THIRD SECTION

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

*(Application no. 36925/07)*

JUDGMENT

STRASBOURG

4 April 2017

Referral to the Grand Chamber

18/09/2017

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

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

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

Helena Jäderblom, *President,* Branko Lubarda, Işıl Karakaş, Helen Keller, Pere Pastor Vilanova, Alena Poláčková, Georgios A. Serghides, *judges,*and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 21 February 2017,

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

PROCEDURE

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

2.  The applicants were represented by Mr A. Riza QC, barrister-at-law, and Ms E. Meleagrou, a solicitor practising in London. The Cypriot Government (“the Government”) were represented by their Agent at the time, Mr P. Clerides, Attorney-General of the Republic of Cyprus (“the Attorney-General”). The Turkish Government were represented by their Agent.

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

4.  On 13 May 2009 the applicants’ complaints concerning the procedural aspect of Article 2 taken alone and in conjunction with Article 13 were communicated to the respondent Governments. It was also decided to rule on the admissibility and merits of the application at the same time.

5.  On 3 September 2009 the Centre for Advice on Individual Rights in Europe (the “AIRE Centre”) was granted leave to intervene in the proceedings as a third party (Article 36 § 2 of the Convention).

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

6.  The application concerns the murder on 15 January 2005 of Elmas, Zerrin and Eylül Güzelyurtlu, all Cypriot nationals of Turkish Cypriot origin.

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

8.  The first five applicants were born in 1978, 1976, 1980, 1962 and 1956 respectively. The sixth and seventh applicants were both born in 1933. The first, fifth, sixth and seventh applicants live in the “TRNC”. The second, third and fourth applicants live in the United Kingdom.

A.  The background facts and the murder of Elmas, Zerrin and Eylül Güzelyurtlu

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

10.  On 15 January 2005 at about 8.00 a.m. on the Nicosia-Larnaca highway, near the Athiainou exit, a police officer spotted a black Lexus car parked on the hard shoulder. The engine was running, the left turn indicator light was flashing and the door of the front passenger seat was open.

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

B.  The investigation and the measures taken by the Cypriot authorities

12.  The particulars of the investigation and the measures taken, as submitted by the Cypriot Government and as can be seen from the documents contained in the case file, may be summarised as follows.

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

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

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

16.  The car was taken away for further inspection.

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

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

19.  On the same day the victims’ bodies were taken to the mortuary at Larnaca General Hospital for a post-mortem examination. Death certificates were issued.

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

21.  The investigation included the tracing and questioning of numerous witnesses, searching the records of vehicles that had gone through the crossing points between north and south, and examining the security system of the victims’ house and computer hard discs for relevant material concerning the movements of persons and vehicles near the house at the material time. The source of the suction cup and the adhesive tape was determined to be a shop in Kyrenia (in northern Cyprus).

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

23.  According to the witness statements taken by the police, at the time the murders were committed a BMW car without number plates was seen parked behind the victims’ car. Four persons were seen standing around the cars and one person was seen in the passenger’s seat of the Lexus car. It was further ascertained that on 14 January 2005, at 11.00 p.m., a red BMW car with “TRNC” number plates had passed through the Pergamos crossing point located in the British Eastern Sovereign Base Area of Dhekelia but without passing through the Base Area’s checkpoint. At 5.45 a.m. the next day the same car had returned to the “TRNC” through the same crossing point – again without being checked. The driver of the car, who resided in the “TRNC”, had been accompanied by another person.

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

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

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

27.  The initial investigation resulted in the identification of five suspects: M.C. (“the first suspect”), E.F. (“the second suspect”), F.M. (“the third suspect”), M.M. (“the fourth suspect”) and H.O. (“the fifth suspect”). It appears from the documents submitted to the Court that the first, second, third and fourth suspects were Cypriot nationals and “TRNC” citizens and that the fifth suspect was a Turkish national.

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

29.  Arrest warrants had already been issued in respect of these three suspects with regard to other offences; the first suspect was wanted in relation to a drugs case and for obtaining a passport and identity card issued by the Republic of Cyprus under false pretences; the second suspect was wanted for the unlawful possession and transfer of a firearm, and the fourth suspect was wanted for the unlawful possession of a firearm.

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

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

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

33.  On 23 January 2005 the police submitted “Red Notice” requests to Interpol to search for and arrest the suspects with a view to their extradition.

34.  On 24 January 2005 an official request was made by the Director of the Diplomatic Office of the President of the Republic to the Special Representative and Chief of Mission (“the Special Representative”) of the United Nations Peacekeeping Force in Cyprus (“UNFICYP”) to facilitate the handing over to the appropriate authorities of the Republic of Cyprus of all the suspects and all evidential material relating to the crime and/or suspects in northern Cyprus (see paragraph 129 below).

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

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

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

38.  On 4 February 2005 the Larnaca District Court issued arrest warrants against all three suspects on the same grounds as those issued in respect of the other suspects (see paragraph 31 above).

39.  On 10 February 2005 the same court issued European arrest warrants against them.

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

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

42.  On 15 February 2005 the police authorities transmitted “stop list” messages to the immigration authorities (see paragraph 32 above).

43.  As can be seen from an email dated 7 March 2005 from the Director of the Diplomatic Office of the President of the Republic to the Chief European Union negotiator for Cyprus, the Cypriot authorities around this time forwarded to UNFICYP an interim report by the Laboratory of Forensic Genetics of the Cyprus Institute of Neurology and Genetics in order to facilitate its mediation of the handing over of the suspects in the instant case. The European Commission was asked for any assistance that it might be in a position to provide in bringing the perpetrators of the murders to justice. According to an internal note of a telephone conversation the Diplomatic Office was subsequently informed by UNFICYP that the above-mentioned report had been passed on to the “TRNC” authorities, who had found the evidence that it contained to be insufficient. The “TRNC” authorities requested video tapes but did not clarify whether the suspects would be handed over if such tapes were given to them.

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

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

46.  In a letter dated 26 July 2006 the Attorney-General assured the applicants’ representatives that the Republic was “doing everything within its power – bearing in mind that it [did] not have effective control over the areas of the Republic occupied by Turkey (in which persons that might be involved [were at that time] and taking into account the relevant Convention case-law – to investigate the ... murder and bring the persons responsible to trial before the Courts of the Republic”. He also informed them that he would keep them informed of the progress of the investigation and reply to the queries that they had submitted on behalf of the victims’ family and that this could be achieved through meetings at his office between him, the applicants’ representatives and the police.

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

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

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

50.  On 19 May 2008 the case file were transferred to the coroner for the inquest proceedings (inquest nos. 9/05, 10/05 11/05) before the Larnaca District Court. The proceedings were scheduled by the court for 18 August 2009. According to the Cypriot Government, on that date the proceedings were adjourned until October 2009 due to the non-attendance of the first applicant. The first applicant was notified by the officer in charge of the investigation of the inquest proceedings and was requested to attend, as the testimony of a relative of the victims was necessary. No further information has been provided about these proceedings by the Cypriot Government.

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

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

53.  On 6 August 2008 the Attorney-General gave instructions for the preparation of extradition requests to Turkey under the European Convention on Extradition of 13 December 1957, to which both States were parties (see paragraphs 164 and 165 below).

54.  On 23 September 2008, extradition requests in respect of the six remaining suspects (see paragraphs 45 and 52 above), together with certified translations of all documents into Turkish, were transmitted by the Cypriot Ministry of Justice and Public Order to the Cypriot Ministry of Foreign Affairs for communication through diplomatic channels to Turkey’s Ministry of Justice. The requests were then sent to the Republic’s embassy in Athens for communication to Turkey.

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

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

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

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

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

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

60.  The particulars of the investigation and measures, according to the submission of the Turkish Government and as can be seen from the documents they provided, may be summarised as follows.

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

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

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

64.  On 18 January 2005 the first applicant gave a statement to the “TRNC” police. His views were requested concerning potential suspects. In his statement he alleged that there were five likely suspects: M.C, E.F., F.M., M.M. and H.O. (see paragraph 27 above). The “TRNC” authorities checked the entry and exit records of the suspects and established that the first suspect had crossed to the Republic of Cyprus side on the night of the murders and had returned to the “TRNC” side in the early morning hours. There was no record of the entry and exit of the other suspects on that day.

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

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

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

68.  On 19 January 2005 an arrest warrant was issued in respect of the first and second suspects by the Kyrenia District Court for two days (*Mahkeme: Zanlilarin 2 gün tutuklu kalmasina emir venir*) on suspicion of theft, forgery of documents and “providing fake registry records, etc.” (*Hirsizlik, Sahte Belge Düzenlemek, Sahte Kayut Temin Etmek v.s*.).

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

70.  The fifth suspect had already left for Turkey (on 18 January 2005) when the Red Notice was published by Interpol on 28 January 2005 (see paragraph 35 above).

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

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

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

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

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

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

77.  On 23 January 2005 the fifth suspect was arrested as, in the meantime, he had returned to the “TRNC” (see paragraph 75 above).

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

79.  On 25 January 2005 “TNRC” Nicosia police headquarters were informed by the Turkish Ministry of Internal Affairs that a Red Notice had been published by Interpol in relation to the first four suspects. The above-mentioned Ministry requested confirmation of Elmas Güzelyurtlu’s death as the Turkish authorities had been looking for him in order to extradite him to the “TRNC”. They also enquired about the nationality status of the first four suspects, in particular, whether or not they had Turkish nationality.

80.  The Turkish Government submitted that on 23 and 28 January 2005 the Turkish Ministry of Internal Affairs received emails from Greek Cypriot Interpol stating that they were searching for the first, second, third and fifth suspects with a view to their arrest and that they should be arrested if they entered into Turkey.

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

82.  On the same day the “TRNC” Nicosia District Court issued a warrant in respect of the sixth and seventh suspects (see paragraph 37 above) for the purpose of bringing them before the court on suspicion of premeditated murder. Search warrants were also issued by the Kyrenia District Court in respect of the house of the fifth suspect and by the Nicosia District Court in respect of the houses of the sixth and seventh suspects.

83.  By a letter dated 27 January 2005 “TRNC” Nicosia police headquarters provided the Turkish Ministry of Internal Affairs with information about the suspects’ identities.

84.  On 28 January 2005 the “TRNC” Nicosia District Court remanded the sixth, seventh and eighth suspects (see paragraph 37 above) in custody for three days on suspicion of premeditated murder. It also issued a search warrant for the house of the eighth suspect.

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

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

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

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

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

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

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

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

93.  The Turkish Government submitted that on 11 February 2005 another email was sent to the Turkish Ministry of Internal Affairs by Greek Cypriot Interpol informing them that they had information that the fifth suspect was going to travel to Mersin in Turkey the same day and requesting the Turkish authorities to take the necessary measures.

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

95.  M.K. (see paragraph 89 above) was also traced and on 25 March 2005 he was questioned by police at Kyrenia police headquarters. He denied any involvement in the murders.

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

97.  Throughout the investigation the “TRNC” police questioned and took statements from numerous persons who knew or were somehow connected or related to the suspects. As can be seen from a document in the internal police files entitled “Time/Work Sheet” (*İ*[*ş Cetveli*](http://tureng.com/fr/turc-anglais/i%C5%9F%20cetveli)) and the copies of the statements provided, statements were taken from various witnesses, including the suspects. They also searched for evidence and took fingerprints.

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

99.  The Turkish Government submitted that, following a report by the “TRNC” Police Chief Inspector, the case had been classified as “non-resolved”. They provided a copy of this report, which was not dated. According to this report, the last action undertaken as part of the investigation appears to have occurred on 22 March 2007, when the fifth suspect’s car, which had been inspected by the “TRNC” police, had been handed over to the “TRNC” Nicosia Customs and Tax Office (*Lefkoşa Gümrük ve Rüsumat Dairesi*). The inspection had not resulted in the collection of any evidence concerning the crime. In his report the “TRNC” Police Chief Inspector concluded that on the basis of the investigation that the police had conducted from the date of the murders until the time of his writing the report the police had not been able to resolve the case. He therefore suggested that the case be logged as “non-resolved for the time being”.

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

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

102.  The Turkish Government submitted that after they received the investigation file from the Cypriot Government through the Court following communication of the case, the “TRNC” police questioned again the first and second suspects on 24 February 2010. The suspects denied their involvement in the killings.

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

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

105.  Following the above-mentioned development, the “TRNC” Attorney-General reviewed the investigation file. Taking into account the rules of evidence, he concluded that even if the first suspect had not retracted his statement, in the absence of other evidence, this statement would not have been sufficient for any charges against the suspects to be brought.

D.  Information submitted by the applicants

1.  Information derived from the first applicant’s statements to his lawyers

106.  In a summary of the first applicant’s statements to his lawyers between 2006 and 2007, the first applicant stated, *inter alia*, the following:

107.  On the morning of 15 January 2005 the Cypriot police informed the first applicant of the death of his parents and sister. He went to Larnaca morgue to identify the victims. He signed a form authorising police officers to enter the family home in Ayios Dometios and conduct an investigation. The first applicant was present for part of the investigation and then went with the police to his father’s office in Nicosia, where the police took documents as part of the investigation.

108.  The next day the first applicant went to Larnaca morgue and then Larnaca police station, where he spent nine hours giving a statement. In his statement he informed the police of the identities of the persons he suspected of committing the murders and the grounds for his suspicions.

109.  On 17 January 2005 the first applicant took the victims’ bodies back to the “TRNC”, where a funeral was held.

110.  On 18 January 2005 the first applicant had meetings with the “TRNC” police.

111.  On 19 January 2005 the first, second and fourth applicants went to Nicosia police headquarters, where they were shown pictures and sketches of a number of people and asked whether they recognised them. Some of the photos had been taken at the funeral. The first applicant identified one of the suspects. The next day they returned to Nicosia police headquarters and were informed that the Cypriot police had DNA matches for at least three of the suspects and had found other DNA which they could not, however, match to any person in their records. The first applicant also gave them information concerning the investigation by the “TRNC” police.

112.  During the two weeks following the killings the first applicant met often with the Cypriot and the “TRNC” police and was informed by both sides of their respective investigations. He also updated each side on the other side’s progress in an effort to prevent the suspects’ release for lack of evidence and to convince the “TRNC” police to surrender them to the Cypriot Government for trial.

113.  The first applicant had meetings with a number of “TRNC” high-ranking officials.

114.  In March 2007 the Cypriot police informed the first applicant that the car and the material removed from the victims’ home and office could be returned. They also informed the first applicant of the circumstances of the killings, that the investigation remained open and that the evidence had been shown to UNFICYP but that the “TRNC” authorities refused to cooperate. Although the Cypriot police showed the first applicant copies of the Red Notices and witness statements, they refused to give him copies. They also informed him that only a court could take possession of the case file (at the appropriate time).

2.  Other information submitted by the applicants

115.  The applicants’ representatives had meetings about the case with the Attorney-General of the Republic of Cyprus in January 2006 and July 2006.

116.  Furthermore, on 1 February 2006, at a meeting at Nicosia Police Headquarters, the applicants’ lawyers were informed that one of the suspects had been briefly detained in Turkey. The Cypriot police had received this information from the office of Interpol in Athens.

117.  On 15 March 2006 the applicants, upon their request, were given a progress report by the Cypriot police on the case. The applicants submitted that they had requested all the evidentiary material but this was not provided with the report.

118.  On 15 July 2007 there was an attempt to kill the first applicant at his home in the “TRNC”. During that month the applicants were also informed by the Cypriot police that the arrest warrant in respect of one of the suspects had been cancelled.

119.  In May 2009 the first applicant’s bodyguard was murdered.

120.  With regard to the inquest, the applicants submitted that the Larnaca District Court had adjourned the inquest on 19 August 2009 for administrative reasons and not because of the first applicant’s absence. The court had resumed the inquest proceedings on 14 and again on 20 October 2009. Three of the applicants had attended with their counsel and a local lawyer. The inquest had confined itself to investigating whether the deaths had been the result of an unlawful killing. The judge had referred the matter to the Attorney-General as she was *functus officio* in so far as the criminal proceedings were concerned.

3.  Correspondence

121.  The applicants, through their representatives, sent a number of letters to various Cypriot, Turkish and “TRNC” high-ranking officials about the case, including the President of the Republic of Cyprus, the Prime Minister of Turkey and the President of the “TRNC”.

122.  In a letter dated 30 November 2006 the applicants’ counsel informed the Prime Minister of Turkey about the case and all the steps that had been taken until that date. They informed him, *inter alia,* that the Government of Cyprus had stated that they were prepared to hand over the relevant evidence to UNFICYP in order for the latter to decide whether there was a prima facie case against the suspects with the proviso that if UNFICYP concluded that there was indeed such a case, the “TRNC” would undertake to surrender the suspects. As UNFICYP was not prepared to take on this task (see paragraph 149 below) and the “TRNC” insisted on making a decision only after receiving the evidence, the applicants’ counsel stated that “I believe that I have now exhausted the possibilities for reaching the desired compromise through negotiation and mediation”.

E.  Involvement of the United Nations

123.  Following the murders the Cypriot Government, the “TRNC” authorities and the applicants were in contact with UNFICYP officials concerning the case. A number of meetings were held. There was also an exchange of telephone calls and correspondence. The relevant information provided by the parties is set out below.

1.  Information submitted by the Cypriot Government

(a)  Internal note dated 20 January 2005

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

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

125.  According to this note, a meeting was held on that day at UNFICYP headquarters in Nicosia on the initiative of UNFICYP’s Senior Police Adviser and Commander (“the SPA”) between the SPA and the assistant of the Cypriot Chief of Police. The UNFICYP’s liaison officer was also present. The SPA stated that she had had, on the same day, a long meeting concerning the murders with the “TRNC” Chief of Police in the presence of other officers and the “TRNC” Attorney-General. She had informed the “TRNC” Chief of Police that the Cypriot police had in their possession genetic material linking three of the suspects with the crime (although she was not in a position at that time to tell them who these suspects were), as well as other evidence linking another two persons to the crime, and that one of the cartridges found at the scene had been made in Turkey. She had also informed him that five arrest warrants had been issued by a Cypriot court against the suspects, four of whom were detained in “TRNC” prisons. She had expressed her concerns that if the suspects were released they might leave the “TRNC” and their future arrest would not be possible. The “TRNC” Chief of Police had informed her that these suspects had been detained for minor offences (car theft) and that it was possible that their detention would not be extended by the judge. Although the “TRNC” authorities would try to get their detention extended, they had no evidence to charge them with murder. Although the suspects had already been questioned about the murders and had given some information, this was not enough. No voluntary statements had been made. The “TRNC” Chief of Police had also told her that he was aware that the Cypriot police did not have enough evidence and that only if the two police forces cooperated could more evidence be collected. He had also asked her if, and how, UNFICYP could help; she had informed him that UNFICYP could only intervene if one of the two sides made an official request for help.

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

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

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

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

129.  This letter reaffirmed the Cypriot Government’s determination to bring the suspects to justice. The Cypriot authorities had collected sufficient evidence, issued arrest warrants for five suspects and requested UNFICYP to facilitate the handing over of the suspects and evidential material to the relevant authorities of the Republic of Cyprus. It stated that the Cypriot police had issued international arrest warrants in respect of four of the suspects, which had been forwarded to Interpol’s General Secretariat and to all of Interpol’s member States. The Cypriot police were in the process of issuing an international arrest warrant in respect of the fifth suspect.

(d)  Internal note dated 25 January 2005

130.  This note stated that the “TRNC” Attorney-General did not intend to hand over to the police of the Republic of Cyprus the three suspects that were detained in the “TRNC” for the murders, relying on the 1960 Constitution. The “TRNC” Attorney-General had notified UNFICYP of this. An attached memo by UNFICYP stated as follows:

“I have seen the [Attorney-General]. Mr A.S. with regard to the inquiries [made in respect of] and the prosecution of the culprits in respect of the Elmas Güzelyurtlu murder. He says that there is no legal and/or constitutional basis for handing over the accused to the Republican Authorities, for the following reasons:

The Constitution of Cyprus

Articles: 133,153,158,159 (2), (3) and (4)

Admin. of Justice Law 14/60

Section 4

Section 5

Section 20

Section 23

He made representation to UN for the Turkish suspect kept by the Greek Police to be handed over to Turkish for prosecution, together with others”.

(e)  Police note dated 25 January 2005

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

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

132.  This letter stated that at meetings held with UNFICYP and the Deputy Senior Police Advisor (“the DSPA”), the SPA had suggested that meetings between the Cypriot police, the police of the British Sovereign Bases and the “TRNC” police be held at a technical services level (*τεχνικό υπηρεσιακό επίπεδο*) in the mixed village of Pyla, which is located in the UN buffer zone between the Cypriot police, the police of the British Sovereign Bases and the “TRNC” police. The Cypriot Chief of Police had rejected this as constituting a move towards recognising a “pseudo-state” which provided refuge to fugitives. It was true that UNFICYP’s arguments for the meetings of the technical committees was valid in that there was a risk that the village of Pyla would become a safe haven for criminals. This could be dealt with, however, through more efficient cooperation between UNFICYP and the Cypriot authorities. The Cypriot Chief of Police sought to obtain the Cypriot Government’s political position regarding this suggestion.

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

133.  This note stated that as concerned a meeting held on 17 May 2006 between the SPA, the DSPA, and members of the Cypriot police and investigation team, the DSPA had raised his concerns as to an increased level of collaboration between Greek Cypriot and Turkish Cypriot criminals and their movements across the island. The DSPA had been informed generally about evidence that had been collected. He had also enquired whether:

- the Cypriot police intended to give the evidence to UNFICYP for forwarding to the “TRNC” authorities to enable the suspects’ prosecution;

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

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

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

135.  The DSPA had stated that the “TRNC” – pursuant to its own laws –could not surrender Turkish Cypriots. It had been stressed by the Police Chief Superintendant that the “TRNC” was not a state.

136.  The DSPA had also put forward the suggestion that the suspects could be surrendered to a third country such as Greece, and that steps to bring them to justice could be taken from there. The Police Chief Superintendant had informed him that this was not an option and that Turkey had an obligation to comply with international law.

137.  Finally, the DSPA had suggested that the matter could be discussed by the relevant technical committee (see paragraphs 154, 155 and 156 below) in order to avoid the issue taking on a political dimension, to find solutions for cooperation and to bring the perpetrators to justice. He had been informed that this was a sensitive matter and that the political aspects could not be ignored; if the “pseudo-state” authorities were interested in completing the investigation and bringing the perpetrators to justice, they should stop providing refuge to criminals.

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

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

2.  Information submitted by the Turkish Government

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

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

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

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

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

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

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

(b)  From the minutes of a meeting on 25 January 2005

140.  On 25 January 2005 the “TRNC” Chief of Police held a meeting with the SPA, who gave details about the circumstances of the murders. According to the minutes, Elmas Güzelyurtlu had been known throughout Cyprus and had been suspected of many crimes; some had involved the suspects. The information in the hands of the Greek Cypriot police was sufficient for the purpose of issuing arrest warrants in respect of the suspects. Although the “TRNC” police had already issued such warrants, they did not have evidence to bring proceedings against the suspects; more information was necessary. The SPA had asked for suggestions.

(c)  From the minutes of a meeting on 26 January 2005

141.  On 26 January 2005 a meeting was held between UNFICYP officials and “TRNC” functionaries, including the “TRNC” Deputy Prime Minister. According to the minutes, the question had been raised as to whether the Greek Cypriot authorities were willing to transmit the evidence. The “TRNC” Deputy Prime Minister had mentioned that if this was done the suspects’ detention would be extended; then, if the “TRNC” courts considered the evidence to be credible, the suspects would be handed over to [the Republic of Cyprus] via UNFICYP.

(d)  From the minutes of a meeting on 31 January 2005

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

(e)  From the minutes of a meeting on 7 February 2005

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

(f)  From the minutes of a meeting on 7 February 2005

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

(g)  From the minutes of a meeting on 30 March 2005

145.  On 30 March 2005 the head of UNFICYP’s civil affairs unit had a telephone conversation with the “TRNC” Head of Consular Affairs. The former informed the latter that the courts of the British Sovereign Base areas did not have jurisdiction to try the suspects; however, the courts of the Republic of Cyprus could sit at the bases and the hearing could take place there. The Head of Consular Affairs stated that the “TRNC” authorities were not planning to take any steps until the evidence and records were given over to them because it was unacceptable to the “TRNC” authorities for the Greek Cypriot authorities to work alone on this matter.

(h)  From the minutes of a meeting on 5 April 2005

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

3.   Relevant correspondence between the applicants and UNFICYP

147.  Between 2005 and 2006, an exchange of correspondence concerning the investigation of the murders took place between the applicants’ representatives and UNFICYP officials. The text of the most relevant communications between UNFICYP and the applicants’ representatives is set out below:

148.  In a communication to UNFICYP dated 19 December 2005, the applicant’s lawyer, requested, *inter alia*, the disclosure of any possible information relating to the UNFICYP’s efforts in the case, in particular, concerning the mistrust and lack of cooperation between the two sides. He wanted to ensure that all local remedies were properly exhausted and UNFICYP to help him to form a view in general terms about the attitude of both sides. If all legal means to bring about the prosecution of suspects of this heinous crime failed, he had instructions to bring an application before the Court against Turkey and Cyprus.

149.  In a letter to the applicants’ representatives dated 23 February 2006 the SPA, stated, *inter alia*, the following:

“1. The Senior Police Advisor (SPA) of the UN police in Cyprus first became involved in the case on 16 January 2005 at the request of the Assistant Chief of Police of the Republic of Cyprus, ... who at that time briefed the Senior Police Adviser on the case. A request was made to the SPA to facilitate the exchange of information between the sides.

2. At no time was the SPA asked to operationally assist in the investigation of the murder or apprehend the suspects. If [she had been] asked this would not have been agreed to as this is not within UNFICYP’s mandate.

...(Illegible)

4. A copy of the preliminary investigation report prepared by the authorities in the south was provided to the Turkish Cypriot authorities, with the SPA’s facilitation. UNFICYP limited itself to a mediation role and therefore neither verified the contents nor kept a copy of the report.

5. At what point the trial venue became an issue cannot be ascertained as this was not within the control or knowledge of the SPA.

6. UNIFICYP attempts to facilitate the exchange of information on criminal enquiries when asked to do so by one side or the other. ...

(Illegible)

8. As you may be aware, UNCIFYP is not part of the internal justice system of the Republic of Cyprus and does not have executive power. UNFICYP is not in any sense an element of the “domestic remedies” available to victims of a crime in the [Republic of Cyprus]”.

150.  In an e-mail sent by the DSPA to the applicants’ representative, Ms Meleagrou on 25 October 2006, the following, *inter alia,* was stated:

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

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

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

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

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

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

151.  In an e-mail sent by UNFICYP to the applicants’ representative Ms Meleagrou on 16 November 2006 the following was stated:

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

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

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

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

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

153.  Report of 27 May 2005:

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

24. The continuing absence of official contacts between the sides has accentuated UNFICYP’s role in promoting bicommunal contacts. Although people from either side can meet freely since the opening of the crossings in 2003, the impartiality of the Ledra Palace Hotel venue and the United Nations umbrella are considered indispensable for sensitive humanitarian and other meetings, including those of political parties from the north and the south. It is hoped that under the auspices of UNFICYP, contacts may be established between the sides, without prejudice to their political positions, on humanitarian and related issues generating a climate of trust and easing tensions. During the reporting period, UNFICYP provided facilities for 57 bicommunal events, including those implemented by the United Nations Development Programme (UNDP)/United Nations Office for Project Services (UNOPS) ...”.

154.  Report of 2 June 2008:

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

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

155.  Report of 15 May 2009:

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

156.  Report of 9 January 2015:

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

II.  RELEVANT DOMESTIC LAW

157.  The following provisions of domestic law of the Republic of Turkey (including the “TRNC”) are relevant for the purposes of the present application.

A.  Extradition

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

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

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

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

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

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

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

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

B.  Criminal jurisdiction of the courts of the “TRNC”

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

163.  Pursuant to section 31(2)(b) offences committed outside the island of Cyprus are treated as if they had been committed within the jurisdiction of the “TRNC” Nicosia District Court (*Kıbrıs adası dışında işlenen suçlar Lefkoşa Kaza Mahkemesi yetki alanı içinde işlenmiş sayılır*).

III.   RELEVANT COUNCIL OF EUROPE INSTRUMENTS

A.  Extradition

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

165.  This Convention was ratified by and entered into force in respect of Cyprus on 22 April 1971. The three Additional Protocols to the Convention were also ratified on 22 May 1979, 13 April 1984 and 7 February 2014 and entered into force in respect of Cyprus on 20 August 1978, 12 July 1984 and 1 June 2014 respectively.

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

Article 6 – Extradition of nationals

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

...

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

Article 18 – Surrender of the person to be extradited

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

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

...”.

Article 27 – Territorial application

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

B.  Cooperation in criminal matters

1.  The European Convention on Mutual Assistance in Criminal Matters

167.  The European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 was ratified by Cyprus on 24 February 2000 and entered into force on 24 May 2000. Cyprus ratified the two Additional Protocols on 24 February 2000 and 12 February 2015 respectively; they came into force in respect of Cyprus on 24 May 2000 and 1 June 2015.

168.  Turkey ratified the Convention on 24 June 1969. It entered into force in respect of Turkey on 22 September 1969. Turkey ratified the two Additional Protocols on 29 March 1990 and 11 July 2016 respectively; they came into force in respect of Turkey on 27 June 1990 and 1 November 2016. The Turkish Government have made the same declaration as the one they made under the European Convention on Extradition in respect of the second Additional Protocol concerning the Republic of Cyprus (see paragraph 164 above).

169.  Article 1 establishes an obligation on Contracting Parties to:

“... promptly afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party”.

170.  Article 2 provides that assistance may be refused in the following circumstances:

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

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

171.  Article 3 provides that:

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

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

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

172.  The European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 was ratified by Cyprus on 19 December 2001 and entered into force in respect of Cyprus on 20 March 2002. Turkey ratified the Convention on 22 October 1978 and it entered into force in respect of Turkey on 28 January 1979. The Turkish Government have made a declaration that they do not consider themselves bound to carry out the provisions of the Convention “in relation to the Greek Cypriot Administration, which is not constitutionally entitled to represent alone the Republic of Cyprus”.

173.  The relevant provisions of this Convention provide as follows:

Article 3

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

Article 6

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

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

PROCEEDINGS BEFORE THE COURT

174.  By a letter sent on 16 August 2007 the applicants’ representatives submitted to the Court a letter with the applicants’ details, an outline of the case and stating their Convention complaints against Cyprus and Turkey. They requested that this letter be considered as constituting a formal introduction of the applicants’ complaints before the Court and asked the Registry to provide them with an application form.

175.  The Court responded, by a letter of 24 August 2007, enclosing an application package. It pointed out:

“You must send the duly completed application form and any necessary supplementary documents to the Court as soon as possible and at the latest within six months of the date of the present letter. No extension of this period is possible. If the application form and all the relevant documents are not sent within the above period, the file opened will be destroyed without further warning.”

176.  The completed application form was received by the Court on 13 December 2007 and the application was registered.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13

177.  The applicants complained that there had been a violation of Article 2 of the Convention by both the Cypriot and Turkish (including the “TRNC”) authorities on account of their failure to conduct an effective investigation into the deaths of their relatives, Elmas, Zerrin and Eylül Güzelyurtlu. They pointed to the failure of the respondent States to cooperate in the investigation of the murders and bring the suspects to justice. The applicants contended that where there had been a systemic failure to investigate certain killings after the perpetrators had escaped by crossing a dividing line; the substantive requirement of Article 2 had also been violated, as the domestic laws in place had not protected the right to life.

178.  Article 2, in so far as relevant, reads as follows:

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

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

180.   Article 13 reads as follows:

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

181.  At the outset, the Court finds that no issue arises in the case under the substantive limb of Article 2 § 1 and that the entirety of the applicants’ complaints relate in substance to an alleged failure by the authorities of the respondent States to discharge their procedural obligations under that provision.

A.  Admissibility

182.  The Turkish Government submitted that in so far as the application was directed against Turkey the applicants had failed to lodge their application within the six-month time-limit, as required by Article 35 § 1 of the Convention, and that they had not exhausted the domestic remedies available to them. The Cyprus Government submitted that to the extent that the application was directed against Cyprus it was manifestly ill-founded.

183.  The Court will examine these pleas below. It first notes, however, that, while the Turkish Government made no plea as to the Court’s competence *ratione loci* to examine the complaints against them, the deaths of the applicants’ relatives took place in the territory controlled by and under the jurisdiction of the Republic of Cyprus and it must examine this question of its own motion (see *Aliyev*a *v. Azerbaijan*, no. 35587/08, § 56, 31 July 2014, and *mutatis mutandis Blečić v. Croatia* [GC], no. 59532/00, §§ 67-69, ECHR 2006‑III).

1.  In so far as the application is directed against Turkey

(a)  Compatibility *ratione loci* of the application

184.  Article 1 of the Convention provides that:

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

185.  “Jurisdiction” under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, § 103, ECHR 2012 (extracts),and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 130, ECHR 2011). As the Court has emphasised, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial (ibid., § 104 and § 131, respectively) and has only extended jurisdiction beyond territoriality in exceptional situations (see *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 74-80, ECHR 2014).

186.  The Court recalls that generally the procedural obligation under Article 2 falls on the respondent State under whose jurisdiction the victim was at the time of death (see *Emin and Others v. Cyprus (dec.), nos. 59623/08, 3706/09, 16206/09, 25180/09, 32744/09, 36499/09 and 57250/09, 3 June 2010*, and *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 243-244, ECHR 2010 (extracts)). Nonetheless, as the Court explained in *Rantsev*, special elements in a case will justify departure from the general approach (ibid.). Where there are cross-border elements to an incident of unlawful violence leading to loss of life, the fundamental importance of Article 2 requires that the authorities of the State to which the suspected perpetrators have fled and in which evidence of the offence could be located, of their own motion, take effective measures in that regard (see *O’Loughlin and Others v. the United Kingdom* (dec.), no. 23274/04, 25 August 2005, and *Cummins and Others v. the United Kingdom* (dec.), no. 27306/05, 13 December 2005). Otherwise, those indulging in cross-border attacks will be able to operate with impunity and the authorities of the Contracting State where the unlawful attacks have taken place will be foiled in their own efforts to protect the fundamental rights of their citizens and, indeed, of any individuals within their jurisdiction.

187.  In the present case, the Court observes that the suspected perpetrators of the murder of the applicants’ relatives are or were within Turkey’s jurisdiction, either in the “TRNC” (*Cyprus v. Turkey* [GC], no. 25781/94, § 77, ECHR 2001‑IV) or in mainland Turkey. The Turkish and “TRNC” authorities were informed of the crime and Red Notices concerning the suspects were published. These elements engage Turkey’s procedural obligation under Article 2 and thus justify departure from the general approach.

188.  The Court notes that the “TRNC” authorities instituted their own criminal investigation in the case and that their courts have criminal jurisdiction over individuals who have committed crimes on the whole island of Cyprus (compare *Gray v. Germany*, no. 49278/09, 22 May 2014, as well as *Aliyev*a, cited above, § 57).

189.  In conclusion, the Court finds that the applicants’ complaints against Turkey are compatible *ratione loci* with the provisions of the Convention. The extent and scope of the procedural obligation incumbent on Turkey in the circumstances of the case remains to be determined in the Court’s assessment of the merits of those complaints.

190.  The Court will now turn to the Turkish Government’s inadmissibility pleas.

(b)  Exhaustion of domestic remedies

(i)  Submissions to the Court

(α)  The Turkish Government’s submissions

191.  The Turkish Government submitted that the “TRNC” law provided civil, administrative and criminal remedies which, however, the applicants had not exhausted before filing their application with the Court.

192.  Firstly, the applicants could have brought a civil action against the suspects before the relevant “TRNC” district court under the “TRNC” Civil Wrongs Law. As alleged by the applicants, the suspects in this case had been identified and there was enough evidence linking them to the murder of the applicants’ relatives. The “TRNC” courts, pursuant to the Courts of Justice Law, had jurisdiction to hear civil cases where the defendant resided or worked in the “TRNC” and where the cause of action arose, in whole or in part, outside the territory of the “TRNC” but on the island of Cyprus (sections 24(1)(b) and (c) of the “TRNC” Courts of Justice Law). Such an action could be brought by the husband, wife, parent or child of a deceased person who had been entitled at the time of his or her death to recover compensation from the person responsible (section 58(1) of the “TRNC” Civil Wrongs Law). The applicants had not had to wait for the initiation or conclusion of any criminal action before bringing such a civil action.

193.  Secondly, the Turkish Government submitted that the applicants could have applied to the “TRNC” Supreme Court, sitting as the Court of Appeal (*Yargıtay*), for an order of mandamus to compel the “TRNC” authorities to cooperate with the Greek Cypriot police in order to secure the prosecution of the suspects in the “TRNC”. Under Article 151 § 3 of the “TRNC” Constitution, the Supreme Court had original jurisdiction to issue such an order. Moreover, the “TRNC” Supreme Court, sitting as the High Administrative Court, also had jurisdiction to order that whatever actions the administrative authority in question had failed to perform must be undertaken.

194.  Thirdly, the applicants had had the right to bring a private criminal action against the suspects. On the basis of Article 158(4)(a) of the “TRNC” Constitution the Attorney-General had the power, in the public interest, to take over proceedings in respect of an offence, provided that the necessary evidence collected by the authorities of the other side was brought before the “TRNC” courts by the applicants in a private criminal action.  The Government maintained that the applicants had been in a better position to access the evidence required – in respect of both civil and criminal proceedings – than the “TRNC” authorities. For example, the Greek Cypriot police had provided them with a copy of their report dated 17 February 2006.

195.  Lastly, the applicants could have complained about a violation of Article 2 of the Convention before those “TRNC” district courts that had applied the Convention.

(β)  The applicants’ submissions

196.  Relying on the judgment in *Öneryıldız v. Turkey* [GC] (no. 48939/99, § 93, ECHR 2004‑XII), the applicants submitted that the failure to prosecute those responsible for endangering life had violated Article 2, irrespective of any other types of remedy which individuals might exercise on their own initiative. Therefore, the Government’s submissions concerning civil law remedies were misconceived. Furthermore, bringing their own criminal action had not been a practical option. The case of *Öneryıldız* constituted authority against such a course of action. Nor had it been open to the applicants to apply for a mandamus as, *inter alia*, “TRNC” law prohibited the extradition of “TRNC” nationals and therefore such a remedy would not have been effective or sufficient to provide redress. Lastly, they pointed out that all the evidence concerning the case had been provided to the “TRNC” authorities through the Court upon communication of the case in 2008.

(ii)  The Court’s assessment

197.  At the outset, the Court notes that, pursuant to *Cyprus v. Turkey*, (cited above, §§ 82‑102) and numerous subsequent judgments (see, for instance, *Kyriacou Tsiakkourmas* *and Others v. Turkey*, no. 13320/02, §§ 157-158, 2 June 2015; *Kallis and Androulla Panayi v. Turkey*, no. 45388/99, § 32, 27 October 2009; *Andreou v. Turkey* (dec.), no. 45653/99, 3 June 2008; and *Adalı v. Turkey*, no. 38187/97, § 186, 31 March 2005), remedies available in the “TRNC” can be regarded as “domestic remedies” of the respondent State for the purposes of Article 35 § 1 of the Convention and that the question of their effectiveness is to be considered in the specific circumstances in which that question arises. That conclusion is not to be seen as in any way casting doubt on the view of the international community regarding the establishment of the “TRNC” or the fact that the Government of the Republic of Cyprus remained the sole legitimate government of Cyprus. In this connection, the Court had stressed in its *Demopoulos and Others* decision that “allowing the respondent State to correct wrongs imputable to it does not amount to an indirect legitimisation of a regime unlawful under international law” (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, ECHR 2010). Thus, “TRNC” remedies may be taken into account in this context.

198.  That said, as regards the Turkish Government’s argument that the applicants could have brought a civil action for damages against the suspects in the “TRNC” courts, the Court has repeatedly held that civil proceedings which are undertaken on the initiative of the next of kin, not the authorities, and which do not involve the identification or punishment of any alleged perpetrator, cannot be taken into account in the assessment of the State’s compliance with its procedural obligations under Article 2 of the Convention (see, for example, *McKerr v. the United Kingdom*, no. 28883/95, §§ 121 and 156, ECHR 2001‑III). Otherwise, a Contracting State’s obligation under Article 2 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if, in respect of complaints under that Article, an applicant would be required to exhaust an action leading only to an award of damages (see among many authorities, *Jelić v. Croatia*, no. 57856/11, § 64, 12 June 2014, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005).

199.  Nor could the applicants be required, taking into account the obligation incumbent on the State authorities to act on their own motion in cases of deaths that occurred in suspicious circumstances (see *Rantsev,* cited above, § 232 and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 111, ECHR 2005‑VII), to bring private criminal proceedings against the suspects, or to apply for an order of mandamus. The Court notes that the “TRNC” authorities opened a criminal investigation *ex officio* in the case. In the Court’s view, this investigation afforded the State an opportunity to put matters right since it could have resulted in the identification and the punishment of those responsible. The applicants were thus not required in addition to embark on any other remedies on the matter (see *Haász and Szabó v. Hungary*, nos. 11327/14 and 11613/14, §§ 30-34, 13 October 2015).

200.  Lastly, as regards the argument by the Turkish Government that the applicants should have invoked Article 2 before the “TRNC” courts, the Court notes that this reference is vague and unsubstantiated.

201.  In view of the above, the Turkish Government’s plea of non-exhaustion must be dismissed.

(c)  Six-month time-limit

(i)  Submissions to the Court

(α)  The Turkish Government’s submissions

202.  The Turkish Government considered that the application had been introduced outside of the six-month time-limit set by Article 35 § 1 of the Convention.

203.  At the outset, the Turkish Government contested the date on which the application had been lodged with the Court. In their view the application had not been introduced on 16 August 2007 but on 7 January 2008, that is to say the date of the Court’s stamp on the application form.

204.  Alternatively, should the Court consider that the six-month period began to run on 16 August 2007, the delay between date of the initial letter of intent and that of the submission of the application form (7 January 2008) had been such that the beginning of the initial correspondence had ceased to constitute the introduction of the application form. The Turkish Government relied on the decisions in *Nee v. Gary* ((dec.), no. 52787/99, 30 January 2003) and *J.-P.P v. France* (no. 22123/93, Commission decision of 31 August 1994, Decisions and Reports (DR). 79-B, p. 72). They argued that that there were a number of possible starting dates for the six-month period in the present case; all of them, however, had fallen more than six months before the date of the lodging of the above application.

205. In the first place, the applicants had stated in their application form to the Court that it had become clear to them by the second week of February 2005 that the investigation had reached a stalemate. They should have therefore lodged their application by August 2005. Secondly, as could be seen from the letter dated 19 December 2005 sent by their representatives to the UNFICYP spokesman, the applicants must have received legal advice about their right to file an application before the Court before that date. Despite this they had still waited almost three years to lodge their application. Thirdly, in a letter dated 30 November 2006 to the Prime Minister of Turkey, the applicants’ lawyer had stated that they had exhausted the possibilities for reaching the desired compromise through negotiation and mediation (see paragraph 122 above). In view of the above, and relying on Court’s decision in *O’Loughlin* (cited above), the Turkish Government argued that the applicants had realised long before they lodged their application that there would be no further investigation in respect of the case and had already been advised that they had grounds to bring an application to Strasbourg. Any attempts by the applicants to prolong the investigation by appealing to UNFICYP were irrelevant as the latter was not a domestic remedy to be exhausted for the purposes of Article 35 § 1. The applicants’ representative had been informed of this in a letter dated 23 February 2006 sent to them by the SPA (see paragraph 149 above).

(β)  The applicants’ submissions

206.  The applicants stressed that in the letter of intent that they sent to the Court on 16 August 2007 they had set out their Convention complaints.

207.  As for the six-month time-limit, this had not yet started to run in their case as their complaints concerned a continuing situation. Firstly, the criminal investigations were still continuing on both sides. The situation in their case could not be compared to that in *O’Loughlin* (cited above), where the delay in filing the application had been striking, there had not been an on-going murder investigation, and the United Kingdom Government had not been keen to prosecute. The Government of Turkey had admitted in their observations that the case file of the “TRNC” Attorney-General was still open and awaiting the submission of evidence by the Cypriot Government (see paragraphs 101 above and 241 below). Furthermore, the applicants’ letters to the President of the “TRNC” and the Prime Minister of Turkey had remained unanswered (see paragraphs 121 and 122 above). Secondly, the applicants were in fear of their lives as a result of the failure of the respondent Governments to cooperate and punish the perpetrators of the murders. There had been an attempt to murder the first applicant on 16 July 2007 and his bodyguard had been murdered in May 2009.

208.  Lastly, the applicants argued that it had been reasonable to try to get the two sides to cooperate before lodging an application with the Court.

(ii)  The Court’s assessment

(α)  Date of introduction of the application

209.  According to the Court’s case-law, as applicable at the relevant time, the date of introduction of an application was as a rule considered to be the date of the first communication from the applicant indicating an intention to lodge an application and giving some indication of the nature of the application (see *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, § 89, 21 July 2015 with further references). This was on the condition that a duly completed application form was then submitted within the time‑limit fixed by the Court (see, for instance, *Kemevuako v. the Netherlands* (dec.), no.65938/09, §§ 19-20, 1 June 2010). Such a first communication, which at the time could take the form of a letter sent by fax, would in principle interrupt the running of the six-month period (see *Oliari and Others,* cited above*,* § 89).

210.  In the instant case, the first communication indicating the intention to lodge a case with the Court (together with the object of the application) was sent by the applicants’ representatives on 16 August 2007 (see paragraph 174 above). A completed application followed, in accordance with the instructions given by the Registry (see paragraphs 175 and 176 above). The date of introduction in respect of the application was thus 16 August 2007.

211.  It remains to be determined whether the application complies with the six-month rule.

(β)  Compliance with the six-month time-limit

212.  As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 259, ECHR 2014 (extracts), with further references).

213.  In cases of a continuing situation, the period starts to run afresh each day and it is in general only when that situation ends that the six‑month period actually starts to run (ibid., § 261).  However, where time is of the essence in resolving the issues in a case, there is a burden on the applicant to ensure that his or her claims are raised before the Court with the necessary expedition to ensure that they may be properly, and fairly, resolved (ibid., § 262). This is particularly true with respect to complaints relating to any obligation under the Convention to investigate certain events. As the passage of time leads to the deterioration of evidence, time has an effect not only on the fulfilment of the State’s obligation to investigate but also on the meaningfulness and effectiveness of the Court’s own examination of the case. An applicant has to become active once it is clear that no effective investigation will be provided, in other words once it becomes apparent that the respondent State will not fulfil its obligation under the Convention (ibid., § 261).

214.  The Court has held in cases concerning the obligation to investigate under Article 2 of the Convention that where a death has occurred, applicants’ relatives are expected to take steps to keep track of the investigation’s progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any appropriate redress, including effective criminal investigation (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 158, ECHR 2009,with further reference therein). In particular, as regards cases of unlawful or violent death, the Court has indicated that an applicant should bring such a case to the Court within a matter of months, or at most, depending on the circumstances, a few years after the events in question (ibid., § 162). Where there is an investigation of sorts, even if plagued by problems, the Court accepts that applicants may reasonably wait for developments which could potentially resolve crucial factual or legal issues (ibid., §166). It is in the interests of not only the applicant but also the efficacy of the Convention system that the domestic authorities, who are best placed to do so, act to put right any alleged breaches of the Convention.

215.  Applying those principles to the facts of the present case, the Court notes that following the death of their relatives on 15 January 2005 two parallel investigations were taken up by the Cypriot Government and the “TRNC” authorities. In the initial year and a half or so the investigations were intensive and there was a strong involvement on the part of UNFICYP to find a solution. The applicants were in contact with all the authorities concerned and UNFICYP in their efforts to help the investigations progress. Although it appears that the applicants started to lose hope because of the lack of cooperation by the two sides, the Court considers that it was reasonable for the applicants to wait for the ongoing investigations and the mediation via UNFICYP to yield results. Nor can it be said that the applicants waited unduly before introducing their complaints before the Court on 16 August 2007, two years and seven months after the death of their relatives. At the time that they lodged their application with the Court the Cypriot Government’s investigation was still continuing. As for the investigation in the “TRNC” no date has been given as to when the file of the case was classified as “non-resolved for the time being”. This must, however, have been after 22 March 2007, for – as can been seen from the “TRNC” Police Chief Inspector’s report – investigative steps were taken on that date (see paragraph 99 above). There is no indication that the applicants were informed at the time of this development in the investigation. In any event, the application was still filed within six months of the above date.

216.  In the light of the above, the Court finds that there was no lack of due diligence on the part of the applicants in lodging their application and that the Turkish Government’s plea concerning the timeliness of the applicants’ complaints must also be dismissed.

2.  The well-foundedness of the application

217.  The Court considers that the applicants’ complaint under Article 2 of the Convention raises serious questions of fact and law in respect of both respondent States which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and no other ground for declaring it inadmissible has been established. It must therefore be declared admissible, along with the related complaint under Article 13.

B.  Merits

1.  Submissions of the parties

(a)  The applicants

(i)  With regard to the scope of the procedural obligation of the Respondent States

218.  The applicants submitted that the crux of the problem was the persistent refusal of the respondent States to cooperate. This stemmed primarily from the fact that the Turkish Government did not recognise the Cypriot Government, and the latter in turn did not recognise the “TRNC”. All the authorities concerned had obstinately clung to their respective positions: the Cypriot Government had not been prepared to provide the “TRNC” with any evidence and had insisted on the surrendering of the suspects for trial in their courts; the “TRNC” had not been prepared to cooperate unless all evidence was provided and the suspects were prosecuted and tried in its own courts. As a result of this failure, despite cogent and compelling evidence, the perpetrators had not been punished.

219.  The applicants submitted that there was a duty on States to cooperate with investigations held outside their jurisdiction or areas under their control. This arose from the primary obligation States had under Articles 1 and 2 of the Convention. When jurisdictions overlapped or were concurrent, Member States were under an obligation to cooperate in order to secure the right to life of persons within their jurisdictions. A finding that there was no such obligation would result in a “vacuum” of protection within the “legal space of the Convention” of the right to life (relying, *mutatis mutandis*, on *Cyprus v. Turkey*, cited above, § 78).

220.  Referring to the principles established under Article 2 (relying, *inter alia,* on *Angelova and Iliev v. Bulgaria* (no. 55523/00, §§  91-98, 26 July 2007) the applicants argued that the obligation to cooperate entailed (i) the duty to take steps to accommodate overlapping jurisdictions, and (ii) to have in place effective law-enforcement machinery that deterred the commission of life-endangering offences, dealt with extradition and/or the *ad hoc* rendition of fugitive offenders and made provision for mutual assistance in their apprehension and punishment. Relying on *O’Loughlin* (cited above) the applicants submitted that the normal way to secure evidence and take measures in relation to suspected fugitive offenders was through early cooperation between the police and prosecutors of the States in question. This required establishing lines of communication and an exchange of information and evidence.

221.  By way of example the applicants referred to the Guidance for Handling Criminal Cases with Concurrent Jurisdiction Between the United Kingdom and the United States of America (published in January 2007). This prescribed a three-stage approach: first, the early sharing of information between investigators and prosecutors, second, consultation between prosecutors, and third, in the event of failure to reach an agreement, the taking up of the issues by the State’s respective law officers with the aim of resolving them. The applicants also cited the European Convention on Mutual Assistance in Criminal Matters, to which both respondent States were parties, pursuant to which Member States had undertaken to provide each other with the widest measure of mutual assistance in criminal matters.

222.  There was also an equivalent negative obligation on States not to have laws and practices that rendered extradition, rendition or mutual assistance impossible.

223.  Here the respondent States’ failure to cooperate had led to a gap in the protection of a fundamental human right. The respondent States were more concerned with their political agendas than with their obligations under Article 2. If there had been political will, a solution could have been found – for example, as in the Lockerbie case, the trial could have been held at a neutral venue (The High Court of Justiciary (Proceedings in the Netherlands) (United Nations) Order 1998; (S.I. 1998 No. 2251) and United Nations Security Council Resolution 1192 of 27 August 1998 on the Lockerbie case).

224.  The applicants also maintained that the respondent States had failed to comply with their obligations both under the European Convention on Extradition and under the European Convention on Mutual Assistance in Criminal Matters.

(ii)  With regard to the responsibility of the Cypriot Government

225.  Relying on *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, §§ 331-335, ECHR 2004‑VII), the applicants argued that although the Cypriot Government were prevented from exercising effective control over the “TRNC” they still had a positive obligation under Article 1 of the Convention to secure for the applicants the rights guaranteed by the Convention. The existence of an unlawful breakaway administration did not absolve a state from its obligations under Articles 1 and 2. The Cypriot Government’s unwillingness to cooperate with any of the “TRNC” law enforcement agencies, directly or even indirectly through UNFICYP, and provide them with any evidence concerning the case, had been in violation of their procedural obligation to conduct an effective investigation within the area in which they had effective control (relying on *Ilaşcu*, cited above, §§ 331-335). They had further failed in their free-standing obligation to disclose to the applicants all witness statements taken by the authorities during the investigation (referring to *Hugh Jordan v. the United Kingdom*, no. 24746/94, 4 May 2001).

226.  In the applicants’ view, disclosing evidence to the “TRNC” police in order to enable the prosecution of the perpetrators did not in law amount to recognition of or support for the “TRNC” (relying on *Ilaşcu*, cited above, §§ 345-346). Nor did international law prohibit cooperation in police matters with unrecognised police entities. Indeed, police forces frequently had to cooperate with people they preferred not to have dealings with. The reasoning of the Court in its judgment in *Cyprus v. Turkey* (cited above, § 98) concerning the “TRNC” courts could be equally applied to the “TRNC” police. The applicants requested the Court to rule that providing evidence to enable the arrest of fugitive murderers did not imply recognition of the “TRNC” or that any such implication should be treated *de minimis*.

227.  The applicants blamed the attitude of the Cypriot Government. It was evident that initially the “TRNC” authorities had not been averse to handing over the suspects for trial but their attitude had hardened following the Cypriot Government’s refusal to deal with them. Handing over the evidence would have secured at least the continued detention of the suspects. As the Cypriot Government had refused to provide the evidence, the “TRNC” authorities had not been able to take the requisite steps to hand over the suspects.

228.  The argument of the Cypriot Government that they were not under an obligation to take measures *vis-à-vis* a separatist administration by surrendering part of their sovereignty in respect of crimes committed on their territory was not compatible with the principles established by the Court in *Ilaşcu.* The importance the Cypriot Government had attached to the safeguarding of its sovereignty had been disproportionate, bearing in mind the enormity of the crime and the non-derogatory nature of the right to life. Furthermore, they were a Contracting State to the 1972 European Convention on the Transfer of Proceedings in Criminal Matters and had agreed in principle to request other countries to prosecute persons suspected of having committed offences within the Cypriot Government’s jurisdiction.

229.  Moreover, the applicants submitted that it was their counsel who had repeatedly raised the absence of evidence in writing of an extradition request at a meeting with the Attorney-General at his office in August 2008. The extradition requests had been made following this meeting. They pointed out that the Cypriot Government had not explained the delay in requesting the suspects’ extradition following the issuance of the international arrest warrants. The manner in which the requests had been made was also questionable.

(iii)  With regard to the responsibility of the Turkish Government

230.  Turkey had concurrent extra-territorial jurisdiction under Article 1 of the Convention as it exercised effective control of the “TRNC” and therefore had responsibility for the stance taken by the “TRNC” in the case (*Loizidou v. Turkey* (merits), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996‑VI). This entailed a heavy obligation under Articles 1 and 2 of the Convention not to impede any murder investigation by another State in order to ensure that a safe haven was not created for murder suspects who had fled. There was also a positive obligation to cooperate fully in any such murder investigation (relying on *Ilaşcu*, cited above, § 317). By refusing to engage at all with the Cypriot Government and to deal with the extradition requests, Turkey had been in breach of her procedural obligation under Article 2.

231.  The applicants considered that the “TRNC” authorities had been wrong to claim the right to conduct a rival primary investigation knowing that they had no access to the *locus delicti*; it had been bound to be ineffective and doomed to fail *in limine*. The investigation conducted in the “TRNC” had not been genuine and had apparently been aimed at obtaining confessions. Furthermore, although there had been no indication that the evidence would be handed over, the “TRNC” authorities’ insistence on holding a trial had only aggravated the situation.

232.  Even though the “TRNC” authorities had received the evidence in the case through the Court following communication of the case in October 2009, they had not taken any action. Furthermore, following the murder of the first applicant’s bodyguard, two of the suspects had been in the hands of the “TRNC”. They should have been questioned about their involvement in the murder and asked to account for the presence of their DNA at the scene of the crime. The first suspect had given a statement on oath to the effect that he had been involved in the killings. Despite the Kyrenia Assize Court’s request that the evidence be referred to the “TRNC” Attorney-General no steps had been taken by the authorities. There had also been ballistic evidence establishing that the gun used in the murder of the first applicant’s bodyguard had been the same as the one that had been used in the attempt to kill the first applicant. Consequently, the applicants submitted that the “TRNC” authorities had evidence enabling them to start a prosecution for the murder of their relatives. The authorities’ claim that they had not been able to do so due to the failure of the Cypriot Government to provide evidence had simply been an excuse and had been politically motivated.

233.  It could not be ignored that the “TRNC” was an illegal entity and not recognised in international law. Its domestic laws on extradition and jurisdiction in respect of crimes committed outside its jurisdiction rendered it a safe haven for fugitive murderers. There was thus a clear lack of a legislative and administrative framework deterring the commission of murders in the areas controlled by the Cypriot Government. Furthermore, both the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters, to which Turkey was a party, applied to northern Cyprus, which came under Turkey’s effective control and lay within the Council of Europe’s *espace juridique* and thus its “metropolitan areas”. Turkey had not denounced these Conventions or made a reservation in respect of the “TRNC”.

234.  Furthermore the Turkish Government could not argue that a trial in the Republic of Cyprus would be unfair due to the composition of the bench.

(b)  The Cypriot Government

235.  The Cypriot Government submitted that they had taken all measures that had been within their power to secure the applicants’ rights under Article 2.

236.  The authorities had carried out an extensive investigation, which had included, *inter alia*, complete post-mortem, forensic and DNA examinations, the examination of a large number of exhibits found and collected from the scene of the crime and the victims’ house, the tracing and questioning of numerous witnesses and obtaining statements from them, and the inspection of computer hard discs. The investigation had resulted in the identification of eight suspects. The authorities had been in contact with UNFICYP’s representatives for the purpose of negotiating with the “TRNC” authorities for the handing over of the suspects to the Republic. Information and evidential material had been transmitted to the “TRNC” authorities through UNFICYP for this purpose, domestic and international arrest warrants had been issued, and extradition requests had been made to the Turkish Government.

237.  As the crime had been committed on the territory under its control, the Cypriot Government submitted that they had jurisdiction to try the suspects, both under domestic and international law. Under international law, the principal ground for the exercise of original jurisdiction was that of territoriality. The Court had acknowledged this in its judgment in the case of *Rantsev* (cited above, § 206). Furthermore, they also had jurisdiction under international law on the basis of both the active and the passive nationality principle: the victims had been and the suspects were members of the Republic’s Turkish Cypriot community and nationals of the Republic; the victims had had their ordinary residence in territory controlled by the Republic. Consequently, no question arose of overlapping or concurrent jurisdiction to try the crime between the Republic of Cyprus and Turkey and/or the separatist local administration in the Republic’s occupied territory.

238.  The procedural obligation incumbent on the Cypriot Government under Article 2 did not include an obligation to cede part of its sovereignty and part of its legal right as a State to prosecute and try crimes committed on its territory to the authorities of a separatist local administration. Such an obligation was not compatible with the principles established in the *Ilaşcu* case (cited above, §§ 339-340). In that case the cooperation measures taken by the Moldovan authorities had been of a limited character and thus were not regarded as constituting support for the Transdniestrian regime. The present case was not comparable. It was not a matter of simple police cooperation. Abandonment of the principle would have undermined its efforts to re-establish control over northern Cyprus and the administration of criminal justice with regard to crimes committed on its territory not under military occupation by Turkey. A duty to cooperate could not impose an unreasonable, impossible or disproportionate burden on the authorities of the States concerned.

239.  To the extent that the applicants relied on the European Convention on Mutual Assistance in Criminal Matters, they pointed out that assistance might be refused if the requested party considered that execution of the request was likely to prejudice the sovereignty, security, public order or other essential interests of its country. Thus they could rightly decline to hand over evidential material. Similarly, the European Convention on the Transfer of Proceedings in Criminal Matters was not relevant, as the Republic had never waived its right to prosecute and try the suspects.

240.  As Turkey had effective control over northern Cyprus, there was a two-fold obligation on Turkey firstly to surrender the suspects, and secondly to communicate all relevant information concerning the suspects and the commission of the crime in order to assist the Republic’s efforts in bringing the suspects to justice.  The “TRNC” authorities and Turkey, however, had failed to take any action to surrender the suspects. In particular the “TRNC” authorities had rejected a proposal by the Attorney-General of the Republic for all the evidence to be handed over to UNFICYP for it to determine whether it disclosed a *prima facie* case against the suspects, subject to an undertaking to surrender them if UNFICYP were to conclude that such evidence existed. Furthermore, the Turkish Government had failed to consider the extradition requests and to inform the Republic of a decision with reasons for their rejection as required by the European Convention on Extradition. Nor had they communicated any information or taken any steps to assist in any way the criminal investigation carried out by the Republic’s authorities. In fact the Cypriot Government had not been informed of any official investigation in northern Cyprus concerning the killings. The applicants had acknowledged this in their application to the Court. The Turkish Government had also failed to disclose to both the Court and the applicants developments in the case, and in particular, new evidence that had come to light following the statement that the first suspect gave during the murder trial of the first applicant’s bodyguard (see paragraphs 104-106 below).

(c)  The Turkish Government

241.  The Turkish Government submitted that the “TRNC” authorities had conducted an in-depth investigation of the case. They had carried out a thorough examination of the evidence, and several statements had been collected from the suspects, possible suspects and various witnesses, over a considerably short space of time. The “TRNC” authorities had been willing to prosecute the suspects. They believed that the Greek Cypriot authorities would be handing over evidence enabling them to proceed with a trial. Their own investigation had not produced sufficient evidence to institute criminal proceedings. All eight suspects had been arrested and held in detention. Their detention had been extended by the appropriate “TRNC” courts a number of times. However, in the absence of adequate evidence, the authorities had not been able to apply under the relevant domestic law for the suspects’ further detention on remand. As a result, the case file remained open, with the “TRNC” Attorney-General waiting for the evidence to be submitted by the Greek Cypriot authorities. When a copy of the investigation file had been received through the Court, the “TRNC” police authorities had questioned again the first and second suspects, who had not admitted their involvement in the incident. The cooperation of the Cypriot Government was still needed in order to ensure that witnesses, including the persons who had prepared the various reports in the investigation file, appeared before the “TRNC” courts to give evidence in court.

242.  The “TRNC” authorities had worked closely with all concerned. They had held numerous meetings with UNFICYP in their efforts to ensure cooperation and the exchange of information on the murders. Seven meetings had been held between 24 January 2005 and 5 April 2005 which had dealt exclusively or in part with the case. They had made it clear that they did not have sufficient evidence to keep the suspects in custody and had warned UNFICYP that they would have to release them if such evidence was not secured. The Cyprus authorities had flatly rejected any cooperation between the two sides on the basis that this would have amounted to the recognition of the “TRNC”.

243.  In so far as Turkey was concerned, the Turkish authorities had been informed of the search of the suspects by Greek Cypriot Interpol and had conducted inquiries into their identities. The fifth suspect – a Turkish national – had been arrested when he had entered Turkey following notification by Greek Cypriot Interpol. He had been questioned but as the authorities had not had any evidence to link him to the crime and in the absence of any extradition requests they had released him. The fifth suspect could have been prosecuted in Turkey if the file with the evidence had been provided. The Mersin public prosecutor had also requested the “TRNC” authorities for the investigation file concerning the first four suspects in order to evaluate the case with a view to prosecuting the fifth and seventh suspects. It had, however, been impossible to obtain the file from the Greek Cypriot authorities.

244.  The Turkish Government pointed out that cooperation with the “TRNC” did not amount to its recognition. For instance, the “TRNC” authorities had cooperated with the United Kingdom authorities in criminal matters to ensure that criminals could be tried. The Turkish Government referred to a case as an example – that of *Attorney-General v. Ozgay Yorgun* (“TRNC” Nicosia Assize Court, case no. 5719/99; TRNC” Supreme Court, appeal no. 67/99) – in which the United Kingdom authorities had provided witnesses and evidence for the prosecution of the suspects.

245.  The Turkish Government maintained that to the extent that the applicants argued that the Court should impose an additional obligation on Turkey under Article 2 to comply with the European Convention on Extradition they had misunderstood the Court’s case-law. The applicants were in essence inviting the Court to create new obligations which were not already provided for in the Convention but were allegedly provided for under other international instruments. However, the main issue before the Court was the application of the Convention and not that of other bilateral or international instruments.

246.  Even if the Court had decided to broaden its interpretation of Article 2 to include obligations under the European Convention on Extradition and European Convention on Mutual Assistance in Criminal Matters, the territorial applications of these Conventions only covered the metropolitan territories of Turkey, which did not include the “TRNC” (Article 27 § 1 of the European Convention on Extradition). Turkey had not entered and could not enter into a direct agreement with two or more Contracting Parties to extend its territories to the “TRNC” (Articles 25 (1) and 27(4)). Neither the Vienna Convention of 23 May 1969 on the Law of Treaties or any other Convention gave a different interpretation of “metropolitan territories”. The ordinary meaning was clear and there was no need to look into secondary meanings. Extradition was based on treaty law and did not constitute an obligation on States in customary law.

247.  The Turkish Government emphasised that there were two separate legal regimes: the “TRNC” and Turkey. Extradition, mutual enforcement of judgments and judicial cooperation in the “TRNC” was regulated by Law No. 43/88. Under that law the “TRNC” could not extradite its own nationals and was obliged to reject a request for the extradition of its nationals from any foreign country, including Turkey. Furthermore, the “TRNC” was obliged to refuse extradition when the crime that was the subject matter of the extradition request had been committed fully or partly within its territory or where the “TRNC” courts had jurisdiction. Under the Courts of Justice Law the “TRNC” Assize Courts had jurisdiction to try the suspects as the crime had been committed on the island of Cyprus (section 31 (1)(b)). To the extent that the applicants relied on what had been said by the Deputy Prime Minister of the “TRNC” in the meeting of 26 January 2005 with UNFICYP officials (see paragraph 140 above) concerning the possible surrender of the suspects, the Turkish Government clarified that what was meant was that the “TRNC” Attorney-General would review the evidence without excluding the possibility that the “TRNC” courts would apply other relevant domestic laws, as well as any other obligations regarding the non-extradition of citizens and human rights considerations, in order to effect this exchange. The Turkish Government stressed that the refusal of the Cypriot Government to submit the evidence gathered in the case had been based on purely policy, and not legal, grounds. The “TRNC”‘s decision to refuse to extradite, however, had been made on legal grounds.

248.  In so far as Turkey was concerned, pursuant to Article 6 of the European Convention on Extradition, Turkey had the right not to extradite its own nationals. Extradition was a procedure which depended on the conditions laid down both in domestic law and the above-mentioned Convention. Each country had its own legal provisions concerning extradition.

249.  In any event, the Turkish Government submitted that the extradition of the suspects could not have taken place for a number of reasons. Firstly, the necessary evidence had not been provided to the “TRNC” or Turkish authorities. Secondly, the extradition of the suspects for trial would have resulted in a violation of Articles 3, 5, 6 and 13 of the Convention due to the lack of proper judicial guarantees. In particular only Greek-Cypriot judges tried cases, which was contrary to the requirements of independence and impartiality under Article 6 of the Convention. Furthermore, as illustrated by *Denizci and Others v. Cyprus*, nos. 25316-25321/94 and 27207/95, ECHR 2001‑V, Turkish Cypriot accused persons had sometimes been harassed by the Greek Cypriot authorities.

250.  As regards the criminal proceedings against the first and second suspects for the murder of the first applicant’s bodyguard the Turkish Government stated that nothing had come to light in those proceedings that could have a decisive influence on their Convention obligations in the present application. The first suspect’s statement regarding his co-defendant, the second suspect, had been of doubtful evidential value. It had been confusing and unclear. Furthermore, he had retracted the statement in the course of the trial. He had not made any statements to the police, and indeed the Attorney-General’s office when reviewing the file had concluded that even if the first suspect had not retracted his statement, there had still not been enough evidence to bring charges against those suspects who had not admitted their involvement in the crime.

251.  To the extent that the applicants complained under Article 13, there had been no breach of this provision as it had not been possible to bring the perpetrators to justice because of the refusal of the Cypriot Government to hand over the evidence in the case.

(d)  Third-party submissions by the AIRE Centre

252.  The AIRE Centre noted that historically, agreements between Member States of the Council of Europe requiring cross-border cooperation in fighting crime had been intended to advance inter-governmental objectives, rather than focusing on the victim. This had been the case with the 1959European Convention on Mutual Assistance in Criminal Matters and the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crimes.

253.  This had, however, changed recently with the 2005 Convention on Action against Trafficking in Human Beings and the 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. These Conventions had shifted the emphasis in inter-governmental cooperation in criminal matters to fulfilling States’ obligations towards the victims of human rights violations. Both Conventions were victim-centred and mandated cross-border cooperation “to the widest extent possible”. This shift in emphasis also reflected a growing consensus amongst the Member States of the Council of Europe that inter-governmental cooperation in criminal matters had to be approached from an ECHR perspective, that is to say it had to address the rights and needs of those who were victims.

254.  At the level of the European Union, various provisions had been adopted to ensure cross-border cooperation between Member States. There had been an evolution from an inter-governmental model of cooperation towards an approach where cooperation contributed to the fulfilment of human rights obligations. The Council of the European Union had adopted various measures designed to ensure cross-border cooperation: the European Arrest Warrant, created by Framework Decision 2002/5841JHA, and the European Evidence Warrant, created by Framework Decision 2008/19781JHA. Both instruments were designed to operate in such a manner as to comply with the requirements of the ECHR (recitals 13 and 27 respectively). Furthermore, they both provided for an exception to the rule of double criminality for certain offences specifically listed in the Framework Decisions. These included the offences of murder, rape, arson, and sexual exploitation of children, which involved acts contrary to Articles 2, 3, 4 and 8 of the Convention. Such acts created obligations for the State on whose territory the crime had been committed, but also for the State within whose jurisdiction evidence or persons crucial to an effective investigation could be found. The AIRE Centre submitted that the positive obligations arising under the above-mentioned instruments mandated some level of confidence on the part of Contracting Parties either between each other or with other States so as to make essential cooperation in investigating acts contrary to those Articles possible. This was necessary to ensure that the rights guaranteed under the Convention were not theoretical and illusory but practical and effective (*İlhan v. Turkey* [GC], no. 22277/93, § 91, ECHR 2000-VII). European Union law demonstrated a developing European consensus that inter-governmental cooperation in criminal matters had to be approached from a human rights perspective.

255.  The AIRE Centre highlighted the numerous international law instruments providing for cross-border cooperation in criminal matters inside or outside of Europe. These included the United Nations Convention Against Transnational Organized Crime (2000), to which both Cyprus and Turkey were parties; the Inter-American Convention on Mutual Assistance in Criminal Matters (1992) and Additional Protocol (1993); the Inter-American Convention on the Taking of Evidence Abroad (1975) and Additional Protocol (1984); the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004); the Economic Community of West African States Convention on Mutual Assistance in Criminal Matters (1992); and the Mutual Assistance Pact between Member States of the Economic Community of Central African States (2002).

256.  In conclusion, the AIRE Centre underlined the prevalence in European and international law of agreements relating to mutual assistance in criminal investigations. In Europe in particular there appeared to be a trend requiring cross-border cooperation when the offences raised issues under Articles 2, 3 and/or 4 of the Convention. This trend placed obligations on States to investigate such offences which had taken place outside their jurisdiction, if persons or evidence of importance to the investigation were within their territory.

2.  The Court’s assessment

(a)  General principles

257.  The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The investigation must be, *inter alia,* thorough, impartial and careful (see *Mustafa Tunç and Fecire Tunç* *v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015)*.*

258.  By requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction, Article 2 imposes a duty on that State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. This obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances, even where the presumed perpetrator of the fatal attack is not a State agent (ibid., § 171).

259.  In order to be “effective” as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate. That is, it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (ibid., § 172). The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. This obligation may include taking steps to secure relevant evidence located in other jurisdictions (see *Rantsev,* cited above §§ 241 and 245) or where the perpetrators are outside its jurisdiction, to seek their extradition (see *Agache and Others v. Romania*, no. 2712/02, § 83, 20 October 2009; see also, in relation to Article 3*, Nasr and Ghali* *v. Italy*, no. 44883/09, §§ 270-272, 23 February 2016).

260.  Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible will risk falling short of this standard (see *Nachova,* cited above, § 113).

261.  The procedural obligation also requires that persons responsible for the investigations should be independent of anyone implicated or likely to be implicated in the events (*Mustafa Tunç*, cited above, § 177); it imposes a requirement of promptness and reasonable expedition (ibid., § 178); and in addition, it means that the investigation must be accessible to the victim’s family to the extent necessary to safeguard their legitimate interests (ibid., § 179).

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

262.  As the applicants’ relatives’ deaths took place in the territory controlled by the Republic of Cyprus and under that State’s jurisdiction, a procedural obligation arises in respect of Cyprus to investigate the death of the applicants’ relatives. Furthermore, the Court has already ruled that Turkey’s procedural obligation is also engaged in the circumstances of the case (see paragraphs 187 and 189 above).

263.  As observed above two parallel investigations were conducted into the killing of the applicants’ relatives by the authorities of the Cypriot Government and the Turkish Government, including those of the “TRNC” (see paragraph 215 above). The applicants’ complaint under Article 2 is twofold: firstly, they have a number of grievances concerning the respective investigations; secondly, they complain about the failure of respondent Governments to cooperate, resulting in an impasse in both their investigations and as a result in the investigation of the case as a whole.

(i)  The respective investigations

264.  The Court will first address the applicants’ criticisms of the respective investigations carried out by the authorities of the respondent States. It notes at the outset that the applicants have not called into question the independence of the investigations and that on the basis of the material before it no such issue arises.

(α)  Cyprus

265.  It is undisputed that the investigation into the killing of the applicants’ relatives started promptly and that numerous urgent and indispensable investigative steps were taken immediately upon the discovery of the victims’ bodies. The police arrived quickly and sealed off the scene. A detailed on-the-spot investigation was conducted by the police and a forensic pathologist. An investigation was held on the same day at the victims’ house, which was also secured and sealed off. Video recordings were made and photographs were taken during both on‑site inspections. Complete post-mortem examinations, during which photographs were taken and a video recording and a diary of action were made, were conducted the next day to determine the cause of the victims’ death (see paragraphs 13-20 above).

266.  In the framework of the investigation the Cypriot authorities, *inter alia*, collected and secured evidence, took statements from numerous witnesses, including the victims’ relatives, carried out a ballistic examination and DNA tests, searched the records of vehicles that had gone through the crossing points, and examined the security system of the victims’ house and computer hard discs (see paragraphs 21, 26, 28, 30 and 44 above). The investigative steps quickly led to the identification of eight suspects, the issuance of domestic and European arrest warrants and the publication of Red Notices following requests by the Cypriot police to Interpol (see paragraphs 27, 31, 35, 37-40 above). The suspects were all added to the Cypriot Government’s “stop list” (see paragraphs 32 and 42 above). It appears from the documents in the case file that the investigation was extended to the British bases and areas not controlled by the Cypriot Government (see paragraph 47 above).

267.  On 24 April 2008 the case file was classified as “otherwise disposed of” pending the arrests of the remaining suspects (see paragraphs 48 and 49 above).

268.  Following this, on 19 May 2008, the case was transferred to the coroner and inquest proceedings were opened (see paragraph 50 above). Despite contradictory submissions as to what happened at the first hearing, it is not contested that the applicants were informed of the inquest which the first applicant attended and that they were informed of the outcome (see paragraphs 50 and 120 above).

269.  The authorities arrested the eighth suspect when he crossed over to the Government controlled areas on 12 July 2006 but had to release him for lack of evidence linking him to the crime. According to the police report, some of the allegations that had been made by him during questioning required further investigation in the “TRNC” (see paragraph 45 above).

270.  The last step taken by the Cypriot authorities was on 4 November 2008, when extradition requests were made to Turkey concerning the six persons that remained suspects in the case (see paragraphs 55-57 above). No further steps have been taken since then pending the suspects’ arrest.

271.  The applicants’ grievances against the Cypriot authorities in so far as their investigation is taken in isolation are twofold: they concern the extradition requests and the applicants’ access to the investigation documents.

272.  First, the applicants questioned whether the extradition requests had been made properly and complained about the delay on the part of the Cypriot authorities in making them. The Court notes that there is no indication that the requests were not made correctly or through the right channels. It is true that they were made more than three and half years after the issuance of the Red Notices. However, in the context of this particular case, this did not constitute any significant obstacle. It was clear very early on, following the publication of the Red Notices, that neither the Turkish nor the “TRNC” authorities were intending to surrender the suspects (see paragraphs 41, 127, 130 and 150 above). The extradition requests were simply returned to the Cypriot authorities without reply. Although both respondent States are Member States to the European Convention on Extradition there was no extradition treaty between them (contrast *Nasr and Ghali*, cited above, § 271, 23 February 2016). Nor can the Cypriot Government be held liable for Turkey’s refusal to extradite (see *Nježić and Štimac v. Croatia*, no. 29823/13, § 65, 9 April 2015, and *Palić v. Bosnia and Herzegovina*, no. 4704/04, § 68, 15 February 2011).

273.  Second, the applicants complained that the Cypriot authorities had not provided them with the evidence they had collected in the case, including all witness statements taken during the investigation. The Court reiterates that Article 2 does not require applicants to have access to police files, or copies of all documents during an ongoing inquiry, or for them to be consulted or informed about every step (see, for example, *Gürtekin and Others v. Cyprus*, (dec.) nos. 60441/13 et al., § 29, 11 March 2014, and *Charalambous and Others v. Turkey* (dec.), nos. 46744/07 et al., § 64, both with further references). It emphasises in this respect that disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects on private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement under Article 2 (see *Gürtekin*, § 29, cited above, and *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 347, ECHR 2007‑II). Similarly, the investigating authorities cannot be required to indulge every wish of a surviving relative as regards investigative measures (ibid., § 348, and *Velcea and Mazăre v. Romania*, no. 64301/01, § 113, 1 December 2009). However, the Court must examine whether the applicants were afforded access to the investigation to the extent necessary to safeguard their legitimate interests (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 311, ECHR 2011 (extracts)).

274.  As can be seen from the material in the case file, the applicants were involved in the investigation from the very beginning. Meetings were held with the Cypriot police and the Attorney-General and the applicants received information from them (see paragraphs 44, 107-108, 111-112 and 114-116 above). They were informed of the progress in the investigation and of the inquest proceedings, which the first applicant attended (see paragraphs 50 and 120). They also received a police report about the case upon their request (see paragraph 117 above). The Court is thus not persuaded in the present case that the applicants were excluded from the investigative process to such a degree as would infringe the minimum standard under Article 2.

275.  In reality the applicants’ grievance stems from the refusal of the Cypriot authorities to transmit the case file to the “TRNC” authorities and their wish to remedy the situation. It is therefore intertwined with their complaint concerning lack of cooperation and will be examined in that context.

(β)  Turkey

276.  The “TRNC” authorities reacted quickly following news of the murders and opened an investigation immediately on 17 January 2005, when the victims’ bodies were taken to the “TRNC”. A statement was taken from the first applicant (see paragraph 64 above). By the end of January 2005 all the suspects had been arrested on the basis of arrest warrants issued by the relevant “TRNC” district courts (see paragraphs 65-87 above). The houses of the seven suspects who lived in the “TRNC” were searched on the basis of search warrants (see paragraphs 72 and 82 above). Statements were taken from the suspects, who were remanded in custody until their release on or around 11 February 2005 due to lack of evidence connecting them to the murders (see paragraph 92 above). The “TRNC” authorities also questioned another person whom they had identified as another possible suspect (see paragraph 95 above). During the investigation statements were taken from the suspects and the applicants, as well as other persons who knew or were somehow connected to the suspects. Evidence was also collected (see paragraph 97 above).

277.  Following his release from detention in the “TRNC”, the fifth suspect was arrested and questioned in Turkey on 15 February 2005. He was subsequently released, as the Turkish authorities did not have enough evidence to link him to the crime (see paragraph 94 above).

278.  Following the suspects’ release, very few steps were taken by the “TRNC” authorities. Sometime after 22 March 2007 the file was classified as “non-resolved for the time being” (see paragraphs 99-100 above). After that, nothing happened until February 2010, when the first and second suspects were questioned again by the “TRNC” police; the authorities subsequently received a copy of the Cypriot investigation file through the Court. This, however, did not lead to anything (see paragraph 102 above). Furthermore, following a statement made by the first suspect during his and the second suspect’s trial for the murder of the first applicant’s bodyguard, the “TRNC” Attorney-General reviewed the investigation file but there was still not enough other evidence to justify prosecution (see paragraphs 104-105 above).

279.  The applicants complained that the “TRNC” authorities had refused to investigate or prosecute the suspects. They also complained of a failure on the part of the “TRNC” authorities to take any steps, firstly when they had eventually obtained a copy of the file through the Court and secondly in respect of new evidence that had come to light during the trial of the first and second suspects in the above-mentioned proceedings (see paragraph 278 above).

280.  It is evident from the material provided that the “TRNC” authorities carried out a substantial amount of work; thus, the Court finds little substance in the applicants’ claim that they refused to investigate. They arrested and detained all suspects; even though the first four suspects were originally arrested in respect of charges related to theft and forgery, those charges were amended to premeditated murder (see paragraphs 65, 67, 68, 71, 74 and 75 above). The investigation did not result in any prosecutions because of a lack of evidence. Whilst it must be frustrating for the applicants that suspects were identified, arrested, questioned and then released, Article 2 cannot be interpreted as imposing a requirement on the authorities to launch a prosecution irrespective of the evidence which is available(*Nježić and Štimac*, § 69, and *Gürtekin,* § 27, both cited above). As the Court has held on numerous occasions, the procedural obligation under Article 2 is not an obligation of result, but of means (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, ECHR 2016). In this connection the Court notes that the suspects all denied involvement in the crime and the investigation carried out did not result in evidence linking them to the crime. Furthermore, although certain steps were taken by the “TRNC” authorities following the communication of the case and the trial of the first and second suspects, these did not lead to solid new evidence on which to base a prosecution. The “TRNC” and Turkish authorities had limited evidence at hand, as the crime was committed in the territory controlled by the Cypriot Government. In order to prosecute the suspects, the “TRNC” and Turkish authorities needed reliable evidence that would be admissible in a court.

(γ)  Conclusion

281.  It is clear from the above that the authorities of the respondent States took a significant number of investigative steps promptly. The Court perceives no shortcomings that might call into question the overall adequacy of the respective investigations in themselves. The Court considers, however, that there is no need to make a finding under Article 2 on this matter, in view of the following.

(ii)  The procedural obligation and the lack of cooperation between the respondent States

282.  The Court observes that both investigations reached a stalemate and the respective files were held in abeyance, pending further developments. Following the return of the extradition requests by Turkey on 24 November 2008 the Cypriot investigation came to a complete halt; the Cypriot Government still await the re-arrest and surrender of the suspects so they can try them. Similarly, the “TRNC” classified the file as “non-resolved for the time being” some time in 2007. Since then nothing concrete has been done. Although the first and second suspects were questioned again in 2010 this did not lead to anything. The Turkish Government are still waiting for all the evidence in the case to be handed over so they can try the suspects. Consequently, although the investigations remain open nothing has happened for more than eight years. All efforts through UNFICYP have proved fruitless due to the persistence of the respondent States in maintaining their respective positions.

283.  There have been a few cases in which the Court has considered the extent of the procedural obligation in a cross-border or transnational/transjurisdictional context.

284.  In *O’Loughlin* (cited above) the applicants complained under Article 2 of the Convention that the United Kingdom authorities had failed to assist in the investigations and the inquests carried out in Ireland into the deaths resulting from the Dublin and Monaghan bombings of 17 May 1974. The suspects were in Northern Ireland. The Court stated that it did not have to decide whether, or to what extent, Article 2 could impose an obligation on one Contracting State to cooperate with inquiries or hearings conducted within the jurisdiction of another Contracting State concerning the use of unlawful force resulting in death, as the relevant complaint had been filed outside the six-month time-limit. Shortly afterwards, in *Cummins* (cited above), which concerned bombings in Dublin in December 1972 and January 1973, the Court declared similar complaints against the United Kingdom to be manifestly ill-founded, as a failure to cooperate with the investigations into the deaths and injuries had not been established. Since these decisions, in its judgment in *Rantsev*, the Court found that the corollary of the obligation on an investigating State to secure evidence located in other jurisdictions was a duty on the State where evidence was located to render any assistance within its competence and means sought under a legal assistance request by the State in which the death occurred (*Rantsev*, cited above, § 245). It therefore found that the procedural obligation under Article 2 required the Cypriot authorities to seek assistance from Russia and that Russia had a corresponding obligation to assist the Cypriot authorities due to the fact that certain evidence had been located on its territory. The Court has therefore acknowledged that the procedural obligation under Article 2 mandates cooperation between states in securing available evidence.

285.  The Court reiterates that in assessing whether there has been a violation of Article 2 in its procedural aspect, it will examine if the domestic authorities have done all that could be reasonably expected of them in the circumstances of the particular case (see, for example, *Nježić and Štimac*, cited above, § 68). In circumstances such as those of the present case, where the investigation of the unlawful killing unavoidably implicates more than one State, the Court finds that this entails an obligation on the part of the respondent States concerned to cooperate effectively and take all reasonable steps necessary to this end in order to facilitate and realise an effective investigation into the case overall. Such a duty is in keeping with the effective protection of the right to life as afforded by Article 2, which ranks as one of the most fundamental provisions in the Convention (see, among other authorities, *Nachova*, cited above, § 93). Indeed, any other finding would severely diminish the purpose of the protection guaranteed by Article 2 and render illusory the guarantees in respect of an individual’s right to life as any real possibility of elucidating the circumstances of the killing and bringing the perpetrators to justice would be hampered and lead to impunity for those responsible. The Convention is a system for the protection of human rights and it is of crucial importance that it is interpreted and applied in a manner that renders these rights practical and effective, not theoretical and illusory (see *Varnava*, cited above, § 160).

286.  This is also consistent with the position taken by the relevant Council of Europe instruments which mandate inter-governmental cooperation in order to prevent and combat transnational crimes more effectively and to punish the perpetrators. The Court reiterates in this respect that it has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. The Court further observes that it has always referred to the “living” nature of the Convention, which must be interpreted in the light of present-day conditions, and that it has taken account of evolving norms of national and international law in its interpretation of Convention provisions (see *Rantsev*, cited above, §§ 273-74 and *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 65-68, 12 November 2008).

287.  The nature and scope of the cooperation required by the States involved in meeting their procedural obligation under Article 2 will, inevitably, depend on the circumstances of the particular case.

288.  To begin with, the Court stresses that it is not competent to review the Contracting Parties’ compliance with instruments other than the European Convention on Human Rights and its Protocols, even if other international treaties may provide it with a source of inspiration it has no jurisdiction to interpret the provisions of such instruments (see *Mihailov v. Bulgaria*, no. 52367/99, § 33, 21 July 2005). It has no competence, therefore, to determine whether the respondent States have complied with their obligations under the European Convention on Extradition and the European Convention on Mutual Assistance, as the applicants suggest.

289.  Furthermore, it is not for the Court to indicate which measures the authorities should take in order for the respondent States to comply with their obligations most effectively. The Court’s role is to verify that the measures actually taken were appropriate and sufficient in the circumstances of the case before it. It is not therefore for the Court to decide where the trial of the suspects should have taken place or to impose an obligation on a Member State to extradite. When faced with a partial or total failure to act, the Court’s task is to determine to what extent a minimum effort was possible and whether it should have been made (see *Ilaşcu*, cited above, § 334).

290.  It is clear from all the material before the Court, including the 2005 UN Secretary-General’s report on the UN operation in Cyprus (see paragraph 153 above), that the respondent Governments were not prepared to make any compromise on their positions and find middle ground. This position arose from political considerations which reflect the long-standing and intense political dispute between the Republic of Cyprus and Turkey (see, *mutatis mutandis, Demopoulos*, cited above, § 83).

291.  On the Cypriot Government’s side it is evident that what drove the unwillingness to cooperate was the refusal to lend (or the fear of lending) any legitimacy to the “TRNC”. However, the Court does not accept that steps taken with the aim of cooperation in order to further the investigation in this case would amount to recognition, implied or otherwise of the “TRNC” (see *Cyprus v. Turkey*, cited above, §§ 61 and 238). Nor would it be tantamount to holding that Turkey wields internationally recognised sovereignty over northern Cyprus (see, *mutatis mutandis*, *Demopoulos*, cited above, §§ 95-96, and *Foka v. Turkey*, no. 28940/95, §§ 83-84, 24 June 2008).The United Kingdom, for example, has cooperated in criminal cases with the “TRNC” (see paragraphs 150 and 244 above) without affording it any recognition.

292.  On the other hand, as the Government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see *Cyprus v. Turkey*, cited above, §§ 14, 61 and 90), it finds it striking that the extradition requests made by the Cypriot Government were ignored by the Turkish Government, who have remained silent on the matter.

293.  Although the respondent States had the opportunity to find a solution and come to an agreement under the brokerage of UNFICYP, they did not use that opportunity to the full. Any suggestions made in an effort to find a compromise solution or that the authorities concerned meet each other half way were met with downright refusal on the part of those authorities. The options put forward have included meetings on neutral territory between the Cypriot and “TRNC” police, UNFICYP and the Sovereign Base Areas police, the questioning of the suspects through “the video recording interview method” at the Ledra Palace Hotel in the UN buffer zone, the possibility of an *ad hoc* arrangement or trial at a neutral venue, the exchange of evidence (under certain conditions), and dealing with the issue on a technical services level (see paragraphs 131-133, 136, 137, 140 and 151 above). While a number of bi-communal working groups and technical committees have been set up – including one on criminal matters (see paragraphs 154-156 above) – it appears that none of these committees has taken up the present case with the purpose of furthering the investigation.

294.  As a result of the respondent States’ failure to cooperate, their respective investigations remain open and nothing has been done for more than eight years. In that regard, the Court would stress that the passage of time inevitably erodes the amount and quality of evidence available and the appearance of a lack of diligence casts doubt on the good faith of the investigative efforts (see *Trubnikov v. Russia,* no. 49790/99, § 92, 5 July 2005). Moreover, the very passage of time is liable to compromise the chances of investigation being completed (see *M.B. v. Romania*, no. 43982/06, § 64, 3 November 2011). It also prolongs the ordeal for the members of the family (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002‑II).

295.  In the present, ultimately straightforward, case a considerable amount of evidence was collected and eight suspects were quickly identified, traced and arrested. The failure to cooperate directly or through UNFICYP resulted in their release. If there had been cooperation, in line with the procedural obligation under Article 2, criminal proceedings may have ensued against one or more of the suspects or the investigation may have come to a proper conclusion.

296.  In view of the above, the Court finds that there has been a violation of Article 2 of the Convention under its procedural aspect by virtue of the failure of the respondent Governments to cooperate.

297.  Having regard to the above conclusion, the Court is of the opinion that there is no need to examine separately the applicants’ complaint under Article 13 of the Convention.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

298.  Article 41 of the Convention provides:

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

A.  Damage

1.  Pecuniary damage

(a)  The parties’ submissions

(i)  The applicants

299.  The applicants claimed 40,000 euros (EUR) in respect of pecuniary damage. This sum represented the expenses incurred by the first applicant to protect his life: home security, the employment of a bodyguard (who was murdered in 2009), travel expenses in respect of trips abroad following the attempt on his life and legal expenses incurred in proceedings that were brought against him for possessing a firearm in defence of his person. The applicants submitted that the above-mentioned sum had been calculated on “a rough and ready basis”, as they did not have any documents proving the expenses claimed.

(ii)  The Cypriot Government

300.  The Cypriot Government did not comment on this head of claim.

(iii)  The Turkish Government

301.  The Turkish Government submitted that there was no causal connection between the pecuniary damage claimed and the subject matter of the application, which had nothing to do with the first applicant’s right to life.

(b)  The Court’s assessment

302.  The Court finds that the applicants’ claim for pecuniary damage is unsubstantiated. It therefore rejects this claim.

2.  Non-pecuniary damage

(a)  The parties’ submissions

(i)  The applicants

303.  In respect of non-pecuniary damage the applicants claimed the total sum of EUR 800,000 – EUR 400,000 from each respondent Government. This sum was composed of a claim in respect of each Government for EUR 100,000 by the first applicant and EUR 50,000 by each of the other applicants.

304.  The applicants stressed how much unbearable anguish, pain, trauma and frustration they had suffered due to the gravity of the crime against their family and the failure of the authorities of the respondent Governments to cooperate and bring the perpetrators to justice. The applicants underlined that they had been treated with utter insensitivity and indifference. They invited the Court to condemn the callous attitude of the respondent Governments through the award of a substantial amount, even though this could not make up for the huge loss they had suffered. Furthermore, as a result of the respondent Governments’ failure to investigate, apprehend, prosecute and punish those responsible for the murders, all the applicants, and in particular the first applicant, feared for their lives and lived in a permanent state of fear and anxiety. There had been an attempt on the first applicant’s life and his bodyguard had been murdered. He had also had to act as a conduit between the various authorities in the days and months immediately after the killings as they had not been cooperating. It was for these reasons that the first applicant’s claim under this head was higher.

(ii)  The Cypriot Government

305.  The Cypriot Government contested the applicants’ claims and submitted that they were excessive, bearing in mind the Court’s case-law. In this connection they referred to the case of *Rantsev* (cited above, § 342).

(iii)  The Turkish Government

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

(b)  The Court’s assessment

307.  The Court notes that it has found a violation of Article 2 under its procedural head on account of the Respondent Governments’ failure to cooperate and thus provide an effective investigation into the death of the applicants’ relatives. It also notes that it has found that no separate issue arises under Article 13 of the Convention.

308.  As a result of the violation found the applicants suffered non-pecuniary damage which cannot be made good merely by the finding of a violation.

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

B.  Costs and expenses

1.  The parties’ submissions

(a)  The applicants

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

(b)  The Cypriot Government

311.  The Cypriot Government submitted that the applicants claimed costs which had not been necessarily incurred, were not reasonable as to quantum and were not substantiated by receipts. They therefore considered that their claim under this head should be rejected.

(c)  The Turkish Government

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

2.  The Court’s assessment

313.  According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Rule 60 of the Rules of Court further requires that an applicant submit itemised particulars of all claims, together with any relevant supporting documents.

314.  The Court notes that the fee agreement, which was signed only by the fourth applicant before the lodging of the application, only refers to aggregate sums that have not been itemised. No reference is made to the specific work actually carried out, the number of hours worked and the hourly rate charged. The applicants have failed to provide any other supporting documents – such as itemised bills or invoices – substantiating their claim.

315.  The Court accordingly makes no award under this head.

C.  Default interest

316.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1.  *Declares*, unanimously, the application admissible;

2.  *Holds,* by five votes to two, that there has been a violation of Article 2 of the Convention in its procedural limb by Cyprus;

3.  *Holds*, unanimously, that there has been a violation of Article 2 of the Convention in its procedural limb by Turkey;

4.  *Holds*, unanimously, that there is no need to examine separately the complaint under Article 13 of the Convention taken in conjunction with Article 2 of the Convention;

5.  *Holds,* by five votes to two,

(a)  that the Cypriot Government are to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,500 (eight thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

6.  *Holds,* by five votes to two,

(a)  that the Turkish Government are to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,500 (eight thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7.  *Dismisses*, unanimously, the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 4 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Helena Jäderblom  
 Registrar President

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

(a)  Partly dissenting opinion of Judge Serghides;

(b)  Partly dissenting opinion of Judge Pastor Vilanova.

H.J.  
J.S.P.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1.  With all due respect to the majority, I disagree with them that there has been a violation of Article 2 of the Convention in its procedural limb by the Republic of Cyprus, though I agree with them that there has been such a violation by Turkey.

I.  Has the Republic of Cyprus violated its procedural obligation under Article 2 of the Convention to effectively investigate the murder?

2.  A crucial point related to the above question which, with respect, the majority have overlooked, is why the Republic of Cyprus had not been prepared to “cooperate” with the “Turkish Republic of Northern Cyprus” (the “TRNC”), and whether the refusal of the Republic of Cyprus was legitimate.

3.  The case concerns the investigation into the unlawful killing of three persons, a couple and their daughter, all of them Cypriot nationals of Turkish Cypriot origin. This murder, which took place on 15 January 2005, was committed on the territory of the Republic of Cyprus, in particular in the part of its territory not under the military occupation of Turkey (see paragraphs 10-11 and 262 of the judgment). The applicants, who are relatives of the deceased, complained that there had been a violation of Article 2 by both the Republic of Cyprus and Turkey (including the “TRNC”) on account of their failure to conduct an effective investigation into the death of their relatives, submitting that the two States failed to cooperate in this connection and bring the suspects to justice.

4.  The investigation, carried out effectively by the Republic of Cyprus, including DNA tests and the examination of exhibits and witnesses (see paragraph 266 of the judgment), resulted in eight suspects facing criminal charges, prosecution and trial before the Republic’s courts. The suspects, however, after the offence had been committed, went to the Republic’s territory in northern Cyprus, over which Turkey exercises effective overall control. The Republic of Cyprus issued warrants for the arrest of the suspects, including European and international arrest warrants, since its courts could not try them in their absence. As is stated in paragraph 218 of the judgment:

“All the authorities concerned had obstinately clung to their respective positions: the Cypriot Government had not been prepared to provide the ‘TRNC’ with any evidence and had insisted on the surrendering of the suspects for trial in their courts; the ‘TRNC’ had not been prepared to cooperate unless all evidence was provided and the suspects were prosecuted and tried in its own courts. As a result of this failure, despite cogent and compelling evidence, the perpetrators had not been punished.”

5.  It has to be said from the outset that a seemingly ordinary criminal case, as was the origin of this case, has given rise to a major issue of international law, which could not have arisen if all the legal parameters under the Convention had been properly examined and taken into account. This issue may not easily be noticed, unless it is clearly revealed and fully explained.

In what immediately follows, I will attempt to explain that, in keeping with the Convention and international law, no “cooperation” could be expected between the two respondent States, since the only thing the Turkish authorities wanted was to try the suspects in their own courts.

(a)  Relevant case-law of the Court on the legitimacy of the Republic of Cyprus and the illegal status of the “TRNC”

6.  On 20 July 1974 Turkey invaded and occupied a significant part of northern Cyprus, and since then it has retained control of this territory by its military troops. In November 1983 Turkey proclaimed in Cyprus the establishment of the “Turkish Republic of Northern Cyprus”.

7.  In paragraph 292 of the judgment it is rightly stated that

“as the Government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see *Cyprus v. Turkey* ... §§ 14, 61 and 90), it finds it striking that the extradition requests made by the Cypriot Government were ignored by the Turkish Government, who have remained silent on the matter.”

8.  In paragraph 233 of the judgment there is an important observation:

“It could not be ignored that the ‘TRNC’ was an illegal entity and not recognised in international law. Its domestic laws on extradition and jurisdiction in respect of crimes committed outside its jurisdiction rendered it a safe haven for fugitive murderers.”

However, as will be seen later on, even though it is emphasised here that this situation “could not be ignored”, it has indeed been ignored in the present judgment to all intents and purposes.

9.  From the case-law of this Court, it is clear that: (a) only the Republic of Cyprus remains the sole legitimate government in Cyprus and therefore its courts are the only lawful courts in Cyprus; (b) the establishment by Turkey in northern Cyprus of the so-called “TRNC” was condemned internationally as legally invalid and unlawful; and (c) the “TRNC” is a *de facto* entityand its authorities have only very limited jurisdiction, just to make the life of the inhabitants of the territory under the control of Turkey tolerable.

10.  In paragraphs 14, 61, 90 and 96 of *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001‑IV) the Court held as follows (my emphasis):

“14. A major development in the continuing division of Cyprus occurred in November 1983 with the proclamation of the ‘Turkish Republic of Northern Cyprus; (the ‘TRNC’) and the subsequent enactment of the ‘TRNC Constitution’ on 7 May 1985.

This development *was condemned by the international community*. On 18 November 1983 *the United Nations Security Council* adopted *Resolution 541 (1983)* declaring the proclamation of the establishment of the ‘TRNC’ legally invalid and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus. A similar call was made by *the Security Council on 11 May 1984 in its Resolution 550 (1984).* In *November 1983 the Committee of Ministers of the Council of Europe* decided that it continued to regard the government of the Republic of Cyprus as the sole legitimate government of Cyprus and called for respect of the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus.”

“61. The Court, like the Commission, finds that the respondent Government’s claim cannot be sustained. In line with its *Loizidou* judgment (merits) (loc. cit.), it notes that it is evident from international practice and the condemnatory tone of the resolutions adopted by the United Nations Security Council and the Council of Europe’s Committee of Ministers that the international community *does not recognise* the ‘TRNC’ as a State under international law. The Court reiterates the conclusion reached in its *Loizidou* judgment (merits) that *the Republic of* *Cyprus has remained the sole legitimate government of Cyprus* and on that account their locus standi as the government of a High Contracting Party cannot therefore be in doubt (loc. cit., p. 2231, § 44; see also the above-mentioned *Loizidou* judgment (preliminary objections), p. 18, § 40).”

“90. In the Court’s opinion, and *without in any way putting in doubt* either the view adopted by the international community regarding the establishment of the ‘TRNC’ (see paragraph 14 above) or the fact that the government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see paragraph 61 above), it cannot be excluded that former Article 26 of the Convention requires that remedies made available to individuals generally in northern Cyprus to enable them to secure redress for violations of their Convention rights have to be tested. The Court, like the Commission, would characterise the developments which have occurred in northern Cyprus since 1974 *in terms of the exercise of de facto authority by the ‘TRNC’*. As it observed in its *Loizidou* judgment (merits) with reference to the Advisory Opinion of the International Court of Justice in the *Namibia* case, international law recognises the legitimacy of certain legal arrangements and transactions in situations *such as the one obtaining in the ‘TRNC’, for instance as regards the registration of births, deaths, and marriages*, *‘the effects of which can only be ignored to the detriment of the inhabitants* of the [t]erritory’ (loc. cit., p. 2231, § 45).”

“96. It is to be noted that the International Court’s Advisory Opinion, read in conjunction with the pleadings and the explanations given by some of that court’s members, shows clearly that, in situations similar to those arising in the present case, the obligation to disregard *acts of de facto entities* is far from absolute. *Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the* de facto *authorities*, *including their courts*; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one. *To hold otherwise* would amount to stripping the inhabitants of the territory of all their rights whenever they are discussed in an international context, which *would amount to depriving them even of the minimum standard of rights* to which they are entitled.”

**Turkey’s accountability for violations of Convention rights only when these take place within the territory of Cyprus over which Turkey has effective control**

11.  The responsibility of Turkey as a Contracting Party to the Convention outside its national territory, in respect of Cyprus, *is confined only to the territory where it has its armed forces and exercises effective control.* According to the case-law of this Court, Turkey is accountable for violations of Convention rights which take place within northern Cyprus, over which it has control, and not the rest of Cyprus. In other words, the *de facto* control criterion is the relevant criterion for the responsibility of Turkey, which is confined to breaches of human rights committed in the area of Cyprus occupied by Turkey.

12.  In *Loizidou v. Turkey* ((merits), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996‑VI), the Court held as follows (my emphasis):

“52. As regards the question of imputability, the Court recalls in the first place that in its above-mentioned *Loizidou* judgment (preliminary objections) (pp. 23-24, para. 62) it stressed that under its established case-law the concept of ‘jurisdiction’ under Article 1 of the Convention is not restricted to the national territory of the Contracting States. Accordingly, the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory. Of particular significance to the present case the Court held, in conformity with the relevant principles of international law governing State responsibility, that the responsibility of a Contracting Party could also arise *when as a consequence of military action* - whether lawful or unlawful - *it exercises effective control* of an area outside its national territory. The obligation to secure, *in such an area*, the rights and freedoms set out in the Convention, *derives from the fact of such control* whether it be exercised directly, *through its armed forces, or through a subordinate local administration* (see the above-mentioned *Loizidou* judgment (preliminary objections), ibid.).”

13.  In *Foka v. Cyprus,* no. 28940/95, § 83, 24 June 2008, the Court said the following, making the point absolutely clear (my emphasis):

“83. The Court recalls that the overall control exercised by Turkey *over the territory of northern Cyprus* entails her responsibility for the policies and actions of the ‘TRNC’ and that those affected by such policies or actions come within the ‘jurisdiction’ of Turkey for the purposes of Article 1 of the Convention with the consequence that Turkey is accountable for violations of Convention rights *which take place within that territory.* It would *not* be consistent with *such responsibility* under the Convention if the adoption by the authorities of the ‘TRNC’ of civil, administrative or criminal law measures, or their application or enforcement within that territory, *were to be denied* any validity or regarded as having no ‘lawful’ basis in terms of the Convention.”

14.  What was said above in *Foka* has been followed in many cases against Turkey, of Cyprus origin, including *Protopapa v. Turkey,* no. 16084/90, § 60, 24 February 2009; *Petrakidou v. Turkey,* no. 16081/90, §§ 91-92, 27 May 2010; *Olymbiou v. Turkey*, no. 16091/90, §§ 89-92, 99-106, 27 October 2009; and *Strati v. Turkey*, no. 16082/90, §§ 105-107, 22 September 2009. All these cases, where the complaint was mainly based on either Article 5 or Article 6 of the Convention, or both, have in common that the alleged violation took place in the territory of the Republic of Cyprus under the control of Turkey.

15.  Though the “TRNC” is not an internationally recognised entity, the Court has recognised, in its above-mentioned case-law, the criminal jurisdiction of the district courts of this illegal entity and found in all the above-mentioned cases that there had been no violation of the said provisions in the exercise of jurisdiction by these courts. The reason given is stated in the passage just quoted from *Foka*: because otherwise, Turkey would not be responsible under Article 1 of the Convention for any violation within the territory of which it has control. In *Cyprus v. Turkey* (cited above, § 78) this was made even clearer (my emphasis):

“... Having regard to the applicant Government’s continuing inability to exercise their Convention obligations in northern Cyprus, any other finding *would result in a regrettable vacuum* in the system of human-rights protection in the territory in question *by removing* from individuals there *the benefit* of the Convention’s fundamental *safeguards and their right* to call a High Contracting Party to account for violation of their rights in proceedings before the Court.”

(See also the quotation from *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, § 23, ECHR 2014, at paragraph 59 below).

16.  This recognition of criminal jurisdiction of the courts of the “TRNC”, limited only to violations committed in the occupied part of Cyprus, could be considered as an extension of the jurisdiction that *de facto* courts have in accordance with the principle set out in the Advisory Opinion of the International Court of Justice in the *Namibia* case (cited in the above-mentioned passage from *Cyprus v. Turkey* (merits), § 90), that is, jurisdiction in everyday matters, for instance the registration of births, deaths and marriages.

17.  Even if one disagrees with the *rationale* of the above-mentioned case-law of the Court recognising the criminal jurisdiction of courts of the “TRNC” for violations of human rights which take place in the territory of Cyprus under the control of Turkey, one cannot but adhere to this binding precedent. However, in the present case I could not adhere to the view of the majority and vote recognising, even in an implicit way, that the courts of the “TRNC” have or should have jurisdiction for violations of human rights occurring in the free territory of Cyprus.

(b)  Suspension of *acquis communautaire* “in those areas of the Republic of Cyprus in which the Government of the Republic does not exercise effective control”

18.  The Republic of Cyprus became a member of the European Union on 1 May 2004. Though the Republic of Cyprus has sovereignty over the whole territory of the Republic and *de jure* represents Cyprus as a whole, it nevertheless controls *de facto* only the southern part of the island, and, therefore, could not secure in its northern territory the effective application of *acquis communautaire* (the accumulated legislation, legal acts and court decisions, which constitute the body of European Union law). Thus the following solution was adopted in Article 1 of Protocol No. 10 of the Treaty of Accession (my emphasis):

“The application of the *acquis* shall be suspended *in* those areas of the Republic of Cyprus *in* which the Government of the Republic does not exercise effective control.”

(See on this provision: *Apostolides v. Orams,* [2007] 1 W.L.R. 241 (Queen’s Bench Division); *Meletis Apostolides v. David Charles Orams* and *Linda Elizabeth Orams,* Case C-420/07, judgment of the European Court of Justice, 28 April 2009; and *Meletis Apostolides v. David Charles Orams and* *Linda Elizabeth Orams* [2010] E.W.C.A. Civ. (Court of Appeal of England and Wales)).

19.  The use of the preposition “*in*” in the above-cited Article 1 of Protocol No. 10, referring exclusively to the territory of the Republic of Cyprus over which the Republic does not have effective control, shows that there is no suspension of the *acquis* where the alleged right is not exclusively linked to the occupied territory.

20.  This provision is consistent with what has been said above, namely that accountability for a violation of human rights depends on which State has effective control over the territory where the violation was committed.

(c)  Competence of the Assize Courts of the Republic of Cyprus

21.  According to the law of the Republic of Cyprus, the only courts in Cyprus competent to try the suspects for the offence were and are the Cypriot Assize Courts. More specifically, under section 20(1)(a) of the Courts of Justice Law 1960 (14/1960), as amended:

“20(1) Subject to the provisions of article 156 of the Constitution every Assize Court shall have jurisdiction to try all offences punishable under the Criminal Code or any other law, which were committed –

(a) in the bounds of the Republic ...”

22.  Furthermore, under section 5(1)(a) of the Criminal Code, CAP. 154, as amended:

“The Criminal Code and any other Law creating an offence is applicable to all offences committed –

(a) in the territory of the Republic ...”

23.  Lastly and most importantly, Article 113.2 of the Constitution provides as follows:

“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 ...”

24.  It is logical that the court of the place where an offence is committed (*locus commissi delicti*) should be the court competent to deal with it, and that the applicable law should be its own law (*lex fori*). This is so since the authorities of the place where the offence is committed are usually in the best position to collect and assess the evidence surrounding the offence. In the present case, not only was the offence committed in the territory of Cyprus under the control of the Republic of Cyprus, but also the three victims were residing in this territory. Thus, the Cypriot police were in a better position than the police of the “TRNC” to collect the evidence required. In paragraph 280 of the judgment it is admitted that “[t]he ‘TRNC’ and Turkish authorities had limited evidence at hand, as the crime was committed in the territory controlled by the Cypriot Government”. Also in paragraph 218 of the judgment, to which reference is made above (paragraph 4), it is said that “[a]s a result of this failure, despite cogent and compelling evidence, the perpetrators had not been punished”.

(d)  Territorial basis for the exercise of criminal jurisdiction under international law

25.  Under international law, territoriality is the principal ground for the exercise of criminal jurisdiction. This is what the Republic of Cyprus rightly emphasised in its Observations (§ 55), finding support in the following extracts from Malcolm N. Shaw, *International Law* (Cambridge, sixth edition 2008), at pp. 652-653 (the emphasis is that of the Republic of Cyprus):

“The *territorial basis for the exercise of jurisdiction reflects one aspect of the sovereignty exercisable* by a state in its territorial home, and is the *indispensable foundation* for the application of the series of legal rights that a state possesses. That a state should be able to legislate with regard to activities within its territory *and to prosecute for offences committed upon its soil is a logical manifestation of a world order of independent states and is entirely understandable since the authorities of a state are responsible for the conduct of law and the maintenance of good order within the state* ...

Thus, all crimes committed (or alleged to have been committed) within the territorial jurisdiction of a state may come before the municipal courts and the accused if convicted may be sentenced ... ”

26.  It is absolutely clear from the judgment that in theory it accepts the territorial basis, but, with due respect, when it comes to apply it to the facts of the present case it seems to overlook it.

27.  In the judgment, mention of *Rantsev v. Cyprus and Russia* (no. 25965/04, ECHR 2010), is repeatedly made (see paragraphs 186, 237 and 284). In paragraph 186 of the judgment it is said:

“[t]he Court recalls that generally the procedural obligation under Article 2 falls on the respondent State under whose jurisdiction the victim was at the time of death ... *Rantsev v. Cyprus and Russia ...*”

In paragraph 237 of the judgment it is also said:

“Under international law, the principal ground for the existence of original jurisdiction was that of territoriality. The Court had acknowledged this in its judgment in the case of *Rantsev ...*”

Furthermore, in paragraph 284 of the judgment it is stated:

“Since these decisions, in its judgment in *Rantsev,* the Court found that the corollary of the obligation on an investigating State to secure evidence located in other jurisdictions was a duty on the State where evidence was located to render any assistance within its competence and means sought under a legal assistance request by the State in which death occurred (*Rantsev ...*).”

28.  In *Rantsev,* the death had occurred in Cyprus and not in Russia, i.e. the other respondent State in the case, and the Court found that there had been a procedural violation of Article 2 of the Convention only by Cyprus and not Russia (§§ 242 and 247, respectively). In paragraph 245 of its judgment, the Court in *Rantsev* said the following (my emphasis):

“The applicant argued that the Russian authorities should have proceeded to interview the two women notwithstanding the absence of any request from the Cypriot authorities. However, the Court recalls that the responsibility for investigating Ms  Rantseva’s *death lay with Cyprus.*”

29.  In paragraph 206 of its judgment, the Court in *Rantsev* said the following about territoriality:

“206. As the Court has previously emphasised, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial. Accordingly, a State’s competence to exercise jurisdiction over its own nationals abroad is subordinate to the other State’s territorial competence and a State may not generally exercise jurisdiction on the territory of another State without the latter’s consent, invitation or acquiescence. Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction (see *Banković and Others v. Belgium* and 16 Other Contracting States (dec.) [GC], no. [52207/99](http://hudoc.echr.coe.int/eng#{"appno":["52207/99"]}), §§ 59-61, ECHR 2001‑XII).”

30.  By analogy, as regards torts or civil wrongs issues in private international law, the law applicable in Cyprus under the common law rule of conflict of laws is *lex loci delicti commissi,* i.e. the law of the place where the delict or tort was committed, and this again refers to the territory where the act was perpetrated.

31.  Turning now to the facts of the present case, not only was there no territorial basis for the jurisdiction of the *de facto* courts of the “TRNC”, but also there was nothing to suggest, on any legal basis whatsoever, in domestic or international law, that these *de facto* courts could in good faith exercise jurisdiction. It is clear from the judgment that: (a) all three victims and six of the eight suspects had Cypriot nationality (see paragraph 6 and paragraphs 27 and 37 of the judgment, respectively); (b) all victims had their ordinary residence in the territory controlled by the Republic of Cyprus (see paragraphs 9 and 237); and (c) the offence was not a political or military offence under Articles 3 and 4 of the European Convention on Extradition, respectively, to be excluded from extradition.

32.  The conclusion is that the Republic of Cyprus and not Turkey had jurisdiction under international law to deal with the crime. In any event, a *de facto* limited jurisdiction of the courts of an unlawful entity, the “TRNC,” by its nature, could not override the jurisdiction of legally established courts of the Republic of Cyprus, the only legitimate government of Cyprus.

(e)  The “TRNC” courts would have exercised *ultra vires* jurisdiction, had they been left to try the murder suspects

33.  As has been shown above, the only lawful court in Cyprus to deal with the murder was the Assize Court of the Republic of Cyprus.

34.  By virtue of section 31(1)(b) of the Courts of Justice Law (no. 9/1976) of the “TRNC” (see reference to this section in paragraphs 162, 188 and 247 of the judgment), the jurisdiction of the “TRNC” is “extended” not only to offences committed in the territory of the Republic of Cyprus under the effective control of Turkey, but also to offences committed throughout the island of Cyprus. No doubt, to the extent that section 31(1)(b) gives jurisdiction to the Assize Courts of the “TRNC” in respect of offences committed on the territory of Republic of Cyprus over which Turkey does not have effective control, it is contrary to the case-law of this Court.

35.  Any exercise of jurisdiction or operation of the courts of the “TRNC” in respect of violations which take place in a part of Cyprus not controlled by Turkey, is *ipso facto* unlawful under Cyprus law, international law and the case-law of this Court.

36.  However, this point was unfortunately neglected in the judgment, with the Court indirectly acknowledging legitimacy or recognition of the courts of the “TRNC” in respect of a crime committed in Cyprus, even though the crime took place in a part of the territory which was not under the effective control of Turkey.

(f)  The Court’s lack of concern about where the trial of the suspects should have taken place

37.  This issue is extremely important, having in mind what has been said above about the territoriality principle and the *ultra vires* jurisdiction of the Assize Courts of the “TRNC” in respect of crimes committed in the territory of Cyprus not under the effective control of Turkey.

38.  However, in paragraph 289 of the judgment it is stated:

“The Court’s role is to verify that the measures actually taken were appropriate and sufficient in the circumstances of the case before it. It is not therefore for the Court to decide where the trial of the suspects should have taken place or to impose an obligation on a [m]ember State to extradite.”

39.  In the circumstances of the case, it should definitely have been the concern of the Court to take into account the point that, if the trial of the suspects were to be conducted by the Assize Courts of the “TRNC”, the whole outcome would be *ipso facto* illegal.

40.  Of course, it would not be the task of this Court to impose an obligation on Turkey to extradite the suspects to the Republic of Cyprus, but at the same time, it should be its task to take into account the fact that Turkey, by not handing over the suspects to the Republic of Cyprus to be tried by the courts of the latter – the only lawful and competent courts in Cyprus to deal with an offence committed in its free territory – would blatantly violate its procedural obligation under Article 2 of the Convention. The Court, certainly in the end, found Turkey liable for not discharging its procedural obligation, but, with respect, it paid no attention to the crux of the problem, which was this exclusive responsibility of Turkey, without the Republic of Cyprus having any responsibility under Article 2 of the Convention with regard to the discharge of its own procedural obligation to investigate the crime.

(g)  In examining the procedural obligation to investigate, a legal issue should have been dealt with by the Court as such, and not simply as a political dispute between the two respondent States

**(i)  Correct approach in a very recent case – Mitrović v. Serbia**

41.  In *Mitrović v. Serbia* (no. 52142/12, 21 March 2017), the Court (actually the Third Section, which also decided the present case) unanimously held that the procedure before a “court” of an internationally unrecognised entity, i.e. the “Republic of Serbian Krajina”, was *ipso facto* unlawful, under the rules of domestic law and international law, and that the detention of the applicant based on a decision of such a “court” violated Article 5 § 1 of the Convention (ibid., §§ 37-44, especially § 43).

**(ii)  The approach in the present case is inconsistent with the Mitrović approach**

42.  Although the Court in *Mitrović* took into account the unlawfulness of the illegal “courts” of the “Republic of Serbian Krajina”, it, nevertheless, did not do the same thing in the present case, with regard to the illegal “courts” and other “authorities” of the “TRNC”, assuming as it did that these “courts” and “authorities” could have a legitimate claim or right to ask or to expect to try the suspects of an offence committed in the free territory of Cyprus and to demand from the Republic of Cyprus that it provide them with all the evidence it had. And, of course, that is why the Cyprus authorities did not provide the authorities of the “TRNC” with the evidence they had. But this reason for the refusal to “cooperate” has, unfortunately, not received the consideration which it deserved, by the Court, when examining the procedural obligation of the Republic of Cyprus under Article 2 of the Convention.

43.  In paragraph 290 of the judgment it is stated:

“290.  It is clear from all the material before the Court, including the 2005 UN Secretary-General’s report on the UN operation in Cyprus (see paragraph 153 above), that the respondent Governments were not prepared to make any compromise on their positions and find middle ground. This position arose from political considerations which reflect the long-standing and intense political dispute between the Republic of Cyprus and Turkey ...”

Also, in paragraph 293 of the judgment it is stated:

“293. Although the respondent States had the opportunity to find a solution and come to an agreement under the brokerage of UNFICYP, they did not use that opportunity to the full. Any suggestions made in an effort to find a compromise solution or that the authorities concerned meet each other half way were met with downright refusal on the part of those authorities.”

By way of conclusion, in paragraphs 295 and 296 of the judgment it is said:

“295. In the present, ultimately straightforward, case a considerable amount of evidence was collected and eight suspects were quickly identified, traced and arrested. The failure to cooperate directly or through UNFICYP resulted in their release. If there had been cooperation, in line with the procedural obligation under Article 2, criminal proceedings may have ensued against one or more of the suspects or the investigation may have come to a proper conclusion.

296. In view of the above, the Court finds that there has been a violation of Article 2 of the Convention under its procedural aspect by virtue of the failure of the respondent Governments to cooperate.”

44.  Taking what is said in paragraphs 290, 293, 295 and 296 of the judgment, as just quoted, as well as what is said in paragraph 218 of the judgment (namely that “[a]ll the authorities concerned had obstinately clung to their respective positions” – see also paragraph 4 of this opinion), in conjunction with the imposition by the Court on each of the respondent States of an equal amount in respect of non-pecuniary damage (i.e. EUR 8,500 – see paragraph 309 of the judgment as well as the operative part, points 5(a) and 6(a)), there is no doubt at all that the majority, in effect, have distributed equal responsibility between the two respondent States for not “cooperating” with each other, and have found them equally responsible for violating the procedural limb of Article 2 of the Convention.

**(iii)  An ipso facto unlawfulness should not have been overlooked and equated with legality**

45.  First of all, it should be noted that neither Article 2 nor Article 1 of the Convention expressly deal with a positive obligation or duty between two States to cooperate in investigating unlawful killings. This obligation is a case-law development based on the principle of effectiveness, which requires that the protection of the right to life be effective. The obligation to cooperate could be considered as a specific aspect of the positive obligation to investigate and it is an obligation of means, not one of result; and, in any event, it cannot impose an unreasonable, impossible or disproportionate burden on the authorities of the State concerned.

46.  I will deal with the issue of *ipso facto* unlawfulness, while at the same time making some comments regarding what the majority say in the above-cited paragraphs 290, 293, 295 and 296 of the judgment.

47.  With all due respect to the majority:

(a)  They follow an approach that is inconsistent with the existing case-law and international law, one that is lacking in legal basis and is unjust. More specifically, they do not take into account all that has been said above, namely that the Republic of Cyprus is the only legitimate government in Cyprus and its courts are the only lawful and competent ones to deal with crimes committed in the free territory of Cyprus, and that the courts of the “TRNC” are *de facto* courts with limited jurisdiction for violations which take place only in the part of the territory of Cyprus controlled by Turkey.

(b)  Therefore, instead of focusing on the absolutely legal issue in the present case, they have relegated it to a mere political issue, overlooking the case-law of this Court and the United Nations Security Council resolutions. By doing so, the approach they follow may lead to political implications and repercussions that are unjustifiably favourable for one State and unjustifiably unfavourable for another State, as will be explained below.

(c)  They have also downgraded to a political issue the matter of the Turkish invasion of the northern part of Cyprus and the continuous unlawful occupation of this territory by Turkish military forces.

(d)  They do not take into account the fact that the Republic of Cyprus has done all that could be reasonably and possibly expected of it in the circumstances of the case to investigate the crime in question, and the only thing that remained for it to do was to obtain the suspects and try them (see, *inter alia,* paragraph 295 quoted above, and paragraphs 218, 235-40, 265-75, 281-82 of the judgment). Here lies the precise breakdown in “cooperation”, since the *de facto* authorities of the “TRNC” wanted themselves to try the suspects and that was why they did not hand them over to the legitimate Cypriot authorities. That was exactly the complaint of the applicants, as shown in paragraph 275 of the judgment, to which the Court gave weight, instead of commenting that what the applicants expected the Cypriot authorities to do would have been illegal:

“In reality the applicants’ grievance stems from the refusal of the Cypriot authorities to transmit the case file to the ‘TRNC’ authorities and their wish to remedy the situation”.

The correct position as regards the breakdown in “cooperation” is stated in paragraph 41 of the Observations of the Republic of Cyprus:

“the only reason that the case against the suspects cannot proceed is that they are not handed over to the Republic, and being within Turkey’s jurisdiction they are not surrendered by Turkey despite the Republic’s efforts to this purpose.”

(e)  The majority say that the respondent States failed to cooperate directly or through UNFICYP, but it escapes their attention that the two States had in fact tried to cooperate through UNFICYP (see, *inter alia,* paragraphs 48, 123-56, 282 of the judgment), but they had failed for the reasons explained above. It is clear from paragraph 127 of the judgment that UNFICYP could not deal effectively with the adamant negative stand of the Turkish authorities:

“UNFICYP’s liaison officer had asked if there was a possibility that Turkey could be involved, so that the suspects could be extradited to Turkey and from there to the Republic of Cyprus. The ‘TRNC’ Chief of Police had answered in the negative; it appeared that the ‘TRNC’ authorities had already examined the matter but could not take such action as it was not provided for by their legislation.”

Also, in paragraph 240 of the judgment it is stated:

“In particular the ‘TRNC’ authorities had rejected a proposal of the Attorney-General of the Republic for all the evidence to be handed over to UNFICYP for it to determine whether it disclosed a *prima facie* case against the suspects, subject to an undertaking to surrender them if UNFICYP were to conclude that such evidence existed.”

Besides, one should not forget that the UN Security Resolutions 541 (1983) and 550 (1984) (see also the passage from *Cyprus v. Turkey* (merits), cited above, § 14) condemned the declaration by Turkey of the “TRNC” and called upon all States “to respect” the sovereignty, independence and territorial integrity of the Republic of Cyprus as well as “not to recognise any Cypriot State other than the Republic of Cyprus”. They also reiterated the call upon all States “not to recognise the purported state of the Turkish Republic of Northern Cyprus set up by secessionist acts and not to facilitate or in any way assist the aforesaid secessionist entity”. Thus, bearing in mind the UNFICYP’s request and the answer given to them by the “TRNC” Chief of Police, what else could have reasonably and legitimately been expected from the Republic of Cyprus? To go against the UN Security Council resolutions and abandon its sovereignty?

(f)  The majority do not take into account the fact that the suspects, after the crime had been committed, went to the occupied area of Cyprus, which, though under the legal jurisdiction of the Republic of Cyprus, is nevertheless under the *de facto* control of Turkey, its military forces, and the “TRNC”, which is a subordinate local administration of Turkey in the occupied area. Thus, it was factually impossible for the Republic of Cyprus to try the suspects, if Turkey did not hand them over to the Cypriot authorities and assist them in bringing the suspects to justice.

The *de facto* control by Turkey, according to the case-law of this Court, makes Turkey accountable and responsible for violations of rights which have taken place within the occupied area, but not also for violations which have taken place within the free part of Cyprus. However, since the violation was committed in the territory of Cyprus not under the control of Turkey, the latter had an obligation under Articles 1 and 2 of the Convention to hand the subjects over to the Republic of Cyprus. Instead of doing so, Turkey ignored all warrants of arrest issued by the Republic of Cyprus, including the European and international arrest warrants, and remained silent on the extradition requests made by the Republic of Cyprus (see paragraph 292 of the judgment).

(g)  They, accordingly, do not take into account the fact that the only thing left for the Cypriot authorities to do, in terms of so-called “cooperation”, was to allow the *de facto* authorities of the “TRNC” to succeed in their demand, thus requiring the Republic of Cyprus to abandon its sovereignty, self-autonomy and independence, as will be explained in more detail below. As stated in paragraph 238 of the judgment, the position of the Republic of Cyprus on this point was as follows:

“238. The procedural obligation incumbent on the Cypriot Government under Article 2 did not include an obligation to cede part of its sovereignty and part of its legal right as a State to prosecute and try crimes committed on its territory to the authorities of a separatist local administration... Abandonment of the principle would have undermined its efforts to re-establish control over northern Cyprus and the administration of criminal justice with regard to crimes committed on its territory not under military occupation by Turkey. A duty to cooperate could not impose an unreasonable, impossible or disproportionate burden on the authorities of the States concerned.”

(h)  They do not take into account the fact that cooperation between two States, when one of them expects something illegal from the other and the other wishes to maintain the rule of law, is not possible and cannot be achieved. The Convention’s purpose and aim is not to expect the Contracting States to do or accept something illegal for the sake of “cooperating” in pursuing their procedural obligation under Article 2 of the Convention to investigate the crime. Cooperation in any matter presupposes consent, which must never be exercised against the law. Furthermore, cooperation must be entered into freely by a State, within the discretion it has as a sovereign entity, and it is not for this Court to say how a State should react or take its decision. As the Court said in *Ilaṣcu and Others v. Moldova and Russia* ([GC], no. 48787/99, § 339, ECHR 2004‑VII), speaking about Moldova’s positive obligations related to the measures needed to re-establish its control over Transdniestrian territory, “this is an expression of its jurisdiction”. With due respect, such an “expression of jurisdiction” could not have taken jurisdiction away from the Republic of Cyprus in the present case.

(i)  The majority do not consider that, by making the Republic of Cyprus also liable to pay compensation for non-pecuniary damage, they make Turkey pay a lesser amount for such damage, even though Turkey should have been found exclusively responsible for the failure of cooperation and the consequent violation of the procedural obligation under Article 2 of the Convention. The result is that the Turkish Government profit from what is contrary to the law and the Convention.

Here the following relevant Latin maxims apply: “*nihil cuiquam expedit quod per leges non licet*”(no one can profit from what is contrary to the law, or, otherwise, by his or her illegality – see Harkerson’s *Maxims,* 103), “*nemo ex suo delicto melioreme suam conditionem facere protest*”(no one can improve his condition by his own wrong – see *Digest* or *Pandects* of Justinian, 50, 17, 134, 1), “*nul prendra advantage de son tort demesne*”(no one can take advantage of his own wrong – see 2 *Institutes* of Justinian 713), and “*nullus commodum capere potest de injuria sua propria*”(no one shall obtain an advantage by his own wrong – see Coke *on Littleton* 148, b.). Since these maxims are based on logic and fairness, they can apply not only to private law but also to public law.

(j)  The majority therefore, in effect, equate legality with illegality, while the latter should always be rejected and the former, the rule of law, should always be maintained. This is exemplified by the indifference shown (see paragraph 289 of the judgment), as to whether the case was to be tried in the northern territory of Cyprus by the illegal courts of the “TRNC” without having jurisdiction for offences committed outside that part of the territory of Cyprus under the control of Turkey.

(k)  They do not take into account the point that the obligation of effective investigation according to the case-law of this Court “is not an obligation of result, but one of means” and that (see *Al-Skeini and Others v. the United Kingdom,* no. 55721/07, § 166, ECHR 2011):

“the authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death”.

All the above steps were taken by the authorities of the Republic of Cyprus, apart from bringing the suspects to court and trying them – a step which was not available to them (see the expression “steps available to them” used by the Court in *Al-Skeini* in the above passage).

As has been said above (sub-paragraph (d)) the Republic of Cyprus fulfilled its obligation of means in full and what remained for it to do was the impossible. However, for the impossible, whether factual or legal, the Republic of Cyprus could not be liable, bearing also in mind that this impossibility was brought about by the illegal Turkish invasion, conquest, and occupation of the northern part of the Republic of Cyprus, without the latter having effective control over that part. The following Latin maxims could be relevant here, since they support the idea that the Convention does not expect or oblige a State to pursue its procedural obligations in relation to matters which are factually or legally impossible: “*lex non cogit ad impossibilia*” (the law forces not the impossibilities or in other words the law requires nothing impossible – see Coke *on Littleton,* 92 a), “*lex non intendit aliquid impossibile*” (the law does not intend anything impossible –see Coke’s *Reports*, 89), “*nemo tenetur ad impossibile*” (no one is bound to an impossibility – see Jenkins’ *Centuries or Reports*, 7), “*ad impossibilia nemo tenetur*”(no one is obliged to perform the impossible), and “*impossibilium nulla obligatio* (*est*)” (there is no obligation to perform something impossible, any such obligation being invalid – see *Digest* or *Pandects* of Justinian, 50, 18, 185)[[1]](#footnote-1). All these maxims, which state what is self-evident, could apply in my view also in this sphere of public law.

(l)  The majority do not take into account the fact that, had the Republic of Cyprus given in to the will of the *de facto* courts of the “TRNC”, for the sake of “cooperation” as the majority understand it, many of the provisions of the Convention would have been violated.

More specifically, they do not take into account the point that if the suspects were to be tried by the courts of the “TRNC”, the jurisdiction of those courts in respect of the case would be unlawful, and, therefore, *ultra vires*,and thus the whole procedure would be *ipso facto* unlawful. If the Cyprus Government were to provide the Turkish Government with all the evidence they had, the suspects would be detained and the deprivation of their liberty would be contrary to Article 5 of the Convention (as was the judgment of this Court in *Mitrović v. Serbia* (cited above), and, if they were eventually to be tried by those courts, the trial would be unlawful and contrary to Article 5 §§ 3 and 4 and Article 6 of the Convention; and, if they were to be punished, their punishment and sentence would be illegal and contrary to Article 6 and Article 7 of the Convention, and the suspects would ultimately have no right to appeal to a lawful court, contrary to Article 2 of Protocol No. 7 to the Convention.

In sum, all eight suspects would be deprived of their right to be tried by a lawful court following a lawful procedure.

Any one of those suspects would probably have recourse to this Court, complaining of violations of his human rights(as was the case in *Mitrović*) on the basis of all those above-mentioned provisions and probably certain others.

All these negative consequences should have been foreseen by the majority in arriving at their judgment. Instead, they concentrated only on the assumption that the two respondent States had political disputes between themselves and that was why they had failed to “cooperate”, and that therefore for this failure they were equally responsible.

Whereas, if the Cyprus courts were to try the suspects, the procedure would be lawful from the beginning until the end, and it was only the Turkish Government which were responsible for not making this happen.

(m)  This division, by the majority, of responsibility for the lack of “cooperation” between the Republic of Cyprus and Turkey, on an equal footing, or any finding that the Republic of Cyprus had some responsibility in this respect, paying no heed to the principle of territoriality, is, in my view, at odds not only with the case-law referred to above, but also with the rule of law (which is inherent in the Convention) and Articles 1 and 2, together with 6 (right to a fair trial), 13 (right to an effective remedy), 17 (prohibition of abuse of rights) and 18 (limitation on use of restriction of rights) of the Convention.

(n)  The majority implicitly legitimise the provision of section 31(1)(b) of the Courts of Justice Law of the “TRNC” giving jurisdiction to the Assize Courts of this illegal entity for crimes committed all over Cyprus. Since the “TRNC” is subordinate to Turkey and Turkey is liable for the acts and decisions of the authorities of the “TRNC” including its courts, this opens the door for Turkey, a State which is a member of the Council of Europe, to claim criminal jurisdiction in respect of the territory of another State not under its control, that latter State also being a member of the Council of Europe – the Republic of Cyprus –, which is responsible under Article 1 of the Convention for violations of human rights committed within this territory. Such a result, with due respect, is not only contradictory and unfair, but is also inconsistent with the international law rule of non-interference with the sovereignty and territorial integrity of States. I would say that such an implication may be contrary to the very existence of the Republic of Cyprus and of any State which may face a similar situation in public international law.

(o)  They expected the Republic of Cyprus to support the illegal entity of the “TRNC”, even though the Court in *Ilaṣcu and Others* (cited above, § 340) said as follows:

“The obligation to re-establish control over Transdniestria required Moldova, firstly, to refrain from supporting the separatist regime of the ‘MTR’ and secondly to act by taking all the political, judicial and other measures at its disposal to re-establish its control over that territory.”

Comparing that case with the present one, the Republic of Cyprus rightly said in paragraphs 63 and 64 of its Observations:

“63. By contrast to measures referred to by the Court in the *Ilaṣcu Case* as the only measures to police cooperation, the prosecution and trial by a State in its courts of crimes committed on its free territory which also constitute as in the present case, human rights violations, are not matters of police cooperation, and their abandonment to authorities of the separatist administration would be incompatible with the Republic efforts to re-establish its control over northern Cyprus.

64. Their abandonment would also undermine the state’s authority in the administration of criminal justice with regard to crimes committed on its territory not under the military occupation by Turkey.”

What the Court said in paragraph 340 of *Ilaṣcu and Others* (cited above), about “taking all the political, judicial and other measures” at the disposal of the Republic of Moldova “to re-establish its control” over the territory under the separatist regime, should not have been misunderstood, as it was by the applicants, in my view, in the light of their submission, in paragraph 26 (page 22) of their Observations in reply, to the effect that the Republic of Cyprus had a duty to do everything that the Turkish authorities illegally claimed from them. Paragraph 340 of *Ilaṣcu and Others* (cited above) speaks about measures aimed at the re-establishment of the control of Moldova over its Transdniestrian territory, and thus of the re-establishment of the control of an independent and sovereign State over its territory under a separatist regime, and not measures resulting in abandonment of the sovereignty of Moldova by which it may lose its identity and existence.

It must be noted that, on the one hand, the situation of Cyprus is similar to that of Moldova in that within part of their respective territories there is a separatist regime, but, on the other hand, their situation is different, as was well explained by Judge Ress in his partly dissenting opinion in *Ilaṣcu and Others*:

“3. The situation in Moldova is different from that described in *Cyprus v. Turkey* ([GC], no. [25781/94](http://hudoc.echr.coe.int/eng#{"appno":["25781/94"]}), § 78, ECHR 2001-IV) where the Court referred to the continuing inability of the Republic of Cyprus to exercise its Convention obligations in northern Cyprus as there was a full military occupation of northern Cyprus by Turkey. In the present case there is no occupation of the Transdniestrian territory, even though there is a rebel regime and the Russian Federation exercises a decisive influence and even control in that territory.”

Reference to the above opinion and thorough analysis of the topic in general can be found in a comprehensive article by Dr Ganna Yudkivska, “Territorial Jurisdiction and Positive Obligations of an Occupied State: Some Reflections on Evolving Issues under Article 1 of the Convention”[[2]](#footnote-2).

As the Republic of Cyprus pertinently emphasised in paragraph 62 of its Observations (my emphasis):

“62. Abandonment to authorities in northern Cyprus of the Republic’s jurisdiction and right as a State to prosecute and try perpetrators of unlawful killings committed on its territory and investigated by its authorities is not a measure *of limited character*, or of such a nature as cannot be regarded to support the separatist administration set up there.”

(p)  The majority overlook the fact that, if they were to find Turkey exclusively responsible for not discharging its positive obligation under Article 2 of the Convention, there would be no “vacuum” of protection within the “space of the Convention” of the right to life under Article 2. This principle that there should be no “vacuum” of protection, though well acknowledged in the judgment (see paragraph 219), is unfortunately neglected in its practical application.

(q)  In conclusion, if the majority were to consider the issue in its correct legal dimension, there would be no political dimensions or consequences. Since they consider, however, that the lack of “cooperation” was due to political disputes, and since, therefore, they abstain from seeing the legal dimension of the issue which affects international law, their approach will unavoidably have consequences under international law that are adverse to the Republic of Cyprus.

**(iv)  Further considerations on the violation of the rule of law**

48.  The rule of law, which is referred to in the preamble to the Convention, and underlies almost every provision of the Convention protecting a human right, is deeply enshrined in Article 1, which provides as follows:

“The High Contracting Parties shall secure to everyone within their jurisdiction and rights and freedoms defined in Section I of this Convention”.

49.  No responsibility for lack of “cooperation” should have been attributed to the Republic of Cyprus, since “cooperation” with the “TRNC” in the circumstances of the case would result in a violation of the rule of law. Any such violation by the Turkish authorities could not absolve the Republic of Cyprus from its duty to maintain the rule of law.The Latin maxim *injuria non excusat injuriam* (a wrong does not excuse or justify another wrong – 15 Queen’s Bench Reports276) may apply also in public law and may be relevant here. As has been explained above, only the Assize Courts of the Republic of Cyprus were competent to deal with the offence committed in the territory of Cyprus not under the control of Turkey, and to find the Cyprus Government responsible under Article 2 of the Convention would be tantamount to expecting it to violate the rule of law at national level and indeed international law, notably the case-law of this Court.

50.  It is to be reiterated under this head, particularly in terms of the rule of law, that the Court should have been concerned as to where the trial had to take place and which court had to try the suspects, rather than showing complete adiaphoria on the issue (see especially paragraph 289 of the judgment).

51.  It would be impossible for the Republic of Cyprus to secure to everyone within its jurisdiction the right to life under Article 2, taken in conjunction with Article 1 of the Convention, if “cooperation” with the “TRNC” amounted to disregarding the legal rule which dictates that the issue should be tried by the competent Assize Courts of the Republic of Cyprus, and not by the Assize Courts of the “TRNC” acting with *ultra vires* jurisdiction in the case.

52.  Therefore, the issue is not a matter of mere police cooperation between two States, as the Republic of Cyprus rightly argued, since in the circumstances of the present case, any cooperation of the Republic of Cyprus with Turkey, as the latter wished, could only result in the Republic of Cyprus abandoning and violating the rule of law and human rights protection, something which, of course, the Republic of Cyprus was not ready or willing to do.

53.  Turkey should have respected the rule of law of the Republic of Cyprus, the international rule of law and the Convention, by handing over the suspects to the Republic of Cyprus and giving it all the information and evidence it had, and not with great audacity demand from the Republic of Cyprus that it abstain from the rule of law. Here, the following Latin maxims, based again on self-evident truth and logic, may be relevant, even in the sphere of public law: “*obedientia est legis essentia*” (obedience is the essence of law – 11 Coke’s Reports 100), “*derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tottitur*”(to derogate from a law is to take away part of it; to abrogate the law is to abolish it entirely – 11 Coke’s *Reports* 100), “*frustra legis auxilium quaerit qui in legem committit*” (vainly does he who offends against the law, seek the help of the law – (Οsborn’s *Concise Law Dictionary,* London, 1983, seventh edition, at p. 155). Similar are the maxims of equity: “he who comes into equity must come with clean hands” and “equity looks on that as done which ought to be done” (see Osborn, *op. cit.*,at p. 134).

54.  The rule of law does not entail only the duty of an individual or a State to obey the law, but also the free exercise of a right of an individual or State, together with the expectation that others will respect this right.

The late Lord Chief Justice of England and Wales Tom Bingham said as follows (*The Rule of Law,* London, 2011, pp. 111 and 113):

“ ... the rule of law in the international order is to a considerable extent at least, the domestic rule of law writ large.”

“Most potent of all reasons for compliance by states with international law is the sheer necessity of their doing do.”

In the present case, it is not only a duty of the two respondent States to obey the international rule of law, it is also a sheer necessity for them to do so, and this Court should have assisted them in so doing.

In paragraph 56 of its Observations the Republic of Cyprus, apart from its procedural obligation under Article 2 of the Convention, also emphasises its legal right as a State to prosecute and try offences committed on its territory (original emphasis):

“The Government submits that in situations such as a the present in which part of the Republic’s territory is occupied by the military forces of Turkey supporting a separatist local *administration set up there* which *survives by virtue of* Turkey’s *military and other support,* the Republic’s obligations under Article 2 in conjunction with Article 1 do not include an obligation to take measures entailing the foregoing to the authorities of the said separatist administration of part of its sovereignty and of its legal right as a State to prosecute and try crimes committed on its territory.”

55.  Finally, the Republic of Cyprus, being an independent and sovereign State, should have been left free and alone to exercise a sovereign power of its own concern, without the fear of any negative consequences, by merely upholding the rule of law. The Court is an instrument for the promotion of justice and the rule of law, and none of its judgments could be reached without its noble mission being taken into account.

**(v)  Articles 1 and 2 of the Convention should be interpreted in good faith and in internal and external harmony**

56.  All that has been said above clearly shows that to coerce the Republic of Cyprus or expect it to “cooperate” in the circumstances of the case and transfer its sovereignty to the authorities of the separatist administration in northern Cyprus, directly or indirectly, expressly or impliedly, would lead inescapably to a violation of international law. According to the rules of international law, a State cannot have competence and responsibility outside its territory except for the limited purpose mentioned above and as explained in *Loizidou* (cited above).

57.  One should not forget that Turkey had invaded and conquered the northern territory of the Republic in 1974 and by using force had expelled from their homes the inhabitants residing therein, and, ever since, has fully occupied this area with its military forces, thus blatantly and continuously violating international law. In the present case, Turkey, which settled in the northern part of Cyprus, sought once again to violate international law by demanding that its courts have extra-territorial jurisdiction over all of Cyprus – a demand which the Court, with all due respect, should not have accepted. Of course, the dimension of this violation of international law cannot be compared with the violation thereof consisting in the illegal conquest and occupation, or with the other violations of human rights related to the invasion or occupation. But it is nevertheless a serious violation for the reasons explained above.

58.  The rules of international law must be applied by this Court by virtue of Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties of 1969 (VCLT) which provides that:

“3. There shall be taken into account, together with the context:

...

(c) Any relevant rules of international law applicable in the relations between the parties.”

It is perhaps appropriate here to refer to some of the principles of public international law which may be relevant in the present case, in the sense that, with due respect, they were not given the requisite consideration in the approach followed by the majority. The following principles, mentioned below in epigrammatic form, are taken from the authoritative book of Emer De Vattel, *The Law of Nations; or, Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns* (translated from French by Joseph Chitty, Philadelphia, 1852): (a) right of liberty and independence of nations (preliminaries, p. lxi); (b) right of equality of nations (preliminaries p. lxii ff. and Bk. II, Ch. III, p. 149 ff. ); (c) right of sovereignty of nations (Bk. I, Ch. IV, p. 12 ff.); (d) a nation is under an obligation to preserve itself (Bk. I, Ch. II, p. 5 ff. Ch. IV, p. 14 ff.); (e) a nation is bound to maintain and observe the existing laws (Bk. 1, Ch. IV, p. 16); (f) every true sovereignty is unalienable (Bk. I, Ch. V, p. 31); (g) a nation is bound to make justice flourish, to establish good laws and enforce them (Bk. I, Ch. XIII, pp. 77-78); (h) a nation has a right to punish the transgressors and execute its laws (Bk. I, Ch. XIII, p. 81 ff.); (i) a nation has a right of dignity (Bk. II, Ch. III, p. 149 ff.); (j) no nation has a right to interfere with the government of another State (Bk. II, Ch. IV, p. 155); (k) one sovereign State cannot make itself judge of the conduct of another (Bk. II, Ch. IV, p. 155); and (l) necessity of the observance of justice in human society and the right of a nation to punish injustice (Bk. II, Ch. V, p. 160).

Regarding the principle of equality, it is particularly said in the above-mentioned work (Bk. II, Ch. III, p. 149):

“... nature has established a perfect equality of rights between independent nations. Consequently, none can naturally lay claim to any superior prerogative: for, whatever privileges any one of them derives form freedom of sovereignty, the others equally derive the same from the same source.”

59.  In *Cyprus v. Turkey* ((just satisfaction), cited above, § 23), the Court said the following regarding the need for the compatibility of the interpretation and application of Convention provisions with the relevant rules of public international law:

“The Court reiterates that the provisions of the Convention cannot be interpreted and applied in a vacuum. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law and, in particular, in the light of the Vienna Convention on the Law of Treaties of 23 May 1969 (the ‘Vienna Convention’). As a matter of fact, the Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties (see, among many others, *Loizidou v. Turkey* (merits), 18 December 1996, § 43, Reports of Judgments and Decisions 1996-VI; *Al‑Adsani v. the United Kingdom* [GC], no. [35763/97](http://hudoc.echr.coe.int/eng#{"appno":["35763/97"]}), § 55, ECHR 2001‑XI; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. [45036/98](http://hudoc.echr.coe.int/eng#{"appno":["45036/98"]}), § 150, ECHR 2005‑VI; *Demir and Baykara v. Turkey* [GC], no. [34503/97](http://hudoc.echr.coe.int/eng#{"appno":["34503/97"]}), § 67, ECHR 2008, and Article 31 § 3 (c) of the Vienna Convention).

(See also *Cyprus v. Turkey* (merits), cited above, § 78).

60.  Similarly, in *Al-Adsani v. the United Kingdom* ([GC], no. 35763/97, § 55, ECHR 2001-XI), the Court said the following:

“The Convention ... cannot be interpreted in a vacuum. The Court must be mindful of the Convention’s special character as a human rights treaty, and it must also take the relevant rules of international law into account (see, mutatis mutandis, *Loizidou v. Turkey* (merits), judgment of 18 December 1996, Reports 1996-VI, p. 2231, § 43). The Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the grant of State immunity.”

(See also *Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 90, ECHR 2001-II).

61.  In interpreting a provision of the Convention, one must try to achieve an internal and external harmony, namely, respectively, harmony within the Convention, reading it as a whole, and harmony with the rules of international law, since the Convention “is part of a wider legal system”[[3]](#footnote-3). Any interpretation must adopt the principle of effectiveness, which is inherent in the Convention, and must take into account the aim of the provision and must be in good faith, as provided in Article 31 § 1 of the VCLT. Good faith, the rule of law and the principle of democracy always go together.

62.  Turkey’s adamant demand to try the suspects of the murder, asking the Republic of Cyprus to transmit to it all the results of the investigation, could not be considered as made in good faith and the Court should not have contemplated any responsibility of the Republic of Cyprus under Articles 1 and 2 of the Convention.

63.  What also showed a lack of good faith was Turkey’s passive stance towards the extradition requests (see on this point paragraph 292 of the judgment).

64.  The disregard of international law and the principle of good faith can be seen not only in Turkey’s demand to extend the jurisdiction of the courts of the “TRNC” over crimes committed on a part of Cyprus not under its control, but also in its demand to extend the application of the criminal law of the “TRNC” to such criminal cases.

**(vi)  Real grounds for the Cypriot authorities’ unwillingness to cooperate and lack of pragmatism as to what such “cooperation” would mean**

65.  In paragraph 291 of the judgment it is stated as follows:

“On the Cypriot Government’s side it is evident that what drove the unwillingness to cooperate was the refusal to lend (or the fear of lending) any legitimacy to the ‘TRNC’. However, the Court does not accept that steps taken with the aim of cooperation in order to further the investigation in this case would amount to recognition, implied or otherwise of the ‘TRNC’ (see *Cyprus v. Turkey*, cited above, §§ 61 and 238). Nor would it be tantamount to holding that Turkey wields internationally recognised sovereignty over northern Cyprus (see, *mutatis mutandis*, *Demopoulos*, cited above, §§ 95-96, and *Foka v. Turkey*, no. 28940/95, §§ 83-84, 24 June 2008).The United Kingdom, for example, has cooperated in criminal cases with the ‘TRNC’ (see paragraphs 150 and 244 above) without affording it any recognition.”

66.  In the above passage the majority say that what drove the Cypriot authorities’ unwillingness to cooperate was their refusal to lend any legitimacy to the “TRNC”. They say this as if such a stance would be totally reprehensible, while in paragraph 233 of the judgment they point out that “[i]t could not be ignored that the ‘TRNC’ was an illegal entity and not recognised in international law”.

67.  What drove the Cypriot authorities’ unwillingness to cooperate was indeed: (a) their legitimate refusal to accept that the courts of the “TRNC” could or should have more *de facto* jurisdiction than that which the Court has previously recognised; and (b) their legitimate refusal to abandon the jurisdiction of the Republic of Cyprus’ courts, the rule of law and the sovereignty of the Republic of Cyprus as an independent State, contrary to international law.

68.  All the case-law cited in paragraph 291 of the judgment, just quoted above, supports the conclusion that the Republic of Cyprus is the only recognised government in Cyprus and that the courts of the “TRNC” have jurisdiction only over the part of the territory which is under the control of Turkey and not throughout Cyprus.

69.  In *Cyprus v. Turkey* ((merits), cited above, § 238), the Court pointed out that its conclusion on the matter “in no way amount[ed] to a recognition, implied or otherwise, of the ‘TRNC’’s claim to statehood”. This phraseology is adopted by the majority in paragraph 291 of the present judgment.

70.  However, with all due respect, the majority overlook that what the Court said in *Cyprus v. Turkey* in the above-mentioned passage was said under the heading “IV Alleged violations arising out of the living conditions of Greek Cypriots in Northern Cyprus” (in relation to Article 6 of the Convention); thus it concerned violations taking place in the territory under the control of Turkey, which is completely different from the audacious demand or claim of Turkey to have jurisdiction also over crimes committed within the territory of Cyprus outside its control.

71.  The reference in the above passage of the present judgment (paragraph 291), as well as in two other paragraphs of the judgment (paragraphs 150 and 244), to a case where the United Kingdom had cooperated in one criminal case with the “TRNC”, is vague and irrelevant, since insufficient facts were given and most probably the issues arising in that case were different from those of the present case, where the issue raised is not a usual cooperation issue between two States. In any event, any cooperation that another country may have had with the “TRNC” in the past cannot justify or legitimise the claim of Turkey to have criminal jurisdiction for a crime committed in the territory of Cyprus outside its control, contrary to the case-law of this Court, the laws and the Constitution of the Republic of Cyprus, the rules of international law, and, of course, the will of the Republic of Cyprus to maintain its jurisdiction, rule of law, sovereignty and, understandably, its credibility as an independent country.

72.  To argue, as the majority do, that it is an obligation for the Republic of Cyprus to cooperate with the Turkish Government, even if the latter persist in their expansionist policy that their Assize Courts are competent to deal with crimes committed also in the territory of Cyprus outside Turkey’s control, is, in effect, tantamount to accepting that Turkey has competence over all of Cyprus. But such a conclusion would be unrealistic and unacceptable. On the contrary, this Court has always acknowledged that the Republic of Cyprus is the only legitimate government of Cyprus.

73.  Despite the fact that the majority in paragraph 291 categorically state that the Court “does not accept that steps taken with the aim of cooperation in order to further the investigation in this case would amount to recognition, implied or otherwise of the ‘TRNC’”, in actual fact, and, in effect, their conclusion does entail such recognition, firstly, because they render the Republic of Cyprus liable for something when it should not be, and, secondly, because they do not go further and try to see what “cooperation” would mean in the circumstances of the present case, that is to say, recognition of the competence of the Assize Courts of the “TRNC” in respect of any offences or acts taking place in the territory of Cyprus over which Turkey has no control. In this respect the following principles are relevant, expressed in Latin maxims whose formulation goes well back in legal history: “*quando aliquid prohibetur omne, per quod devenitur ad illud*”(when anything is prohibited, all that relates to it is prohibited – Cokeon Littleton,233, b), “*quando aliquid prohibetur ex directo prohibetur et per obliguum*” (when anything is prohibited directly, it is also prohibited indirectly – Coke on Littleton, 223 b).

74.   In paragraph 291 of the present judgment it is stated again, regarding steps taken with the aim of cooperation:

“Nor would it be tantamount to holding that Turkey wields internationally recognised sovereignty over northern Cyprus ...”

But one wonders what the practical meaning of this statement is, when a European and international court of human rights, as is this Court, implicitly recognises the expansion of Turkey’s criminal jurisdiction to crimes committed anywhere in the island, and when it is clear from section 31(1)(b) of the Courts of Justice Law of the “TRNC” that this is the goal and ambition of the occupying power (“*acta exteriora indicant interiora secreta*”*,* external actions show the secret intentions – 8 Coke’s *Reports* 146).

Regrettably, time works in favour of the occupying power and this is clear from the evolution of the recognition, express or implicit, by this Court, of the *de facto* jurisdiction of the courts of the “TRNC”. One cannot but notice that there have been at least four phases of such recognition: *phase one* – jurisdiction of civil courts in everyday matters (see paragraphs 9-10 above); *phase two* – jurisdiction of the immovable property commission in respect of the immovable property of Greek Cypriots situated in the territory of Cyprus under the control of Turkey (see paragraph 86 below); *phase three* – jurisdiction in all civil, criminal and administrative matters for acts or violations occurring in the territory of the Republic of Cyprus under the control of Turkey (see paragraph 13 above); and *phase four* – criminal jurisdiction for offences committed everywhere on the island of Cyprus (as in the present case). One may really wonder, ultimately, whether the recognition of such an expanding jurisdiction of the illegal courts of the “TRNC” offers the treatment and respect the Republic of Cyprus deserves as a sovereign and independent State.

75.  Under Article 32 of the Convention:

“the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention”.

The application of a provision of the Convention – in the present case Articles 1 and 2 – should be consistent with the interpretation of that provision. With all due respect, I take the view that in the present case, both the interpretation and application of Articles 1 and 2 given by the majority are incorrect. Whilst the starting point of their approach, namely that the Republic of Cyprus is the only legitimate government in Cyprus and that the “TRNC” is an illegal entity, is correct, I submit that the whole approach then sheers off and proceeds in a wrong direction, regarding both the interpretation and application of the said provisions, and with a very unsatisfactory result for national and international law, including the scope of the Convention and the role of the Court.

(h)  “The essential purpose of the procedural obligation under Article 2 of the Convention is to secure the effective implementation of the domestic laws protecting the rights to life in a State”

76.  The above statement is well developed in paragraphs 67-73 of the Observations by the Republic of Cyprus:

“67. The Government submits that as the essential purpose of the procedural obligation under Article 2 is to secure the effective implementation of the domestic laws protecting the rights to life in a State where an unlawful killing has taken place, protection of the right under the Article entails an obligation by Contracting States if the subjects are present within their jurisdiction, as the suspect are in the present case within the jurisdiction of Turkey, to surrender them to the State where the unlawful killing has taken place.

68. Otherwise the purpose of Article 2 will be defeated as the authorities of the Contracting State where the unlawful killing has taken place, in this case those of the Republic of Cyprus, will be foiled in their own efforts to protect the fundamental rights of their citizens.

69. The above obligation is also imposed by the European Convention on Extradition with the chief aim of repressing crime and eliminating impunity of fugitive offenders.

70. The Government submits on the same grounds that Article 2 entails also an obligation by other Contracting States if the suspects are present within their jurisdiction, to communicate to the state where the unlawful killing has taken place relevant information respecting the suspects and commission of the crime for assisting the state’s efforts in bringing the suspects to justice.

71. The authorities of the local administration in northern Cyprus and Turkey is responsible for its policies and actions have not tendered any information or taken any steps for assisting in any way the criminal investigation carried out by the Republic’ authorities.

72. The Government submits that the above failure to tender assistance to the Republic violates applicant’s rights under Article 2 in conjunction with Article 1, and that this violation is imputable to Turkey.

73. The suspects are in northern Cyprus. The authorities of the local administration there do not hand over the suspects to the Republic’s authorities. The Government submits that this violates applicant’s rights under Article 2 in conjunction with Article 1 by preventing the case to proceed, and this violation is imputable to Turkey.”

77.  Individual human rights, especially the right to life, as secured by Article 2 of the Convention, which is one of the most fundamental rights –since without life no other right could be enjoyed – should always be respected, and, therefore, must not be dependent on the will of a recalcitrant State, which obstinately does not wish to abide by the rule of law, demanding with great audacity that another State follow suit, and by doing so, making a mockery of international law.

78.  In *Loizidou v. Turkey* ((preliminary objections), 23 March 1995, § 72, Series A no. 310), and in many other cases, the Court said as follows:

“... the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective.”

Would it be the object of the Convention and would its safeguards be practical and effective, if the suspects of an offence committed on the Republic of Cyprus’ territory, which is not under the military occupation of Turkey, were tried not by the competent Cypriot courts, but by courts which are not established by the Republic of Cyprus but by Turkey in a territory of Cyprus under the control of Turkey, which is described by the judgment (see paragraph 233) as a “safe haven for fugitive murderers”? Would such a situation be considered as a safeguard for the right to life of anybody who wishes to find justice in the Republic of Cyprus?

79.  Turkey rendered the right to life of the victims and their relatives ineffective, in the present case, in three ways: (a) because of the illegal occupation of the northern territory of Cyprus and the full control over it by Turkey, the latter had deprived the Republic of Cyprus of its positive procedural and substantive obligation to arrest and try the suspects and probably to collect further evidence relating to the case; (b) while Turkey had arrested the suspects, it nonetheless did not hand them over to the Republic of Cyprus, though there were extradition requests which remained unanswered, thus depriving the Republic of Cyprus of its duty to try the offenders; and (c) by its acts and omissions, Turkey led the suspects to be released, the crime to remain unsolved and the offenders to go unpunished.

80.  Since Turkey rendered the right to life ineffective, as described above, it is also liable, not only because it has culpably and signally failed to fulfil its positive procedural obligation to investigate the crime, but also because it has unjustifiably prevented the Republic of Cyprus from doing so. It violated the Convention and the rule of law of the Republic of Cyprus the only legitimate government of Cyprus.

81.  Article 17 of the Convention reads as follows:

“Nothing in the Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the right and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”.

What would this Court expect the two respondent States to do? Surely not to act against the provisions of Article 17 and destroy or suffocate the right to life under Article 2, leaving the matter to be tried by an incompetent and unlawful court, as explained above!

82.  Any restrictive interpretation contradicts the principle of effectiveness and is not part of international law[[4]](#footnote-4). So much worse is an interpretation which runs counter to Article 17 of the Convention, by which the substance of a right is destroyed or suffocated, as has happened in the present case with the right to life, which requires that the perpetrators of a murder be brought to justice and be punished.

83.  The absolute prohibition under Article 17 of the Convention imposes the interpretation that no provision of the Convention implies for any State (as for Turkey in the present case) or group (as for the “TRNC” in the present case) “any right to engage in any activity or perform any act aimed at the destruction of any [Convention] right” (as the right to life of the victims and their relatives, the applicants, in the present case). The approach followed by the judgment may thus be inconsistent with the absolute prohibition in Article 17 of the Convention.

84.  Finally, if one recognises jurisdiction of the courts of the “TRNC” over crimes committed in the free territory of Cyprus, one impairs the level of protection of the right to life for all the reasons explained above.

(i)  Further undesirable consequences and implications of the approach of the judgment (*argumentum ad consequentiam*)

85.  Any interpretation and application of Articles 1 and 2 of the Convention finding that the Republic of Cyprus has violated the latter provision under its procedural limb, may lead to a lack of certainty, foreseeability and eventually to legal chaos, not only in what the Convention’s scope and the Court’s role would be, but also in the rule of law in the national and international context.

86.  If one were to implicitly or otherwise accept competence of the “TRNC”‘s Assize Courts over crimes committed on the territory of the Republic of Cyprus not under the control of Turkey, then one may also, by the same logic, accept, or at least not exclude, that the immovable property commission (IPC) established in the northern part of Cyprus by the “TRNC” Law 67/2005, and recognised by the Court in *Demopoulos and Others v. Turkey* ((dec.) [GC], nos. 46113/99 and 7 others, § 127, ECHR 2010), would also have jurisdiction over property which lies in the free part of Cyprus not under the control of Turkey – a conclusion which would be totally unacceptable. By the same logic, this may lead to the unacceptable conclusion: (a) that the same would apply to all courts of the “TRNC” of civil, criminal, administrative and other jurisdiction, i.e. that these courts would be competent throughout Cypriot territory and that no court of the Republic of Cyprus would have jurisdiction in any matter in Cyprus; and (b) that only the laws of the “TRNC” would apply throughout the territory of Cyprus at the expense of the Constitution and the laws of the Republic of Cyprus. Would this not be an astonishing impairment of the existence of the Republic of Cyprus as an independent State?

87.  The approach of the majority may, therefore, open the “flood gates” and would undermine the basic tenet *pacta sunt servanda.* More specifically it will be a “green light” to a country which invaded another country, as is the case with Turkey, which invaded Cyprus in 1974 and has stayed in its northern part ever since, by encouraging its expansionist policy, as such policy stems from section 31(1)(b) of the Courts of Justice Law of the “TRNC”, referred to above.

88.  Though the issue in the present case is a purely and absolutely legal one, the approach followed by the majority, by overlooking this and relegating the issue merely to one of “political disputes” between the two respondent States, in itself does not assist the legitimate efforts of the only recognised government of Cyprus in striving for the freedom of the northern part of Cyprus from the occupying power of Turkey and in achieving a just and viable solution to the Cyprus issue which will secure to everyone in Cyprus the human rights and fundamental freedoms guaranteed by the European Convention of Human Rights.

89.  It is to be noted that Turkey did not only refuse to cooperate with the Republic of Cyprus and hand over to it the suspects of the murder, but it has also shown until now a stance that lacks proper respect for this Court in implementing its judgments against Turkey of Cypriot origin. A most recent example of failure to implement a judgment can be seen with the Grand Chamber judgment in *Cyprus v. Turkey* of 12 May 2014 (cited above), as regards the issue of just satisfaction, in respect of non-pecuniary damage suffered by the relatives of the missing persons and by the enclaved Greek Cypriot residents in the Karpas peninsula, a territory of Cyprus under the control of Turkey, that being contrary to Article 46 of the Convention and contrary to international law (see Articles 26 and 27 of the VCLT, *pacta sunt servanda*). That judgment, together with the judgment on the merits of the same application, found, like other judgments of the Court, that the Republic of Cyprus was the only recognised government in Cyprus. However, Turkey continues to ignore it. In the 2014 *Cyprus v. Turkey* judgment, the first to find that Article 41 of the Convention on “just satisfaction” applies also to inter-State applications, incorporated the principle of international law according to which a violation by a State of a treaty, in that case Turkey, entailed a duty to make adequate reparation. To mention only a couple of other judgments of the Court on applications against Turkey, of Cypriot origin, which have not been implemented by Turkey, and which every three months are listed for supervision at a human rights meeting of the Committee of Ministers: *Xenides-Arestis v. Turkey,* no. 46347/99, 22 December 2015, and a group of 33 cases, and *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, ECHR 2009 (see Council of Europe, HUDOC-EX – Department for the Execution of Judgments of the ECtHR).

90.  *Varnava and Others v. Turkey* concerns the failure of Turkey to fulfil its procedural obligation under Article 2 of the Convention in providing a proper investigation into the fate of Greek-Cypriot missing persons (see §§ 187-94 of that judgment), and, similarly, this was one of the issues in *Cyprus v. Turkey* ((merits), cited above, §§ 123-36). Turkey has been unable to fulfil its procedural obligation under Article 2 and has been reluctant to implement the judgments of the Court in the above two cases, which concerned violations committed on the territory of which Turkey has effective control and where the alleged violations were on a larger scale in terms of victims than in the present case, where the offence was committed in the free territory of Cyprus. These cases illustrate Turkey’s failings in similar matters even in the territory under its control.

Considering Turkey’s reluctance to comply with the judgments of the Court, in cases of Cyprus origin, if, in a future case similar to the present one, Turkey would, again, refuse to hand over suspects to the Republic of Cyprus, the latter, in order to comply with the judgment, would have to sacrifice its sovereignty, independence and rule of law; thus the judgment would lead the Republic of Cyprus into an undesirable “adventure” and result in an extremely difficult situation. If the Republic of Cyprus abides by the precedent of the judgment, but Turkey does not, this may lead to an increase in crime in the free territory of Cyprus, because criminals who reside in the northern part of Cyprus will come to the free part, commit crimes there and then return to the northern part (as the suspects of the murder did in the present case), in the belief that, after the judgment, they will not be tried by the lawful courts of the Republic of Cyprus and probably by no court in Cyprus.

A judgment on the procedural aspect of Article 2 of the Convention should have been a shield for the right secured, rather than undermining its level of protection, and not, surely, a shield for fugitive murderers, who, as the judgment says, find the northern territory of Cyprus to be a “safe haven” (see paragraph 233 of the judgment).

91.  The implementation of the Court’s judgments is important not only for the credibility and prestige of the Court and the Committee of Ministers, but also for the very existence of the Council of Europe’s system for the protection of human rights, the rule of law, democratic stability and peace in the world. Turkey does not implement the judgments of this Court which have a Cypriot origin, and, I regret to say, the Court in the present case, instead of recognising that Turkey had exclusive responsibility for the lack of cooperation, implicitly legitimises Turkey’s unreasonable demand for its courts to have jurisdiction all over Cyprus. None of the above helps the genuine efforts of the Republic of Cyprus to re-establish possession of the northern part of Cyprus, as was the Court’s concern for Moldova in relation to Transdniestria in the *Ilaṣcu* judgment(cited above).

92.  To reiterate, the approach of the majority in overlooking the legal aspect of the case and relegating the issue to a political dispute between the two respondent States, may have negative implications for the human rights and dignity of every person living in Cyprus, as well as for the right of the Republic of Cyprus to self-autonomy, legitimacy, independence and recognition, which have been acknowledged by the Court in *Cyprus v. Turkey,* cited above, and other cases.

93.  In the present case, the majority, while perhaps seeking to maintain an equal balance between the two respondent States, have ultimately recognised an unlimited expansion of the *de facto* competence of the courts of the “TRNC”, which for me is not acceptable even implicitly, for the reasons explained above.

94.  I regret to say that the States in question should not be treated like two small spoilt children, whose parents, when they do something wrong, scold both of them equally, without going into the details of their quarrel, lest one of them is made to feel worse than the other. States should be considered responsible for their acts and actions according to the rules of public international law. There should not be any easy solutions, but only just and fair ones, in public international law, particularly when States are expected to fulfil the duty they owe to their people under Article 1 of the Convention, the most important of which is to respect and secure the right to life under Article 2. It is the duty of this Court under Article 19 of the Convention to ensure the observance of the engagements undertaken by the States and to intervene by exercising its supervisory jurisdiction, if this is required. As the Latin maxim teaches in private law, “*nemo punitur pro alieno delicto*”(no one is to be punished for the crime or wrong of another – Wingate’s *Maxims*,336); the same applies in public law, no State should be responsible for the acts or omissions of another, and in the present case the Republic of Cyprus should not be responsible for the omissions of Turkey. Indeed, like individuals, States also have rights. They have rights under public international law, as under the Convention. For this purpose, there is a provision in the Convention, namely Article 33, for filing inter-State applications, and it was indeed under this provision that the inter-State application *Cyprus v. Turkey* was lodged.

95.  The right of the Republic of Cyprus to be the only legitimate government in Cyprus, as recognised by Strasbourg case-law, should be respected and protected by this Court, not only directly, but also indirectly, and not only in words, but also in practical terms. This right of the Republic of Cyprus to be the only legitimate government of Cyprus, and to be treated accordingly at international level by this Court, does not belong only to the Republic, but also to its people and every person living therein, indiscriminately.

96.  The recognition by this Court of an unlimited expansion of the *de facto* competence of the courts of the illegal entity of “TRNC”, in a direct or indirect manner, whether expressly or implicitly, would, with due respect, serve neither the Convention’s vocation as an instrument in the service of justice and peace in the world, best maintained by an effective political democracy, as stated in the preamble to the Convention, nor the role of this Court, which is not to legitimise illegality, but to be a guarantor and defender of human rights. Put another way, using the wording of the Court in *Loizidou v. Turkey* ((preliminary objections), cited above, § 75), such an approach “would not only seriously weaken the role of the ... Court in the discharge of [its] functions but would also diminish the effectiveness of the Convention as a constitutional instrument of European public order (*ordre public*)”. (See also *Al-Skeini and Others*, cited above, § 141, to the effect that the Convention is a constitutional instrument of European public order).

The Court is the “conscience of Europe” and it has repeatedly said that the Convention is an “instrument designed to maintain and promote the ideas and values of a democratic society” (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*,7 December 1976, § 53, Series A no. 23, and *Soering v. the United Kingdom*, 7 July 1989, § 87, Series A no. 161). These values of a democratic society and the rule of law cannot tolerate the “law of the strongest”, which Turkey imposed in northern Cyprus by its invasion, conquest and occupation and seeks also to impose in the present case, by way of securing jurisdiction for its criminal courts over a crime committed in the free territory of Cyprus.

97.  I am not prepared to follow any approach which does not oppose the injustice caused to the applicants – in the present case exclusively by Turkey –, whose case was not brought ultimately before any court in Cyprus, and, at the same time, I am not prepared to follow any approach which puts the very existence of a State, in the present case the Republic of Cyprus, at stake, in terms of public international law, as has been explained. What Martin Luther King, Jr, said, “Injustice anywhere is a threat to justice everywhere” (letter from Birmingham Jail, April 16, 1963), has, in my view, full relevance in the present case.

98.  No one is above the law (“*nemo est supra legis*” – *Lofft’s Reports, Appendix,* 142). And, of course, no member State of the Council of Europe is above the Convention. Otherwise, democracy would be in great danger!

II.  Conclusion on the discharge of the procedural obligations of the two respondent States

99.  In view of the foregoing, I conclude that there has been a violation of Article 2 of the Convention in its procedural limb exclusively by Turkey and not by the Republic of Cyprus, which has discharged its procedural obligation under this provision.

III.  Just satisfaction

100.  My findings as set out above, that there has been a violation of Article 2 of the Convention only by Turkey and not by the Republic of Cyprus, would have led to no award to be paid by the Republic of Cyprus and to an increase in the amount of the award paid by Turkey in respect of non-pecuniary damage, the determination of which, however, could only be theoretical, since I am in the minority.

PARTLY DISSENTING OPINION OF JUDGE PASTOR VILANOVA

(Translation)

The Court has found, by a substantial majority, that there has been a violation of Article 2 of the Convention under its procedural limb in respect of the Republic of Cyprus.

I regret that I am unable to agree with this decision for the following reasons.

1.  Whilst the finding against the Republic of Turkey appears unquestionable to me in the present case, the responsibility of the Republic of Cyprus does not seem to have been engaged.

2.  The Cypriot authorities did not wish to transmit the result of their criminal investigation to the “TRNC” because for them it was not a legitimate entity. According to the Chamber’s judgment, the finding against Cyprus is based precisely on Cyprus’ lack of cooperation or assistance *vis-à-vis* the authorities of the “TRNC”. This means that the legal structure of the Republic of Cyprus would have to evolve so that it cooperates with an entity which does not enjoy international recognition, *inter alia* that of the Council of Europe, and which has violated its territorial integrity. In my humble opinion, this finding is at odds with the principle that the Convention must not be interpreted in a vacuum but in harmony with the general principles of international law (see *Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 90, ECHR 2001‑II, and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001‑XI). To be sure, it was not ascertained, in this territorial conflict between courts, whether or not the respective positions (see, *inter alia*, paragraph 55 of the observations of the Republic of Cyprus of 3 September 2009) were compatible with the rule of law and the principle of good faith. Instead, a general obligation to cooperate has been imposed.

3.  A State may be recognised by another State either expressly or implicitly. In any event, this is a discretionary act. If the Republic of Cyprus takes the view that a police or judicial assistance arrangement with the “TRNC” would constitute an implicit recognition of that entity’s sovereignty, this is a political decision and one that is not for us to judge. States have a very broad margin of appreciation in such matters and it must be noted that the refusal by the Republic of Cyprus was in no way arbitrary. There are indeed numerous principles of contemporary international law which justify the position of the Republic of Cyprus: Turkey used force to invade the northern part of the island, thus breaching the territorial integrity of a sovereign State and disregarding the principle of non-interference of States in the internal affairs of others.

In those circumstances I am of the view that our Court cannot support or recognise, even indirectly, the actions of the “TRNC” which stem from an unlawful use of force, in breach of the most basic principles of public international law. By definition, it is the duty of our Court to defend the “force of law” and condemn any recourse to the “law of force”. Any subsequent willingness to compensate the victims can never allow the principle of legality to be circumvented, even if this is unintentional.

4.  In addition, it is not in dispute that the Republic of Cyprus thoroughly investigated the murders and formally requested the Republic of Turkey to extradite the suspects. It fulfilled its procedural obligations under Article 2. It must not be forgotten that we are speaking here of an obligation of means, not one of result.

5.  Moreover, the conflict arose because the authorities of the “TRNC” reserve the right to prosecute offences committed in the neighbouring territory of the Republic of Cyprus. This authority arises from the legislation on courts of law which extends the territorial jurisdiction of the “TRNC” to offences committed anywhere on the island, even in the independent territory of the Republic of Cyprus (see paragraph 162). In the following paragraphs I will show that the Chamber’s finding against the Republic of Cyprus legitimises, *de facto,* this provision. I would point out that the European Convention on Human Rights, in many of its provisions, lays emphasis on the rule of law and the Court’s case-law stresses the need for harmony between the interpretation of the Convention and public international law.

6.  According to customary international rules on the extraterritorial application of domestic law, a State may extend its statutory jurisdiction beyond its borders provided that this extension is at least attached to one of the indissociable elements of State sovereignty. Territory, population and “sovereignty” are common points of attachment.

First, it is self-evident that the State exercises its authority over local situations within its borders, especially in matters of homicide and bodily harm. Indeed, it is on its own territory that the evidence of the crime will generally be found.

Secondly, the State has an inherent power to legislate in respect of its own nationals, regardless of their place of temporary or permanent residence.

Lastly, the State may also legitimately reserve the right to try extraterritorial offences when they endanger its national security, its very existence, or its services abroad ...

Any extraterritorial application of legislation which is not reasonably and in good faith related to one of those situations will be at odds with international law. Consequently, it will have no legal value and will engage the international responsibility of the State from which the invalid provision stems.

7.  The “TRNC” sought to prosecute the individuals suspected of murdering the applicants’ relatives under an extraterritorial law, which was apparently unlimited in scope (see paragraph 162). But it is not in dispute that: (a) the murder was committed on the territory of Cyprus (see paragraph 10); (b) the victims all had Cypriot nationality (see paragraph 6); (c) the majority of the suspects had Cypriot nationality (see paragraphs 27 and 37); and (d) there was nothing to suggest that the murders had been directed against a superior State interest of the “TRNC”. I would observe that the “TRNC” could not rely on any significantly reasonable link between the criminal acts in question and its domestic “jurisdiction”. Similarly, the unreasonable exercise of an extraterritorial power is also incompatible with international law.

8.  Consequently, I am of the view that the authorities of the Republic of Cyprus were indeed reasonably entitled to argue that they had full jurisdiction – the rules on jurisdiction not being subject to derogation – to try the murders committed on its territory. In turn, the authorities of the “TRNC”, in the absence of any bilateral agreement with the Republic of Cyprus, committed an abuse of power by: (a) requiring that State to transmit the results of the investigation and (b) refusing to hand over the suspects. It is worth mentioning that the authorities of the “TRNC” ultimately found out about the criminal case in question through the proceedings before our Court. However, no progress was made in the investigation (see paragraphs 102 and 278) ... The old maxim “*aut dedere, aut judicare*” also seems to have been disregarded.

9.  It should be added that the situation here does not represent a legal vacuum. Turkey had the possibility of handing over the suspects to Cyprus under the European Convention on Extradition. The individuals concerned could have been tried in the Republic of Cyprus. However, Turkey did not even respond to an official request for extradition. It must now, on its own, assume the consequences of its culpable omission.

10.  Lastly, I would like to emphasise that this case must be distinguished from that of *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001‑IV), where the Court gave its “approval” to the courts of the “TRNC”, albeit to a very limited degree. In that connection the Court pointed out that the inhabitants of the northern part of the island (see paragraph 98 of that judgment) had an interest in the settlement of domestic disputes. The present case has two major differences: (a) the events took place exclusively in the Cypriot part of the island, while in *Cyprus v. Turkey* the violations of the Convention took place on the territory controlled by the “TRNC”, and (b) the present conflict arose on account of the lack of mutual legal assistance between the authorities of the Republic of Cyprus and those of the “TRNC”, whereas that institutional dimension was absent from *Cyprus v. Turkey*.

1. See Jerzy Stelmach and Bartosz Brozek, *Methods of Legal Reasoning*, Springer: Dordrecht, 2006 (Law and Philosophy Library), vol. 78, p. 162. [↑](#footnote-ref-1)
2. In Anne van Aaken and Iulia Motoc (eds), *The ECHR and General International Law*, Oxford University Press (forthcoming). See <https://ssrn.com/abstract=2825208>. [↑](#footnote-ref-2)
3. See Daniel Rietiker, “The Principle of ‘Effectiveness’ in the Recent Jurisprudence of the European Court of Human Rights: Its Different Dimensions and Its Consistency with Public International Law – No Need for the Concept of Treaty *Sui Generis*”, *Nordic Journal of International Law,* vol. 79, no. 2 (2010), p. 271. [↑](#footnote-ref-3)
4. See Hersch Lauterpacht, “Restrictive Interpretation and Effectiveness in the Interpretation of Treaties” in *BYIL* (1945), p. 48 at 50-51, 69; and Alexander Orakhelashvili*, The Interpretation of Acts and Rules in Public International Law,* Oxford 2008, reprinted 2013, at p. 414. [↑](#footnote-ref-4)