applicant and the other men were again beaten by the CIS police with clubs and sandbags. They were forced to sign statements to the effect that they had no complaints against the Cypriot police and had decided to go to the northern part of Cyprus of their own free will. They were then put in a cell.

43. In the evening of the same day, the applicant and the other Turkish Cypriots were taken from the cell. The applicant was handcuffed and slapped before he was put in a police Jeep. All the detainees were put in two Jeeps and driven to a dry riverbed near the buffer-zone, south of the Güzelyurt (Morphou) area. The handcuffs were removed from the detainees, who were ordered to walk along the riverbed to the northern part of Cyprus. A policeman by the name of Christakis Savva warned them not to come back, otherwise they would be shot. The applicant and the others followed a route to the north different from the one indicated by the police, for fear that it might have been mined. They safely reached Taşpınar, a village in the northern part of Cyprus.

44. On 21 April 1994 the applicant was examined at the “Turkish-Cypriot State Hospital” in Nicosia. On the same day a medical report was drawn up which stated that there were swellings and ecchymoses in both scapular regions. The applicant was later examined by a United Nations medical officer.

(β) Statement given on 29 April 1994 to the “TRNC” police officer Salih Ceyhan

45. The facts presented by the applicant to the “TRNC” police are the same as those presented in his application form to the Commission.

(γ) Statement made on 28 August 1995 to the Cypriot police

46. Following his return to the south to rejoin his companion and their children on 27 August 1995, the applicant gave a statement to the Cypriot police on 28 August 1995. In his statement, he said that in April 1994, after the murder of the Greek Cypriot Theophilos Georghiades, he had quarrelled with his companion and decided to go to the northern part to see his family. On 18 April 1994 he crossed over secretly in the Angolemi (Taşpınar) area, not the usual Pergamos area. He crossed the border with others, among whom were Hüseyin Davulcular, Yılmaz Mavideniz and Doğan Davulcular. They were apprehended by Turkish troops on the riverbed and taken to Angolemi police station, where they were very severely beaten with rifle butts, sandbags and other instruments. The applicant and the others were forced to sign some documents. Afterwards, they were taken to hospital and were told to say that they had been beaten by the Cypriot police. The authorities then called television reporters and journalists, and also informed the United Nations authorities.

47. The next day the applicant was taken to a military court and sentenced to three years’ imprisonment. Fifteen days after he was put in prison, the applicant was visited by a lawyer of the “TRNC” authorities, Zaim Necatigil, who asked him to lodge an application against the Cypriot authorities with the European Commission of Human Rights. The lawyer told him that, if he lodged such an application, he would get a lot of money. The applicant refused, but both the lawyer and the prison governor, Kemal Demir, started putting pressure on him. The lawyer came to see the applicant a week later, accompanied by another person who threatened to kill his brother, mother and father if he refused to sign the document. The applicant accepted and signed a document whose contents he did not know, as he was not allowed to read it. From that day, however, the applicant had not been bothered anymore.

48. During his stay in prison, he was visited a number of times by his companion, whom he told that he wanted to escape and go back to the Greek-Cypriot area.

49. The applicant was set free on an unspecified date. On 25 August 1995 he was drafted into the army and taken to Gülseren Military Camp in Famagusta. On 27 August 1995, around noon, the applicant, together with his aunt and two children, were helped by his uncle, Hasan Merthoca, to cross to the south.

50. The applicant also stated that he had no complaints against the Cypriot police.

(iii) *Hüseyin Mavideniz, Yılmaz Mavideniz, Doğan Davulcular and Hasan Merthoca*

(α) Statement dated 12 September 1994 submitted by Hüseyin and Yılmaz Mavideniz and Doğan Davulcular in their application to the Commission

51. In 1986 Yılmaz Mavideniz crossed over from the northern part of Cyprus to the territories under the control of the Republic of Cyprus in order to find work there and earn a living. He worked there until 1991, when he returned to the northern part of Cyprus. In 1992 he again crossed to the Republic of Cyprus. Upon arrival at Limassol, he went to the local police station and reported his arrival. He then took up residence in Limassol, where he worked as a construction worker and later at a petrol station. During this period he met T., a Greek-Cypriot woman, and they lived together in the Turkish district of Limassol. Yılmaz Mavideniz was continually under the surveillance and control of the Cypriot police and his movements were monitored.

52. On 17 April 1994 he helped some other Turkish Cypriots to cross from the northern part of Cyprus to the territories under the control of the Republic of Cyprus and tried to find accommodation for them in Limassol. The persons whom he helped to cross to the south were Hüseyin Davulcular and Doğan Davulcular (his cousins), Hüseyin Mavideniz and their wives and children.

53. On 18 April 1994 three Cypriot policemen from the CIS, amongst whom were Rodis and Asimenos, came to the house of Yılmaz Mavideniz. The other Turkish Cypriots who had crossed to the south the day before and were staying in the house, namely Doğan and Hüseyin Davulcular and their wives and children, were driven to Limassol police station. A police officer named Asimenos ordered Yılmaz Mavideniz to drive him to the house where Hüseyin Mavideniz was staying. Hüseyin Mavideniz was then brought to Limassol police station together with his wife and their two children.

54. At Limassol police station, Yılmaz Mavideniz and Aziz Merthoca were taken into another room, interrogated and beaten with hands and fists for helping the others to come to the territories under the control of the Republic of Cyprus. Hüseyin Mavideniz and Doğan Davulcular were also interrogated, sworn at and beaten by the police. Hüseyin Mavideniz said that he was poor and was looking for work, but did not intend to stay permanently in the south. He asked why he was beaten. The police swore at him and told him that he was beaten for being a Turkish Cypriot. They said that they did not want to see any Turks in the south.

55. On the same day, around noon, the applicants, their families and the other detainees were put into two four-wheel drives (Pajeros) and driven to the CIS headquarters in Nicosia. There, the applicants were beaten by six or seven policemen. Then they were all taken to a police station in a mountain

area, which they believed to be the CIS building in the Troodos/Kambos area. There, the applicants were taken into a room in turn and beaten by the CIS police with clubs and sandbags. Four of the policemen wore civilian clothes and one was in police or military uniform. The policemen kept repeating that they did not want Turks in the south and that they would punish them.

56. Due to severe beating in the area of his kidneys, Hüseyin Mavideniz could not urinate for two days. He had bruises on the body and a swollen face.

57. The applicants and the other detainees were forced to sign statements to the effect that they had no complaints against the Cypriot police and had decided to go to the northern part of Cyprus of their own free will.

58. In the evening of the same day, at about 8 p.m., the applicants and the other detainees were handcuffed, put into two Land Rovers and driven to a dry riverbed near the buffer-zone in the south of the Güzelyurt (Morphou) area. After removal of the handcuffs they were ordered to walk along the riverbed to the northern part of Cyprus.

59. One of the policemen warned them not to come back, otherwise they would be shot. The applicants and the others followed a route to the north different from that indicated by the police for fear that it might have been mined. They safely reached Taşpınar, a village in the northern part of Cyprus.

60. At the material time, T., the companion of Yılmaz Mavideniz, was expecting the birth of their child.

(β) Statement dated 18 April 1994 by Yılmaz Mavideniz to an unidentified Cypriot police officer

61. The applicant's statement is identical to that of İlker Denizci mentioned above (see paragraph 36).

(γ) Statement dated 28 April 1994 by Yılmaz Mavideniz to "TRNC" police officer Salih Ceyhan

62. The applicant's statement was similar to the one he made to the Commission. In addition, he mentioned that one of the policemen who had beaten him at the CIS headquarters in Nicosia was Christakis. He also mentioned in his statement that he had left his clothes, a gold chain and a thin necklace at his house in Limassol.

(δ) Statement dated 6 May 1994 by Hüseyin Mavideniz to "TRNC" police officer H.H.

63. On 17 April 1994, at around 8 p.m., following a telephone call from Yılmaz Mavideniz, the applicant, together with his wife, their two children, Hüseyin Davulcular, his wife, Doğan Davulcular, his wife and their children left their houses and went by car to the village of İncirli with the intention of

crossing over to the Greek area. Around 9 p.m., they reached the İncirli area, where Yılmaz Mavideniz and Aziz Merthoca were waiting for them. The applicant, his spouse and their children got into Aziz Merthoca's car, while the others got into Yılmaz's car. They left the İncirli area around midnight.

64. On 18 April 1994, at around 4 a.m., while the applicant, his spouse and their children were at Aziz Merthoca's house, a policeman in civilian clothes came to the house and took them in Yılmaz's car to Limassol police station. The applicant was interrogated about the purpose of his coming to the Greek part of the island. He told the police that he had come to work, to earn a living, not to settle. At this point, a tall policeman started beating him with his fists. When the applicant asked him why he was beating him, the policeman replied: "Because you are a Turk, you calamity. You took our houses, we will send all you Turks back. We don't want to see any Turks here."

65. The applicant and his family were kept at the police station for one hour. They were then put into a van and taken to Nicosia, to a big building. The applicant and the other Turkish Cypriots were put into separate rooms. The staff were in civilian clothes. The applicant was beaten by two Greek individuals in civilian clothes for about twenty minutes. After half an hour, in the afternoon, the applicant and the other Turkish Cypriots were put into two Pajero vehicles. After a two- to three-hour journey, they reached a mountain area and were brought to a police station, where all the men were taken to a room and beaten. This beating lasted for about four hours. The applicant was severely beaten with sandbags on his kidneys. As a result, he had difficulty urinating normally for two days. The applicant's spouse and children were not beaten.

66. At around 8 p.m. the policemen put them into two Land Rovers, took them to a riverbed and told them to cross over to the Turkish side. The police pointed their guns towards the applicant and the others and threatened to kill them if they returned. The applicant and his companions started walking across the riverbed, crossing over two wires. They were taken by Turkish soldiers to a military base and were brought before an army doctor. After their examination, they were handed over to Turkish police officers.

67. The applicant also stated that he had left 5 million Turkish liras at the house of Yılmaz's wife, and that he wanted to file a complaint against the Cypriot police for torture. He also stated that he wanted to lodge a complaint with the European Commission of Human Rights, through the United Nations Peacekeeping Force.

(ε) Statement dated 6 May 1994 by Doğan Davulcular to “TRNC” police officer O.C.

68. The applicant made a similar statement to that given to the Commission (see paragraphs 51-60 above). In particular, he mentioned that they arrived in Limassol on 18 April 1994, at around 4 a.m. The applicant, his wife, their children, Hüseyin Davulcular, his spouse and their four children went to the house of Yılmaz Mavideniz. On the same day, three Cypriot police officers in civilian clothes came to Yılmaz’s house. In the meantime, Aziz Merthoca had also arrived there. The policemen took them all to the police station. Aziz Merthoca confirmed that, with the exception of the women and children, they were all beaten at the police headquarters in Nicosia. He also confirmed that, at the police station in the mountain area, all the men were beaten with a thick stick and sandbags.

(ζ) Statement dated 28 April 1994 by Hasan Merthoca to “TRNC” police officer Salih Ceyhan

69. The applicant lived in the northern part of Cyprus until 1981. That year he moved to the territory under the control of the Republic of Cyprus in order to stay with his mother, who, at the material time, was living in Limassol. He also intended to work and earn a living there. He worked in Limassol as a construction worker for three years and then returned to the northern part of Cyprus. In 1986 the applicant again went to the territories controlled by the Republic of Cyprus after crossing the British bases. He was apprehended by the Cypriot police and kept in custody for some time. After his release he went to Limassol to stay with his mother. In Limassol he met M.Y., a Greek-Cypriot woman, and they started living together. In 1990 the couple had a daughter.

70. The applicant was continually under the surveillance and control of the Cypriot police. He was occasionally interrogated and his movements were monitored.

71. After the murder of Theophilos Georghiades, two Cypriot policemen attached to the CIS, whom the applicant believes were called Rodis and Kostis, came to his house in Limassol and questioned him about his whereabouts on the day Mr Georghiades was killed. The policemen took a statement from him. After that, the applicant was forbidden to leave Limassol without police permission and his movements were closely watched. The police came to his house every now and then to ask questions.

72. On 19 April 1994, between 7 and 8 a.m., two Cypriot policemen in civilian clothes came to the applicant’s house and ordered him to come with them. The applicant was taken to the CIS headquarters in Limassol, on the third floor. The policeman called Rodis told him that he would be taken to Nicosia to be interrogated in connection with a theft. The applicant was then handcuffed to Süleyman Seyer, another Turkish Cypriot, and they were driven in a white car to the CIS headquarters in Nicosia. There, five or six

policemen insulted him and beat him and other Turkish Cypriots with clubs and a truncheon.

73. On the same day, around noon, the applicant and Süleyman Seyer were handcuffed and blindfolded, and driven to a police station, which he believed to be the CIS headquarters in the Troodos/Kambos area. There, the applicant was beaten again with clubs by three policemen whom he had seen earlier at the CIS headquarters in Nicosia. He was then forced to sign and affix his fingerprint on a piece of paper, after which he was taken back to his cell. Then Süleyman Seyer was taken from the cell and brought back after some time. The two men were kept in the cell till evening.

74. On the same evening at about 9 p.m., the applicant and Süleyman Seyer were again blindfolded and handcuffed, and driven to a dry riverbed where the blindfolds were removed and the handcuffs were released. One of the policemen, whom the applicant believes to have been Christakis, ordered the applicant to cross the United Nations buffer-zone to the northern part of Cyprus. Süleyman Seyer followed the applicant. They were warned not to come back; if they did, they would be shot. They went north and reached Taşpınar (Angolemi), a village in the northern part of Cyprus.

75. On 21 April 1994 the applicant was examined at the “Turkish-Cypriot State Hospital” in Nicosia. On the same day a medical report was drawn up which mentioned the presence of six ecchymoses in the dorsal region, the diameters of which varied from 3 cm to 7 cm. The applicant was examined by a United Nations medical officer on 27 April 1994.

76. Due to his forced expulsion to the northern part of Cyprus, the applicant had left behind various household goods and clothes at his house at No. 17 Ankara Street in Limassol, which included a stove, a colour television, a video-recorder, a radio cassette player, a double bed, gold jewellery and a Datsun car. He also left behind 1,500 Cyprus pounds at the house of his mother Nazlı, who lived at No. 5 Kemal Selim Street in Limassol.

(η) Statement dated 12 September 1994 submitted by Hasan Merthoca in his application to the Commission

77. The applicant’s statement is similar to that made on 28 April 1994 to police officer Salih Ceyhan.

(iv) *Erbay Kaptanoğlu*

(α) Statement made on 20 April 1994 before an unidentified Cypriot police officer

78. The applicant’s statement is identical to İlker Denizci’s statement of 7 April 1994 mentioned above (see paragraph 36 above).

(β) Statement dated 12 September 1994 submitted in the application to the Commission

79. The applicant, who had previously been living in the northern part of Cyprus, moved in August 1985 to the territory controlled by the Republic of Cyprus in order to find work and earn a living. He reported to a Cypriot police station outside Nicosia. From there, the applicant was brought to Nicosia police headquarters and interrogated about the military situation in the northern part of Cyprus. He was then brought to Larnaka Road police station, where he was detained in a cell for twenty-nine days. During his detention and later, the applicant was continually interrogated by the CIS about the military situation in the northern part of Cyprus. After his release, the applicant was sent to Limassol, whose police found accommodation for him in a deserted house in town, and the applicant started to work as a construction worker.

80. In 1987 the applicant left for Norway and stayed there for five years. In 1992 he returned to Limassol and started to work in a factory. During his stay in Limassol, he was under strict surveillance by the Cypriot police, who monitored his activities and movements at all times.

81. After the murder of Theophilos Georghiades, the applicant was questioned by the Cypriot police as to his whereabouts on the relevant day.

82. On 20 April 1994, at 9.30 a.m., two policemen whom the applicant believed to be from the CIS came to the applicant's place of work and ordered him to come with them to Limassol police station. When they arrived, the applicant saw another Turkish Cypriot, Murat Doksandokuz, who was being kept there. The applicant and Murat Doksandokuz were then taken to a police station in Nicosia, which the applicant believed to be the main headquarters of the CIS. The Limassol police, who handed over the applicant to the Nicosia police, took from him the keys to his flat, his car and his motorcycle. At Nicosia police headquarters, the applicant was told, among other things, that he was a "filthy Turk" and was beaten and slapped. He was then blindfolded, handcuffed to Murat Doksandokuz and taken to another police station, which he believed to be the headquarters of the CIS in the Troodos/Kambos area. There, the applicant was beaten by the Cypriot police with a truncheon and a club. He was then forced to sign a statement to the effect that he had no complaints about the Cypriot police and had decided to return to the northern part of Cyprus of his own free will. When he refused to sign, he was severely beaten. In the end, he signed the statement. Then he was put in a cell with Murat Doksandokuz.

83. On the same day, at about 8 p.m., the applicant and Murat Doksandokuz were taken from the cell by five policemen, handcuffed and blindfolded, and driven to a dry riverbed. They were ordered to follow the riverbed across the United Nations buffer-zone to the northern part of Cyprus. They were also warned not to come back, otherwise they would be

shot. They subsequently reached Taşpınar (Angolemi), a village in the northern part of Cyprus.

84. On 21 April 1994 the applicant was examined at the “Turkish-Cypriot State Hospital” in Nicosia and a medical report was drawn up which mentioned the presence of an ecchymosis in the right scapular region, 10 cm in diameter. The applicant was examined by a United Nations medical officer on 29 April 1994.

(γ) Statement made on 29 April 1994 to “TRNC” police officer Salih Ceyhan

85. The applicant’s statement is substantially the same as that made to the Commission. In addition, the applicant identified the two CIS police officers who arrested him at his workplace on the morning of 20 April 1994 as being Theodoro and Rodis.

(v) *Taşer Kışmir*

(α) Statement dated 22 April 1994 submitted by Taşer Kışmir to an unidentified Cypriot police officer

86. The applicant’s statement is identical to that made by İlker Denizci on 7 April 1994 (see paragraph 36 above).

(β) Statement dated 12 September 1994 submitted in the application to the Commission

87. Until April 1991 the applicant lived in the northern part of Cyprus. In April 1991 he moved to the territory controlled by the Republic of Cyprus. Upon his arrival in Limassol, he went to the police station and completed the relevant documents. He worked in Limassol as a construction worker for several months. He then moved to Paphos and, at all material times, was working there as a construction worker.

88. The applicant was under strict police surveillance during his stay in the territory controlled by the Republic of Cyprus.

89. On 22 April 1994, at about 8.30 a.m., three members of the Cypriot police, whom the applicant believed to be attached to the CIS, came to his place of work in the village of Florakas and ordered him to come with them. The applicant asked to see his lawyer but was told that there was no need for one. He was forced into a car and driven to a police station in Nicosia, which the applicant believed was the headquarters of the CIS. The applicant was taken to a room where İlker Tufansoy, another Turkish Cypriot, was being kept (İlker Tufansoy was later killed by unknown persons. His father has brought application no. 27207/95). The applicant was handcuffed to İlker Tufansoy, blindfolded, slapped and hit on the face and on the back of his head several times.

90. The applicant and İlker Tufansoy, still blindfolded, were then driven to another police station, probably in the vicinity of the Troodos area. The

journey took about forty to forty-five minutes. There, the handcuffs were released and the applicant was separated from İlker Tufansoy. He was taken to another room and interrogated by policemen, one of whom he recognised later as being named Christakis. He was asked where he was in 1974 during the Turkish intervention. In the course of the interrogation the applicant was insulted and beaten with clubs, one of which broke into pieces due to the severity of the blows. Then, the applicant was forced to sign a statement to the effect that he had decided to go to the northern part of Cyprus of his own free will. He was then taken back to a cell. İlker Tufansoy was already there.

91. On the same day, around 8 or 8.30 p.m., the applicant and İlker Tufansoy were taken from the cell and were driven, blindfolded, to a dry riverbed near the buffer-zone controlled by the United Nations. The police removed their blindfolds and told them to go to the northern part of Cyprus along a path following the riverbed. The police warned them not to come back; if they did, they would be shot. The applicant and İlker Tufansoy walked north but, when the police were out of sight, they followed a different route for fear that the path which they had been shown should be mined. They reached a village in the northern part of Cyprus (Gayretköy) on the same evening.

92. On 23 January 1996 the applicant returned to the south.

(γ) Statement dated 27 April 1994 made to “TRNC” police officer Salih Ceyhan

93. The applicant’s statement is very similar to the one made to the Commission. In addition, he identified the two CIS police officers who had beaten him in Nicosia: one was short with a dark complexion and a slightly stocky build and could speak Turkish, and the other was obese, tall, with a dark complexion and was wearing glasses. The applicant also described one of the policemen present at the police station in the mountain area as white-haired and fair-skinned. He could speak Turkish.

(δ) Statement dated 26 January 1996 made to the Cypriot police

94. On his return to the south on 23 January 1996, the applicant made a statement to Cypriot police officer Y.D. from Paphos police station.

95. The applicant stated that he had crossed into the free area in 1988 and started living in Limassol. Since then, he had been living in harmony with the Greek Cypriots and, whenever he had a problem he went to the police, who would help him.

96. On 22 April 1994 he and İlker Tufansoy crossed over into the northern part of the island, as the applicant wanted to see his son and his family. While they were crossing over, they were apprehended by Turkish troops, who handed them over to the police. Later on, under physical pressure, they made some statements dictated by the police. In these

statements, they were forced to say that they had been beaten by the Cypriot police.

97. In his statement of 26 January 1996, the applicant denied that he had been beaten by the Cypriot police, stating that he had been beaten by the “TRNC” police. After signing the statements forced out of them by the Turkish police, they were brought before a court, which released them on bail. Some time later, they were summoned again to appear before the court. The applicant was sentenced to four months’ imprisonment. He spent fifty-four days in prison. When he was released, a lawyer came to see him and told him that one of the documents he had signed was an application to the European Commission of Human Rights against the Republic of Cyprus. The applicant then found work. However, due to police pressure, he had to quit his job. On the night of 23 January 1996, he returned to the south, where he took a taxi to Paphos.

98. The applicant concluded by saying that he had no complaint whatsoever against Cyprus, as he had very good relations with the Cypriot police. Thus, after his arrival in Paphos, he went to the police and asked them to help him find a job. The police immediately found him a job at a blacksmith’s.

(ε) Statement dated 13 January 1998

99. The applicant had remained in the south of the island since his return on 23 January 1996.

100. On 13 January 1998 he submitted a statement to the Cypriot authorities, the aim of which was to “clarify certain things about [his] life”.

101. The applicant stated that, after the Turkish invasion of Cyprus, the living conditions of Turkish Cypriots in the occupied area became very difficult. This was why he had gone to the southern part of the island. On 5 February 1988 he secretly crossed to the south and went to the police, who helped him find work and a house in Limassol. Since then, he had been living in Limassol. He stated that he had good relations with the Greek Cypriots and the government and did not wish to return to the northern part of the island. On 22 April 1994, together with his friend İlker Tufansoy, he secretly crossed to the north in order to see his son and his family. The reason they went secretly was to avoid being caught by the Turkish police or army, who would arrest them as traitors. In fact, Turkish soldiers did arrest them as soon as they got to the occupied area and handed them over to the police, who beat them very severely and asked questions about the military situation in the south. Then, they were forced to sign an application to the European Commission of Human Rights against the Republic of Cyprus. According to that application, they had been beaten by the Cypriot police and then sent forcibly to the Turkish side.

102. The applicant stated that the application to the Commission was made without his consent and that he had no complaints against the

government. In the southern part, he had always lived happily and the Cypriot police had always helped him with his problems.

(vi) *İbrahim, İlker and Rebiye Tufansoy*

(a) Statement dated 13 September 1994 submitted by İbrahim Tufansoy in his application to the Commission

103. The applicant's son, İlker Tufansoy, was born in 1971 in Limassol. In May 1991 İlker Tufansoy crossed over, with two of his friends, from the northern part of Cyprus to the territory controlled by the Republic of Cyprus. Upon their arrival, they reported to the police in Limassol. İlker Tufansoy stayed in the village of Stavrokonno for about one and a half months and worked on a construction site. He then went to live in Paphos, while continuing to work on the same construction site. In July 1991 he returned to northern Cyprus. In the summer of 1992 he crossed over again to the territory controlled by the Republic of Cyprus with two of his friends. They were apprehended by the police and taken to Nicosia police headquarters, where they were interrogated about their military service in northern Cyprus and about the military situation there. They were then released and asked to report to the police station in Paphos. İlker Tufansoy subsequently found a job and started to work as a construction worker. Towards the end of 1993 he went to London, where he applied for asylum. Three months later he withdrew his application, returned to the Republic of Cyprus and resumed work with his former employer.

104. He was under constant police surveillance during his stay in the territory controlled by the Republic of Cyprus.

105. On 22 April 1994, at about 7.30 a.m., three policemen came to his place of work and ordered him to follow them to Paphos police station. All belonged to the CIS and two of them dealt specifically with Turks. İlker Tufansoy wanted to get in touch with his lawyer but was not allowed to do so. He was driven to the police headquarters in Nicosia instead of Paphos police station. At the Nicosia headquarters, he was handed over to the CIS police. Later, another Turkish Cypriot, Taşer Kişmir, was brought in (see application no. 25321/94). The two were handcuffed to each other and taken into a room. There were five policemen in the room. İlker Tufansoy was slapped and beaten by the policemen. Later, he was blindfolded and beaten again.

106. İlker Tufansoy and Taşer Kişmir, still blindfolded, were later driven to another police station, probably in the vicinity of the Troodos/Kambos area. There, the handcuffs were removed and İlker Tufansoy was separated from Taşer Kişmir. Then İlker's blindfold was removed and he saw the same five policemen. One of the policemen asked whether he liked Greek Cypriots. He said he liked them. At that point one of the policemen kicked him in the face. Later he was beaten with a rubber

truncheon. He was then forced to sign a statement to the effect that he was going to the northern part of Cyprus of his own free will. The policemen continued to beat him even after he had signed the statement. He was then taken to a room where Taşer Kişmir was kept.

107. On the same day, at about 8 p.m., the policemen came back to the room. The policemen continued to beat the applicant and Taşer Kişmir until they were put in a car, blindfolded. They were driven to a dry riverbed near the buffer-zone controlled by the United Nations, south of the Morphou (Güzelyurt) area. The police told them to go to the northern part of Cyprus using a path following the riverbed. The police warned them not to come back; if they did, they would be shot. İlker Tufansoy and Taşer Kişmir walked north but, when the police were out of sight, they followed a different route for fear that the path shown to them should be mined. They reached a village in the northern part of Cyprus on the same evening.

108. On 23 April 1994 İlker Tufansoy was examined at the “Turkish-Cypriot State Hospital” in Nicosia. A medical report was drawn up according to which the patient was in pain and there was evidence of extensive abrasions and bruises on his upper back and shoulders. There was also a swelling and pain in the left zygomatic area. On the same day he was examined by a medical officer at the United Nations Ledra Palace headquarters. Photographs were taken of the injuries to his back.

109. On 5 May 1994 İlker Tufansoy returned to the territory controlled by the Republic of Cyprus. In order to be allowed to stay and work there, on 14 May 1994 he had to sign a statement denying that he had been ill-treated and expelled by the Cypriot police, stating instead that he had been ill-treated by the “TRNC” authorities.

110. He then stayed at a house in Paphos which the Cypriot police had indicated.

111. On 2 June 1994, at about 6 p.m., İlker Tufansoy telephoned his father and told him that he was going to the village of Stavrokönno (Aydoğan) that evening with Ertuğrul Akburç, one of his Turkish-Cypriot friends, to stay in another house because the one the police had shown him was in fact a private property.

112. On the same day, at about 9 p.m., İlker Tufansoy and Ertuğrul Akburç were shot at and killed with automatic rifles and shotguns in front of the house in Stavrokönno. On 4 June 1994 an autopsy was carried out on their bodies in the northern part of Cyprus, in the presence of an observer from the United Nations. The autopsy report stated that there were signs of a previous autopsy having been performed, probably in the Republic of Cyprus. It concluded that the body had been hit by five bullets, two of which had remained in the body and had probably been removed during the first autopsy.

(β) Statement dated 22 April 1994 by İlker Tufansoy to an unidentified Cypriot police officer

113. The applicant's statement is identical to that made by İlker Denizci on 7 April 1994 (see paragraph 36 above).

(γ) Statement dated 27 April 1994 by İlker Tufansoy to the "TRNC" police

114. İlker Tufansoy's statement is similar to the one submitted by İbrahim Tufansoy to the Commission. In addition, he mentioned that one of the policemen who brought him to Nicosia in a Pajero was called Thoma. He also gave detailed descriptions of some of the civilian policemen who beat him at the CIS headquarters in Nicosia. One was short, with grey hair and a moustache, wore glasses and was around 45 years old; another was tall, in his fifties, had grey hair and wore glasses; another was tall and stout, was around 45 years old and had grey hair. Yet another had black hair, was tall and fat, was around 30 years old and could speak very good Turkish.

(δ) Statement dated 14 May 1994 by İlker Tufansoy to the Cypriot police

115. Following his return to the southern part, İlker Tufansoy made the following statement to the Cypriot police.

116. On 22 April 1994 he called his mother on the Turkish side. His sister answered the telephone and told him that their mother was very ill. When he heard this, he decided to cross over to the northern part as soon as it was dark. He did so in the vicinity of Angolemi, which was an area he knew very well. However, he was injured by barbed wire and was eventually arrested by a Turkish soldier. He was then handed over to the police in Morphou. The police told him that, if he made a statement to the effect that he had been beaten by the Cypriot police, he would not be imprisoned. As he was afraid, he did so. The police then brought in television reporters and journalists, took everybody to the Ledra Palace and left them with the United Nations officials. İlker Tufansoy made the same statement to the United Nations officials. Then he was handed back to the "TRNC" police, who released him.

117. İlker Tufansoy stated that the Cypriot police did not do anything to him and apologised for not having informed them about the case in time.

(ε) Undated statement by Rebiye Tufansoy

118. In 1991 the applicant's son crossed over for the first time into the territory controlled by the Republic of Cyprus, intending to find work. He came back some months later, as he wanted to go to London. In 1992 he crossed over again into the territory controlled by the Republic of Cyprus, where he worked for a while as a construction worker, saving money to go to London. In 1993 he went to London with his brother and applied for asylum. However, three months later, he withdrew his application and returned to Cyprus via Greece. When her son was in Cyprus, the applicant

used to visit him. He would call her but, in general, he did not like to talk over the telephone, saying that his line was tapped. During this period, he never went to see his family in the northern part.

119. On 23 April 1994 someone from Güzelyurt police station called at the applicant's house and told her that her son had been sent to the Turkish side that night, that he was at the police station and that his family could come and see him and bring him something to eat. The same day İbrahim Tufansoy went to see İlker. Some time later, İlker came to stay at the family house with them. He told them that the Cypriot police had tortured him and forced him to return to the northern part. He said he had pains in his back and shoulders.

120. During İlker's stay with his family, his Greek-Cypriot girlfriend used to call him. She told him that her uncle, who was a lawyer, had brought proceedings on his behalf and that, as a result, he could come back to the south.

121. Soon after his return to the southern part, he telephoned his family to tell them that he would not be living at the house in Paphos where the police had told him to stay, but instead at the house of his friend Ertuğrul Akburç, in Stavrokonno. The next day, the applicant and her husband were informed by Güzelyurt police station that İlker had been killed.

(b) Findings of the UNFICYP's civilian police and the report of the Secretary-General of the United Nations

122. In a report dated 7 June 1994, the Secretary-General of the United Nations stated that UNFICYP had received from members of the Turkish-Cypriot community allegations that, in five incidents in April 1994, twenty-two Turkish Cypriots in the southern part of the island had been taken into police custody, beaten and forcibly sent to northern Cyprus. In the period between mid-April and 10 May 1994, CIVPOL conducted an investigation concerning these allegations. Fourteen persons were interviewed; the remaining eight could not be interviewed, either because they were too young, or for reasons of mental incapacity or detention in prison. The interviews were recorded on cassettes. Photographs were taken of all the men interviewed, showing the areas where they were allegedly beaten. The majority of the men were medically examined.

123. On 26 April 1994 İlker Denizci was examined by a United Nations doctor who noted in her report that the applicant had approximately fourteen scars of varying ages and shapes and that it would be difficult to say with certainty what the aetiology of these scars was. It was noted in the report that, on examination, the applicant appeared to be frail, to have obvious nicotine stains on his right hand and an incisor missing from the right side of his mouth. The area of the missing incisor showed no sign of any bruising or bleeding. The doctor added in her report that the applicant's diabetes had been diagnosed after the alleged assault but pointed out that he

had probably had mild diabetes before, which had developed since he was examined after the assault. A test of the applicant's urine showed a large amount of blood which could, in the doctor's view, be consistent with a recent trauma. As to the amputation of the fourth toe of the left foot, the doctor noted in her report that, if the foot had been stamped on, "it would be more likely that the first or fifth toe would be injured and not the fourth". She also added that, due to poor circulation in the foot, associated with diabetes, it was possible that the toe "would have been amputated for medical reasons anyway".

124. Members of AUSTCIVPOL (Australian Civil Police Contingent in Cyprus) interviewed İlker Denizci the same day between 2.37 and 4.35 p.m.

125. Aziz Merthoca was examined by a United Nations medical officer on an unspecified date. No documents concerning the results of this examination have been submitted to the Commission.

126. On 30 April 1994 Yılmaz Mavideniz was examined by a United Nations doctor, who stated in his report that the applicant had superficial scars and scratches on his left forearm which looked between two and three weeks old. The report concluded that, if the applicant had been beaten on 18 April 1994, the injuries he had sustained at that time were not severe. AUSTCIVPOL took down the applicant's statement the same day between 4.27 and 5.37 p.m.

127. Doğan Davulcular was examined by a United Nations doctor on 3 May 1994. According to the examination report, if the applicant had been beaten on 18 April 1994, his injuries were not severe and the story about vomiting blood was not consistent with the trauma described.

128. Hasan Merthoca was interviewed by AUSTCIVPOL on 27 April 1994 between 12.21 and 3.02 p.m. He was examined by a United Nations doctor the same day. The medical report stated that the applicant's bruise of 3 cm by 2 cm over his collarbone would be consistent with an assault on 19 April 1994 and that there was no other sign of bruising. According to the United Nations doctor, after a severe beating as described by the applicant, the absence of any other such sign would be unusual.

129. Erbay Kaptanoğlu was examined by a United Nations doctor on 29 April 1994. According to the doctor's report, there was an inconsistency between the degree of physical injuries described and the "lack of any sign of recent significant physical injury". Furthermore, the psychological problems of which the applicant complained were "consistent with post-traumatic stress, but this could only be ascertained after a review by a specialist in this field". The Commission has not been informed of any examination of the applicant by a psychologist.

130. Taşer Kışmir was examined by a doctor on 23 April 1994. According to the medical report, evidence was found to support his allegations. In particular, numerous bruises approximately two days old

were found along the back of his scapulae. He was interviewed the same day from 3.41 p.m. until 6.15 p.m.

131. On 23 April 1994, İlker Tufansoy was examined by a United Nations doctor who found superficial contusions in the left upper back and deltoid regions and some mild swelling on the left cheek and around the left eye. The doctor concluded that there was evidence to support the original complaint. The applicant was interviewed by members of AUSTCIVPOL on 26 April 1994 between 11.45 a.m. and 1.44 p.m. During the interview, the applicant gave precise details about the policemen who participated in his expulsion and ill-treatment and the way in which these events had occurred.

132. The CIVPOL final investigation report of 9 May 1994 concluded that, *prima facie*, there was adequate material to support the plausibility of the allegations. The view of the medical examiners was that some of the injuries were consistent with recent assaults while others were not. As to the allegations that the applicants were forcibly removed from the southern part of the island and directed to the northern part, the UNFICYP investigators concluded that, *prima facie*, they were all plausible.

133. According to the investigation report, the details contained in the investigation file were sufficient to launch a criminal inquiry if deemed appropriate. It was also pointed out that the method alleged to have been used by the Cypriot police officers was such that in all likelihood further evidence, such as photographs, documents, fingerprint records, statements, radio logs and diary entries, existed. The investigation report concluded furthermore that the information contained in the interviews was probably sufficient to enable some of the officers concerned to be identified, along with a localisation of the events outlined.

134. It was stated that full reports had been passed on by UNFICYP to the government of Cyprus.

135. In a report dated 12 December 1994, the Secretary-General of the United Nations mentioned that, following the transmission of the CIVPOL report, the government of Cyprus had informed UNFICYP that the allegations could not be conclusively substantiated.

(c) Various statements of witnesses

(i) Statement dated 19 April 1994 by Süleyman Seyer to the Cypriot police

136. The witness's statement is identical to that made on 7 April 1994 by İlker Denizci (see paragraph 36 above).

(ii) Statement dated 28 April 1994 by Süleyman Seyer to "TRNC" police officer Salih Ceyhan

137. The witness crossed over to the territory controlled by the government of Cyprus for the first time in 1988 because of family problems.

As soon as he arrived in Limassol, he went to the police and made the required statement. Later, he crossed back to the northern part of the island a number of times and again to the southern part. In 1992 he settled in the southern part, where he also married. He had a job there and could move freely in the territory. However, after the murder of Theophilos Georghiades, the Cypriot leader of the Kurdish association, he was no longer allowed to travel without informing the police. The witness tried to contact a lawyer to talk about these problems, but was twice beaten up by the same policeman for having done so.

138. On 19 April 1994, at 7.30 a.m., two police officers in plain clothes came to his workplace and took him to the police station, where he met Hasan Merthoca. At 10 a.m., the police officers handcuffed them together and took them in a private car to the CIS headquarters in Nicosia. Two policemen, Christakis and Yannaki, began to beat them with a thick wooden stick.

139. They were later blindfolded, put into a car and driven for about one hour to a police station in a forest area. There, the blindfolds were taken off and they were put into a cell. Hasan Merthoca was taken out later and the witness could hear that he was being beaten. After Hasan Merthoca had been brought back to the cell, the witness was taken out and the police officers asked him to sign a paper. As he refused, Yannaki started to beat him with a wooden stick. Then his fingerprints were taken by force and he was also forced to sign a statement to the effect that he was going to the Turkish side of his own free will. At 9 p.m., he and Hasan Merthoca were again blindfolded, put into a car and taken to a dry riverbed. There, the blindfolds and the handcuffs were removed. There were five policemen in uniform carrying short-barrel guns. While taking Hasan Merthoca to the riverbed, they tore the witness's T-shirt and told him to follow Hasan Merthoca. Then Yannaki threatened that he would kill him if ever he came back. The witness joined Hasan Merthoca and reached the village of Taşpınar, where Turkish soldiers found them and took them to the authorities.

(iii) Statement dated 12 May 1994 by Süleyman Seyer to the Cypriot police

140. Following the murder of Theophilos Georghiades, the Turkish Cypriots living in the southern part of the island started to be afraid. Therefore, in the night of 19 April 1994, together with Hasan Merthoca, the witness secretly crossed over to the northern part of the island in the Angolemi area. At the border, they were apprehended by Turkish soldiers. Because he was afraid, the witness told them that the Cypriot police had taken them from their homes and sent them to the Turkish side. The witness and Hasan Merthoca were handed over to the police in Morphou, who beat them severely and told them that, if they said that they had been beaten by the Cypriot police, they would secure their acquittal in court. The witness

and Hasan Merthoca signed the statement to avoid being imprisoned. They were then taken to a hospital and examined by a doctor. The witness refused to talk to the journalists present at the hospital and asked instead to talk to officials from the United Nations.

141. Fifteen days after his crossing to the Turkish side, the witness secretly returned to the southern part of the island, as he did not feel secure on the Turkish side. The witness stated finally that he had no complaints against the police or the Republic of Cyprus.

(iv) Statement dated 29 April 1994 by Murat Doksandokuz to "TRNC" police officer Salih Ceyhan

142. The witness crossed to the southern part in 1992. He was under constant police surveillance. He had to report to the CIS in Limassol whenever he wanted to go anywhere. Every time he left Limassol without reporting, the police would beat him up.

143. After the murder of Theophilos Georghiades, the witness was taken to the CIS, where he was beaten and questioned. He had to report to the police daily and let them know his whereabouts. On the morning of 20 April 1994 the witness went to work. A police officer from the CIS, whose name was Rodis, came to his workplace and took him to the police station. There, he met Erbay Kaptanoğlu, to whom he was handcuffed. The police officers took them to the CIS headquarters in Nicosia, where they were beaten and told they were "filthy Turks". Then they were blindfolded and taken to a police station in the mountains. They were put into a cell together. Eyes uncovered, the witness was taken to a room, where he was beaten and forced to sign a paper stating that he was going to the Turkish side of his own free will. The same thing happened to Erbay Kaptanoğlu. During the night, five police officers (two in plain clothes and three in uniform) took them, blindfolded, to a riverbed and, after uncovering their eyes and releasing the handcuffs, told them to follow the riverbed. They were warned that, if they came back, they would be killed. The witness and Erbay Kaptanoğlu reached the village of Taşpınar, where Turkish soldiers apprehended them and handed them over to the police.

(v) Statement dated 23 August 1994 by Murat Doksandokuz to the Cypriot police

144. Following the murder of Theophilos Georghiades, the Turkish Cypriots living in the southern part of the island started to be afraid. Therefore, in the night of 20 April 1994, together with Erbay Kaptanoğlu, Murat Doksandokuz secretly crossed over to the northern part in the Morphou area. At the border, they were apprehended by six Turkish soldiers, who beat them very severely and handed them over to the police. The police also beat them and sent them for examination to Nicosia Hospital in the northern part, where fifteen Turkish Cypriots were waiting to be

examined. The witness read a statement prepared by the police to the journalists present at the hospital. Erbay Kaptanoğlu also spoke on his own behalf and said that they had been beaten by the Cypriot police and that life was difficult for them in the southern part, as they were constantly bothered by the Cypriot police. After leaving the hospital, the witness and the others were taken to the Ledra Palace, where they were examined by an English doctor. The witness made a statement which was translated by a Turkish policeman. He was then taken to a military court, where he was sentenced to fifteen days' imprisonment. On 23 August 1994 he crossed back to the south, as he was unemployed on the Turkish side.

(vi) Statement dated 18 January 1996 by Kemal Demir, former governor of the Central Prison in Nicosia (northern Cyprus)

145. The witness stated that the second applicant, Aziz Merthoca, had been remanded in custody at the Central Prison from 22 April 1994 to 7 June 1994 and, from 7 June 1994 to 25 August 1995, was detained following his conviction by a military court for violation of military areas and of the borders of the "TRNC".

146. During his term of imprisonment, Aziz Merthoca made a number of statements, complaining about his forcible expulsion by the Cypriot police and about the treatment to which they had subjected him. He also complained that, as a result of his expulsion, he was separated from his Greek-Cypriot wife and their two children.

147. The meetings between Aziz Merthoca and his lawyer, Mr Necatigil, took place in the witness's office and in his presence. The lawyer had come to see İlker Denizci and advise him about his rights, and on that occasion the witness introduced him to Aziz Merthoca. Mr Necatigil explained to both of them the procedure before the Strasbourg organs, but only İlker Denizci signed a power of attorney, as Aziz Merthoca was concerned about the fate of his wife and children and therefore asked for the help of the "TRNC" authorities to bring his wife and children to the Turkish side. Mr Necatigil came back to the prison ten to fifteen days later and Aziz Merthoca signed a power of attorney of his own free will.

(vii) Statement dated 5 August 1995 by Panayiota Papachristophorou to the Cypriot police

148. According to Aziz Merthoca's wife, on 18 April 1994 Aziz left Limassol with other Turks (relatives of Yılmaz Mavideniz) and crossed to the northern part of the island on their own initiative. There, he was caught by the Turkish army, who put him in prison. She visited Aziz in prison four or five times, through the United Nations. The first time, he told her that the Turkish soldiers who had caught him beat him so severely that he had to stay in hospital for six days. He was also badly treated in prison and he wanted to go back to the southern part of the island. During her visit on

29 May 1995, Aziz told her that the authorities of the “pseudo-State” would make him and other Turkish Cypriots testify before the European Court of Human Rights that they had been ill-treated by the Cypriot police and were expelled to the occupied area, although in reality they had gone there of their own free will.

(viii) Statement dated 3 January 1998 by Panayiota Papachristophorou to the Cypriot police

149. On 22 September 1997 Aziz Merthoca secretly crossed to the northern part in order to evade some private problems. There, he was arrested and put in prison. On 31 December 1997, with the help of the United Nations, the witness was able to visit him in prison. He was in very poor shape and looked as if he had been drugged. On 2 January 1998 the witness called someone from the United Nations and requested that Aziz Merthoca be examined by a United Nations doctor. She also requested that the Cypriot police help her in this matter, as she was convinced that the “TRNC” authorities ill-treated her husband.

(ix) Statement dated 15 April 1998 by Öle Röinaas

150. The witness first met Erbay Kaptanoğlu in Norway in May 1988. When the latter went back to Cyprus in May 1992, the witness bought a flat in Limassol as a home for Erbay and a holiday flat for himself and his family. Between May 1992 and May 1994, the witness spent all his holidays in the flat in Limassol, in Erbay’s company. For this reason, the witness had a good knowledge of his living conditions.

151. According to the witness, the telephone in the flat was tapped. Very often, a car with two plain-clothes policemen from the CIS was parked in front of the flat. When the witness and his friend Erbay went out of Limassol, they were nearly always followed by CIS officers. The surveillance was so obvious that even the witness’s 78-year-old mother noticed and asked: “Why are this car and man following us all the way to Agia Napa?”

152. In town, they would sometimes be followed by plain-clothes policemen, who would even sit down at a table next to them in a restaurant to try and hear what they were talking about. On his arrival at Larnaka Airport for the Christmas holiday period in 1993, the witness was unexpectedly arrested and kept in custody for one hour. He was questioned about his background, his reasons for coming to Cyprus and what he was doing there.

153. After Erbay Kaptanoğlu’s expulsion to northern Cyprus in 1994, the witness spent a week in Limassol to make all the arrangements, that is to say, sell the flat, pack all movable property and send it to the north. He also took Erbay’s car to the “green line” and handed it over to the “TRNC” authorities, to return it to its owner. After that, the witness never came back

to the southern part of Cyprus, the main reason being that, through his friends in the south, he learned that he was considered by the Cypriot authorities as a Turkish spy working for the Turkish government.

(d) Medical examination of the applicants at Cengiz Topel Hospital (northern Cyprus)

(i) As to İlker Denizci

154. The applicant was examined on 8 April 1994 by Dr R.C., who found evidence of abrasions in both zygomatic areas, in the right mandibular region, on the upper back and the right shoulder, and wounds of various sizes on both hands and in both tibia areas.

(ii) As to Aziz Merthoca

155. The applicant was examined by Dr M.K. on 21 April 1994. The applicant was found to present swelling and ecchymoses in both scapular regions.

(iii) As to Hüseyin Mavideniz

156. On 23 April 1994 Dr M.K. examined the applicant and found an epigastric hernia and tenderness in the lateral thoracic region.

(iv) As to Yılmaz Mavideniz

157. The applicant was examined by Dr M.K. on 21 April 1994. He was found to present pain on the chin and neck, sensitivity in the back, particularly on the palpi in the left scapula.

(v) As to Doğan Davulcular

158. The applicant was examined on 21 April 1994 by Dr M.K., who found tenderness in the epigastric region which diminished when sitting.

(vi) As to Hasan Merthoca

159. The applicant was examined on 21 April 1994 by Dr M.K., who found six ecchymoses in the dorsal region, between 3 cm and 7 cm in diameter.

(vii) As to Erbay Kaptanoğlu

160. The applicant was examined on 21 April 1994 by Dr M.K., who found an ecchymosis in the right scapular region, 10 cm in diameter.

(viii) As to Taşer Kışmir

161. The applicant was examined by Dr B.G. on 23 April 1994. The doctor found pain in the upper back, evidence of extensive abrasions and

bruises on the upper back and shoulders. He also found that the applicant's left wrist was swollen and in pain, due to its fracture two months before the events.

(e) Dr Matsakis's reports of July 1994 and November 1995

162. On 30 July 1994 Dr Marios Matsakis, a pathologist, together with a police officer, H. Argyrou., drafted a report concerning the applicants' allegations of ill-treatment. The English translation of this report, prepared by Dr Matsakis himself and dated November 1995, differs slightly from the original Greek report of July 1994. The conclusions of these reports are summarised below.

163. As to İlker Denizci's allegations, Dr Matsakis found that the applicant had been diagnosed as having diabetes in 1974, and not in 1994 as stated to the United Nations authorities, which could have given rise to an infection resulting in the surgical removal of his toe. He expressed the opinion that the applicant had omitted on purpose to mention his long-standing diabetes, in order to deceive the United Nations.

164. As far as Hüseyin Mavideniz was concerned, after examination of the photographs that accompanied the United Nations report, Dr Matsakis reached the same conclusion as the United Nations report, that is, that there was no evidence of beating or torture.

165. As far as Yılmaz Mavideniz was concerned, Dr Matsakis confirmed in his report of November 1995 his findings of July 1994. He wrote the following in the English version of his report dated November 1995:

"... It is impossible to base any comments/conclusions on this video because I have no proof as to where, how and when it was made, and no clear evidence whatsoever of any beating/torturing appears in the video. I note that the general appearance of Mr Mavideniz eg. presence of multiple tattoos and generally ill kept, seems to indicate a person of low intelligence and low social status i.e. a person who could easily have sustained injuries after involving himself in quarrels and fights and a person who could have lied on his allegations either voluntarily or after pressure from the Turkish Cypriot pseudo-State authorities ..."

166. Concerning Doğan Davulcular, Hasan Merthoca and Erbay Kaptanoğlu, Dr Matsakis concluded that there was no evidence of beating or torture, and referred to the United Nations report stating that their injuries were not of a serious nature and that their stories were not consistent with their alleged injuries.

167. Concerning Taşer Kişmir, Dr Matsakis found substantiated to a large extent the presence of multiple recent ecchymoses in the upper back region. He concluded, however, that it was not possible "to establish whether these injuries were received during his arrest by the Republic of Cyprus Police Force or after he was released and fled to the occupied part of the country".

168. As to İlker Tufansoy's injuries, the doctor stated that they appeared to have been caused "a few hours prior to examination/photographing by the United Nations medical officer and not on or before 19 April 1994, which is the date Mr İlker Tufansoy fled into the occupied part of Cyprus".

169. At the end of the July 1994 report, Dr Matsakis suggested that he be present, as an official State pathologist and medical examiner, at any further medical examination of persons who had made complaints to the United Nations of ill-treatment by the Cypriot police. In his November 1995 report, he noted that the wish he had expressed in his July 1994 report had not been answered.

(f) Dr Matsakis's report of August 1998

170. The Government submitted a supplementary report drafted by Dr Matsakis in August 1998 in the light of new material made available to the Government, in particular, statements provided by the "TRNC" police and doctors and further photographs of the applicants.

171. Concerning İlker Denizci, Hüseyin Mavideniz, Hasan Merthoca and Erbay Kaptanoğlu, Dr Matsakis maintained the comments made in his previous reports.

172. For the first time, Dr Matsakis examined documents relating to Aziz Merthoca's allegations and concluded that the findings of Dr M.K. on 21 April 1994, if true, were totally inconsistent with the allegations of severe beating made by the applicant. The report also mentioned that, in any event, such injuries could easily have been caused by a simple fall against a hard surface.

173. As far as Yılmaz Mavideniz was concerned, Dr Matsakis found that the 21 April 1994 report of Dr M.K. was "generalised, superficial, non-specific" and did not indicate "in any way any causal link between the findings made and the alleged beatings" of the applicant. Dr Matsakis also questioned the United Nations doctor's findings, noting in particular that the appearance of the wounds was not described by him "in a way such as to enable forensic specialists subsequently to estimate their age". He maintained his findings of November 1995 and concluded that the applicant "quite probably sustained the wounds noted by United Nations medical officer while he was in the occupied areas of Cyprus but *not*, as he originally alleges, while he was in the free area".

174. As to İlker Tufansoy, Dr Matsakis stated:

"It would appear that the only injuries which can be safely said to have been present on or around 23 April 1994 are those mild injuries described by the United Nations medical officer and depicted ... in the attached photocopies of the photos taken during the United Nations medical examination. Those injuries are not consistent in terms of severity or causation with the history allegedly given by İlker Tufansoy ..."

175. As to Taşer Kişmir's allegations, the doctor noted that the medical report of the Turkish doctor who had seen the applicant on 23 April 1994

was “short, rather imprecise and generalised” and concluded that it was unreliable. He also questioned the competence of the United Nations doctor to assess forensic causation and noted that there was no indication as to whether the applicant really wanted to be examined by a United Nations doctor.

(g) Other documents

(i) Aziz Merthoca’s application dated 10 May 1994 to the “TRNC Ministry of the Interior”

176. During his detention in the Central Prison in Nicosia (northern Cyprus), the applicant stated that, following his expulsion from the south, he had had no news from his wife and their children and asked to be allowed to have contact with his family.

(ii) Aziz Merthoca’s applications dated 9 August and 20 October 1994 to the “TRNC Ministry of the Interior”

177. Stating that he had been obliged to leave the south of Cyprus, leaving his wife and children behind, the applicant requested the “TRNC” authorities to grant permission to his family in the south to join him in northern Cyprus.

(iii) Summary of a conversation between Aziz Merthoca, detained at the Central Prison in Nicosia (northern Cyprus), and his wife, Panayiota Papachristophorou, on 16 June 1994

178. This conversation, recorded by the “TRNC” authorities, was summarised by the deputy governor of the Central Prison in Nicosia (northern Cyprus) in a letter to the prison administration. It appears that Aziz Merthoca told his wife to come and settle in the north. However, she said that the Cypriot police and the CIS constantly put pressure on her to sign documents indicating that she did not want to go to the north. As she refused to sign such a statement, they threatened her and kept her in custody for four hours.

(iv) The applicants’ criminal records established by the Cypriot authorities as at September 1994

179. As to Hasan Merthoca, it appears that he came to the south on 13 April 1982, went back to the north on 6 April 1983 and, on 17 July 1983, returned to the south. He had been convicted and sentenced many times for offences in connection with fighting, theft, burglaries, arson, trespassing, unlawfully carrying a knife while drunk and assault against officers and against a member of the CIS in Limassol.

180. Aziz Merthoca came to the government-controlled area on 18 July 1983 and went back to the northern part on 18 August 1983. On 28 September 1983 he came to the government-controlled area a second

time, but went back to the northern part again on 3 November 1983. On 25 October 1985 he came for a third time to the southern part and settled in Limassol. On several occasions, he had been sentenced to prison in connection with burglary, thefts and fights. In 1986 he began a relationship with K., while pursuing his relationship with Panayiota Papachristophorou, with whom he had a child. In 1988 he started another relationship with a married woman, M. According to his criminal record, Aziz Merthoca is a drug user and dealer.

181. According to his criminal record, Yılmaz Mavideniz came to the government-controlled area on 21 August 1985, went back to the occupied part two months later, but came again to the south on 4 July 1987 and settled in Limassol. The applicant had been convicted a number of times for burglary and theft offences. The record also states that he is a drug user.

182. İlker Denizci is mentioned as having arrived in Cyprus in 1986 via Saudi Arabia, where he worked, and as being suspected of photographing military positions in the government-controlled area. The record also reports his activities in tracing Turkish-Cypriot missing persons and investigating the circumstances in which they disappeared. The record further indicates that, while he was living in the village of Potamia, he disappeared for a month and “it was later discovered that during that period he had stayed in various Turkish-Cypriot houses in Limassol and his disappearance is considered very suspicious”.

183. Taşer Kışmır’s movements between the government-controlled area and the northern part of the island are noted down in his criminal record, together with his various jobs and employers. The record also mentions that in 1991, during a business lunch to which the Turkish-Cypriot members of the DGD youth organisation were invited, the applicant urged them to publish in the Turkish-Cypriot press that the Cypriot police and the CIS oppressed the Turkish Cypriots. It further states that “on 30 June 1992 he participated in a demonstration outside the Paphos city hall by two Turkish Cypriots who alleged that the house which they had been given was not fit for living in” and that, for the same reason, he participated in a hunger strike which started on 18 January 1993 at the same place. It transpires from the record that the applicant came into contact with Turkish Cypriots considered to be associated with the “TRNC” central intelligence service and that during his stay in the government-controlled area he urged all Turkish Cypriots not to collaborate with members of the Cypriot police or the CIS, whom he verbally abused on various occasions.

184. İlker Tufansoy’s record contains information on his movements between the government-controlled area and the northern part of the island, on a relationship he had with a Greek-Cypriot woman married to an Egyptian and on an armed robbery allegedly planned with another Turkish Cypriot. Moreover, it indicates that he was a drug dealer and user and that he regularly visited the village of Pyla and came into contact with Turkish

Cypriots considered to be associated with the “TRNC” central intelligence service.

185. Erbay Kaptanoğlu’s record contains information on his sexual preferences and intimate relationships. It also indicates that he used to drive to Pyla, taking Turkish Cypriots with him to enable them to contact their relatives in the occupied part.

(v) Decision of 28 October 1997 of the “Security Forces Court of the TRNC” against Aziz Merthoca

186. On 7 October 1997, as a result of his crossing on 28 August 1995 from northern Cyprus to the southern part, Aziz Merthoca was charged by the “Attorney-General of the TRNC” on the following counts: leaving “the TRNC territories” without permission from the Security Forces Command, entering secretly and without permission into a forbidden military zone and, as a soldier, leaving his unit without permission from his commander.

187. On 28 October 1997 the applicant was convicted on all counts and sentenced to eighteen months’ imprisonment. The court took into account the applicant’s depression due to the fact that his wife and children lived in the southern part and that they were not given permission to come to the northern part of the island.

(vi) Decision of 30 May 1989 of the Norwegian Ministry of Justice

188. On 30 May 1989 the Norwegian Ministry of Justice granted Erbay Kaptanoğlu a residence permit for humanitarian reasons, despite its previous decision of 30 June 1988 rejecting his application for asylum.

(vii) Examination of bodies and autopsy of İlker Tufansoy’s body

189. On 3 June 1994, at 12.25 a.m., forensic pathologist Dr Marios Matsakis arrived in Stavrokonno at the request of the police. After certifying the death of İlker Tufansoy and Ertuğrul Akburç, the doctor postponed the examination of the bodies until 5.30 a.m., due to the darkness.

Later the same day, an autopsy was conducted by Dr Matsakis at the hospital in Paphos. According to the autopsy, the deaths were caused by multiple wounds sustained from shotgun pellets.

(viii) Police investigation into İlker Tufansoy’s death

190. The investigation into the killing of İlker Tufansoy was entrusted to the Paphos police. Since İlker Tufansoy had been killed at the same time as Ertuğrul Akburç, the investigation related also to the latter. On 3 June 1994, following the report of the incident by Kyriakos Nikolau, officers from the Paphos police went to the scene. Members of the Police Ballistics Department examined the scene and took various samples. Then, a forensic pathologist was called in (see paragraph 189 above). Sketches were made at the scene of the positions of the bodies and the location.

191. By 1997 the investigation file, containing more than 600 pages, was composed of documents such as: the case file of the Kouklia police station in Paphos; summonses served on witnesses; reports of police officers; lists of the things found and the map of the crime scene; autopsy reports; blood and urine tests; fingerprint tests; telephone call printouts; various letters from the Paphos police to the police headquarters in Nicosia; statements of suspects; statements of witnesses; various warrants for the search of houses; medical examinations of suspects; examinations of guns; interim reports; order for the burial of bodies, etc.

(ix) Coroner's inquest into İlker Tufansoy's death

192. On 11 July 1995 the Paphos district police sent the investigation file to the Attorney-General. The police pointed out that a significant number of suspects had been heard, the clothes of many of them had been scientifically examined, the shotguns of the villages of Holetria, Stavrokonno, Amargeti, Kelokedara and Trakhypedoula had been scientifically examined, but that nothing positive had emerged against anyone. The police therefore suggested that an inquest be held.

193. On 24 July 1995 the Attorney-General's Office decided that an inquest be held.

194. On 9 August 1996 the coroner, F. Haralambos, presented his conclusions. After examination of the autopsy report and of all the evidence collected by the police, he concluded that İlker Tufansoy's death was due to multiple wounds caused by pellets from a shotgun constituting a premeditated criminal act committed by unknown persons.

2. Oral evidence

195. The evidence of the twenty-three witnesses heard by the Commission delegates may be summarised as follows.

(a) İlker Denizci

196. The applicant was born on 24 June 1950 and was at the time living in the Akçay Güzelyurt region, in the northern part of Cyprus.

197. Probably on 4 April 1994, at around 7.30 a.m., two policemen in civilian clothes came to his workplace. The first policeman was between 40 and 45 years old, a little heavy and had white hair. The other was about 40 years old, short, slim and had completely white hair. They took him to Limassol police headquarters and the slim policeman recorded his personal details in a book. Then, they handcuffed him and interrogated him about the death of a journalist named Georghiades. After that, he was taken to the CIS headquarters in Nicosia and brought to an office where there were seven or eight policemen. Two of them, named Bambo and Christakis, beat him all over the body for twenty minutes. Christakis also used a stick to beat him,

but generally he was punched and kicked. The applicant was then blindfolded and put into a Pajero car.

198. After a drive of about an hour and a half, they reached a mountain area. At around 10 a.m., they arrived at a police station built of yellow stone. When his blindfold was removed, he was able to see through the window and realised he was in the Troodos mountains. At that police station he saw five persons, two of whom were wearing uniforms. He was interrogated about the murder of a journalist. During the interrogation, he was beaten with a truncheon and an iron bar by Bambo and Christakis. One of them put a stick into his mouth and asked him to bite. When he did, the policeman pulled out the stick, loosening one of his incisors. Around 7 p.m., they put two papers in front of him, one in Greek, the other in Turkish, and asked him to sign them. The papers read: "I am going to the Turkish Republic of Northern Cyprus of my own accord." As he refused to sign them, the policemen hit him with his identity card, saying he was not worthy of it. They also took away his wallet containing 380 Cyprus pounds.

199. Around 8 p.m., he was blindfolded, put in a car with four policemen and driven for fifteen minutes to the banks of a shallow river. There, three policemen pushed him against the wall of a bunker and made him kneel down. They had kalashnikovs in their hands and told him not to come back to the south or they would kill him. After his blindfold had been removed, the policeman named Christakis took his left shoe off and started stamping his foot with the heel of his boot. One of his toes got crushed and one broke. As he fainted, Bambo burned his feet with cigarettes. As he fainted again, he was thrown into the river. About fifteen minutes later, he came to and, as he could not walk, he started to crawl in the river towards the light in the Troodos. He crawled for four or five hours, passing twice through barbed wire, and reached the village of Angolemi (Taşpınar).

200. At around one a.m. he was found by Turkish soldiers, who took him immediately to Pendayia Hospital (northern part). There, the doctor, an obstetrician, stopped the minor bleeding, pulled out his loosened incisor and treated the injuries to his toes. The applicant was then sent to the hospital in Nicosia in an ambulance. As he was a diabetic, they had to amputate his crushed toe, which had become gangrenous. While he was in the hospital, the police took statements from him.

201. Before this incident in 1994, the witness did not know he had diabetes. It was after the incident that it worsened.

202. After the incident, a police officer from the north took him to the United Nations offices, where he was interrogated by the United Nations police and examined by a United Nations doctor.

203. After he left the hospital in Nicosia (northern part), he was convicted by a court in the northern part for having crossed the border unlawfully. While in prison, he met Aziz Merthoca, who was also detained. The applicant had requested to see a lawyer concerning his expulsion and

ill-treatment in the south. He met Aziz Merthoca on the occasion of the lawyer's visit. They met twice with the lawyer and discussed the possibility of bringing a case before the European Commission of Human Rights. Eventually, the applicant and Aziz Methoca signed powers of attorney enabling Mr Necatigil to bring proceedings before the Commission. They signed the powers of attorney of their own free will. No force or persuasion was used.

(b) Hüseyin Mavideniz

204. The applicant was born on 15 March 1946. At the time of his hearing before the delegates, he was living in Famagusta, in the north.

205. In April 1994 his brother called him, Hüseyin and Doğan Davulcular and told them that they could find work in Limassol and live comfortably there. On 17 April 1994 Hüseyin and Doğan Davulcular came to his house and told him to go to Limassol. They told him that Yılmaz Mavideniz would come and pick them up in the village of İncirli. So he took his wife and their two children, Doğan took his wife and their two children and Hüseyin Davulcular took his wife and their three children and all of them went in Hüseyin's car to İncirli. They left the car in the village. Aziz Merthoca and Yılmaz Mavideniz arrived together and took all of them on foot to the petrol station. There, the applicant and his children got into Aziz Merthoca's car, while the others got into that of Yılmaz Mavideniz. They went to Limassol. As there was not enough room in his brother Yılmaz's house, the applicant and his family went to Aziz's house, and the others to Yılmaz's house. By that time, it was almost morning.

206. Around 7.30 to 8 a.m., two police officers in civilian clothes arrived at Aziz's house and arrested them. He did not know how the police knew that they were there. When the police arrived Aziz's wife, Panayiota Papachristophorou, was not there. She had left the house. He did not know the people who came to Aziz's house, but Aziz told him that they were policemen and mentioned that one of them was called Asimenos. Aziz also told him not to worry, because his wife was Greek and had gone to fetch a lawyer who would help to have them released. He left all his money and some gold jewellery at Aziz' house.

207. Shortly after he arrived at the police station in Limassol, those who had crossed with him that night and Aziz Merthoca and Yılmaz Mavideniz also arrived. Altogether, they were fifteen. He also saw Aziz's wife an hour later, but the police did not allow her to stay. He was questioned about his reasons for crossing to the southern part of the island. He said that he had come to find work and earn a living. A tall man with glasses started to hit and insult him. The man also told him they did not want Turks in the south because the Turks had taken their homes. The tall man and Asimenos beat him for quite a long time, until around 10 a.m. He was hit in the kidneys, on the chest and on the back. Then, all of them were handcuffed and taken to

Nicosia. In the minibus that was taking them to Nicosia, they told each other how they had been beaten.

208. In Nicosia, they were taken to a police station. He told the Commission delegates that he did not know what kind of police station it was, but he had heard Aziz say that it was the CIS headquarters. It was in Nicosia that they were most severely beaten. The women and children were not beaten, only the men. The police officers used a wooden stick, not only their hands as in Limassol. They were kept for about one hour in Nicosia. He did not know any of the policemen there, but heard Aziz say that one of them was called Beniko.

209. From there, they were taken in Pajero vehicles to a police station in the mountains, near a riverbed. He did not remember how long the journey had taken, as he was feeling very unwell after the beating. It could have been one or two hours. During the journey, most of the men were feeling sick and vomited, and they were taken out of the car for this reason.

At the police station, there were about six policemen. Only one of them was wearing a uniform, the others were in civilian clothes. The policemen, except for the one in uniform, beat them very severely, also using sandbags. They were mainly hit in the kidneys. Because of the beating, the applicant started vomiting blood and could not urinate. The policeman who gave the orders, a tall dark-haired man, knew Turkish. According to what Aziz told the applicant, his name was Asimenos.

The applicant was forced to sign a statement. He did not know what it contained.

Around 8 p.m., still handcuffed, they were taken to a stony area, where the police removed their handcuffs and told them to go to the Turkish side. They also warned them that, if they came back, they would be shot.

210. They crossed the road and a barbed wire, and a Turkish soldier came and took them to an army doctor. In the morning they were taken to the General Hospital in Nicosia (northern Cyprus), where they stayed until the evening. Then they were taken by the police and detained, with the exception of their wives and children, who were released. The police took a statement from the applicant on 6 May 1994. He was placed in detention, following his conviction for having crossed the border illegally. After his release, he was told by the police to go to the Ledra Palace. He went there with his family, and found those who had been expelled from the south at the same time as he had. Then, they were examined by doctors from the United Nations and interviewed. The applicant continued to have difficulty urinating.

(c) Yılmaz Mavideniz

211. The applicant was born in 1970.

212. In April 1994 the applicant was living in Limassol. He had been living there since 1986. While in the south, he was not allowed to move

freely. He had to report to the police every time he wanted to go to another place. The police from the intelligence service used to come and see him every other day. He knew the names of some of the policemen: Theodoro, Rodis, Christakis and Yorgo. The police used to beat him each time he did not report.

213. The applicant is illiterate. Not knowing the months of the year, he guessed that it was on the night of 16 to 17 September 1994 that, together with his nephew Aziz Merthoca, he went to northern Cyprus and brought back to the southern part Doğan Davulcular, Hüseyin Davulcular, Hüseyin Mavideniz, Şenay Davulcular, Selma Davulcular, Nermin Mavideniz and her children. He arrived back in Limassol around midnight.

214. On 17 September 1994, at around 6.30 a.m., two policemen called Rodis and Theodoro came to his house and told him he was wanted in Nicosia. When they saw the others, they asked the applicant who they were. He told them that they were relatives and that they came from the other side.

215. They were all taken to Limassol police station. The applicant went in his own car with a police officer and Hüseyin Davulcular, while the others were taken in a police vehicle. At Limassol police station, there were many plain-clothes policemen. He and the others, with the exception of the women and children, were beaten and then taken in a minibus to Nicosia.

Two policemen accompanied them in the minibus, one of them being Rodis. At the central police station in Nicosia, they were put into a room, handcuffed and beaten with hands, fists and a wooden stick for twenty minutes. Among those who beat them he recognised Christakis. They were also questioned in relation to the murder of Georghiades and accused of committing various crimes. Then they had to sign a statement to the effect that they were going to the Turkish side. After that, he and the others were handcuffed, put in a four-wheel-drive and taken to a small police station in an unknown village, probably Gambos according to what Aziz Merthoca had told him. Aziz Merthoca had already been to Gambos. From 9 a.m. until 9 p.m., all of them were beaten with wooden sticks and sandbags. They were beaten very severely. Hüseyin Mavideniz and Doğan Davulcular even vomited blood because of the beating. The applicant himself was hurting everywhere. They were obliged to sign statements. When the night came, they were driven for about two hours to a riverbed. Pointing their guns at them, the police made them cross to the other side. Christakis, the police officer from Nicosia, was also there. Partly crawling, partly walking, the applicant and the others reached the barbed wire, where they were apprehended by Turkish soldiers. They were taken to a military unit, where they were examined by army doctors. Then the police came and took them to the police station in Morphou. After spending the night there, they were taken to a court, which convicted the applicant for having crossed the border illegally. He was then taken to hospital. In April 1994, while he was in

detention, he made a statement to the police. Later, the police came to fetch him to make a statement to the United Nations police.

(d) Hasan Merthoca

216. The applicant was born in 1955. At the time of his hearing before the delegates, he was living in Balıkesir, in the north.

217. Before 1994 the applicant had crossed from the north to the south a number of times. He used to make the crossing in the Pergamos area. In 1994 he was living in Limassol, where he had been for the last fourteen to fifteen years. During that time, the police kept him under constant surveillance. He could not move freely, and had to report to the police every time he wanted to go somewhere. The police officers came to his workplace and to his home. He knew the names of some of the policemen: Christakis, Rodis, Muzoro. They were from the CIS. Christakis was about 50 years old, was of darkish complexion and came from the CIS in Nicosia. Rodis was 40 years old, shorter and plumper and was from Limassol. Muzoro was tall. The applicant often had problems with the police because of drinking and fighting. He had been to prison for this. Whenever they wanted to, the police used to arrest him and beat him, accusing him of having committed burglaries.

218. In April 1994, one or two weeks after the death of an important figure, Theophilos Georghiades, he was taken in by the police and accused of having committed a burglary. It was around 7.30 in the morning. He was first taken to Limassol police station, a three-storey building, where he was questioned about the death of Theophilos Georghiades. Then, he was taken to the CIS headquarters in Nicosia. There were many policemen there, most of them in plain clothes. He was handcuffed to Süleyman Seyer. The policemen, especially Christakis, who was also giving orders, beat them with an iron bar and a truncheon and insulted them. No bleeding resulted from this beating; parts of the body just became darker. Süleyman was beaten much harder.

Then they were blindfolded, handcuffed with their hands behind their backs and taken to the Troodos mountains. The journey lasted one and a half to two hours. When they arrived at a police station in the mountains, his blindfold was removed. He was put in a room without windows and beaten. As he could not read or write, they forced him to put his fingerprint on a document. The police told them to leave the region and never come back, and threatened to kill them if they did. Later, around 10 p.m., the police came back, blindfolded him and beat him with fists in his kidneys. Then they were taken by car along an earthen track to a riverbed, in an area he did not know. Their blindfolds and the handcuffs were removed and, under threat, they were forced to walk about 50 m until they reached barbed wire. He left all his belongings behind, his identity card, his photographs, his money and his car.

Having gone through the barbed wire, after a fifteen-minute walk, they were apprehended by Turkish soldiers who took them to a military camp and called the police. When the police arrived, they took the applicant to hospital. He did not stay in the hospital; he was released, but had to report to the police every week. He made a statement to the police about what had happened to him. No pressure was put on him to make such a statement. He also went to the United Nations police and made a similar statement. A doctor from the United Nations examined him.

Then, the police brought him before a court and, after three or four days of detention, he was released on bail. The court sentenced him to three months' imprisonment for having crossed a military zone without permission.

Since these events, he had not seen his wife or his child.

(e) Erbay Kaptanoğlu

219. The applicant was born in February 1965. At the time of his testimony he was living in Çatalköy, in the north.

220. Before 1985 he lived in the northern part of Cyprus. In August 1985 he moved to the territory controlled by the Republic of Cyprus in order to find work and earn a living. In 1987, due to the strong pressure put on him and the other Turkish Cypriots living in Cyprus by the Cypriot police, he went to Norway where he sought political asylum. As he obtained a humanitarian residence permit, he stayed there for five years. In 1992, following changes in the Cypriot government, he returned to Cyprus and lived in Limassol until the events in April 1994. During that time, his Norwegian friend, Öle Røinaas, used to come to see him very often. In Limassol, he was under strict surveillance by the Cypriot police, who monitored his activities and movements at all times. He had to tell the police where he was going, whom he was seeing, what he was doing. His telephone was probably tapped, since the police seemed to know in advance his every move.

221. On 20 April 1994, around 9 a.m., two policemen from the CIS, Rodis and Theodoro, came to the applicant's place of work and ordered him to come with them to Limassol police station. When he got there, he saw another Turkish Cypriot, Murat Doksandokuz, who was being kept there. The applicant and Murat Doksandokuz were then handcuffed to each other and taken to a police station in Nicosia, which he believed to be the central headquarters of the CIS. The Limassol police who handed over the applicant to the Nicosia police took from him the keys to his flat, his car and his motorcycle. At the Nicosia police headquarters, the applicant was insulted and told he was a "filthy Turk" and was beaten and slapped. He was then blindfolded, handcuffed to Murat Doksandokuz and driven along a mountain road to another police station. They were put into a room and their blindfolds and handcuffs were removed. They waited there for more than

three hours. In the meantime, some uniformed policemen brought them something to eat and drink and asked the applicant why he was there. After a while, he was brought before two policemen in civilian clothes. One of them had a 50-cm hard stick, with which he kept hitting the applicant. He was then forced to sign a statement to the effect that he had no complaints about the Cypriot police and had decided to return to the northern part of Cyprus of his own free will. When he refused to sign, he was severely beaten on the shoulders. In the end he signed the statement. Then he was put in a cell with Murat Doksandokuz.

222. On the same day, at about 8 p.m., the applicant and Murat Doksandokuz were taken from the cell by five policemen; they were handcuffed and blindfolded and driven to a dry riverbed. They were ordered to follow the riverbed across the United Nations buffer-zone to the northern part of Cyprus. They were warned not to come back, otherwise they would be shot. After a walk of about twenty-five minutes they reached the village of Taşpınar (Angolemi) in northern Cyprus. They were apprehended by Turkish soldiers who, after questioning them, handed them over to the Turkish police. They were taken to a police station in the Morphou area and questioned for about an hour.

223. On 21 April 1994 the applicant was sent for an examination to the “Turkish-Cypriot State Hospital” in Nicosia (northern Cyprus). After that, he was taken back to a police station in Nicosia (northern part), where he remained for another two days, until the investigation was over.

The applicant asked to see the United Nations authorities. On 29 April 1994 he was examined by a United Nations medical officer and interviewed by the United Nations civilian police.

In September 1994 he was convicted of unlawfully entering a military zone in 1985 and sentenced to six months’ imprisonment.

224. On the day he was arrested, he was supposed to meet a young woman working for the United Nations. Her name was Chris Redly. They had arranged to meet in the evening in a café in Limassol, to talk about informing other Turkish Cypriots of the possibility, through the United Nations, of seeing their families living in the north. Chris Redly was supposed to come with other people and pick him up at his flat. He learned later that they had come but, as they did not find anybody at home, they had slipped a note under the door. When his friend Öle Röinaas came to collect his furniture, he found the note.

(f) Taşer Kışmir

225. The applicant was born on 21 January 1957 and, at the time of his hearing, he was living in the Republic of Cyprus.

226. He went to the Republic of Cyprus for the first time in 1988 and stayed there until 1989. In April 1991 he crossed again to the territory controlled by the Republic of Cyprus. Upon his arrival in Limassol, he went

to the police station and filled in the relevant documents. He worked in Limassol as a construction worker for several months. He then moved to Paphos and, at all material times, was working there as a construction worker.

227. The applicant was under strict police surveillance during his stay in the territory controlled by the Republic of Cyprus.

228. On 22 April 1994, at about 8.30 a.m., three members of the Cypriot police, probably from the CIS, came to the applicant's place of work in the village of Florakas and ordered him to come with them because their boss wanted to see him. The applicant asked to see his lawyer, but was told that there was no need for a lawyer. He was forced into a car and driven to Nicosia, to the CIS police station. There, the applicant was taken to a room where İlker Tufansoy, another Turkish Cypriot, was being kept. The applicant was handcuffed to İlker Tufansoy, blindfolded, slapped and hit on the face and on the back of his head several times.

229. The applicant and İlker Tufansoy, their eyes still blindfolded, were driven to another police station, probably in the vicinity of the Troodos area. The journey took between forty-five minutes and one hour and a half. There, the handcuffs were removed and the applicant was separated from İlker Tufansoy. The applicant was taken to another room and interrogated by policemen, one of whom he recognised as being someone called Christakis. He was asked where he was during the 1974 Turkish intervention. In the course of the interrogation, the applicant was insulted and beaten with clubs, one of which broke into pieces due to the severity of the blows. Then the applicant was forced to sign a statement to the effect that he had decided to go to the northern part of Cyprus of his own free will. He was then taken back to a cell. Then they took İlker Tufansoy. When İlker returned to the cell, he said he had been beaten and showed the applicant the marks on his back.

230. On the same day, around 8 to 8.30 p.m., the applicant and İlker Tufansoy were taken from the cell and were driven, blindfolded, to a dry riverbed near the buffer-zone controlled by the United Nations. The police removed their blindfolds and told them to go to the northern part of Cyprus along a path following the riverbed. The police warned them not to come back or they would kill them. The applicant and İlker Tufansoy walked north until they reached the village of Gayretköy, where soldiers apprehended them.

231. After a check the soldiers handed them over to the police, who took them to Pendaria Hospital (northern Cyprus). They spent the night in Morphou. The next day they were taken to Nicosia (northern part), where they were re-examined at the State Hospital. On 23 April 1994 they were taken to the Ledra Palace and examined by doctors from the United Nations. The applicant remained in detention until 27 April 1994. He was later

convicted by a court and sentenced to four months' imprisonment for having unlawfully entered a military area.

232. On 23 January 1996, being depressed and alone following the death of his mother, the applicant returned to the south. There, the Cypriot police took four statements from him, but they were not truthful. They were dictated by the police.

(g) Rebiye Tufansoy

233. Rebiye Tufansoy was born in 1938 and, at the time of her hearing, was living in Güzelyurt (Morphou). She and her family had arrived in the north after the events in 1974.

234. In April 1994 the applicant's son, İlker Tufansoy, lived in the south. He had gone there to find work and earn his living. At that time, she used to have contacts with her son. He would call her but, in general, he did not like to talk over the telephone, saying that his line was tapped. During this period, he never went to see his family in the northern part. The applicant once visited her son in the south, in Paphos. He told her about his life in Cyprus. He said that the police put pressure on him, that they used to raid his house during the night and frighten him. For this reason, he feared for his life.

235. On 23 April 1994 someone from Güzelyurt police station called at the applicant's house and told her that her son had been sent to the Turkish side that night, that he was at the police station and that his family could come and see him and bring him something to eat. The same day she and her husband, İbrahim Tufansoy, went to see İlker at the police station in Morphou, where he was detained. İlker had marks of beatings on his back and on his face. The applicant saw this herself. She also went to see him while he was at Nicosia Hospital (in the northern part).

Later, İlker came to his family's house and stayed with them for about one month. He told them that the Cypriot police had tortured him and sent him by force to the northern part. He said he had pains in the back and shoulders.

236. During İlker's stay with his family, his Greek-Cypriot girlfriend, who lived in the south, used to call him and ask him to come back. She said that her uncle was a lawyer and that he could bring proceedings so that İlker could come back. As a result, İlker went back to the south. When he arrived, he called his family and told them he would go to Famagusta to see his elder brother.

237. The night İlker died, around 6 p.m., he telephoned his family to tell them that he would not be living at the house in Paphos where the police had told him to stay, but instead at the house of his friend Ertuğrul Akburç, in Stavrokonno. He told them that the same evening he and Ertuğrul were going to clean that house. During the conversation, he also mentioned he

had some money in the bank and a job as a construction worker, and asked them to get permission to come and join him in the south.

238. The next morning, the applicant and her husband were informed by the Güzelyurt police station that İlker had been killed.

(h) Salih Ceyhan

239. The witness was born on 16 February 1962. At the time of his testimony, he was an assistant police inspector at the Nicosia (northern part) Police Department.

240. In April-May 1994 he was serving at the political branch attached to Nicosia (northern part) Police Department. At that time, he took statements from nine people complaining about their forceful expulsion from Cyprus. These persons were: İlker Tufansoy, İlker Denizci, Aziz Merthoca, Hasan Merthoca, Yılmaz Mavideniz, Erbay Kaptanoğlu, Taşer Kişmir, Süleyman Seyer and Murat Doksandokuz.

241. When the witness took their statements, he had already heard about the events from the police in Güzelyurt (Morphou). Before taking the statements, he visited the persons in question at the hospital in Nicosia (northern part) in order to get some preliminary information. At the hospital, there were also press and television journalists who took photos of them. After that, as they were discharged from the hospital, they were brought to the police station for their statements to be taken. He took these statements in order to investigate the allegations. Nobody forced them to make these statements. They did so voluntarily.

(i) Kemal Demir

242. Kemal Demir was born on 16 February 1946. At the time of his testimony, he was living in Nicosia (northern Cyprus).

243. In April-June 1994 he was governor of the Central Prison in Nicosia (northern Cyprus). On 22 April 1994 Aziz Merthoca was brought to the Central Prison as a remand prisoner. He was kept there as such until 7 June 1994, when he was sentenced to three years' imprisonment. He was released on 25 August 1995, following a remission for good conduct and an amnesty.

244. When Aziz Merthoca arrived in prison he looked miserable and was going through a nervous breakdown. In his capacity as governor, Kemal Demir used to assist detainees concerning complaints they wanted to make or wishes they had. Aziz Merthoca told him that he had been forcibly separated from his spouse and children in the Greek part, that the Cypriot police had subjected him to inhuman treatment and had sent him to the Turkish part, and that he was complaining about that. His written requests in this respect were forwarded by the authorities of the Central Prison to the "TRNC Ministry of the Interior".

245. İlker Denizci had also complained of having been subjected to ill-treatment by the Cypriot police in similar circumstances. In this connection, he had wanted to see a lawyer, and Mr Necatigil had come to see him. One of the meetings with Mr Necatigil took place in the governor's office. Subsequently Aziz Merthoca had also wanted to see Mr Necatigil in connection with his requests to have his spouse and children come and see him in prison and eventually settle in the north. Consequently he attended the next meeting between İlker Denizci and Mr Necatigil. The witness was also present at the request of the two detainees. Following this meeting, Aziz Merthoca and İlker Denizci decided to file an application with the European Commission of Human Rights. For this purpose, they signed powers of attorney in favour of Mr Necatigil. As the lawyer only had one form with him, and as Aziz Merthoca feared that he might endanger the situation of his family in the south, it was İlker Denizci who signed it. The lawyer came back later with another power of attorney and Aziz Merthoca signed it.

246. During his stay in prison, Aziz Merthoca received a number of visits from his wife and children. They came to see him on 5 December 1994 and 2 January 1995. However, he did not receive any answer to his request concerning the settlement of his family.

(j) Murat Doksandokuz

247. Murat Doksandokuz was born in 1966. At the time of his testimony, he was living in the south. (The witness, who was illiterate, initially said that he lived in the north, but it became clear during his examination that he meant the south.)

248. In April-May 1994 he was living in Limassol, in the south. During that time, he did not have any contacts with the Cypriot police. He could go freely wherever he wanted. If he had problems, he would go to the police, who would help him and treat him very well. He knew almost all the policemen in Limassol.

249. Probably on 4 April 1994, he went to the Turkish side to see his mother who was ill. He had already applied for permission to see his mother, but the Turkish authorities had never allowed it. His mother was not allowed to come to his wedding or to see his child, despite a number of applications he had made to the Cypriot police. So, probably on 4 April 1994, around 9.15 p.m., he took a taxi with Erbay Kaptanoğlu to Pyla. They arrived in Pyla at 2 a.m., paid the taxi, had a coffee and then secretly crossed to northern Cyprus. When they arrived in the north, they were apprehended and questioned by Turkish soldiers. They were also beaten with the butt of a rifle on their hips and with a truncheon on the soles of their feet. Half an hour later, they were handed over to the "TRNC" police who took them to a police station in Famagusta. At the police station, the witness was beaten by three policemen. They slapped him and hit him on

the back. They took his shoes off and beat the soles of his feet with a truncheon. Erbay Kaptanoğlu was in a different room, but he could hear him scream and say that he would not come back. They spent one night at that police station. In the morning, they were taken to Nicosia (northern Cyprus) police station, where they were beaten, but only a little. The witness was detained in Nicosia for fifteen days, as were Erbay Kaptanoğlu and other Turkish Cypriots such as Aziz Merthoca, Yılmaz Mavideniz and Hasan Davulcular. He had known all these people since he was a child. They had all come to the south to find jobs, as there was no work in the north. After his release, he went to the hospital and was treated as an out-patient. He had to sign his name with the police every day. At their request, he also went to the United Nations Ledra Palace headquarters. He was interviewed, but could not remember what he had told them. He was also examined by a doctor.

250. The police gave him money for his subsistence and forced him to sign a paper. One day, the police put him and others into a minibus and took them to the airport. They were about a hundred. Erbay Kaptanoğlu was there too. Someone important came from Turkey and Erbay Kaptanoğlu gave him an envelope. Then they were taken back to the police station. He signed his name and went home. The same night, he fled back to the south. He went to the police and made a statement before two CIS officers about what had happened to him. The police took him to hospital, where he stayed for two days.

(k) Öle Røinaas

251. Öle Røinaas was born on 20 July 1945. He is a Norwegian national and a dentist. In May 1988 he met Erbay Kaptanoğlu in Norway, where the latter had been granted a residence permit for humanitarian reasons. After seven years of residence, he could have obtained Norwegian citizenship. However, after five years, in 1992, the witness and Erbay decided that Erbay would go back to Cyprus. When Erbay returned there in May 1992, the witness bought a flat in Limassol as a home for him. Between May 1992 and May 1994, the witness spent his holidays in Limassol, when he spent all his time with Erbay. For this reason, the witness had a good knowledge of his friend's living conditions.

252. Upon his return to Cyprus, Erbay found a job. He was a good worker and wanted to become integrated in the south. He also attended classes to learn Greek. He was under strict surveillance. Erbay told the witness that the police followed him and other Turkish Cypriots. The witness saw that Erbay was being followed. It looked as if the police did not mind being seen. The surveillance was so obvious that even the witness's 78-year-old mother noticed it and asked: "Why are this car and man following us all the way to Agia Napa." The telephone in the flat was tapped. Very often, a car with two plain-clothes policemen from the CIS

was parked in front of the flat. When the witness and his friend Erbay went out of Limassol, they were nearly always followed by CIS officers. In town, they would sometimes be followed by plain-clothes policemen, who would sit down at the table next to them in a restaurant to try to hear what they were talking about. On his arrival at Larnaka Airport for the Christmas holiday period in 1993, the witness was unexpectedly arrested and kept in custody for one hour. He was questioned about his background, his reasons for coming to Cyprus and what he was doing there.

Erbay seemed to be more and more nervous about all this, especially in the last six to eight months before the incident.

253. Three or four days after he was expelled to the north of Cyprus in 1994, Erbay rang the witness, told him what had happened and asked him to come to Cyprus and help him save all his movable property, his car, his motorcycle, etc. The witness managed to get a charter flight and came to Cyprus. He arrived at night at Erbay's flat and found a note from a United Nations representative which said: "We came to your flat to pick you up but you were not at home. We are going to contact you again." The note was signed "Sarah and Chris" and was dated the evening Erbay had been taken away. The witness went into the flat and found it as it had been left: the laundry was there, the flowers were dead, the refrigerator smelt. With the help of some friends and of someone called Sarah from the United Nations, he managed to pack everything and send it to the north, including the car. He also managed to sell the flat. Later, when he was back in Norway, a Mrs Rena Pericleous from the Cypriot government rang him at his clinic and said that the government was very embarrassed about the way he had taken the car to the north.

(I) Meriç Taydemir

254. The witness was born on 1 October 1956. He became governor of the Nicosia Central Prison (northern Cyprus) on 7 November 1995.

255. On 28 October 1997 Aziz Merthoca had been convicted because, while he was doing his military service, he had crossed over from the "TRNC" to the southern part of Cyprus. He was sentenced to nine months' imprisonment and served his sentence at the Nicosia Central Prison (northern Cyprus). He was released on 6 April 1998, due to his good conduct and the period he had spent in detention on remand.

256. On 28 October 1997, while he was in prison, he applied to receive visits from his spouse and children. Following a permission issued by the "TRNC Ministry of the Interior", he received a visit from his wife Panayiota Papachristophorou on 31 December 1997, from 12.15 to 12.45 p.m. On 14 January 1998 he requested that his spouse and children be allowed to come and settle in the northern part of the island. However, this request received no answer from the Cypriot authorities.

On various occasions when Aziz Merthoca was ill, he was given pills to treat his gastritis, to cure a cold or to alleviate the psychological suffering caused by detention.

(m) Panayiota Papachristophorou

257. Panayiota Papachristophorou was born on 20 December 1962. At the time of her testimony, she was living in Limassol.

258. She had been living with Aziz Merthoca for fourteen years and had three children by him.

259. When Aziz Merthoca was informed that the European Commission of Human Rights had summoned him to testify, he said he did not want to go to the post office to get the summons. She did not know why.

260. One night in April 1994, Aziz went to the occupied area by taxi, which she paid for. Then he came back with others, including Yılmaz Mavideniz and his wife. They were supposed to leave the next day. There were a lot of them, so they slept on mattresses and blankets in the living room and in the bedroom. Because she did not want these people to remain in her house, they left the next morning around 7 a.m. for the occupied part. They called a taxi, since she needed her car to go to work. She locked the door of the house and gave them money for the taxi, but took off without having seen them leave.

She was then called by the United Nations to go and see Aziz in the northern part, which she did. He complained that things were not going well, that he wanted to leave, that he had been ill-treated, etc.

261. The statements she had made on 5 August 1995 and 3 January 1998 were correct. She had made the first statement when Aziz had complained, because she wanted the government to look into the matter. She had made the second statement after she had seen him in detention, in very bad shape, and wanted him to be examined by a doctor.

262. Her husband Aziz did not work all the time. The CIS police would help him out every time he got into brawls or got drunk or had a car accident. Nobody ever followed him. He did not need permission to travel on the island.

(n) Dr Marios Matsakis

263. The witness was born on 2 August 1954. He is a forensic pathologist and a private forensic expert. He was also elected a member of the parliament of the Republic of Cyprus. On a number of occasions, he took part in campaigns to enlighten tourists and to enable them to make their own decision as to whether to cross to the northern part of the island.

264. In 1994 he was the State pathologist and medical examiner for the Republic of Cyprus. He ceased being State pathologist on 15 July 1995.

265. In July 1994 he drew up a report entitled “Allegations of ill-treatment and return by force of Turkish Cypriots from controlled areas to

the occupied areas of Cyprus”. He did it at the request of the Ministry of Justice. It was written in collaboration with Mr Argyrou, a police officer in Nicosia. Drawing up a report jointly with a police officer was indeed quite unusual, and even irregular. The witness made the medical comments and the police officer the other observations, and at the end the report was signed by both of them. He was not aware that some individuals had lodged applications with the European Commission of Human Rights.

For the preparation of the report, he was provided with photocopies of photographs and a report by the Australian Federal Police operating on behalf of the United Nations in Cyprus. He was also shown a short video. He was asked to review the material and give his professional opinion as to the allegations made.

266. Generally speaking, it was common in his profession to be asked to study different materials and give an opinion on them. In many cases, it was possible to tell, by looking at photographs, whether a scar was more or less than twenty days old.

When drafting the report in July 1994, the witness asked the authorities whether it would be possible for him to see the individuals mentioned in the report, but he was told that it was not possible. He was given oral information about İlker Denizci having been diagnosed as suffering from diabetes in 1974 and he therefore put this information in his report of July 1994. He might have obtained that information from the police officer, but he did not think it necessary to mention the source of the information in the report.

Concerning his remarks about Yılmaz Mavideniz, the witness was aware that it was not very polite to make comments and judgments about people on the basis of their appearance alone, but such comments could be important in his job. Some tattoos could be related to a sub-culture, drug abuse, membership of a secret cult, etc. However, he had exaggerated and expressed a subjective opinion when he had written in his report that the tattoos on Yılmaz Mavideniz’s body showed low intellectual abilities. He was definitely of the opinion that a person with low intellectual abilities would be more easily manipulated and pressured into lying.

As to his findings in the report of July 1994, the witness confirmed that the appearance of İlker Tufansoy’s injuries was consistent with their having been caused a few hours prior to photographing/examination by the United Nations. On the other hand, those injuries could not have been caused by barbed wire.

The report dated November 1995 and written in English is not a strict English translation of the July 1994 report, but a free translation produced by the witness at the request of the Attorney-General.

The witness had noticed some flaws in the United Nations medical reports, due probably to the fact that the doctors who had examined the

individuals in question were not forensic experts but army doctors. However, these flaws were not very serious.

267. The witness recalled that one of the individuals mentioned in that report, İlker Tufansoy, was later killed and that he had performed the post-mortem examination on him. The witness was the only State pathologist at that time.

(o) Andreas Angelides

268. The witness was born on 1 September 1942. At the time of his testimony, he was Commissioner of Police.

269. At the time of the events in issue, in April-June 1994, he was a public prosecutor in the Legal Department of the Attorney-General's Office, where he had served since 1974.

270. He was put in charge of the investigation into İlker Tufansoy's death when the file came to the Attorney-General's Office, a year after the murder had been committed. His task was to discuss the case with the investigator, that is, the police, to see whether there were any issues that needed further clarification, and to give the appropriate instructions. As far as he could remember, there was no omission on the part of the police. But as the murderer had not been found, the case remained open. The fact that a coroner's inquest had been held did not mean that the case was closed, since the murderer had not been found. The coroner was a district judge.

The witness did not remember having heard anything about allegations of ill-treatment and expulsion of Turkish Cypriots by the Cypriot police.

(p) Andreas Christophides

271. The witness was born on 3 August 1941. At the time of his testimony, he was Deputy Chief of the Cyprus police. In April 1994 he was a chief superintendent and was in charge of the Research and Development Department.

272. In April 1994 there were about 300 to 400 Turkish Cypriots living in the free area. They were treated the same way as all other citizens of the Republic of Cyprus. He had never received any complaint from Turkish Cypriots concerning harassment by the police. Turkish Cypriots could travel freely in the government-controlled area, like any other Cypriot citizen. They could also freely return to the north.

273. The CIS was staffed by members of the police force. There was, therefore, a very close cooperation between the members of the CIS and the other members of the police force. The CIS was empowered to provide every facility to Turkish Cypriots, at any rate in cases where they asked for help. The CIS had a special department of Turkish speakers who looked into matters concerning Turkish Cypriots, bearing in mind that many Turkish Cypriots did not speak Greek. In April 1994 the CIS offices in Nicosia were housed in the same district and place as most of the other public-service

departments. This place was therefore very much frequented. The CIS had branch offices in the provincial capitals.

Although there were some allegations that the telephones of Turkish Cypriots were tapped, an investigation into these allegations proved them to be unfounded. In any event, telephone tapping was not allowed by the laws of the Republic of Cyprus. There was no surveillance whatsoever of the Turkish Cypriots, and they were never ill-treated.

274. The CIS provided various facilities for Turkish Cypriots: they found jobs and accommodation for them, provided them with basic equipment, tried to solve their financial difficulties and to satisfy any other reasonable requests. Upon their entry into the free area, a sort of consultation took place between them and the Cypriot police in order to identify any difficulties they might encounter in the government-controlled area. But no statement was taken from them, unless they wanted to make one.

The CIS acted as a sort of a liaison agency between the Turkish Cypriots and various government departments. In any event, Turkish Cypriots entering the free area went to the police on their own initiative. The witness also explained that Pyla was a mixed village, where Turkish Cypriots and Greek Cypriots lived together. This village was also known for the smuggling into Cyprus of various goods from the northern part. If Turkish Cypriots came to Pyla, the police had no means of knowing anything about the visit.

As to the murder of Theophilos Georgiades, the witness recalled that there was a strong conviction among the public and the media that he had been murdered by agents of MIT, the Turkish intelligence service.

275. The witness had heard of the allegations that in April 1994 a number of Turkish Cypriots had been arrested and expelled to the north. After the Attorney-General's Office had been informed of the matter, the witness was asked to look into whether any Turkish Cypriots had been arrested in April 1994. For this purpose, he was only provided with a list of the seven applicants who had lodged an application with the Commission. At that time, the witness was Deputy Commissioner of Police responsible for administrative matters. He contacted all the provincial police chiefs and requested them to conduct a personal search of all the records kept in all police stations and to report whether, among the names of the people arrested during that period, the names of the applicants could be found. A few days later, they all replied that none of the applicants' names appeared in the police records. Nor were there any entries for arrests of that nature. They also supplied him with photocopies of the police station diaries for the relevant month, which he studied.

He did not prepare any written report on the results of this investigation.

(q) Kyriakos Nikolau and Lefki Dimitriou

276. Kyriakos Nikolau is a deaf-mute who uses sign language. It was his daughter Lefki Dimitriou, who was born on 12 March 1959, who translated his testimony before the Commission delegates.

277. Kyriakos Nikolau was an eyewitness to the killing of İlker Tufansoy and his friend Ertuğrul Akburç (Antonis Kypriou in Greek). While the witness was walking in the village of Stavrokonno, he noticed eight people hiding here and there. They had parked a van. Some were inside the van, others spread around the houses. They were dressed in black and wearing hoods covering their entire faces. They were carrying guns. Then the shooting started. The witness was very frightened and hid. The shooting was continuous. They first shot at Ertuğrul Akburç at close range until he fell. Then they came closer to him and finished him off, after which they went after İlker Tufansoy. İlker had started to run away, but they followed and killed him.

278. The witness did not see how the killers got away because he himself ran away as soon as the shooting stopped. He got home and told his daughter Lefki Dimitriou that they had killed Antonis and İlker. The witness and his daughter called the police. Then they went to the place of the incident and saw that the two were lying dead. The police and Dr Matsakis arrived later. The two witnesses also made statements to the police about the event.

279. Lefki Dimitriou knew Antonis Kypriou very well. She also knew that on the evening of the killing Antonis and his friend İlker had cleaned the house in which İlker wanted to stay and were about to return from there. She did not know who else knew that İlker was in Stavrokonno. She knew that in the morning they had called the administration and asked it to give İlker a house. But the administration did not do so. So İlker presumably told the CIS – the police – that he would come to live in Stavrokonno. She also knew that Antonis feared for his life because a year earlier his father had also been killed. However, İlker did not seem to fear for his life.

(r) Dimitra Irodotou

280. Dimitra Irodotou was born on 15 October 1970. At the time of her testimony, she was living in Limassol.

281. During the period from April to June 1994, the witness was living in Paphos. She was a friend of İlker Tufansoy. She had met him three or four months before the events. They became very good friends. He helped her a lot, financially, with her children and her family; they were like brother and sister. They lived together the last week before he was killed. But before that, she used to see him every day. On one occasion, he had disappeared for a few days. She had heard that he had been arrested by the Cypriot police – the CIS – at his workplace, then taken to Nicosia, blindfolded, and thrown into the river with another friend. She did not

witness his arrest herself but, half an hour after the event, a friend came to her house and told her that the police had taken İlker and Taşer Kişmir away from their workplace. Some days later, as she was watching Turkish television, she saw İlker. The commentator was saying that he and his friend Taşer Kişmir had been beaten by the Cypriot police. While he was in northern Cyprus, she used to call İlker almost every day at his mother's number. When he came back, he told her that he had not seen precisely who had beaten him because he was blindfolded, but added that the government did not want him here, which was why they had sent him to the occupied area. Upon his return, they went together to the police to tell them that they wanted to live together, so that the police would not send İlker back to the north. The policeman spoke very nicely to him. İlker then made a statement to the police, but she did not know what it said, because she was waiting outside the room.

282. He did not seem to fear for his life until three days before he was killed, when he told her that, if anything happened to him, she should be strong for the children.

283. She knew Antonis's family very well and was not happy that İlker was friendly with him. She had heard that Antonis's father had been mixed up in some illegal deals.

284. On 2 June 1994, when İlker and Antonis were killed, the authorities knew they were in the village, because in the afternoon they had spoken with the village *muhtar* who had told them they could have the house. At the time of the killing, she was at Lefki Dimitriou's house.

(s) Andreas Spatalos

285. The witness was born on 28 March 1944. At the time of his testimony, he was head of a CIS department. In 1994 he was deputy head of the same department, which was responsible for collecting information for the security of Cyprus. The witness produced copies of the statements mentioned in paragraphs 36, 61, 78, 86, 113 and 136 above.

286. When a Turkish Cypriot crossed over to the free area, his first move was to go to the police, as usually he did not speak Greek. There, he would be referred to the witness's department, which was the only one with a Turkish interpreter section. Once it was established that the individual was a Cypriot citizen, they would find him accommodation and a job, and cater for his other needs. This was done because those people were in a completely foreign environment. The witness's department also liaised with other government departments so that Turkish Cypriots could be given financial assistance until they could earn their living.

The witness's department never followed or harassed Turkish Cypriots. The CIS never kept personal files on individuals. They were free to go anywhere on the island. If they wanted to cross over legally to the occupied area, they went to the CIS offices on their own initiative to say so. They

were asked to sign a formal statement in Turkish, a Greek translation being provided at the bottom of the document. That statement said that they were leaving on their own initiative, without anyone putting pressure on them. That was to avoid their being declared missing persons. Such a statement would be kept by the local police for some time, then the original would be sent to headquarters and destroyed a few years later if it was no longer useful. However, in general, Turkish Cypriots preferred to cross to the occupied area secretly, because the authorities from that area were on the lookout for them and would arrest them if they caught them.

287. After the murder of Theophilos Georgiades, a patriot very much loved by Greek Cypriots, there were some rumours in the press that the Turkish MIT was behind the murder. Therefore, a certain amount of agitation and anger arose among Greek Cypriots. The witness's department therefore approached the Turkish Cypriots and told them to take steps to protect themselves and not to get involved in discussions with Greek-Cypriot extremists. The patrol cars of his department as well as those of the police were told to watch the houses of the Turkish Cypriots from time to time in case someone would try to harm them. There was no reason to expel these people, as they cooperated very well with his department.

288. After the murder of Theophilos Georgiades, some Turkish Cypriots came to the CIS and said that they were leaving for the occupied area. They signed a statement to that effect. The witness remembered six such Turkish Cypriots. They had filled in statements for the CIS branch offices of the towns where they lived. İlker Tufansoy and Taşer Kişmir had signed their statements in Paphos, the others had done so in Limassol. However, it was impossible to determine the identity of the police officer who had filled in these forms by hand, as the officer was not obliged to mention his name. Then they had crossed secretly, probably using a frequently used area, Angolemi, where there was a riverbed which afforded them some cover.

289. As to the documents entitled "Criminal records as at September 1994" and the references they contained, the witness explained that the CIS collected information relevant to State security and, in particular, about the activities of the Turkish secret service. Some information concerning the private lives of the applicants could have come from their wives or from the police, who were asked to investigate the complaints of these Turkish Cypriots about their forcible expulsion. Other information concerning the movements of these people in Pyla was recorded because Pyla was considered a contact point for Turkish secret service agents with Greek or "TRNC" agents.

290. The witness's department learned about the allegations of forcible expulsion and ill-treatment of a number of Turkish Cypriots in April 1994 from the Turkish-Cypriot newspapers, as part of their job was to read and translate these newspapers daily. Later, they were informed of these

allegations by the Cypriot authorities. His department was not in charge of the investigation into these allegations, but they did gather information and conveyed it to the police. Some of his staff, like Rodis and Kostis, for instance, questioned the friends and relatives of the Turkish Cypriots concerned, to determine whether these people had really left. For example, from Panayiota Papachristophorou they learned that, the night before Aziz Merthoca left, he had brought home some Gypsies, and that she did not want to have them in her house, which was why they left.

However, no statement was taken, since that was the job of the police.

291. Concerning the investigation into the above-mentioned allegations, statements were taken from police officers. Everyone in the witness's department who had contacts with Turkish Cypriots was questioned. The witness himself interrogated the officers in Limassol; the others were questioned by the director. The witness himself was not questioned. But nothing came of this investigation, as it appeared from the six statements voluntarily given that the Turkish Cypriots had left of their own free will.

292. The witness also stated that the CIS offices did not keep diaries, because of the risk of information leaks.

(t) Christakis

293. The witness was born on 25 February 1943. At the time of his testimony, he was a member of the CIS.

294. In April 1994 he was working for the CIS department responsible for monitoring the Turkish-Cypriot press and translations. His head of department was Andreas Spatalos. There were about seven or eight people working in the department. Because the witness spoke Turkish, he had frequent contacts with Turkish Cypriots as he helped the police dealing with Turkish Cypriots arriving from northern Cyprus. He assisted the police in various matters arising out of the arrival of these people: establishing their identity, as most of them did not carry an identity card, taking them to all State departments (the Welfare Office, the Red Cross, etc.), acting as interpreters if they went to buy clothes, shoes or food, helping them to find accommodation, a job, etc. This was why all these people knew him. He had regular contact with them. The witness gave them his office telephone number so that they could call him if they needed help. However, he did not tell them his real name.

295. The CIS did not arrest people, which was the task of the police. Therefore, there was no custody record at the CIS headquarters.

296. It was also the witness's job to read Turkish-Cypriot newspapers, so he read about the allegations of expulsion and ill-treatment of a number of Turkish Cypriots by the Cypriot police. He was never asked to take part in any investigation into these allegations, be it as a witness or an investigator, nor was he aware of any investigation carried out into the matter. The witness himself had had no contact with any of the applicants

on the specific days he was accused of having taken them to the CIS headquarters in Nicosia.

(u) Asimenos

297. The witness was born on 14 November 1944.

298. At the time of the events, he was working with the CIS, at the Limassol Police Directorate. His task was to receive Turkish Cypriots and help them in various ways: he would take them to the Welfare Office to get them shoes, to the Red Cross to get clothes, he helped them to obtain their identity cards, etc. Therefore, he had regular contacts with these people.

299. Turkish Cypriots were free to go wherever they wanted. However, if they wanted to go to northern Cyprus, they would sometimes tell the CIS, which could ask them to fill in forms in case their families looked for them. The forms were completed by Kostakis, who was the only member of the Limassol office who knew Turkish.

300. The witness knew some of the applicants: Erbay Kaptanoğlu, whom he helped to obtain a job, and Yılmaz Mavideniz and Aziz Merthoca. The witness had never heard any allegations that in April 1994 a number of Turkish Cypriots had been taken by the Cypriot police, ill-treated and forced to go to the northern part of the island. The witness had never been questioned in relation to these allegations. He did not go to Yılmaz Mavideniz's house on 18 April 1994. The CIS did not have any Land Rovers in 1994. They did not have kalashnikovs either.

(v) Rodis

301. The witness was born on 26 May 1943.

302. In April-June 1994 he was working for the CIS in Limassol. There were about twenty to twenty-five people working for the CIS in Limassol. His task, among others, was to meet Turkish Cypriots and help them with various matters: he would take them to the Welfare Office to get shoes, to the Red Cross to get clothes, he helped them to obtain their identity cards, etc. Therefore, he had regular contacts with them. He did not speak Turkish, but many Turkish Cypriots could speak Greek.

303. Turkish Cypriots were free to go wherever they wanted. The witness did not monitor their movements or keep them under surveillance, but the CIS would patrol sometimes, when they thought that Turkish Cypriots needed protection from Greek Cypriots, as happened after the murder of Theofilos Georgiades. The witness had very good relations with the Turkish Cypriots : he would go and have coffee with some of them, or visit them on a friendly basis. Sometimes, when Turkish Cypriots wanted to go to the northern part of the island, they would inform the CIS, which could ask them to fill in forms in case their families looked for them. These forms were kept in duplicate. The original was sent to Nicosia and a copy

was kept in a general file in the department. But most of those who left did not fill in forms.

304. The witness knew some of the applicants: Yılmaz Mavideniz, Aziz and Hasan Merthoca, Murat Doksandokuz and Süleyman Seyer. He had never heard any allegations that in April 1994 a number of Turkish Cypriots were taken into custody by the Cypriot police, ill-treated and forced to go to the northern part of the island. The witness had never been questioned in relation to these allegations. He did not go to Hasan Methoca's house after the murder of Theophilos Georghiades and never questioned him in relation to that murder. He did not go to the homes of Yılmaz Mavideniz and Aziz Merthoca on 18 April 1994 and did not arrest fifteen people that day. The CIS did not question people, so it was impossible for him to arrest or collect anybody at their homes and take them to the station.

(w) Kostis

305. The witness was born on 20 February 1960.

306. In April-June 1994 he was working at the Limassol branch of the CIS. His task was to collect information. Among other things, he worked on matters relating to Turkish Cypriots coming from the northern part of the island: finding them accommodation, getting them shoes, finding them a job, etc. As he knew Turkish, he had more contact with them than other officers. At the time, there was another police officer who knew Turkish; he was known as Asimenos.

307. Turkish Cypriots were free to go wherever they wanted : they were neither controlled nor monitored. CIS officers had friendly contacts with Turkish Cypriots. They would have such contacts at the station or go to their homes if invited. Sometimes, the Turkish Cypriots would invite them for coffee.

308. When Turkish Cypriots wanted to go to the northern part of the island, they would inform the CIS, which could ask them to fill in forms so that their families would not look for them as missing persons.

309. At the end of April 1994, the witness heard allegations that in April 1994 a number of Turkish Cypriots had been detained by the Cypriot police, ill-treated and forced to go to the northern part of the island. The branch in Limassol had been informed about that. He discussed these allegations with his colleagues in the branch, but all thought that they were lies. Some time later, the government set up an inquiry, and the police officer in charge of the inquiry, Chief Inspector Argyrou, questioned the head of the branch about the matter. The witness provided oral information to his superior, and the head of the branch conveyed that information to Mr Argyrou. The witness never saw the report produced by Chief Inspector Argyrou and Dr Matsakis.

310. After the murder of Theophilos Georghiades, the CIS took some additional measures in order to protect the Turkish Cypriots from possible

reprisals. The CIS officers visited them at their homes and told them to watch out, not to behave in a provocative way and to inform the CIS if they saw anything suspicious. They visited nearly all Turkish Cypriots, at their homes, in cafés, etc. The witness did not visit Aziz Merthoca on 18 April 1994. Only later, after he heard about the allegations, did he go to Aziz Merthoca's house, but his wife told him that Aziz and other Turkish Cypriots had left for the Turkish part of the island after an argument.

He did not fill in the forms in which the applicants declared that they had decided to go to the Turkish side of their own free will, and did not know who could have done it.

311. The Commission also called the following persons as witnesses, but they did not appear before the delegates:

- Aziz Merthoca, applicant;
- Doğan Davulcular, applicant (Mr Necatigil explained at the hearing that the applicant was in London with his sick child, who was undergoing medical treatment there; on 26 January 2001 the applicant submitted documents substantiating that he had been unable to appear at the hearing in Nicosia and confirmed his intention to pursue the application);
- Süleyman Seyer, allegedly expelled with the applicants;
- Theodoro and Beniko, agents of the CIS (the Government indicated that no persons bearing such first names were members of the CIS).

II. RELEVANT DOMESTIC LAW

312. Article 113 § 2 of the Constitution of Cyprus provides:

“The Attorney-General of the Republic shall have power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Such power may be exercised by him in person or by officers subordinate to him acting under and in accordance with his instructions.”

313. Article 172 of the Constitution provides:

“The Republic shall be liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic. A law shall regulate such liability.”

314. Article 6 of the 1991 to 1995 Laws on the Ombudsman provides:

“7. If at the end of an inquiry ..., the Ombudsman forms the conclusion that prejudice or injustice has been caused to the person concerned, he includes in his report a recommendation to the competent authority for the reparation of the prejudice or the redressing of the injustice ...”

“9. Any other provisions in this law notwithstanding, if at the end of the inquiry ... the Ombudsman reaches the conclusion that the action complained of violated the human rights of the person concerned and could constitute a criminal offence, he transmits a copy of [his] report ... to the Council of Ministers, the House of Parliament and the Attorney-General of the Republic.”

THE LAW

I. THE COURT'S ASSESSMENT OF THE FACTS

A. Introduction

315. The Court reiterates its settled case-law that under the Convention system prior to 1 November 1998 the establishment and verification of facts was primarily a matter for the Commission (former Articles 28 § 1 and 31 of the Convention). In the instant case, however, although a delegation of the Commission heard evidence in Cyprus (see paragraph 10 above), the Commission did not adopt a report under former Article 31 by 1 November 1999 (see paragraph 7 above). The Court is therefore required, in accordance with Article 5 § 3 *in fine* of Protocol No. 11 and Rule 99 § 5 of the Rules of Court, to assess the evidence and establish the facts in the light of all the material before it. The following general considerations are relevant in this context.

(i) The Court has based its findings on the evidence given orally before the Commission delegates or submitted in writing in the course of the proceedings; in the assessment of whether or not the applicants' allegations are well-founded, the standard of proof is that of "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact; in addition, the conduct of the parties when evidence is being obtained may be taken into account (see, *mutatis mutandis*, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

(ii) In relation to the oral evidence, the Court is aware of the difficulties attached to assessing evidence obtained orally through interpreters: it has therefore paid careful attention to the meaning and significance which should be attributed to the statements made by witnesses appearing before the Commission delegates. In relation to both the written and the oral evidence, the Court is aware that the cultural context in which some of the applicants and witnesses live has rendered inevitable a certain imprecision with regard to dates and other details (in particular, numerical matters), and it does not consider that this by itself affects the credibility of the testimonies.

(iii) In a case where there are contradictory and conflicting factual accounts of events, the Court is acutely aware of its own shortcomings as a first-instance tribunal of fact. The problems of language are adverted to above; there is also an inevitable lack of detailed and direct familiarity with the conditions pertaining in the region. In addition, neither the Commission nor the Court had powers of compulsion as regards the attendance of witnesses. In the present case, while twenty-eight witnesses were

summoned to appear, five of them failed to give evidence before the Commission delegates. The Court has therefore been faced with the difficult task of determining events in the absence of potentially significant testimony.

(iv) The Court has not been provided with the case file of any detailed investigation at the domestic level as regards the alleged expulsion of the applicants between 4 and 22 April 1994. The Court has accordingly based its findings on the evidence given orally before the Commission delegates or submitted in writing in the course of the proceedings.

316. The applicants alleged that between 4 and 22 April 1994 they were arrested, beaten, and forcibly sent to the northern part of Cyprus. The Government deny that these events took place and state that the applicants went to the northern part of their own will, where they were arrested and beaten by Turkish-Cypriot soldiers and police.

317. The Court must therefore examine the evidence before it concerning the applicants' allegations.

318. The applicants' allegation that between 4 and 22 April 1994 they were arrested by the Cypriot police, ill-treated and then expelled to the northern part of the Island is confirmed by a number of witnesses who were heard by the Commission delegates (see paragraphs 196-203, 204-10, 211-15, 216-18, 219-24, 225-32, 233-38, 239-41, 251-53 and 280-84 above) or whose written statements were submitted to the Commission (see paragraphs 6-35, 37, 38-44, 45, 51-60, 62, 63-67, 68, 69-76, 77, 79-84, 85, 87-92, 93, 103-12, 114, 118-21, 137-39, 142-43, 145-47, 150-53, 154-61, 177 and 178 above). In particular, the Court notes that, despite their written testimonies made before the Cypriot authorities denying the allegations, the applicants confirmed their original allegations before the Commission delegates, describing the events in detail and with very few discrepancies. The Court does not find these discrepancies irreconcilable, the small differences being due to difficulties of memory after a long lapse of time.

B. The applicants' arrest and expulsion

319. The Court attaches in the first place particular importance to the undisputed arrival, in the night of 17 April 1994, or at latest around 4 o'clock in the morning of 18 April 1994, of Hüseyin Mavideniz, his wife and children, of Hüseyin Davulcular and his wife, and of Doğan Davulcular, his wife and children, at the homes of Aziz Merthoca and Yılmaz Davulcular, in the south. It notes that they came for the purpose of finding jobs and to live there. Panayiota Papachristophorou alleged that on 17 April 1994 she had given Aziz money for a taxi to go to the northern part of the island and pick up a number of Turkish Cypriots, but that on the same day, late in the evening, she was displeased to see Aziz bring so many people to her house. She alleged that Aziz had brought all the Turkish Cypriots to her

house, that is, Hüseyin Mavideniz, his wife and their children, Doğan Davulcular, his wife and their children, and Hüseyin Davulcular, his wife and their children. As a consequence, on 18 April 1994, as early as 8 a.m., she allegedly gave them money for a taxi to return to the north. The Court considers that this version lacks credibility and discloses a desire to establish her sole responsibility for the return of those people to the northern part of the island on the same day.

The Court finds it difficult to accept that, after travelling for many hours to come and settle in the south, a group of people including women and children would choose to give up their plans immediately and to travel back on a long and tiring journey for the sole reason that Aziz Merthoca's wife did not want them to stay at her house. On the other hand, no other explanation has been provided by the Government as to why those who stayed at the house of Yılmaz Mavideniz should have decided to go back to the north early in the morning on the day after their arrival.

In assessing the evidence, the Court also attaches significance to the fact that, as transpires from the statements made by the CIS officers and most of the applicants before the delegates, it was a common practice among Turkish Cypriots arriving from the north for the purpose of settling in the south to go to the police and ask for social assistance in matters such as accommodation or jobs.

320. The Government denied until the hearing of witnesses in Nicosia that the applicants had been arrested on the dates in question or that they went to any police station for the purpose of making statements to the effect that they were leaving. However, on 3 September 1998, Andreas Spatalos submitted six statements to the Commission delegates (see paragraph 285 above) and claimed that, on various dates, six Turkish Cypriots went to the police stations in Limassol (İlker Denizci, Erbay Kaptanoğlu, Yılmaz Mavideniz and Süleyman Seyer) and Paphos (İlker Tufansoy and Taşer Kışmir) and signed these statements, as they wanted to go to the northern part of the island. His assertion that the statements were filled in by various police officers in Paphos and in Limassol is, however, contradicted by the examination of the statements, which shows that the handwriting in the forms is the same on all of them. Taking also into account that the CIS officers heard by the Commission confirmed that each CIS officer was attached to a particular police station, the oral testimony of the applicants to the effect that they signed the statements at the same police station, namely that of the Troodos/Kambos area, is therefore entirely credible.

321. All the applicants provided the same account of events during the hearing, which matched the allegations submitted in their application forms and before the "TRNC" police.

The Court has also examined the statements made by the applicants to the Cypriot authorities (see paragraphs 46-50, 94-102, 115-17, 140-41 and 144 above) in the light of the oral evidence. Serious doubts arise, however,

as to the credibility of these statements, having regard in particular to the following elements.

(i) The Court gives special weight to Taşer Kışmir's testimony before the Commission delegates. The Government challenged the credibility of his statements to the Commission and of those made in the northern part of the island, as well as his oral testimony. They stressed that the applicant's brother lived in the north and suggested that, therefore, the applicant feared for his brother and was afraid to say that he had been obliged to lie in his application to the Commission.

The Court notes that, after having denied twice before the Cypriot police the account of the events presented in his application to the Commission, the applicant came before the delegates despite his bad condition (following an accident at work, he was in a wheelchair) and his visible physical suffering. He confirmed before the delegates his original complaint and alleged that he had made four statements to the Cypriot police, all of them untruthful, which had been dictated by the police.

(ii) The Court was also impressed with Erbay Kaptanoğlu's oral statement before the Commission and found it to be consistent with other evidence before it. The Court was therefore satisfied that the applicant provided a truthful, and, in its essential details, accurate account of the events.

(iii) In his statement to the Cypriot police, İlker Tufansoy declared that he had decided to cross secretly to the north of the island because his mother was ill. However, in her oral testimony, Rebiye Tufansoy denied that she was ill at the material time. The Court has no reasons to doubt the sincerity of Rebiye Tufansoy's statement to the Commission delegates. She is an illiterate elderly woman, who was obviously unable to invent a story and provide false answers in a consistent way.

Dimitra Irodotou's statement before the delegates reinforced the doubts raised by İlker Tufansoy's statement to the Cypriot police. Her statement confirmed that İlker Tufansoy was arrested and expelled together with Taşer Kışmir. The Court also notes that she explained that, upon his return to the south, İlker went to the police to explain that he wanted to live with her, so that the police would not send him back to the north. The police treated him well, so İlker made a statement.

(iv) In the statement he made on 23 August 1994 to the Cypriot police, Murat Doksandokuz declared that he had decided to go to the northern part because he started to be afraid following the murder of Theophilos Georghiades. However, in his oral evidence, he alleged that he went to the northern part to see his mother who was ill. The Court also notes other striking inconsistencies in Murat Doksandokuz's statements. In particular, in his statement to the Cypriot police, he alleged that it was Erbay Kaptanoğlu who had spoken on his behalf, but not with his consent, to the journalists gathered at Nicosia Hospital in northern Cyprus. The witness did

not mention this at all before the delegates, adding that he could not remember which version of the facts he had presented to the United Nations investigators. The Court also finds particularly obscure the description of his arrest by the “TRNC” police, who allegedly took him to the airport together with about one hundred persons, among whom was also Erbay Kaptanoğlu (see paragraph 250 above). This description was confirmed neither by his own statement to the Cypriot police nor by any other witness.

322. The applicants’ account of events is also supported by testimonies of Süleyman Seyer, Öle Röinaas and Dimitra Irodoutou, who confirmed many details already provided by the applicants. Finally, the Court notes that the applicants’ account of the events is supported by findings contained in the report of UNFICYP (see paragraphs 122-33 above).

323. The Court finds, therefore, that the applicants’ arrest and expulsion appear to have been carried out according to a similar if not identical plan for each applicant.

The applicants were arrested on various dates early in the morning at their homes or at their work. After their arrest, they were taken to the police station in Limassol and then to what they believed were the CIS headquarters in Nicosia, with the exception of Taşer Kişmir and İlker Tufansoy, who were taken directly to Nicosia. The applicants were mostly arrested by CIS officers whom they knew. After being kept in Nicosia for a while, towards noon they were taken to a police station in a mountain area, presumably that of Troodos/Kambos, although the applicants’ oral testimony does not allow the Court to identify precisely the village in which the police station was located. The applicants were kept in that police station for the whole afternoon. In the evening, between 8 and 9 p.m., the applicants were taken to a dry riverbed and expelled to the north under threat that if they came back they would be killed. Then they crossed the buffer-zone and reached the northern part of the island in the Angolemi/Taşpınar area, where they were apprehended by Turkish soldiers who handed them over to the “TRNC” police. Because they were wounded, the “TRNC” police took them to hospital and then detained them on remand. The applicants appear to have been taken, although not by force, to be examined by United Nations doctors. They were also interviewed by the United Nations civilian police.

C. The applicants’ alleged ill-treatment

324. The Court notes that it is alleged that the first eight applicants and the ninth applicant’s son were subjected to ill-treatment during their custody in Nicosia and especially at the police station in the mountains.

The Court’s task is thus to determine whether the applicants and İlker Tufansoy were ill-treated, and if so, whether this occurred during their custody in Cyprus.

The Court notes firstly that medical evidence before it reveals that the applicants and İlker Tufansoy presented a number of injuries of varying degrees. Moreover, it has not been alleged that all these injuries were of an accidental nature or that they were caused by the applicants themselves. The Court must therefore determine which of the injuries were sustained by the applicants at the relevant period. In doing so, the Court will rely mainly on the findings of the United Nations doctors, but also, to a lesser degree having regard to the superficial nature of the evidence, on the medical examination of some of the applicants in the northern part of Cyprus. The Court will also rely on the oral statements which were found above to be credible.

325. As far as Dr Matsakis's reports are concerned, the Court observes that this witness did not examine the applicants himself, but drew up his report on the basis of the United Nations report and his examination of the photographs of the applicants. His findings inevitably carry less weight than those of the United Nations doctors who examined the applicants shortly after their injuries were sustained.

The Court notes that, notwithstanding the fact that he never saw the applicants and that the United Nations report found the applicants' allegations to be *prima facie* plausible, Dr Matsakis dismissed the applicants' allegations in an over-assertive and dogmatic manner. In particular, the Court observes that, in his reports, Dr Matsakis made a number of comments which were not of a medical nature, but covered issues outside his competence. In this respect, the Court notes that, throughout his 1994 and 1995 reports, Dr Matsakis expressed the view that the applicants had fled to the northern part of Cyprus. Moreover, in his oral statement before the Commission, Dr Matsakis admitted that his comments on Yılmaz Mavideniz's intelligence and social status (see paragraphs 165 and 266 above) were subjective and probably exaggerated.

The Court also notes the contradictory statements concerning Yılmaz Mavideniz contained in Dr Matsakis' 1998 report. While questioning the United Nations doctor's description of the wounds, which he claimed was not sufficient to draw conclusions as to their age, Dr Matsakis expressed the view that Yılmaz Mavideniz had probably sustained those injuries while he was in the occupied areas of Cyprus (see paragraph 173 above).

326. The Court accordingly considers that the evidence of Dr Matsakis must be treated with caution.

As to İlker Denizci

327. The applicant complained that, while he was at Nicosia police station, he was beaten for about twenty minutes. He alleged that at the police station in the mountains, he was severely beaten with hands and fists, received blows with an electric baton, was hit several times with an olive-wood stick and a pistol butt and that a police officer dislodged one of his

teeth with a club. Finally, he alleged that, when he was taken to a riverbed, the police made him take off his shoes and stamped on his toes, crushing and causing some of them to bleed, and then extinguished their burning cigarettes on them.

328. The Court notes that the examination report drawn up by the United Nations doctor found fourteen scars of various ages and shapes, the aetiology of which was uncertain. The report also found that the applicant was missing the incisor on the right side of his mouth, but that the area of the missing tooth showed no sign of bruising or bleeding; that the applicant had a large amount of blood in his urine, consistent with a recent trauma; and that the fourth toe had been amputated, but that it would have been more likely that the first or the fifth toe would have been injured if the foot had been stamped on (see paragraph 123 above).

The medical examination of the applicant in the northern part of Cyprus showed that the applicant presented abrasions in both zygomatic areas, in the right mandibular region, on the upper back and the right shoulder, and wounds of various sizes on both hands and in both tibia areas (see paragraph 154 above). However, the report drawn up on that occasion gives no indication as to the possible timing of these injuries. The Court cannot therefore rely entirely on this report, although it can take it into account to support its findings.

329. In the light of the above, the Court finds it established that, during his detention by the Cypriot authorities, the applicant was beaten sufficiently severely to cause the presence of a large amount of blood in his urine although, in the absence of conclusive medical evidence, it cannot determine with precision the manner in which the beating was inflicted or the parts of the body which were affected. For the same reasons, it cannot conclude that the applicant lost his tooth and his toe as a result of that beating.

As to Aziz Merthoca

330. The applicant complained that he was beaten while he was detained in Nicosia and that he was slapped before he was expelled.

331. The medical examination of the applicant in the northern part of Cyprus showed that the applicant presented swelling and ecchymoses in both scapular regions (see paragraph 155 above).

332. Although no indication was provided as to the possible timing of these injuries, the Court finds it reasonable to conclude that the applicant was subjected to an assault during his detention by the Cypriot authorities. However, in the absence of any other medical evidence, the Court cannot establish the precise manner in which the beating was inflicted.

As to Hüseyin Mavideniz, Yılmaz Mavideniz and Doğan Davulcular

333. These three applicants alleged that they were beaten with hands and fists at the Limassol and Nicosia police stations, and with sandbags and clubs at the police station in the mountains. Hüseyin Mavideniz complained that due to severe beating in the kidneys, he could not urinate for some days. In his oral testimony, he added that he continued to have problems when urinating.

334. Having considered the reports of the medical examinations of the applicants in the northern part of Cyprus (see paragraphs 156-58 above) and the United Nations findings (see paragraphs 126-27 above), the Court finds it established that the applicants were beaten during their detention by the Cypriot authorities, mainly on the back and on the shoulders.

As to Hasan Merthoca

335. The applicant alleged that, at the CIS headquarters in Nicosia and at the police station in the mountains, he was beaten with clubs and a truncheon.

336. In the light of the medical evidence at its disposal (see paragraphs 128 and 159 above), the Court finds it established that the applicant was beaten during his detention by the Cypriot authorities, mainly on his shoulders and around the collarbone.

As to Erbay Kaptanoğlu

337. The applicant alleged that, at the CIS headquarters in Nicosia, he was beaten and slapped, and that, at the police station in the mountains, he was beaten with a truncheon and a club.

338. Having regard to the medical evidence before it (see paragraph 160 above) and to the applicant's oral evidence (see paragraph 221 above), which it found to be a truthful account of the events, the Court finds it established that the applicant was beaten during his detention by the Cypriot authorities, mainly on his shoulders.

As to Taşer Kişmir

339. The applicant alleged that, while he was at the CIS headquarters in Nicosia, he was beaten and slapped on his face and on the back of his head, and that, at the police station in the mountains, he was beaten with clubs, one of which broke into pieces due to the severity of the blows.

340. Having regard to the medical evidence before it (see paragraphs 130 and 161 above) and to the applicant's oral evidence (see paragraphs 228-29 above), which it found to be a truthful account of the events, the Court finds it established that the applicant was beaten during his detention by the Cypriot authorities, mainly on his shoulders.

As to İlker Tufansoy

341. In his application to the Commission, İlker Tufansoy alleged that, while he was at the CIS headquarters in Nicosia, he was beaten and slapped by policemen, and that, at the police station in the mountains, he was beaten with a rubber truncheon.

342. Having regard to the medical evidence before it (see paragraph 131 above) and to the oral evidence of Taşer Kışmir supporting İlker Tufansoy's allegations (see paragraph 228 above), which it found to be a truthful account of the events, the Court finds it established that İlker Tufansoy was beaten during his detention by the Cypriot authorities, mainly on his shoulders.

D. The confiscation of belongings

343. İlker Denizci alleged that, during his detention, the Cypriot police seized 380 Cyprus pounds which he had in his pocket. Hasan Merthoca alleged that, due to his forcible expulsion, he was deprived of the use and enjoyment of his household goods and his money.

344. The Court notes that there is no evidence to support İlker Denizci's contention that money was taken from him by the Cypriot police. In the absence of such evidence, it does not find it established to the required standard of proof that such theft took place. It does find, however, that as a result of his forcible expulsion from the Republic of Cyprus, Hasan Merthoca was deprived of the use and enjoyment of his property, his household goods and his money.

E. The control of the applicants' movements in Cyprus

345. The applicants alleged that, during their stay in the territories of the Republic of Cyprus, they were under strict police surveillance, their movements were monitored and they had to get permission to leave the town in which they lived.

346. The Court has examined the applicants' statements contained in their applications to the Commission, as well as their oral statements, and considers them consistent with each other. It also finds them consistent with some elements provided by the CIS officers.

It appears that the applicants had to report to the police upon their arrival from the north (see paragraphs 226 and 286 above). The police, including the CIS officers, indicated to them the town in which they could live, in some cases providing them with a house to live in (see paragraphs 286, 294 and 298 above). The applicants had to report to the same authorities every time they wanted to move to another flat or town (see paragraphs 217, 220 and 237 above). Likewise, the applicants had to report every time they

wanted to go to the northern part of the island to visit their families or friends (see paragraph 286 above).

347. These statements are supported by other evidence. In his oral statement, Öle Röinaas indicated that, when he visited his friend Erbay Kaptanoğlu, they were very often followed by the police (see paragraph 252 above). From Dimitra Irodotou's statement (see paragraph 281 above) about her visit, with İlker Tufansoy, to the police in order to inform them that they wanted to live together, it appears that İlker Tufansoy needed the permission of the police to live in the Republic of Cyprus.

The CIS officers all confirmed that they knew the applicants well and had regular contacts with them. While their evidence was supported by the applicants' evidence as regards their role in finding jobs for the applicants, the Court is not convinced that the CIS officers acted only as social workers. The applicants had to cooperate with the CIS (see paragraph 287 above), and, according to Kostis's statement, after the murder of Theophilos Georghiades, all the applicants were closely followed (see paragraph 310 above). The Court finds no evidence to support Kostis's assertion that the surveillance following Theophilos Georghiades's murder had the purpose of protecting the applicants.

The CIS officers also used to visit the applicants regularly at their homes or at work (see paragraphs 294, 303 and 307 above).

From the criminal records of the applicants (see paragraphs 179-85 above), it appears that the Cypriot authorities closely monitored and were therefore aware of the applicants' movements between the northern part of the island and the south, and within the south, as well as their private lives. It also transpires from the criminal records that the applicants were not allowed to move without reporting to the authorities, or that, at least, moving without reporting to the authorities generated suspicion (see paragraph 182 above).

F. Events related to the murder of İlker Tufansoy and investigation by the authorities

348. The circumstances surrounding the events on the evening of 2 June 1994 are not essentially in dispute. From the evidence gathered by the authorities and from the evidence before the Commission delegates, the Court finds the following established. After his expulsion on 22 April 1994, İlker Tufansoy returned to the south on 5 May 1994 and stayed at a house in Paphos indicated by the Cypriot police. On the morning of 2 June 1994, İlker Tufansoy told the police that he intended to live in Stavrokonno. In the afternoon of 2 June 1994, he talked to the *muhtar* of Stavrokonno, who told him he could have the empty house of which Ertuğrul Akburç had spoken. In the evening of 2 June 1994, İlker Tufansoy, his friend Ertuğrul Akburç and Kyriakos Nikolau went to clean the house in which İlker intended to

live together with Dimitra Irodotou. After they had cleaned the house, at about 9 p.m., as they were going back to Ertuğrul Akburç's house, İlker Tufansoy and Ertuğrul Akburç were shot and killed by unidentified men using automatic rifles and shotguns.

349. In his oral statement before the Commission delegates, Kyriakos Nikolau, the only eyewitness to the incident, added that killers first shot Ertuğrul Akburç and then shot and killed İlker Tufansoy. It was the witness who reported the killing to the police.

350. The Court has carefully examined the investigation file submitted by the Cypriot authorities and finds that there is no evidence arising out of the circumstances of the killing of İlker Tufansoy and Ertuğrul Akburç, which would allow any finding as to the identity of their killers.

351. The Court finds that the police arrived at the scene of the killing shortly after it was reported to them by Kyriakos Nikolau. The Court finds no significant omission or lack of care in the conduct of the investigation at the scene. The cartridges were collected for ballistic examination; sketches were made at the scene of the positions of the bodies and the site; and a forensic examination was carried out on the spot. Later on the same day, an autopsy was carried out at the hospital in Paphos (see paragraph 189 above).

352. The Court notes that statements were taken from a large number of people from Stavrokonno and the surrounding villages. It appears from these statements that a week before the killing, Ertuğrul Akburç was saying in the village that he knew who had killed his father and that he would take revenge. The Court further notes that searches were carried out in various houses; that blood, urine and fingerprint tests were made; and that guns belonging to various villagers were examined (see paragraph 191 above).

353. However, by July 1995, a year after the investigation had started, no clue which might have shed light on the killing had emerged. Under these circumstances, the Attorney-General ordered an inquest, which was carried out by the coroner, F. Haralambos. After a thorough examination of all the evidence before him, the coroner came to the conclusion that the killing had been a premeditated criminal act committed by unknown persons (see paragraph 194 above). However, the file is still open and will remain so until the perpetrators of the murder are identified and brought before a court.

354. On the basis of these findings of fact, the Court will now proceed to examine the applicants' complaints under the various Articles of the Convention.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

355. The Government objected that the applicants had not exhausted domestic remedies, as required by Article 35 of the Convention, by making proper use of the available means of redress through the institution of a

private prosecution or a civil action for damages against the Republic, including punitive damages and an injunction, along with the lodging of a complaint with the Ombudsman and the Human Rights Committee of the House of Representatives for further investigation and action. The Government stressed that these remedies were effective and submitted a non-exhaustive list of criminal cases filed by the police following complaints made by Turkish Cypriots which proved, in the Government's view, that where the Cypriot authorities had the cooperation and assistance of Turkish Cypriots the latter had effective access to the criminal courts in Cyprus. In this respect, the Government rebutted the allegations that the Attorney-General had failed to conduct an investigation, but submitted that, due to the applicants' refusal to cooperate, any inquiry by the Attorney-General's Office with a view to the prosecution of suspects would have been fruitless. The Government also submitted examples of cases filed in the civil courts by various Turkish Cypriots against Greek-Cypriot defendants to prove that Turkish Cypriots had access to the civil courts in Cyprus.

356. The applicants' counsel did not repeat the arguments he had previously submitted before the Commission at the admissibility stage, but invited the Court to rule on the merits.

357. The Court reiterates that the aim of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford Contracting States an opportunity to put matters right through their own legal system before having to answer before an international body for their acts. However, although Article 35 § 1 requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that recourse should be had to remedies that are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1219, § 105, and p. 1210, §§ 65-67).

358. The Court also reiterates that, where an individual has an arguable claim that there has been a violation of Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Aksoy*, cited above, p. 2287, § 98, and *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V).

359. In the present case, the Court observes that the applicants' allegations were investigated by the United Nations Force in Cyprus (UNFICYP), whose final report of 9 May 1994, concluding that, *prima facie*, there was adequate material to support the plausibility of these allegations, was transmitted to the Government. Despite this information, the Attorney-General of the Republic of Cyprus at no time inquired into any

of these allegations, although he had and still has the power to conduct such an inquiry *ex officio* (see paragraph 312 above). The Court cannot, in these circumstances, consider it important that the applicants did not formally address a complaint to the Attorney-General.

As to the Government's submission that the Attorney-General did not institute proceedings because they would have been doomed to fail in the absence of cooperation by the applicants, the Court considers that this argument lacks substantiation. It notes, in particular, that the Attorney-General never attempted to invite the applicants to take part in a criminal inquiry that he could have ordered *proprio motu*.

360. The Government also submitted that the applicants could have filed a civil action for damages. The Court notes that an investigation was ordered by the Minister of Justice and Public Order, which resulted in the report of 30 July 1994 rebutting the applicants' allegations, and that no further investigation of the matter was deemed necessary by the Government. Against such a background, where no prosecution has been instituted against any State official, the prospects of success of civil proceedings based on allegations against State officials must be considered negligible.

361. The submission by the Government of a list of various criminal and civil cases filed by Turkish Cypriots before Cypriot courts does not affect the Court's conclusions under paragraphs 358 and 359 above. The Court notes in this respect that there is no similarity between the present instance and those cases, as none of them concerned allegations of expulsion and ill-treatment by agents of the Republic of Cyprus.

362. Finally, the Government contend that the applicants could have filed a complaint with the Ombudsman. The Court reiterates that, according to the case-law of the Court and the Commission, a complaint to the Ombudsman is not in principle a remedy which requires to be used under Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Montion v. France*, no. 11192/84, Commission decision of 14 May 1987, Decisions and Reports (DR) 52, p. 227).

The Court also recalls that in *Egmez v. Cyprus* (no. 30873/96, ECHR 2000-XII) the applicant had made a complaint to the Ombudsman which resulted in a report naming some of the officers responsible for the alleged ill-treatment of the applicant. Having regard to the Attorney-General's refusal to take any action, the Court decided that the applicant's complaint to the Ombudsman had not discharged the authorities of the Republic of Cyprus of the duty to "undertake an investigation capable of leading to the punishment (as opposed to the mere identification) of those responsible" (see *Egmez*, § 67).

This is also true in the present case, where the Attorney-General refrained from taking any action despite the power he had to conduct an inquiry *ex officio* (see paragraph 312 above) and where, under Cypriot law,

the Ombudsman would have had no power to order any measures or impose any sanctions (see paragraph 314 above).

363. In these circumstances, the Court considers that the applicants were justified in considering that no other legal remedy on the national level would be effective in respect of their complaints.

364. The Court therefore finds that there were no adequate and effective remedies for the purposes of Article 35 of the Convention which the applicants were required to exhaust.

365. Concerning the complaint related to the killing of the ninth applicant's son, İlker Tufansoy, the Court notes that an investigation was opened by the Attorney-General *proprio motu*. However, no incriminating evidence was found against any person. Consequently, it finds that the ninth applicant was not required to pursue any domestic remedy in this respect.

366. The Court therefore dismisses the Government's objection on grounds of failure to exhaust domestic remedies.

III. AS TO AZIZ MERTHOCA'S APPLICATION

367. The Court notes that the Commission summoned the applicant to appear before its delegates in Nicosia. However, he did not appear at the hearing. Panayiota Papachristophorou, Aziz Merthoca's wife, attended the hearing and explained that her husband did not wish to go to the post office to accept delivery of the letter from the Commission containing the summons (see paragraph 259 above). The applicant's lawyer explained at the hearing that Aziz Merthoca was afraid to testify before the delegates, as he had decided to live together with his Greek-Cypriot wife in the territories under the control of the Republic of Cyprus. By a registered letter of 9 January 2001, the Court invited the applicant to explain the reasons for his absence at the hearing and to confirm his intention to pursue the procedure before the Court. The applicant did not answer the letter.

368. The Court has examined above the contradictory statements provided by some of the applicants and found that the statements made to the Cypriot police were not reliable (see paragraph 321). The Court does not question the validity of the application introduced by Aziz Merthoca and has noted the comment of his representative that Aziz Merthoca feared that he would be persecuted. However, it cannot exclude the possibility that there may be circumstances in which an applicant may change his mind about the application introduced by him or may lose interest in pursuing it.

Moreover, the Court reiterates that individual applicants bear the responsibility of cooperating in procedures flowing from the introduction of their complaints (see *Kapan v. Turkey*, no. 22057/93, Commission decision of 13 January 1997, DR 88-A p. 17). Given the time that has elapsed since the hearing of evidence in September 1998, during which no further information from Aziz Merthoca has been forthcoming despite the Court's

attempt to obtain such information, the Court finds that the applicant does not intend to pursue his application within the meaning of Article 37 § 1 (a) of the Convention.

369. The Court also notes that the applicant Aziz Merthoca has raised the same complaints as the rest of the applicants in the present case, on which it will express its opinion below. The Court, therefore, finds no reasons relating to respect for human rights, as defined in the Convention and its Protocols, which would require it to continue the examination of the application (Article 37 § 1 *in fine*).

370. Accordingly, the Court decides to strike the application of Aziz Merthoca out of its list.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

371. The applicant Rebiye Tufansoy alleged that the respondent State was responsible for the killing of her son İlker Tufansoy. She asserted that the deprivation of the life of her son was the consequence of a series of acts imputable to the authorities or agents of the respondent State. She maintained that the respondent State had failed to provide security of life for her son in the territory controlled by it and to punish or to take legal measures against any person or any member of the police for acts of harassment, ill-treatment and banishment of Cypriots of Turkish origin living and working in its territory, including her son. She alleged that this implied that the respondent State approved, supported or condoned such acts. She relied on Article 2 of the Convention, which provides:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

372. The Government alleged that the investigation into İlker Tufansoy’s death was an effective and thorough one and pointed in this respect to the numerous acts carried out in the course of the investigation. They considered that the Cypriot authorities had no reason to believe that İlker Tufansoy’s life was in danger such as to warrant police protection.

A. As to the State's responsibility for the killing of İlker Tufansoy

373. The Court recalls its finding above (see paragraph 350) that it is unable to determine who killed İlker Tufansoy. It has not been established that the perpetrators were members of the CIS or agents acting on their behalf.

374. However, this does not exclude the responsibility of the respondent State. The Court has examined in addition whether the circumstances disclose any failure on the part of the State to fulfil any positive obligation under Article 2 of the Convention to protect the right to life by the preventive and protective framework in place at the time of İlker Tufansoy's death and by the investigative procedures implemented after his death.

B. Alleged failure to take protective measures

375. The Court recalls that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115).

However, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (*ibid.*, pp. 3159-60, § 116).

376. In the present case, the Court notes that after he returned to the south on 5 May 1994 İlker Tufansoy was in permanent contact with the Cypriot police. He first went to stay at a house in Paphos indicated by the police. On 2 June 1994 he informed the police about his intention to move to Stavrokonnou, where his friend Ertuğrul Akburç had found him a house (see paragraph 347 above). Dimitra Irodotou stated to the Commission delegates that, three days before he was killed, İlker mentioned to her the possibility that something might happen to him (see paragraph 282 above), without providing further details. However, in his conversation with the

applicant Rebiye Tufansoy, İlker appeared rather optimistic and asked his parents to obtain permission to join him in the south.

In the material before the Court, there is nothing to suggest that, even supposing İlker Tufansoy feared that his life was at real and immediate risk, he had ever reported these fears to the Cypriot police. Nor is there anything to indicate that the Cypriot authorities ought to have known that İlker Tufansoy was at risk of attack from criminal acts of a third party and failed to take steps to protect him.

377. For these reasons, the Court concludes that there has been no violation of Article 2 of the Convention on this account.

C. The investigation after the killing of İlker Tufansoy

378. The Court reiterates that the obligation to protect life under Article 2, 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", 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 *Timurtaş v. Turkey*, no. 23531/94, § 87, ECHR 2000-VI, and, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161). This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. The mere knowledge of the killing on the part of the authorities gives rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death (see *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, p. 1778, § 82).

In the present case, the Court notes that, immediately after the killing was reported to the authorities, the police went to the scene, a plan of the incident site was drawn up and a list of the objects found established. Relevant samples were taken and scientifically examined. A pathologist who arrived at the scene a few hours after the killing performed the post-mortem examination and, later on the same day, carried out an autopsy on the bodies. The Court also notes the numerous acts accomplished by the local police in Paphos during the investigation opened into the killing of İlker Tufansoy and his friend, which led, in less than a year, to a case file of more than 600 pages (see paragraphs 353-54 above).

379. In the light of the above and having examined the investigation file submitted by the domestic authorities, the Court sees no element which would allow it to conclude that the investigation into the killing of İlker Tufansoy was inadequate.

There has accordingly been no violation of Article 2 of the Convention on this account.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

380. The applicants alleged that they, and in the case of Rebiye Tufansoy, her son İlker, were victims of breaches by the respondent State of Article 3 of the Convention, which provides:

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

381. The Government did not address these allegations beyond denying the factual basis of the substantive complaint.

382. The applicants asserted that the manner in which they (or, in the case of the ninth applicant, her son) were treated by the Cypriot police, and the way in which they were forcibly expelled to the northern part of Cyprus, constituted deliberately inflicted and severe physical and mental suffering which amounted to torture and/or to inhuman and/or degrading treatment and punishment.

383. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment (see *Selmouni*, cited above, § 95). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see *Ireland v. the United Kingdom*, cited above, p. 65, § 162). However, in order to determine whether a particular form of ill-treatment should be characterised as torture, the Court must have regard to the distinction, embodied in the provision, between that notion and that of inhuman or degrading treatment. As the Court has previously found, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Selmouni*, cited above, § 96).

384. The Court has found above that, at the time of the applicants' detention, the police officers had intentionally subjected them to ill-treatment of varying degrees of severity (see paragraphs 329, 334, 336, 338, 340 and 342). However, it has not been established that the police officers' aim was to extract a confession. The Court also points out that it could not determine the precise manner in which the beatings were inflicted. Moreover, it cannot disregard the uncertainty concerning the severity of the injuries sustained by some of the applicants.

385. Finally, the Court observes that, despite the serious injuries sustained by some of the applicants, no evidence was adduced to show that the ill-treatment in question had any long-term consequences for them.

386. In the light of the above, the Court considers that the ill-treatment to which the applicants were subjected cannot be qualified as torture. Even so, that treatment was serious enough to be considered inhuman in respect of each applicant.

387. The Court therefore concludes that there has been a breach of Article 3 of the Convention.

388. It does not deem it necessary to make a separate finding under Article 3 of the Convention in respect of the alleged lack of an effective investigation.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

389. The applicants complained that they (or in the case of the ninth applicant, her son) had been victims of unlawful and arbitrary arrest and detention. They relied on Article 5 § 1 of the Convention, which provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

390. The applicants submitted that they were arrested at their homes or at work, that no reason was given for their arrest, that no court order or judgment was served on them and that there was no judicial warrant authorising their arrest. The unlawfulness of their arrest tainted their entire subsequent detention.

391. The Government did not address these allegations beyond denying the factual basis of the substantive complaint.

392. The Court has found above (see paragraphs 319-21) that the applicants (or, in the case of the ninth applicant, her son) were taken and kept in custody by Cypriot police officers and then expelled to northern Cyprus.

The Court notes that no lawful basis for the applicants’ arrest and detention has been advanced by the Government.

393. There has thus been a violation of Article 5 § 1 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

394. The applicants complained that the aim of the treatment to which they (or, in the case of the ninth applicant, her son) were subjected was to exercise coercion through force and fear and this constituted unjustified interference with their moral integrity as well as their physical integrity, and thus, their private life. They relied on Article 8 of the Convention, which provides:

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

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

395. The Government did not address this allegation beyond denying the factual basis of the substantive complaint.

396. In the light of its findings that the applicants (or, in the case of the ninth applicant, her son) were subjected to inhuman treatment in breach of Article 3, the Court finds it unnecessary to examine this complaint separately.

VIII. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

397. The applicants İlker Denizci and Hasan Merthoca also alleged that they were deprived unlawfully of their possessions, contrary to Article 1 of Protocol No. 1. İlker Denizci alleged that during his arrest, the police seized 380 Cyprus pounds, while Hasan Merthoca alleged that due to his forceful expulsion he was deprived of the use and enjoyment of his household goods and money.

398. The Government did not address these allegations beyond denying the factual basis of the substantive complaint.

399. The Court recalls its finding above (see paragraph 344) that, on the basis of the written and oral evidence before it, it has not been established that the theft alleged by İlker Denizci occurred, whereas it has been established that, as a result of his forcible expulsion, Hasan Merthoca was deprived of the use and enjoyment of his property, his household goods and his money.

In respect of İlker Denizci’s complaint, the Court considers, therefore, that the factual basis is insufficient for reaching the conclusion that there has been a violation of Article 1 of Protocol No. 1. Accordingly, there has been no violation of this provision in this regard.

As to Hasan Merthoca’s complaint, the Court finds that the deprivation complained of is the consequence of the applicant’s expulsion and,

therefore, does not require to be examined separately from the applicant's complaint under Article 2 of Protocol No. 4 (see paragraphs 400-06 below).

IX. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

400. The applicants complained about their expulsion to northern Cyprus and about the monitoring of their movements while they were living in the southern part. They relied on Article 2 of Protocol No. 4, which provides:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

401. The applicants complained that their forcible expulsion (or, in the case of the ninth applicant, her son's expulsion) from the territories under the control of the Republic of Cyprus to the northern part of Cyprus constituted an unjustified violation of their liberty of movement within the territory of the Republic of Cyprus and their freedom to choose their residence. They also asserted, in this connection, that during their stay in the territories under the control of the Republic of Cyprus, they were under strict police surveillance, that their movements were monitored and that they had to obtain permission to leave their town of residence.

402. The Government did not address this allegation beyond denying the factual basis of the substantive complaint.

403. The Court has found above (see paragraphs 346-47) that the Cypriot authorities closely monitored the applicants' movements (or, in the case of the ninth applicant, her son's movements) between the northern part of the island and the south, and within the south. They were not allowed to move freely in the south and had to report to the police every time they wanted to go to the north to visit their families or friends or upon their entry into the south.

404. The Court reiterates that mere restrictions on liberty of movement resulting from special supervision fall to be dealt with under Article 2 of Protocol No. 4 (see *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. 19, § 39, and *Labita v. Italy* [GC], n° 26772/95, ECHR 2000-IV).

In the present case, the Court considers that the restrictions to the applicants' movements as described above also fall under Article 2 of Protocol No. 4 and constitute an interference with their freedom of movement protected by that provision.

405. Such interference breaches Article 2 of Protocol No. 4 unless it is "in accordance with law", pursues one of the legitimate aims set out in Article 2 §§ 3 and 4 of Protocol No. 4 and is, in addition, necessary in a democratic society to achieve the aim or aims in question.

The Court notes that no lawful basis for the restrictions on the applicants' movements was advanced by the Government. Moreover, the Government did not claim that the measure was necessary in a democratic society to achieve one of the legitimate aims set forth in paragraphs 3 and 4 of Article 2 of Protocol No. 4.

406. The Court concludes that the restrictions on the applicants' freedom of movement were neither provided for by law nor necessary. There has accordingly been a violation of Article 2 of Protocol No. 4 to the Convention.

X. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 4 TO THE CONVENTION

407. The applicants complained that they (or, in the case of the ninth applicant, her son) were expelled from the territory of the Republic of Cyprus of which they were nationals, in breach of Article 3 of Protocol No. 4, which provides:

"1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national."

408. The applicants maintained that the Republic of Cyprus could exercise authority and control only in the southern part of Cyprus.

409. The Government did not address this allegation beyond denying the factual basis of the substantive complaint.

410. The Court observes that the applicants, apart from submitting that the Republic of Cyprus can exercise authority and control in the southern part only, have not claimed that they were expelled to the territory of another State.

The Court further notes that the government of the Republic of Cyprus is the sole legitimate government of Cyprus – itself, bound to respect international standards in the field of the protection of human and minority rights (see also *Loizidou v. Turkey* (merits), judgment of 18 December 1996, Reports 1996-VI, pp. 2230-31, §§ 42-45).

411. In these circumstances, the Court considers that its conclusions in relation to Article 2 of Protocol No. 4 to the Convention make it unnecessary for it to determine whether Article 3 of Protocol No. 4 applied in the instant case and, if so, whether it was complied with.

XI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 3 AND 5

412. The applicants complained that they (or, in the case of the ninth applicant, her son) were subjected to discrimination on grounds of race and/or national or social origin in the enjoyment of their rights guaranteed under Articles 3 and 5 of the Convention.

413. The Government have denied the factual basis of the substantive complaints and that there has been any discrimination.

414. The Court has examined the applicants' allegations in the light of the evidence submitted to it and in the context of Article 14 of the Convention. However, in the light of its findings above (see paragraphs 387 and 393), it considers that no separate issue arises under Article 14 of the Convention taken in conjunction with Articles 3 and 5.

XII. ALLEGED VIOLATION OF FORMER ARTICLE 25 § 1 OF THE CONVENTION

415. The applicants' lawyer submitted that, upon their return to the south, the applicants Taşer Kişmir, İlker Tufansoy and Aziz Merthoca had been subjected to serious interference with their right of individual petition, in breach of former Article 25 § 1 of the Convention (now replaced by Article 34), which provided:

"The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right."

416. The applicants' lawyer complained that the authorities of the respondent State forced the applicants who returned to the south to make statements denying the truth of their complaints before the Commission and alleged that this constituted a blatant interference with the applicants' right of individual petition under former Article 25 § 1 of the Convention.

417. The Government asserted that the applicants voluntarily made statements to the police upon their return to the free part of Cyprus. Nobody

obliged or requested them to do so and the applicants were not intimidated in any way.

418. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 of the Convention that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others*, cited above, p. 1219, § 105; *Aksoy*, cited above p. 2288, § 105; and *Ergi*, cited above, p. 1784, § 105).

In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, pp. 1192-93, § 160).

Furthermore, whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of former Article 25 § 1 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see *Akdivar and Others* and *Kurt*, cited above, p. 1219, § 105, and pp. 1192-93, § 160, respectively).

419. In the instant case, the Court has found above (see paragraph 321) that Taşer Kişmir and İlker Tufansoy made statements to the Cypriot police to the effect that the “TRNC” authorities had forced them to sign application forms to the Commission in which they complained about the Cypriot authorities and their expulsion.

However, as far as İlker Tufansoy is concerned, the Court notes that at the time he made the above-mentioned statement, on 14 May 1994, he had not filed an application with the Commission. Moreover, it was only after his death that his father, İbrahim Tufansoy, introduced an application before the Commission, on 12 September 1994, and neither his father nor Rebiye Tufansoy, who pursued the application after the death of her husband, alleged that the Cypriot authorities interfered in any way with their right of individual petition.

420. As to Taşer Kişmir, in his oral statement to the Commission delegates, he explained that he had no other choice but to make untruthful statements before the Cypriot police, which were dictated by them.

However, the Court notes that no evidence was adduced to support Taşer Kişmir’s allegation that he made those statements under pressure from the Cypriot police. In particular, there is no evidence of any questioning about the applications to the Commission or of any threats having been made against the applicants in respect of their applications.

Moreover, while the statements are consistent with their having been made under direct pressure from the Cypriot authorities, they are equally

consistent with the fact that the applicants had recently returned to resettle in the south and, being in a vulnerable position, might have felt it to be prudent to retract the allegations made against the police officers with whom they would be in regular contact.

421. In these circumstances, the Court does not find that it has been sufficiently established that the applicants were subjected to improper pressure by the authorities of the respondent State to withdraw their allegations or that the effective exercise of the applicants' right of individual petition was otherwise hindered by those authorities.

Therefore, the respondent State has not failed to comply with its obligations under former Article 25 § 1 of the Convention.

XIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

422. 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

423. Having regard to the serious violations of the Convention, the special aggravating circumstances of the case, as well as the attitude of the Government and the lasting effect on them of the trauma they had been forced to undergo, the applicants claimed, the following amounts: İlker Denizci 150,000 Cyprus pounds (CYP); Hüseyin Mavideniz CYP 50,000; Yılmaz Mavideniz CYP 150,000; Doğan Davulcular CYP 50,000; Hasan Merthoca CYP 150,000; Erbay Kaptanoğlu CYP 150,000; Taşer Kışmir CYP 150,000; and Rebiye Tufansoy CYP 160,000.

424. The Government considered that no violations had occurred in this case and that in any event the amounts claimed were excessive. According to them, the amount of damages, if any, should range between CYP 5,000 or less and CYP 10,000.

425. The Court recalls that it has found that the applicants were subjected to inhuman treatment during their unlawful and arbitrary arrest and detention. In addition to violations of Articles 3 and 5 of the Convention in that respect, it has also concluded that the applicants' freedom of movement was infringed, contrary to Article 2 of Protocol No. 4. In these circumstances, the Court awards to each applicant, on an equitable basis, CYP 20,000.

B. Costs and expenses

426. The applicants requested legal costs and expenses for the Strasbourg proceedings in proportion to the volume of work engendered. Their lawyer stressed that the evidence at the hearing of witnesses in Nicosia alone represented an important number of files, which he checked carefully and then used as a basis for the applicants' final observations.

427. The Government pointed out that no evidence had been submitted to substantiate the level of costs.

428. The Court reiterates that it can only award costs and expenses that were actually and necessarily incurred and were reasonable as to quantum (see, among other authorities, *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports* 1997-VIII, p. 2719, § 107). Deciding on an equitable basis and having regard to the amount of work reasonably required to produce the documents and observations submitted by the nine applicants, the Court awards the applicants together the sum of CYP 25,000 in legal costs and expenses for the proceedings before the Commission and the Court, especially since they had to be represented at the taking of evidence in Cyprus, less the 6,045 French Francs received by way of legal aid from the Council of Europe, such sum to be paid, according to authorisations submitted by those applicants living in the north of Cyprus, into their lawyer's bank account.

C. Default interest

429. According to the information available to the Court, the statutory rate of interest applicable in Cyprus at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Decides* to strike out of the list the application introduced by Aziz Merthoca;
3. *Holds* that there has been no violation of Article 2 of the Convention;
4. *Holds* that there has been a violation of Article 3 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

6. *Holds* that it is unnecessary to consider separately the applicants' complaint under Article 8 of the Convention;
7. *Holds* that there has been no violation of Article 1 of Protocol No. 1 in respect of İlker Denizci and that it is unnecessary to consider separately this complaint in respect of Hasan Merthoca;
8. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention;
9. *Holds* that it is not necessary to examine the case under Article 3 of Protocol No. 4 to the Convention;
10. *Holds* that no separate issue arises under Article 14 of the Convention taken in conjunction with Articles 3 and 5;
11. *Holds* that the respondent State has not failed to comply with its obligations under former Article 25 § 1 of the Convention;
12. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) to each applicant CYP 20,000 (twenty thousand Cyprus pounds) in respect of non-pecuniary damage;
 - (ii) to all applicants together CYP 25,000 (twenty-five thousand Cyprus pounds) in respect of costs and expenses, less FRF 6,045 (six thousand and forty-five French francs) already received by way of legal aid from the Council of Europe;
 - (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;
13. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 May 2001.

Vincent BERGER
Registrar

Antonio PASTOR RIDRUEJO
President