



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

FIRST SECTION<sup>1</sup>

**CASE OF ADALI v. TURKEY**

*(Application no. 38187/97)*

JUDGMENT

STRASBOURG

31 March 2005

**FINAL**

*12/10/2005*

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

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<sup>1</sup> In its composition prior to 1 November 2004.



**In the case of Adalı v. Turkey,**

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr R. TÜRMEŒ,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 31 January 2002 and on 10 March 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 38187/97) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national living in the “Turkish Republic of Northern Cyprus” (“TRNC”), Ms İlkey Adalı (“the applicant”), on 12 September 1997.

2. The applicant, who had been granted legal aid, was represented by Lord Lester of Herne Hill, QC, assisted by Ms Monica Carss-Frisk, QC, and Mr Stephen Grosz, counsel from Bindman & Partners, a law office in London. The Turkish Government (“the Government”) were represented by their Agent, Professor Zaim Necatigil, and their co-Agents, Ms Deniz Akçay and Mr Münici Özmen, assisted by Ms Deniz Şulen Karabacak, Mr Ergin Ulanay, Ms Alev Günyaktı and Mr Ali Rıza Güder, counsel.

3. The applicant alleged, in particular, that her husband had been killed by the Turkish and/or “TRNC” authorities and that the national authorities had failed to carry out an adequate investigation into his death. She further contended that, following the death of her husband, she had been subjected to continuing practices of harassment, intimidation and discrimination by the “TRNC” authorities. The applicant invoked Articles 2, 3, 6, 8, 10, 11, 13, 14 and 34 of the Convention.

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

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 31 January 2002 (Rule 54 § 3).

There appeared before the Court:

(a) *for the Government*

Professor Z. Necatigil,	<i>Agent,</i>
Ms D. Akçay,	<i>Co-Agent,</i>
Ms S. Karabacak,	<i>Counsel,</i>
Mr E. Ulanay,	<i>Adviser,</i>
Ms A. Günyakti,	
Mr A.R. Güder,	<i>Counsel;</i>

(b) *for the applicant*

Lord LESTER OF HERNE HILL, QC,	
Ms M. CARSS-FRISK, QC,	
Mr S. GROSZ,	<i>Counsel.</i>

8. The Court heard addresses by Professor Necatigil and Mr Ulanay, for the Government, and Lord Lester, for the applicant.

9. By a decision of 31 January 2002, following the hearing, the Court declared the application admissible.

10. The Court, having regard to the factual dispute between the parties over the circumstances surrounding the killing of the applicant's husband and the alleged harassment, intimidation and discrimination policies pursued by the "TRNC" authorities against the applicant, conducted an investigation pursuant to Article 38 § 1 (a) of the Convention. The Court appointed four Delegates to take evidence from witnesses at hearings conducted in Strasbourg, on 8 October 2002, and in Nicosia (Lefkoşa) between 23 and 24 June 2003.

11. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Cypriot Government, who had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and

Rule 44 § 2). The respondent Government replied to those comments (Rule 44 § 5).

On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case remained assigned to the First Section as composed on 1 November 2001.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

12. The applicant was born in 1944 and lives in Lefkoşa, in the northern Cyprus, “Turkish Republic of Northern Cyprus” (“TRNC”).

13. The application concerns the killing of the applicant's husband, Mr Kutlu Adalı, by unknown persons. The applicant made serious allegations about the involvement of Turkish and/or “TRNC” agents in the murder. She further complained of the inadequacy of the investigation launched by the “TRNC” authorities into the death of Kutlu Adalı. She contended that her husband had received death threats on several occasions because of his articles and political opinions. The applicant further complained that following the death of her husband she had been subjected to continuing practices of harassment, intimidation and discrimination by the “TRNC” authorities. In this connection, she referred to several incidents.

14. The Government denied all allegations concerning the murder of Kutlu Adalı. They maintained that the “TRNC” authorities had immediately commenced an investigation into his death, and had conducted a thorough investigation. However, the perpetrators of the crime had not yet been identified. The Government also rejected the applicant's allegations of harassment and submitted that these submissions were of mere speculation.

#### A. The facts

15. The facts surrounding the killing of the applicant's husband and the alleged practices of harassment, intimidation and discrimination by the “TRNC” authorities are disputed between the parties.

16. The facts as submitted by the applicant are set out in Section 1 below. The facts as submitted by the Government are contained in Section 2.

17. A summary of the documents submitted by the parties is to be found in the Annex. The witness evidence taken by the Court's Delegates at hearings conducted in Strasbourg and Nicosia is summarised in Part B.

*1. Facts as submitted by the applicant*

18. The applicant's husband, Mr Kutlu Adalı, was a Turkish Cypriot writer and journalist who was known for having written and published articles strongly criticising the policies and practices of the Turkish Government and the authorities of the "TRNC". He had always claimed that Cyprus should not be divided and that Turkish and Greek Cypriots should live in a united republic based on a pluralist democratic system.

19. Apart from his writing and journalism, Mr Kutlu Adalı had also held various civil service posts in the past. Between 1961 and 1972 he was employed as the private secretary to Mr Rauf Denктаş, who later became the President of the "TRNC". In 1972 Mr Adalı's salary was suspended because he had wished to write an article about policies of Mr Denктаş with which he disagreed.

20. At that time, Mr Denктаş wanted the applicant's husband, Kutlu Adalı, to work for a radio station called Bayrak (Flag), which was under the control of the Turkish Resistance Movement. Mr Kutlu Adalı refused to work for this radio station and was imprisoned without any charge or trial for one week because of his refusal. After his release, he started to work for the Bayrak radio station in order for his salary to be restored.

21. In 1974 Mr Adalı was appointed to the post of Head of the Identity Cards Section of the Department for the Registration of the Population. In December 1979 he was suspended, and was reinstated in 1986, when he was given the post of adviser in the Tourist Office of the "TRNC". His career as a civil servant ended in 1987, when he was compelled to take early retirement at the age of 50.

22. During his public service and after his retirement Mr Kutlu Adalı continued his career as a writer and journalist. Initially, he wrote under a pseudonym (Kerem Atlı), because it was dangerous for him to express his political views about a unified Cyprus using his real name. In 1981 he started using his real name. For the last seven years before his death he wrote regularly for *Yenidüzen*, a left-wing newspaper.

23. The applicant and her husband received various threats intended to deter him from continuing to express his opinions. Between January 1980 and July 1996 unknown persons subjected the applicant's husband to various forms of harassment. His house was attacked with machine guns and he received frequent threatening phone calls. Unknown people entered his house looking for copies of his articles, in order to be able to start criminal proceedings against him, as he was writing his articles under a pseudonym.

24. On 17 March 1996 the *Yenidüzen* newspaper printed an article by Kutlu Adalı about an incident in which thieves had broken into a tomb in the monastery of St Barnabas and stolen various objects of cultural significance. He had written that the licence plates and the colour of the thieves' cars had been noted, and the licence plates had been traced as

belonging to two members of the Civil Defence Organisation. After the publication of this article, the editor of the newspaper received a threatening phone call from the head of the Civil Defence Organisation. Mr Adalı also began to receive frequent threatening phone calls.

25. On 4 July 1996 the *Yenidiğer* newspaper published another article by Mr Adalı which strongly criticised the “Mother Country- Child Country” policy of the Government of Turkey and of the “TRNC”.

26. On 6 July 1996, at around 11.35 p.m., the applicant's husband was shot and killed in front of his house in the “TRNC” by unknown persons. The applicant was in Istanbul on the night when he was killed. When she had telephoned her husband at about 11.15 p.m., he had told her that “they” had been threatening him. The “TRNC” authorities refused to show the applicant her husband's body. She was told by the doctor in charge of the mortuary, Dr İsmail Bundak, that no post mortem had been carried out, although the body had been rayed. She has never been allowed to see the rays. The applicant was informed for the first time that a post mortem had been carried out in the Government's observations of 1 April 1999, and a copy of the post-mortem report was provided.

27. The applicant has attempted to investigate her husband's death herself. She found out from her neighbours that shortly before her husband's death, a black car had been parked in the street. This black car was of the same model as the car driven by Altay Sayıl, a retired police officer who had become friendly with the family in the last months of the applicant's husband's life. This retired police officer Altay Sayıl did not appear for ten days following the death of her husband.

28. The applicant's neighbours told her that around the time her husband had been shot they had heard him begging his killers for his life. They said that they had heard a man saying that the applicant's husband deserved to die. The neighbours also informed her that the electric lighting in the street outside the applicant's home had gone out at about 10.30 p.m., causing the area to be in darkness, and had not been switched on again until shortly after Mr Adalı had been shot. The applicant also learned from her neighbours that within only a few minutes of the shooting about twelve military cars had arrived and had sealed off the area, and that the “special teams” of police officers had threatened the neighbours with guns to force them to go back inside their houses.

29. On 8 July 1996 the pro-“TRNC” government newspaper *Kıbrıs* reported that it had received a statement from a fascist group calling itself the Turkish Revenge Brigade, claiming that it had killed Kutlu Adalı. According to the applicant, this group is linked to the so-called “Grey Wolves”, the youth movement of the Turkish Nationalist Movement Party. They have close and long-standing links with members of the Turkish armed forces, the Turkish police, the Turkish National Intelligence Service

(MIT), the Turkish paramilitary apparatus, Turkish ministers and the Turkish mafia.

30. Three days after her husband was killed, the applicant's family received a telephone call from an anonymous caller, a woman, who gave the names of two individuals who she said were responsible for Mr Adalı's murder, a Mr Hüseyin Demirci and a man whose first name was Orhan. The applicant informed the police about this phone call but the police refused to start an investigation, stating that this woman was known for making false allegations to the police. The applicant discovered that Mr Demirci was a member of the "Grey Wolves" and of the Civil Defence Organisation and that the security forces were paying him. Orhan was a colonel in the Turkish armed forces on the island.

31. On 14 July 1996 the applicant's children arranged a meeting with the President of the "TRNC". They requested him to take steps to ensure that effective action was taken to find their father's killer, and the President promised to take effective action.

32. On 18 July 1996 the applicant requested President Denктаş that the status of martyr be awarded to Kutlu Adalı. On 9 September 1996 her request was rejected.

33. There have also been repeated allegations in the press that a man called Abdullah Çatlı, an extreme right-wing activist who was linked with the "Grey Wolves" and who was allegedly instructed by some Turkish officials to kill people suspected of being PKK members, was involved in the death of the applicant's husband. According to the applicant's personal information, Abdullah Çatlı had arrived in the "TRNC" at the beginning of July 1996 under a false identity.

34. She contends that in November 1996 she received an invitation from southern Cyprus to receive an award in her husband's name. However, the day before the meeting she received a phone call from an official in the "TRNC Ministry of Foreign Affairs" and, being scared by this phone call, she decided not to attend the meeting.

35. In December 1996 the applicant went to see the security forces' commander, Mr Hasan Peker Günal, and complained that the security forces were not investigating her husband's death properly.

36. On 5 March 1997 the *Yenidüzen* newspaper published a letter signed by the head of the "Grey Wolves", which contained a threat that left-wing journalists and writers would be killed like the applicant's husband. The applicant gave copies of this article to the police to investigate, but she did not receive any response.

37. On 26 June 1997 the applicant wrote to the security forces' commander, Mr Hasan Peker Günal, pointing out that nearly one year had passed since her husband's assassination and that the perpetrators had not yet been found, but she did not receive any concrete information in reply.



38. Plain-clothes policemen have constantly been following the applicant and her daughter; their phones had been tapped and their correspondence monitored. They have received anonymous phone calls and their telephone and fax line has been disconnected from time to time. In this connection, she submits that she received very few letters of condolence following her husband's death. She maintains that the water supply of her house has been cut on several occasions and she does not believe that this was due to technical faults as it has been alleged by the Council Water Department.

39. The "TRNC" regime also refused to register an association, which is called "Kutlu Adalı Foundation", whose aims include the furthering of the ideas of Kutlu Adalı regarding peace, democracy, human rights and freedom.

40. The applicant also requested permission from the authorities to keep her husband's press card that entitled her to certain privileges, such as discounts for air fares. However, this request was also rejected.

41. On 20 June 1997 the public authorities prevented the applicant and her daughter from attending a meeting organised by a radio station in southern Cyprus, by not giving them permission to cross over to that side.

42. On the anniversary of Kutlu Adalı's death the applicant organised a ceremony to commemorate her husband. On the day of the ceremony, the municipality brought in digging machines to dig up the road just under their street. The applicant also submits that a picture of Kutlu Adalı, which was displayed in their garden, was stolen.

43. On 10 August 1997 she heard three gunshots outside her home. Subsequently, before she left for England, a real-estate agent came to meet her daughter and told her to sell their house and accept any offer he would make to buy it. The applicant believes that this real-estate agent was sent by the "TRNC" authorities to persuade her to leave the country.

44. The applicant further contends that following her application to the European Court of Human Rights, her daughter was dismissed from her post in a bank, and that although she was ranked 15<sup>th</sup> among 68 candidates in the examination to become a civil servant, she was not given a post.

45. Moreover, the applicant's representatives informed the Court on 21 January 2000 that on 15 December 1999 the applicant had a meeting with Professor Bakır Çağlar about her application before the Court. Professor Çağlar, who is a former agent of the Turkish Government in the cases before the European Court of Human Rights, allegedly told the applicant that she might be assassinated if she won her case before the Court and that her daughter's scholarship would be discontinued. However, the applicant submitted in her oral evidence to the Court's Delegates that Professor Çağlar had asked about the details of the case and that he had told her that he could win the case for her since, according to him, her lawyers were not very good. As she considered that he was connected to the

authorities of the “TRNC” or of Turkey, she did not want to hand her case over to him.

*2. Facts as submitted by the Government*

**(a) Events preceding the murder of Kutlu Adalı**

46. The Government submit that at the time when Kutlu Adalı was employed as the private secretary of President Denктаş, he requested the President's support to evade military service. His request was rejected and Mr Adalı had to do his military service, which consisted of a short period of basic training and a remaining period of office work, which he performed at the Bayrak radio station. When he completed his military service, he was appointed as the Director of Registration. In December 1979 he was removed from his post by an instrument signed by the minister responsible, the Prime Minister and the Head of State pursuant to Article 93 of the Constitution of the Turkish Federated State of Cyprus, and was appointed to the Ministry of Foreign Affairs, Defence and Tourism as an adviser. Mr Adalı initiated proceedings in the High Administrative Court and requested the annulment of this action. Eventually, the courts accepted Mr Adalı's arguments and he was reinstated in his post in 1983.

47. The Government maintain that Mr Adalı pursued his career as a writer and a newspaper journalist while he was in the public service. He used to write under the pseudonym of “Kerem Atlı” not because it was dangerous for him to express his political views, but because there was a legal provision that civil servants should not be involved in daily politics and should act impartially. The vast majority of Turkish Cypriots did not agree with the views expressed by Mr Adalı.

**(b) Investigation into the killing of Mr Adalı**

48. The Government submit that on 6 July 1996 at 11.40 p.m. a tip-off was received at the communications section of the Lefkoşa Police Headquarters on telephone no. 155 from an unidentified caller, stating that there had been a murder at the point where Ardiç Street crosses Akasya Street.

49. Following the tip-off two Land Rovers belonging to the special unit (*çevik birlik*) of the nearby Yenişehir police station, attached to the Lefkoşa Police Headquarters, came to the scene of incident, within a short time. They were followed by police vehicles bringing Criminal Investigation Department personnel from the Yenişehir and Lefkoşa Police Stations. The immediate area of the incident and the surrounding area were cordoned off by the police officers who started to work in order to identify the culprits. The Government underline the fact that all the vehicles used by the police

and those by the Turkish Cypriot security forces are of a similar type and colour.

50. The investigation began immediately after the death of Kutlu Adalı. Early in the morning of 7 July 1996, at 3 a.m., police officers brought a doctor from the Nicosia (Lefkoşa) State Hospital to the scene of the incident. The doctor examined the body and established that Mr Adalı had died at the scene of the incident as a result of two bullet wounds in the areas of his left temple and left shoulder. A photographic fingerprinting officer took photographs of the scene of the incident. A sketch map of the scene of the incident indicated the positions of the empty cartridges. The body was then sent to the Nicosia State Hospital morgue for the purposes of an autopsy. Mr Adalı's corpse was shown to his brother-in-law by police officers at the hospital morgue.

51. On 7 July 1996 police officers drew up a list of residents, including the applicant's neighbours, in the Akasya and Ardiç streets. On the same day statements were taken from thirty-three persons as to their knowledge about the incident.

52. Following the autopsy carried out by Dr İsmail Bundak on 7 July 1996, the cause of death was identified as dismemberment of the internal organs, internal haemorrhage and supdural bleeding at the head as a result of the wounds sustained by being shot with a firearm. After the autopsy, the blue-coloured shirt, striped T-shirt, pair of slippers and pair of glasses which Mr Adalı was wearing were taken as evidence.

53. Between 8 and 31 July 1996 twenty-six further statements were taken from potential witnesses, including members of the applicant's family.

54. The investigation report of 13 July 1996 indicated persons who were not at home on the night of the impugned incident and their whereabouts at that time.

55. On 17 July 1996 the Deputy to the Head of Security Forces Command in Lefkoşa sent a bloodied T-shirt and a shirt belonging to Mr Adalı to the State Laboratory for an analysis of the blood.

56. On 18 July 1996 in an article, which appeared in the newspaper *Milliyet* under the headline "The murderer was someone he knew", it was alleged that a few days before the murder, a Timur Ali from the Nationalist Thought Association had made statements in the *Birlik* newspaper such as "Kutlu Adalı must be destroyed like a dog by the council".

57. On the same day, statements were taken by the police officers from Ali Tekman, a columnist who used the pen-name "Timur Ali". In his statements the latter denied that he had made such allegations and claimed that he had never written for *Birlik* newspaper and that he was not a member of the Nationalist Thought Association.

58. The authorities investigated the applicant's allegations that at the time her husband was killed the street lights at the scene of the incident and in the vicinity were switched off. Subsequent to the enquiries made by

Mr Ali Horoz, an equipment engineer at the Turkish Cyprus Electricity Company, it was established that the electricity for the street lights at the place of the incident and in the nearby Akasya, Akalan, Bağarası, Söğüt and Altınova Streets was provided by the “Sıdıka Çatozlu” power supply and not from the power supply of the Civil Defence Organisation as alleged by the applicant. After statements had been taken from the residents in the area, it was established that there had not been a power cut on the night of Mr Adalı's murder and that even if, as alleged by the applicant, the power supply in the courtyard of the Civil Defence Headquarters had been interfered with in order to affect the street lamps, it would not have been possible to switch off the street lights at the scene of the incident or in the streets in the vicinity.

59. A ballistic examination was also carried out on the used cartridges. Following the examination of 14 used cartridges, the ballistics report of 6 August 1996 stated that they were 9-mm Parabellum-type cartridges that had been fired from one single gun at close range. It was further noted in the report that the cartridges and the bullet cores were not linked to any other cartridges or bullet cores that had hitherto been found within the territory of the “TRNC” or recorded in the files on murders by unknown assailants.

60. On 15 October 1996 the applicant submitted a petition to the Telephone Directorate in Nicosia, stating that she and her family had been disturbed by calls made from a certain number. At the applicant's request a tapping device was put on to the applicant's telephone line (no. 2274089).

61. On 12 November 1996 a call was received from the telephone number 2271851, and the authorities found out that the number belonged to a certain Mr Cahit Hüray, whose telephone line was then cut off. Following a request made by a person named B.K., the telephone was reconnected on payment of a certain amount of money. The owner of the telephone line, Mr Hüray, sent a complaint to the Telephone Directorate on 18 November 1996 stating that he had never dialled the applicant's number. Mr Hüray requested an inquiry to be made into this disturbance. Thus, on 22 November 1996, an assistant police inspector took statements from the head of the technical section at the Telephone Directorate to clear this matter up.

62. On 4 March 1998 the police assistant inspector in charge of the investigation, Ahmet Soyalan, concluded his report on the investigation. In his concluding remarks, the inspector stated that it had not been possible to identify the murderer(s) and that he could not therefore reach a positive result for the investigation.

63. On 29 April 1998 the case was referred to the Attorney-General of the “TRNC”.

64. On 1 July 1998 the Attorney-General's office advised that the matter should be referred to a coroner for an inquest.

65. On 31 July 1998 the Nicosia Police Chief informed the Nicosia Coroner of the results of the investigation into the killing of Mr Adalı. He transmitted the full investigation file containing the statements of the witnesses and the investigating officer's report.

66. The hearing in Lefkoşa before the coroner commenced on 20 October 1998 and, following statements from witnesses, was concluded on 11 December 1998 with the delivery of the verdict. The coroner found that Kutlu Adalı had been shot dead on 6 July 1996 by unidentified person(s), and that his death had been caused by organ dismemberment, internal haemorrhage and subdural haemorrhage in the head. The coroner stated that the murderer(s) of the deceased could not be identified and declared the case closed.

**(c) The Government's observations in response to the applicant's allegations**

67. The Government maintain that the allegation about the involvement of Abdullah Çatlı is no more than speculation. In this connection, they submit the "TRNC" records according to which Abdullah Çatlı's last visit to TRNC had been between 26 April 1996 and 1 May 1996. The Government emphasise the fact that Abdullah Çatlı was not in the "TRNC" on 6 July 1996, when Kutlu Adalı was killed.

68. The Government explain that public opinion was supportive of the loss of the applicant's husband. Public statements were made by the President, the Speaker of the Legislative Assembly, the Prime Minister and political party leaders, condemning the killing and calling for the assailants to be found. Moreover, Mr Adalı's name was assigned to the street where he lived by the Lefkoşa Municipal Council.

69. As regards the events that occurred after the death of the applicant's husband, the Government maintain that most of the applicant's allegations are highly exaggerated. In this connection, the Government note in the first place that the applicant herself asked for protection from the "TRNC" authorities and was told that she was already under the protection of plain-clothes policemen.

70. The Government further submit that in order to register a foundation in the name of Kutlu Adalı, an application should be made to the competent court and a court order should be obtained. On 2 April 1998 the Nicosia Family Court ordered the registration of the Kutlu Adalı Foundation after the applicant and eight other persons chose to follow the correct procedure.

71. In respect of the refusal of the applicant's request to cross to the southern part of Cyprus, the Government submit that the crossings of the Green Line to and from the Ledra Palace Gate between the "TRNC" and southern Cyprus are regulated by the rules and regulations of the "TRNC" and crossings are subject to restrictions due to security precautions. The "TRNC" authorities have the right to suspend permission to cross the border.

72. The Government further submit that the St. Barnabas incident which occurred in March 1996 was a security operation. There was no damage to the icons or to the archaeology museum. Upon receipt of intelligence reports to the effect that illegal arms had been hidden in the tomb, the security forces conducted an operation there. The Government state that the Civil Defence Organisation was not involved in the incident.

73. The Government explain that pursuant to Law No. 7/1974 providing for aid to families of martyrs and victims of events, a martyr denotes a person who lost his life in the performance of duties assigned to him by lawful orders, in the protection of the rights of the “TRNC” in the struggle against illegal acts.

74. Moreover, the Government contend that the applicant's daughter was dismissed from her post in the Erbank on account of disorderly conduct on 12 October 1998. The application was communicated to the Government on 26 December 1998; therefore, as the dismissal of the applicant's daughter occurred before the communication of the application, this incident cannot be attributed to the authorities. The Government also state that the applicant's daughter had ranked 52<sup>nd</sup> (not 15<sup>th</sup> as alleged) amongst 68 candidates in the examination to become a civil servant. The result of this exam was published in the Official Gazette dated 23 September 1998.

## **B. Oral evidence**

75. The facts of the case being in dispute between the parties, the Court conducted an investigation with the assistance of the parties. In this connection, four delegates of the Court took oral evidence from the applicant on 8 October 2002. Six further witnesses were heard by the Delegates on 23 and 24 June 2003 in Lefkoşa, Cyprus. The evidence given by the witnesses may be summarised as follows.

### *1. İlkay Adalı*

76. Mrs Adalı was born in 1944. In addition to her earlier submissions she claimed the following.

77. Prior to the events in question, Mr Kutlu Adalı's writing led to his being prosecuted by the authorities on one occasion. On 15 August 1981 police officers searched their house because her husband had allegedly insulted President Denktaş in an article. The search warrant was signed by Emin Okur, a judge in Kyrenia. The authorities wanted to find out the identity of the author of the article “Minaredeki Deli” (*the mad on the minaret*) and whether it was Kutlu Adalı who was using the name Kerem Atlı. The prosecution was subsequently discontinued for lack of evidence. None of the books and articles written by the applicant's husband were ever seized or confiscated.

78. No further incidents occurred until after her husband's article on the St Barnabas monastery was published in *Yenidüzen* on 17 March 1996. On the day of publication the head of the Civil Defence Organisation, Galip Mendi, telephoned the newspaper and made threats, which were indirectly aimed at her husband because he was the author of the article. Following the St Barnabas incident Mr Mendi was removed from his post. He left Cyprus two days before the killing of the applicant's husband and returned two years later. He was currently in charge of the security services.

79. The Civil Defence Organisation was an organisation initially established in order to help the people and to assist them in defending themselves in the event of disasters such as a fire or the outbreak of war. People who were no longer eligible on grounds of age belonged to the Organisation and were called into service if there was an emergency. A commander belonging to the military stood at the head of the organisation. The applicant did not accept that it was a civil organisation – she was of the opinion that it was a special and secret organisation attached to the Prime Minister.

80. Whilst in his post as Director General of Population Issues, her husband had been a senior manager within the Civil Defence Organisation. The applicant only learned about this after her husband's death, when amongst his papers she found the 1975 decision of the Council of Ministers appointing him.

81. Erhan Arıklı, a member of the Nationalist Thought Association, wrote to *Yenidüzen* threatening Kutlu Adalı. Mr Arıklı also had an article, entitled “The Red Disease”, published in the pro-Government newspaper *Birlik* in which he wrote, using the pseudonym Timur Ali, that leftist people should be shot like stray dogs by municipal officials. It was true that in her interview with the *Milliyet* newspaper the applicant had said that, in “The Red Disease”, Mr Arıklı had written that her husband should be put down like a dog. This was in any event how she had interpreted the article.

82. In December 1996, when the applicant was going through her husband's papers, she discovered a letter, dated 1990, written to her husband by the fascist Nationalist Thought Association and signed by Mr Arıklı. She perceived its contents as threatening.

83. It was not only *Yenidüzen* which received threats: the applicant's husband himself also received many anonymous letters, saying that he would be killed in a week's time, and threatening telephone calls. As he was a very proud person, he did not report these threats to the police, although he did mention them in an article of 23 April 1996. Neither did he try to have the telephone calls traced.

84. On 6 July 1996, the day of her husband's killing, the applicant was in Istanbul to celebrate their daughter's birthday. Her husband had not accompanied them for financial reasons. She spoke to him by telephone at

11.15 p.m., fifteen minutes before he was killed. After her husband's death, she was unable to see his body. Her brother-in-law did see the body.

85. Being of the firm belief that her husband had been assassinated by Government agents, the applicant herself conducted an investigation. She handed the results of this investigation, in the form of a written statement, to the police chief Mehmet Özdamar. She was not given a copy of it.

86. As regards her investigation, the applicant said that, as time went by, her neighbours - the persons living around her and across the street from her- started giving her information. For example, Ayşe Mehta told her that she had seen a black Murat car driving rapidly to the Civil Defence Organisation headquarters that day. Ms Mehta lived on Şehit Ecvet Yusuf Street, which ran parallel to the street where the applicant and her husband were living. It was also the street where the Civil Defence Organisation was based. None of the inhabitants of Şehit Ecvet Yusuf Street were interviewed by the police. The police said that these people had not been at home when the incident had occurred, but this was not true.

87. Other neighbours, Arzu Çağın and Ali Rıza Kırçay, mentioned a dark red Şahin and a dark-coloured car respectively.

88. Based on these statements, the applicant formed the opinion that the car had been a black Murat, although she acknowledged that it might also have been a Şahin since Şahin and Murat cars looked the same.

89. Ms Mehta also told her that the two lamp-posts on Ardiç Street, around the applicant's house, had been switched off at 10.30 p.m. Ms Mehta did not see when they had come back on, but she did notice that they were on after the murder. This was something that used to – and continued to - happen quite frequently. Only the lights around the applicant's house would be off and the applicant and her family would be left in darkness. A sibling of the applicant had explained to her that this was done by removing the fuse from the fuse-box in an individual lamppost.

90. Two other neighbours – Turkish students, living in the basement of the building next door – refused to speak to the applicant and left Cyprus three days after the killing. However, they did give a statement to the police.

91. Erinç Aydınova, a fourteen-year-old child of a neighbour, was one of the first persons to find the body of the applicant's husband. He was so afraid that he had still not spoken to the applicant. He had made a statement to the police, but it was not complete: the boy did not tell the police that he had seen a car passing at great speed. The applicant's daughter found that information from him as she used to take him to school. The applicant was almost certain that the boy must have seen the make of the car given that, together with two other boys, he was the first to find the body.

92. Feri Khan and her mother lived across from the applicant's. They were at home on the night of the murder, saw a black Murat car without licence plates and heard shots, but the police had never asked them for



statements. According to the police, Ms Khan and her mother had not been at home that night.

93. Following the murder, the applicant found a packet of dried nuts bought from the shop of Ziya Kasaboğlu in her house. Mr Kasaboğlu told the applicant that her husband had bought the nuts and that he had been killed afterwards. He said that it was because of this that he had been the one who had informed the family of the murder: he had telephoned the father-in-law of the applicant's sister. In actual fact, Mr Kasaboğlu was a plain-clothes policeman and the father-in-law was his superior. After the applicant's husband had died, Mr Kasaboğlu closed up his shop and moved to the village of İnönü. The applicant believed that Mr Kasaboğlu was involved in the incident because he did not come to speak to her and the police did not take a statement from him. In addition, her husband never used to buy nuts from his shop. The applicant asked the authorities to take a statement from Mr Kasaboğlu, but to no avail. She first made this request at a secret meeting in December 1996 with Hasan Peker Günal, commander of the security forces, and Attila Sav, the chief of police, which took place in the latter's office. She subsequently, and just as unsuccessfully, put the same request to many other authorities.

94. Altay Sayıl was a friend of the applicant's husband. They met about fifteen years before Kutlu Adalı's death and would occasionally meet to pursue cultural activities. Two to three years before the murder, their friendship intensified. Mr Sayıl often came to visit the applicant's husband and brought him classified documents, for example about the police. Her husband used these documents in his articles. As a result, the head of the security forces was removed from his post after those articles were published. Two nights before the killing, Mr Sayıl came to the applicant's house in a black Murat car. He said that it belonged to a friend. Apart from her mother, Mr Sayıl and his wife were the only persons who knew that the applicant was going to Istanbul.

95. The applicant suspected that Mr Sayıl was working for the intelligence services and that he had been using her husband. On the first night when she was questioned, Mr Özdamar told her that Mr Sayıl was a good person, and insinuated that Mr Sayıl had nothing to do with the murder. As the applicant felt Mr Özdamar to be prejudiced she did not tell him about Mr Sayıl handing documents to her husband, but she did mention it in the article in *Aktüel*.

96. Mr Sayıl did not come to the applicant's house for ten days after the murder; and then he only came because the applicant asked him to. On that occasion he denied having brought a booklet to the applicant's husband on the night of the murder. This booklet, which had been left in front of her husband's office, contained photographs of two journalists who had been assassinated in 1962. A photocopied picture of her husband had been superimposed on it. Months later, the applicant found the photograph from

which the copy had been made upside down in an album amongst her husband's books. She also found out that a letter, saying that certain journalists had been killed, had been photocopied at a shop where Mr Sayıl's brother was working.

97. Shortly after the applicant's husband had been killed, a large number of police officers went into her house, ostensibly to guarantee the security of the house because, according to them, they found the door open and the television switched on. However, they turned everything upside down in the house and it took the applicant and her family two years to restore order amongst her husband's books and papers. The police were accompanied by the *muhtar*, Tahsin Ali Rıza. The *muhtar* was never questioned by the police.

98. Subsequently, both Mr Demirci and one Orhan Ceylan, who was a colonel, brought a court action against the applicant because of an article that had appeared in *Milliyet*. This is how the applicant found out about Orhan's surname. The police never took a statement from this individual, although Mr Demirci was interviewed by them. A statement was similarly not taken from Mustafa Asilhan who had dinner with Mr Demirci on the evening of the murder, according to the latter's statement. Mr Asilhan was now an adviser to the commander of the security forces.

99. The applicant later found out that Mr Demirci had been injured in an incident when his car had been shot at. When he was taken to hospital by local people, Mr Demirci shouted that an attempt had been made to kill him because he had killed Kutlu Adalı. The local people informed the police, but were told to forget about it. Mr Demirci was subsequently taken to a military hospital in Turkey where all his expenses were paid. Upon his return to Cyprus he became the private secretary of Mr Mendi.

100. Following the murder, the applicant spoke to Dr İsmail Bundak, who told her that no post mortem had been carried out but that her husband's body had been rayed. She was unable to find out whether this was true until, after she had lodged her application with the former Commission, she obtained a copy of the post mortem report together with the Government's observations. Dr Bundak did not give her the death certificate, in which the cause of death was stated as internal bleeding, until about one month after the incident.

101. The applicant's allegation to the effect that Abdullah Çatlı was involved in her husband's murder was not just based on newspaper reports. In 1997 she had a meeting with Fikri Sağlar, a member of the Turkish Parliament and chairman of the Turkish Susurluk committee. In 1998 and in 2001 the Parliament of the "TRNC" established its own Susurluk investigation committee, suspecting that there was a connection between Mr Çatlı and the murder of Kutlu Adalı. The applicant made statements to these committees, but did not have transcripts of her statements. The committees came to the conclusion that Mr Çatlı had visited Cyprus, using

false identities, on many occasions and that around the time of her husband's murder he had been staying at the Jasmine Court hotel, with his expenses being paid by the army. When Mr Çatlı died in a car accident in November 1996, an Uzi was retrieved from the car. It is the applicant's opinion that this Uzi, which had gone missing from the Turkish police, was the weapon with which her husband had been shot.

102. Although the roads in the vicinity of the applicant's house were very quickly closed off by the military after the shooting of her husband, the roads in the outlying area, and especially those leading to the airport, were not. A taxi driver told the applicant that he had taken Abdullah Çatlı to the airport directly after the murder had been committed.

103. The applicant believed that Mr Sayıl, Mr Kasaboğlu, Mr Demirci and Mr Çatlı were Government agents, that they had acted collectively and as a team and that they had killed her husband. She did not accept that he might have been killed by a private individual who was angered at her husband's writings. At the secret meeting with Mr Günel and Mr Sav in December 1996, she informed them of her suspicions. Mr Günel said that he had never heard the name of Mr Sayıl before but that he would follow it up.

104. The applicant was of the opinion that the security forces were opposed to an effective investigation being carried out into the killing of her husband. Shortly after the killing, Refik Öztümen, who was in charge of the judicial investigation, wanted to meet with her at her sister-in-law's house. The applicant refused because she was afraid at that time. Later on, Mr Öztümen told the applicant's sister-in-law that he had been given instructions by the security forces not to conduct the investigation effectively and that she, the applicant, should not follow it up either.

105. The applicant had been subjected to constant harassment after the death of her husband. She received threatening telephone calls. When she informed the police about this in 1996, they managed to trace a call to one Cahit Hüray who lived two streets away. The applicant had never met Mr Hüray, but she knew that he belonged to the Civil Defence Organisation. Mr Hüray was let off after paying a miserly fine. The telephone calls continued. The applicant bought an indicator to show the number of incoming telephone calls. When she received a telephone call from a man calling himself Ali who said that he was coming over to determine her fate, she informed the police as the indicator had shown the number that had been used. The police did nothing.

106. One evening, as the applicant was returning home after a meeting and stopped off at a neighbour's, she was told that there was somebody walking around in her garden. It turned out to be a neighbour and he was near the water tank. He did not explain what he was doing there. The applicant's sister-in-law, a chemist, advised her to change the water, which they did. The next day, the applicant found that her dog was dead. Its ribs and one of its legs were broken. The veterinary surgeon who conducted the

autopsy said that the dog had not been run over by a car, because of a lack of tyre marks on the place where it was found. Her dog had been severely tortured elsewhere and then taken to her garden.

107. Also, the applicant's water and electricity were regularly cut off. Mail addressed to her was either not delivered or was opened. Her telephone calls were monitored. The applicant's complaints to the police, both orally and in writing, about this harassment led to nothing.

108. The application to establish the Adalı Foundation, which sixty democratic organisations wanted to set up in order to continue Kutlu Adalı's work, was initially refused. The registration fee was increased fivefold and the applicant sold a plot of land to raise the money. Also, the charter of the Foundation had to be changed. For example, the phrase "democratic activities" was replaced by "cultural activities".

109. On 15 December 1999 the applicant met with Professor Bakır Çağlar, after he had asked her to send him the details of the case. However, he became cross when the documents which the applicant showed him did not include the agreements which she had concluded with her lawyers. He told her that her lawyers were not very good and that he could win the case for her. As she considered that he was connected to the authorities of the "TRNC" or of Turkey, she did not want to hand her case over to him.

110. In July 1996, her daughter was told she would get a job in the public sector but this did not materialise. She then found a job in a bank. However, her contract of employment was terminated from one day to the next, allegedly for disciplinary reasons but in reality it was because of the applicant had lodged an application with the Court. Also, her daughter was standing as a candidate for a party different from the party for which the owner of the bank was standing as a candidate. Her daughter wrote to, and subsequently met, President Denктаş about this matter. The President wrote out a cheque for the equivalent of two months' wages and told her to go home. Recently her daughter's scholarship had been discontinued.

111. On 19 August 2001 the applicant met with President Denктаş. At the presidential palace she met a man with the first name Tansel, who was the son-in-law of the police commander Erdem Demirbağ. Tansel told her that unless she withdrew her application she would be arrested.

## *2. Ahmet Soyalan*

112. The witness was born in 1962. In 1996 he was an assistant inspector at the judicial branch of the Lefkoşa police headquarters. Mr Mehmet Özdamar, who was his superior, was the head of the judicial branch, attached to the general police headquarters. Mr Refik Öztümen was the chief of Yenişehir police station. In an investigation, the local police station would report to the judicial branch and the judicial branch would report to the head of the judicial branch.

113. The witness was responsible for the investigation into the killing of Kutlu Adalı. He started his investigation at 9 a.m. on 7 July 1996. He had known Mr Adalı by name from the articles he wrote for *Yenidiğer*, but he had never met him. Although it was possible that Mr Adalı had been killed because of his activities as a journalist, this was not the only line of inquiry he pursued: he also looked into Mr Adalı's personal life and his personality.

114. Not having been on duty on the evening of 6 July, The witness did not go to the scene of the crime that night. He was only informed of the murder the following morning and received a short briefing from Mr Öztümen as to what had been done the previous night.

115. Chief Inspector Eybil Efendi and his colleagues from the rapid response unit had been the first police officers to arrive at the scene. Whilst out on patrol duty, they heard shots and went to the location of the incident. Mr Efendi informed the general police headquarters. Upon hearing the shots, local people also alerted the police switchboard. Not long afterwards, Mr Özdamar and Mr Öztümen, the assistant chief of police Yusuf Özkum and police sergeant Mustafa Eğmez, as well as officers working at the judicial branch and the Yenişehir police station, arrived at the site. This constituted normal police attendance in a murder case.

116. The witness did not consider it necessary to take a statement from Mr Efendi because he, Mr Soyalan, had been briefed by Mr Öztümen, who had arrived at the scene so soon after Mr Efendi that the latter would not have seen anything different from Mr Öztümen. If Mr Efendi had seen or heard anything, he would have told Mr Öztümen. In 2002, however, Mr Soyalan took a statement from Mr Efendi in order to show that, contrary to what the applicant alleged in her application to the Court, no military vehicles were present at the scene and that the vehicles of the rapid response unit resembled military vehicles.

117. The witness was further told by Mr Öztümen that after the discovery of Mr Adalı's body, police had entered the applicant's house, together with the *muhtar*, in order to check if any of the family members were at home and if they were safe, and also to see if any clues about the murder could be found there. The door of the house was open, the television was switched on and a table and chairs were on the veranda. Nothing untoward was found. No search as such of the house was carried out, merely a visual inspection. It was not considered necessary to take a statement from the *muhtar*, as no evidence was found in the house and neither did anything untoward happen. No fingerprint examination was carried out at the house, given that the incident had taken place outside the house and the interior of the house was thus not a crime scene. In addition, the applicant herself said that when she had spoken to her husband by telephone at 11 p.m., her husband had told her that he had not received any visitors. One or two neighbours stated that when they had passed the house around 8 p.m., there had been no one in there.

118. From the statements taken by Mr Öztümen and his colleagues directly after the incident, it appeared that a dark-coloured car with many lights at the rear had been seen. Its make or registration was not known, and no one had mentioned to the witness that it had been a Murat car. A search was carried out that night but the vehicle, which had left the scene at high speed, was not found. The witness spoke to Arzu Çağın the day after her initial statement had been taken by one of his colleagues. She said that she did not know what make or colour the car was. He did not draw up a written report of this statement, given that it did not contain any positive indications. The witness disputed that at the inquest, Ms Çağın had given evidence to the effect that the car was Bordeaux red and that it might have been a Şahin.

119. The witness started his investigation on the morning after the incident by taking statements, together with police colleagues, from the people living in the area of the scene of the crime. This work had already commenced the previous evening, so that in the end statements were taken from all persons who had been at home at the time of the incident, regardless of whether or not they had any information to offer. It was the local police officers, who knew the area and its inhabitants well, who established who had been at home and who had not. Since no statement was taken from Feri Khan and her mother, they must have been out when the offence had taken place. The witness knew nothing about the applicant asking Hasan Peker Günal, commander of the security forces, to have the Khans interviewed.

120. The witness took the applicant's statement on the evening of 7 July, after she had returned from Turkey. The applicant expressed her opinion that the killing of her husband was connected to the articles he had written about the St Barnabas incident. According to the applicant, the head of the Civil Defence Organisation, Mr Galip Mendi, had been annoyed by these articles and had telephoned *Yenidüzen* making threats against her husband. The applicant persistently claimed that the murder had been arranged by the administration of the Civil Defence Organisation and that she held the head of that organisation responsible. She also aired these suspicions in her interview with *Aktüel* (see paragraph 190 in the Appendix). Mr Özdamar and Mr Öztümen were also aware of these allegations. However, not even the smallest piece of evidence could be found to support the allegation. For that reason no statements were taken from the head or other persons belonging to the Civil Defence Organisation. In any event, a statement could not be taken from Mr Mendi because he had gone abroad. Mr Mendi returned in 2001 as the commander of the security forces.

121. Similarly, the applicant alleged that on the night of the murder the street lighting in Ardiç Street, where she lived, had been switched off at the transformer substation in the Civil Defence Organisation. This matter was examined and it was established through the taking of statements that the

street lights had been on that night. It was further established that power for the lighting in the street was supplied from a different substation.

122. In her statement to Mr Soyalan, the applicant also mentioned Ahmet Cavit An, according to whom Mr Adalı's killing was a politically motivated murder. Mr Soyalan went to see Mr Cavit An, once at his house and once at the clinic where he worked. Mr Cavit An was unable to provide any useful information as to the secret cells allegedly involved in the murder.

123. The witness had not heard that the applicant had been refused permission to see her husband's body. He was not given any instructions to the effect that, because the applicant had given critical newspaper interviews, he should not give her a copy of the post mortem and ballistic reports. In any event, in order to obtain a copy of such documents, permission from the Attorney-General's office was required.

124. The witness took two statements from Altay Sayıl. He first interviewed Mr Sayıl because he had been informed that Mr Sayıl was a close friend of Mr Adalı. However, in the light of articles that subsequently appeared in newspapers he felt the need to take a more in-depth statement from Mr Sayıl. Mr Sayıl attended the *mevlit* (religious ceremony) held at the applicant's house three days after the killing. He did not go to the house subsequently because of the allegations which the applicant had made against him.

125. The weapon which was used to kill Mr Adalı could not be identified. A number of spent cartridges were found at the site from which it could be established that they had been fired by a 9 mm firearm, but the make of the weapon remained unknown. Ballistic tests were carried out both in Turkey and in the "TRNC" to see if the bullets had been fired by a weapon known to the authorities, but to no avail. These tests included comparisons of sample cartridges held in the archives of the "TRNC" of all the weapons registered in the names of persons in the "TRNC", such as the weapon belonging to Mr Orhan Ceylan.

126. Two of the spent cartridges were kept in the archives in Turkey. The witness therefore assumed that the Turkish authorities had examined whether they had been fired by the Uzi found in the car in which Abdullah Çatlı had died in Susurluk in November 1996. He had not been informed of any result. In any event, the investigation showed that Mr Çatlı had not been in the "TRNC" at the time of the incident as there were no records of him entering the "TRNC" at the relevant time under any of the identities which Mr Çatlı was known to have used. He had visited the island, under the name of Mehmet Özbay, in June 1994 and in April/May 1996. It was not possible to enter the "TRNC" without an entry record being made by the immigration authorities.

127. The applicant did not inform the witness or any other police officers that she had received an anonymous telephone call from a woman

alleging that Mr Demirci and a man with the first name Orhan had been involved in the killing. However, some time after the incident, a woman, who could not be identified, telephoned Mr Özkum, the then head of the judicial branch, and gave him the name of Hüseyin Demirci. Mr Özkum passed the name on to Mr Özdamar, who proceeded to take Mr Demirci's statement.

128. On the evening of the incident, Mr Demirci had dinner with Mustafa Asilhan, the then assistant chief of police, in Gemikonağı. Although no statement was taken from Mr Asilhan at that time, Mr Özdamar did speak to Mr Asilhan about the matter, and Mr Asilhan said that Police Officer Muharrem Göç had seen the two men having dinner. Mr Göç subsequently confirmed this in a statement to Mr Özdamar. In any event, Mr Asilhan himself also confirmed that he had had dinner with Mr Demirci on 6 July 1996 when his statement was taken in 2002.

129. The witness did not consider it likely that Mr Demirci could have been involved in the killing after he had left the restaurant because such an assassination required preparation. Mr Demirci said that he had gone straight home after dropping off Mr Asilhan – and as Mr Özdamar had not formed the opinion that Mr Demirci was speaking anything other than the truth, this matter was not examined further.

130. According to the witness, Mr Demirci – a self-employed ironmonger – had no relations with the police or the security forces. He checked to see whether Mr Demirci had a criminal record as there was an allegation that he had been acquitted on a murder charge, but there was no information that he had ever committed any criminal offence.

131. The witness further examined whether Mr Demirci had been admitted to hospital with burns, as was alleged by the applicant in her application to the Court. He established that Mr Demirci had spent three days in hospital in February 1997 for broken ribs. Mr Demirci was not asked about this because his stay in hospital did not coincide with the murder of Mr Adalı. In any event, had the incident alleged by the applicant really occurred – namely that Mr Demirci opened fire inside the hospital, saying “I killed Kutlu Adalı” – it would have been reported to the police.

132. The information reported to the police was only connected to Mr Demirci and did not mention Orhan Ceylan. However, at some point there was a report in the press to the effect that Mr Ceylan had committed the murder along with Mr Demirci. Mr Ceylan's statement was not taken at that time given that Mr Demirci's whereabouts on the evening of the murder had already been established and it was thus known that Mr Demirci had not been in contact with Mr Ceylan that night.

133. The witness nonetheless took a statement from Mr Ceylan on 18 October 2002, but only because his name had come up in the application to the Court – there was not a shred of evidence or any indication that he had been involved in the killing.



134. The witness took a statement from Ziya Kasapoğlu on 21 October 2002, also because his name was mentioned in the application to the Court. Prior to that, Mr Soyalan was not aware that Mr Kasapoğlu might possess information relating to the incident: Mr Kasapoğlu's shop was in Şehit Ecvet Yusuf Street, far from the scene of the crime. Mr Kasapoğlu told him that Mr Adalı had come to his shop at 11 p.m. to buy some dried fruit and nuts, as he used to do from time to time. Mr Kasapoğlu said that he had not telephoned anybody to inform the applicant's family of the death of Mr Adalı. The witness could not check the veracity of this claim, as he did not have the name of the person whom Mr Kasapoğlu was alleged to have telephoned. The witness could not remember whether he had been informed that, according to the applicant, Mr Kasapoğlu had telephoned the father of her sister-in-law. Mr Kasapoğlu further stated that he had not received any telephone calls from the applicant.

135. Mr Soyalan was requested by the Agent of the respondent Government, Professor Necatigil, to carry out an investigation in connection with the allegations made by the applicant to the Court. He received no specific instructions, only a document containing the applicant's allegations.

136. Apart from taking statements from a number of persons, Mr Soyalan also took photographs of a Murat, a Şahin and a Fiat car so that they could be compared. He further investigated the applicant's claim that Mr Demirci's azure blue car had been repainted black. It was established that the car's colour was its original blue.

### 3. Mehmet Özdamar

137. The witness was born in 1953. He is currently the chief of police in Güzelyurt. At the time of the impugned incident, he was the head of the judicial branch at the Police Headquarters in Lefkoşa (Nicosia). He supervised the investigation into the killing of Mr Adalı. He was the supervisor of Ahmet Soyalan and Refik Öztümen. He was informed about the incident by the switchboard and arrived at the scene of the incident within ten or fifteen minutes. According to the procedure on conducting investigations, the person who arrives at the scene of the incident must not touch anything and must take security precautions until those in charge arrive. There was a corpse and its position had to be established by his supervisees. When he arrived Mr Refik Öztümen and Mr Yusuf Özkum were already at the scene of the crime. The officers marked and numbered the empty cartridges and cordoned the area off with a view to preventing unauthorised persons from walking around. A sketch-map of the scene of the incident was drawn up and a team was set up in order to take testimonies from people nearby.

138. The witness entered Mr Adalı's house three or four hours after the incident, along with Refik Öztümen, a close relative of the deceased and the local *muhtar*. The door was open and the TV was on. They looked for a

document, an item or anything that could have been the cause of the incident. They did not remove any object. Mr Adalı's office was in disorder and there were a large number of books which were piled up or arranged in boxes. Refik Öztümen told the witness that he had entered the house for a very short time in order to check whether there was anybody in.

139. The witness did not consider it necessary to look for fingerprints since the incident had happened in the street and not in the house. According to the statements given by the deceased's next door neighbour, Mr Ali Rıza Kırçay, the deceased was sitting on the terrace by himself and watching television. On the basis of the latter statement the witness excluded the possibility that Mr Adalı could have been sitting with some other persons on the terrace. The witness identified a glass, a bottle and an ashtray in a photograph shown to him. He emphasised that it was the custom to drop the shells into an ashtray when eating dried nuts, especially pumpkin seeds, and that it was normal for someone to sit on the balcony and drink water during a hot night in summer.

140. The witness knew the deceased by sight and through his articles in an opposition newspaper. When investigating into the murder every aspect of the case was considered, be it a political crime or one related to Mr Adalı's activities as a journalist. However, there was no evidence significant enough to lead to any of these conclusions. He was informed about the applicant's allegation that the head of the Civil Defence Organisation had made threats against Mr Adalı personally or against the newspaper because of an article concerning the St Barnabas incident. The prosecuting authorities did not verify this allegation since the applicant could not name anyone and she had constantly made similar inconsistent allegations at the time of the incident and for some time afterwards. They did not consider them to be serious. As an example of her inconsistent allegations, the witness referred to the applicant's statements in which she had described Mr Altay Sayıl as a close friend of her husband who visited their home every day, and had then complained to the authorities that she suspected of Mr Sayıl of involvement in the murder.

141. Following the receipt of an anonymous telephone call alleging that a person named Hüseyin Demirci and another person described as Colonel Orhan were involved in the killing, the prosecuting authorities found Mr Demirci and took statements from him about the allegations. It was established that Mr Demirci had been outside Lefkoşa on the night of the incident. In particular, he had been at a dinner in the Güzelyurt area in the company of Mr Mustafa Asilhan, who was the first assistant of the Chief of Police, and Mr Muharrem Göç, a police inspector. Mr Asilhan confirmed to the witness that he had been out for dinner with Mr Demirci. A statement was also taken from from Mr Göç. The anonymous caller was a lady who could not be identified. The witness denied having told the applicant that the

anonymous caller was a crazy woman who had often made such allegations to the police.

142. The witness knew Mr Altay Sayıl from the time they had enrolled to the police academy and had attended the same course. However, he denied having told the applicant that Mr Sayıl was a very good person and that he had nothing to do with the killing. He had never spoken to the applicant about Mr Sayıl. The witness had never taken a statement from the applicant in relation to Kutlu Adalı and the applicant had never approached him to be supplied with a copy of such a statement. The witness further stressed that no security commander had been dismissed or forced to relinquish his post for any reason, contrary to the applicant's allegation that the chief of the security forces had been removed from his post because of the articles written by Mr Adalı on the basis of the documents supplied by Mr Altay Sayıl.

143. Regarding a tip-off to Yusuf Özkum, who was then the Chief of Police, about Mr Demirci, the witness stated that they had had no chance to investigate the woman caller since she had not given her name and had asked her identity to be kept secret.

144. On 8 July 1996 the pro-Government newspaper *Kıbrıs* reported that it had received a statement from a fascist group called the Turkish Revenge Brigade claiming responsibility for the murder. No investigation was conducted into this allegation as such an organisation did not exist in the "TRNC" and the investigating authorities considered that the allegation had been made as a ploy designed to cause confusion.

145. The applicant had never asked the witness to supply her with a copy of the autopsy report. In any event, documents contained in the investigation file were confidential. Only the investigating officer and his superiors as well as the Attorney-General's office could have access to them. The witness was not involved in the subsequent investigation that followed from 15 October 2002.

#### 4. Refik Öztümen

146. The witness was born in 1953. He is currently working at the judicial branch attached to the "TRNC" General Police Headquarters. At the time of the incident, he was the chief of Yenişehir police station, attached to the Lefkoşa police headquarters.

147. The witness was informed about the impugned incident at 11.40 p.m. at the station. He sent the sergeant on duty at the station to the scene of the incident together with a team. He further asked for a doctor from the local hospital to be sent to the scene of the incident. Following their departure, he also went to the scene of the crime along with a police officer. He arrived there at 11.45 p.m. Eybil Efendi arrived later. He saw the deceased lying on the ground 55 metres from the door of his house in Ardiç Street. He checked the deceased and took his pulse. He then called out

“Anybody in?”. The door was open and the television was on. There was nobody in the house. He learned from the neighbour waiting outside that his family was abroad. At around 3 or 3.30 a.m. the witness entered the house along with the *muhtar*, Yusuf Özkum, Mehmet Özdamar and the brother-in-law of the deceased. They looked for a clue that could have shed light on the incident. They visited the study room and other rooms. They did not conduct an in-depth search by, for example, opening the drawers. However, they could not find anything. The television was located at the entrance of the house and it was on. There was one plastic chair and one table on the terrace. This gave the impression that Mr Adalı had been sitting on the terrace just before he was killed in the street. They did not consider taking fingerprints on account of the fact that the incident had taken place outside the house. There was nothing on the terrace; no glasses and bottles or any trace indicating that cigarettes had been smoked. Had the officers found glasses, they would have been examined for fingerprints.

148. The officers assigned by the witness visited the families living in the close vicinity and further away from the scene of the incident and noted their names. Those who were at home at the time of incident were interviewed. The officers also went to the home of the Khan family of Pakistani origin. They established that the family was not at home. The witness rang the bell of the Khan family the next day and the following evening but to no avail. The Khan family's neighbour, Ali Rıza Bey (Kırçay), told the witness that they were not in. The police officers guarded the applicant's house until she arrived from abroad.

149. Apart from the cartridges found at the scene of the incident, the applicant and the officers in charge conducted a search along the whole street with a view to finding anything that might have been left by the assailants. But, they could not find anything. The cartridges found at the scene of the incident were first examined against the ones in the “TRNC” and no matches could be found. Then they were sent to a forensic laboratory in Ankara. However, no positive result had been obtained about the weapon which could have discharged them. The weapon found in the possession of Abdullah Çatlı following his death was also put through a forensic test. The result was negative.

150. The witness denied that he was related to the applicant in response to a claim by the latter. He remarked, however, that his brother's daughter had married to the applicant's sister-in-law. The witness had never met or spoken to the applicant prior to the impugned incident. In this connection, he rejected the applicant's allegation that he had told her sister-in-law that the security forces had given him instructions not to follow the investigation effectively. The witness further stressed that the applicant had never asked him to take statements from Mr Ziya Kasapoğlu. The witness also denied the applicant's assertion that he had asked to meet her at her sister-in-law's house. He maintained that he had met the applicant at least ten times at her

house following her husband's death. He had also spoken to the applicant in connection with the damaged tyre incident and also in connection with other problems.

151. The witness led the investigation carried out in October 2002. In 1996 Mr İsmail Koşman was the commander of the security forces. In August of the same year he was replaced by Hasan Peker Günal. No investigation was carried out into the role of the Civil Defence Organisation since no allegation involving the responsibility of the latter was communicated to the authorities. However, the Ministry of National Education investigated the St Barnabas incident and concluded that the Civil Defence Organisation had conducted an exercise.

152. The applicant had never made an allegation in relation to Orhan Ceylan in the course of their talks or meetings. The distance between Gemikonağı and Lefkoşa was approximately 55-60 kilometres, in other words approximately an hour's distance.

##### *5. Hasan Peker Günal*

153. The witness was born in 1948. He is currently a retired major-general. In July 1996 he was the commander of a commando brigade in south-east Anatolia in Turkey. Between 19 August 1996 and 15 August 1998 he served as the commander of the security forces in the "TRNC". Subsequent to his arrival on the island, the witness learned about the killing of Mr Adalı through the articles in the press. In view of the allegations that the Turkish armed forces had been involved in the killing of Mr Adalı, he asked the General Police Headquarters to brief him about the impugned event. At the end of August or early September 1996 Mr Atilla Sav and his delegation briefed the witness about the killing of Mr Adalı and the current state of the investigation at the office of the Chief of police. The witness remarked that, according to the Constitution of the "TRNC", the police were under the authority of the commander of the security forces in the administrative field, and in the judicial field it operated under the supervision of the chief prosecutor's office. The commander of the security forces was responsible to the Prime Minister.

154. The applicant wrote a letter to the witness complaining about the conduct of the investigation. He told her through the police liaison officer that he was unable to intervene in a judicial affair but, if she wished, he could meet her. The applicant accepted and a meeting was held on 12 December 1996 at the office of the chief of police, Mr Atilla Sav. At the meeting were the latter, the applicant, her daughter, the witness and few other police officers who were involved in the investigation. During the meeting the applicant was given all relevant information about the investigation. The witness did not intervene in the discussions but asked the investigators to take all necessary measures to find the perpetrators of the murder so that they could save the honour of the "TRNC" and that of the

security forces whose involvement in the impugned event was in question. The police officers listened to the applicant's statements and requests. At no stage did she ask for protection. She stated at the meeting that she had been threatened several times and that she had been receiving anonymous calls.

155. The witness denied having told the applicant that she had already been protected by plain-clothes police officers. At the meeting, the applicant did not make an allegation in relation to the Civil Defence Organisation. The witness denied that he had pointed at the cars outside through the window of the meeting room and had told the applicant that they were there to protect her, since the room was a small office where you could not look out and see a car outside. This meeting was not a secret one. It was reported in the press.

156. The witness spoke to the applicant on other occasions and once met her concerning her late husband's entitlements for the period of his military service. The witness was further informed about developments in the investigation in the course of monthly coordination meetings. He told the police force to examine even the slightest suspicion. He also made it clear to them that if they wanted to investigate anything connected with the armed forces or any members of the armed forces he would not obstruct it in any way even if that person was the highest-ranking officer. There was not however the slightest indication of any member of the security forces being involved in the matter. According to the witness, there was no political motive behind the murder.

157. The witness had not heard any allegations about Colonel Orhan Ceylan. In his opinion, the latter could be a retired colonel or lieutenant colonel who was working in an administrative post in security at the time. During his term of office in the "TRNC", no one under his command was ever the subject of an investigation. The witness noted that the Civil Defence Organisation was not a unit under the authority of the security forces but was responsible to the Prime Minister.

#### *6. Atilla Sav*

158. The witness, who was born in 1938, is a former police chief who retired on 4 May 1998. In July 1996 he was the Chief of Police in the "TRNC".

159. He learned about the killing of Mr Adalı whilst he was at an engagement party. He arrived at the scene of the incident almost an hour and a half after the killing of Mr Adalı. The police had already secured the house and barred the public from entering. The witness stayed at the crime scene for half an hour. He entered the Adalı family's house along with other officers and did not notice anything out of the ordinary. He knew Mr Adalı by name. He had not seen him before. However, he knew that Mr Adalı was a journalist who wrote articles in the *Yenidüzen*, critical of the Government.

He was regularly informed by the officers about developments in the investigation.

160. On 12 December 1996 a meeting was held in the witness' office with the applicant, her daughter, Mr Hasan Peker Günal and Mr Mehmet Özdamar, who was then the chief of the forensic police. The meeting was held at the request of the applicant. The latter gave all relevant information to the participants about the impugned incident and complained that she had been receiving anonymous phone calls during which she had been threatened. She was advised to apply to the telecommunications department to have her line monitored. The applicant raised her suspicion about Mr Hüseyin Demirci and she was told that statements from Mr Demirci had been taken by the police

161. The witness stated that he had known Mr Ziya Kasapoğlu since 1956. He also knew Mr Altay Sayıl as a police officer who was now retired. He did not remember whether Mr Sayıl and Mr Kasapoğlu's names had been mentioned during the meeting. Nor did he know or remember the applicant's allegations about Colonel Orhan Ceylan or the Civil Defence Organisation. The witness did not remember whether any notes had been taken as regards the applicant's statements or allegations at the meeting.

162. The witness did not need to intervene in the investigation in any way since there were no deficiencies. It was being conducted according to its normal course. The applicant had not told the witness about her suspicion concerning the involvement of the Civil Defence Organisation in the killing of her husband. The witness pointed out that it would have been inappropriate to qualify the killing of Mr Adalı as politically motivated before concluding the investigation. The witness further noted that when the police had completed the investigation, the files had been given to the chief prosecutor who had supervised the investigation. As regards a question pertaining to the handing over of Mr Adalı's glasses to his widow, the witness remarked that only the materials which were considered to be part of the evidence had been retained. He stated that Mr Adalı's glasses could have been considered as irrelevant in respect of the investigation. The witness stressed that, during the meeting which took place in his office on 12 December 1996, the commander of the security forces had not pointed at cars outside the building telling the applicant that they were protecting her. He noted that the office did not have a window overlooking the car park.

#### *7. Galip Mendi*

163. The witness, who was born in 1951, is currently the Field Operations Deputy Chief-of-Staff in the Turkish armed forces. He was the head of the Civil Defence Organisation between August 1994 and July 1996. He served as the commander of the TRNC security forces between 2000 and 2002.

164. According to the “TRNC” legislation, the head of the Civil Defence Organisation can be any person, whether a civilian or a military person, provided that that person is a Turkish national. Given the fact that this post requires expertise and that the “TRNC” is a newly established state, the heads of the Civil Defence Organisation are appointed from among the members of the Turkish armed forces.

165. The Civil Defence Organisation is a humanitarian rescue organisation, which protects institutions and organisations as well as the life and property of the civilian population during wartime or in the event of natural disasters such as floods and earthquakes. The organisation does not have any military functions. The officers of the organisation do not wear uniform and do not possess arms. However, in certain rescue operations, in cases of fire or floods, they wear special clothing. There is no organisational link between the armed forces and the Civil Defence Organisation, the latter being directly under the authority of the Prime Minister's office. Yet, in certain cases, such as floods, fire or war, the Civil Defence Organisation cooperates with the military in the performance of its tasks. The Civil Defence Organisation is not a secret organisation or an intelligence agency as alleged by the applicant.

166. The witness did not know Mr Adalı personally. He used to read Mr Adalı's articles published in the *Yenidiizen* newspaper. He further knew that the applicant had worked in the civil defence people's army. She held a post in Girne (Kyrenia) People's Army. The civilian population assisted the authorities in cases of calamity. The age limit for this civilian duty was 50 for women and 60 in respect of men. Mr and Ms Adalı were also given certificates for their services at a ceremony organised in Girne. This was the only occasion on which the witness had met them. The witness also remarked that Mr Adalı had represented the Ministry of Culture in the Civil Defence Committee between 1978 and 1980.

167. The witness denied that the Civil Defence Organisation could have been involved in the killing of Mr Adalı. He further noted that he had not been involved in the investigation into the impugned event and that this was the first time he had been questioned about it. The witness was aware of the allegations that the Civil Defence Organisation had been involved in the killing of Mr Adalı. However, neither he nor the Civil Defence Organisation had a problem with Mr Adalı. Nor did he bear any grudge against him since he did not know him. He did not deem it necessary to carry out an investigation within the organisation as he considered that the allegations were totally unfounded.

168. The witness's term of office ended a month after the incident and he left the island in August 1996. On his return to Turkey, he reported to his superiors that neither he nor any other person in the Civil Defence Organisation had been involved in the murder.



169. The witness averred that the St Barnabas incident had in no way been connected with the Civil Defence Organisation. It was an anti-terrorist operation carried out by the peace forces command at the time. Thus, the allegations that the Civil Defence Organisation was involved in the St Barnabas incident were untrue. The witness pointed out that these allegations stemmed from the fact that his organisation had allocated a civilian car to the peace forces, who wore official uniforms, for an operation conducted against the PKK. Apart from the allocation of a car, the Civil Defence Organisation had not intervened in any activity connected with the St Barnabas incident.

170. There were many newspaper articles on the St Barnabas incident and the alleged involvement of the Civil Defence Organisation. Some of these articles were written by Mr Adalı in *Yenidüzen*. The witness did not call on any newspaper to refute those allegations, but instructed his colleagues in the press department of the Civil Defence Organisation to telephone the newspaper and tell them that the organisation had not been involved in the St Barnabas incident. One of his colleagues conveyed the message to the newspaper, possibly to the editor-in-chief, in appropriate language and reported back to him that it had been well received.

171. The witness met Hüseyin Demirci in one of the training courses on civil defence services, just as he met many other local people. However, he denied the applicant's allegation that Mr Demirci was his adviser. He further stated that he had known Mr Orhan Ceylan as a renowned officer who was now retired after a career of heroic service. But he was not acquainted with him.

172. The witness denied the applicant's allegation that he had left the island two days before the killing of Mr Adalı, namely on 4 July 1996. He stressed that he had left the island in the second week of August 1996 subsequent to the end of his term of office. When asked about the allegations made by Mr Adalı, in his column in 23 March 1996 edition of *Yenidüzen*, in relation to the St Barnabas incident, the witness contested the allegations and stated that it had been an anti-terrorist operation, for which he had provided a white Renault Toros car.

173. The witness stated that he had not reacted to a television program on Show TV during which allegations had been made by the editor of *Yenidüzen* to the effect that he had made a threatening call to the newspaper. He explained that it was not possible to react to the allegations without obtaining the authorisation of the General Staff of the Turkish armed forces.

174. As regards an article published in the *Afrika* newspaper which referred to Mustafa Asilhan as the witness' adviser who had allegedly said that it would have been better had they not written about the involvement of the Civil Defence Organisation, the witness stressed that Mr Asilhan had never been an adviser to him and that the allegations were untrue.

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

#### A. Alleged failure to exhaust domestic remedies

##### *1. The submissions of the parties*

###### **(a) The respondent Government**

175. The Government submitted that the applicant had failed to comply with the exhaustion of domestic remedies rule in Article 35 § 1 of the Convention. They submitted that the applicant had filed her application without having recourse to the local remedies which were effective, sufficient and easily accessible to her and capable of providing redress for her complaints within the judicial system of the “TRNC”.

176. The Government averred that the Constitution of the “TRNC” clearly demonstrated that an effective and independent judicial system existed in the “TRNC” and that the Turkish-Cypriot courts were the guardians of the rights of individuals. In this connection, the Government pointed out that the Constitution of the “TRNC” incorporated provisions for human rights drawn from the 1960 Cypriot Constitution, and also the European Convention on Human Rights, which formed part of the laws of the “TRNC”. Under the Constitution fundamental rights and liberties could only be restricted by law and only for the purposes that were provided for in law. Articles 136 to 155 of the Constitution provided for access to independent courts and for judicial review of administrative action on the grounds of illegality or error of law and excess and/or abuse of power (Article 152) as well as judicial review of legislation by way of reference to the Supreme Constitutional Court (Article 148) and the institution of proceedings for annulment of legislation and subsidiary legislation (Article 147). In particular, Article 152 of the Constitution provided that the High Administrative Court had exclusive jurisdiction to adjudicate in the final instance on a complaint that a decision, act or omission of any body, authority or person exercising any executive or administrative authority was contrary to any of the provisions of the Constitution, or of any law or subsidiary legislation thereunder, or exceeded or abused the powers vested in such body or authority or person.

177. The Government noted that all investigations were carried out by the police, and all prosecutions were carried out by the Attorney-General. The latter, who enjoyed all judicial guarantees of independence (Article

158), was the supervisor of the police forces in the conduct of investigations. The criminal justice system in Cyprus was based on the English “accusatorial system”, and the standard of proof was that of “beyond reasonable doubt”. As to civil cases, the “TRNC” courts applied the provisions of the Civil Wrongs Law, which was a codification of the English common law. The standard of proof in a civil case was that of “beyond the balance of probabilities”. The acts of assault and battery, trespass to property, libel and harassment constituted crimes under the Criminal Code as well as civil wrongs.

178. As regards the applicant's allegations concerning the lack of a sufficient investigation into her husband's death, the Government submitted, with reference to the above-mentioned remedies, that the applicant could have complained to the Supreme Court of the “TRNC”, sitting as the Court of Cassation (*Yargıtay*), for an order of *mandamus*, to compel the performance of a public duty. Under Article 151 § 3 of the “TRNC” Constitution, the Supreme Court has an original jurisdiction to issue orders in the nature of *habeas corpus*, *mandamus*, prohibition and *certiorari*. The High Administrative Court also had jurisdiction to declare that whatever was omitted by the administrative authority concerned must be performed. Furthermore, in order to institute a criminal prosecution against anyone, the complainant must make a statement to the police about the alleged acts. However, no criminal charges could be brought against any person unless there was sufficient evidence.

179. In the present case, the alleged threats to the deceased's life had not been communicated to the authorities and no protection had been requested from official bodies prior to Mr Adalı's death. Thus, the allegations of such threats had been made *ex post facto*. Moreover, no complaint had been made to the police that the Head of the Civil Defence Organisation had issued threats to the *Yenidüzen* newspaper on account of the article written by the applicant's husband in relation to the so-called St Barnabas incident.

180. Concerning the applicant's allegations of harassment, intimidation and discrimination as well as the complaint about the alleged interference with the applicant's right to freedom of association, the Government pointed out that, in addition to complaining to the police, it was also open to the applicant to bring civil cases in the competent district court against persons who had allegedly trespassed into her property and/or harassed her. She could further bring administrative proceedings in the High Administrative Court against any administrative authority to set aside any act or decision in respect of her complaints.

181. In view of the above, the Government submitted that the application was inadmissible for failure to exhaust domestic remedies.

**(b) The applicant**

182. The applicant disputed the Government's submissions. She submitted that, whilst the Government's lengthy recitation of legal provisions in the "TRNC" might demonstrate the existence of an independent legal system in theory, they had not discharged the burden of showing that there were any effective domestic remedies available to her in practice for the breaches of Convention rights of which she complained.

183. The applicant pointed out that, in its *Cyprus v. Turkey* judgment ([GC], no. 25781/94, § 91, ECHR 2001-IV), the Court had held that, where it could be shown that remedies existed to the advantage of individuals and offered them reasonable prospects of success in preventing violations of the Convention, use should be made of such remedies. The Court had also held that it would examine in respect of each violation whether the persons concerned could have availed themselves of effective remedies to secure redress. In particular, the Court had stated the following in the *Cyprus* judgment (cited above, § 99):

“...It will have regard in particular to whether the existence of any remedies is sufficiently certain not only in theory but in practice and whether there are any special circumstances which absolve the persons concerned ... from the obligation to exhaust the remedies which, as alleged by the respondent Government ... were at their disposal.”

184. In the light of the above, the burden of proof was on the respondent Government to satisfy the Court that the remedy had been an effective one in theory and in practice at the relevant time (*ibid.*, § 106). Where, as in the present case, the authorities for which the respondent Government were responsible had remained passive in the face of serious allegations of misconduct or the infliction of harm by State agents, for example by failing to undertake investigations and offer assistance, this would prevent the domestic remedies rule from applying (*ibid.*). In the applicant's opinion, if the domestic remedies rule applied in her case, despite the fact that her complaint involved an administrative practice, she was not obliged to have had recourse to the courts of the "TRNC" for the following reasons:

(i) Mr Adalı had been killed in circumstances which strongly suggested that the murder was politically motivated, because of his strong opposition to the policies and practices of the "TRNC" regime.

(ii) Turkey and the "TRNC" regime control the police and the security forces and other public authorities in the "TRNC". Thus, whatever the position in theory, or in other cases, it was most improbable that the courts would be independent in practice in determining the issues in her case.

(iii) Even assuming that the courts of the "TRNC" were independent and prepared to provide protection, which was disputed, the applicant had sought, and been unable, to obtain legal assistance in the "TRNC" to pursue her legal claims.

(iv) Despite the applicant's repeated requests, there had been a failure to conduct a prompt, impartial, thorough and effective investigation into the circumstances of her husband's murder. This involved a denial of any remedies for her, and thereby a denial of access to other potential remedies, including a claim for compensation;

(v) Since her husband's death, the applicant has been subjected to continuing monitoring, harassment, intimidation and discrimination, causing her to fear for her personal safety.

(vi) Despite repeated requests, there had been a failure to provide the applicant with effective protection, security or redress or to punish the perpetrators.

(vii) In these circumstances, the applicant had understandably and reasonably formed the belief that she could not hope to secure concern and satisfaction through national legal channels.

**(c) The Cypriot Government**

185. The Cypriot Government made observations similar to those of the applicant, disputing the arguments of the respondent Government. In their submissions the Cypriot Government argued that remedies within the “TRNC” judicial system did not constitute effective domestic remedies requiring exhaustion for the purposes of Article 35 § 1 of the Convention. Alternatively, they submitted that the illegality of those remedies in international law amounted to a “special circumstance” absolving the applicant from the requirement of exhaustion.

*2. The Court's assessment*

186. As regards the question of application of the Article 35 § 1 in the light of the alleged illegality of the remedies in international law, the Court observes that in the *Cyprus* judgment (cited above, §102) it held that, for the purposes of former Article 26 (current Article 35 § 1), remedies available in the “TRNC” could be regarded as “domestic remedies” of the respondent State and that the question of their effectiveness was to be considered in the specific circumstances where it arises. Furthermore, in the same judgment, the Court stated the following:

“101. ... It appears ... difficult to admit that a State is made responsible for the acts occurring in a territory unlawfully occupied and administered by it and to deny that State the opportunity to try to avoid such responsibility by correcting the wrongs imputable to it in its courts. To allow that opportunity to the respondent State in the framework of the present application in no way amounts to an indirect legitimisation of a regime which is unlawful under international law.”

187. The Court observes that it cannot be asserted, on the one hand, that there has been a violation of various Articles of the Convention because a State has not provided a remedy while asserting on the other hand that any such remedy, if provided, would be null and void (see *Cyprus*, cited above,

§ 101 and *Djavit An v. Turkey*, no. 20652/92, § 31, ECHR 2003-III). Consequently, it concludes that Article 35 § 1 of the Convention applies to the circumstances of the present case.

188. Turning to the question of alleged non-exhaustion in the instant case, the Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

189. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicant has not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68).

190. As regards the availability and effectiveness of possible remedies cited by the respondent Government in the present case, the Court observes that, in its admissibility decision of 31 January 2002, it considered that the question whether the criminal investigation at issue could be regarded as effective under the Convention was closely linked to the substance of the applicants' complaints and that it should be joined to the merits. Noting the arguments submitted by the parties on this question, the Court considers it appropriate to address these questions in its examination of the substance of the applicant's complaints under Articles 2, 3, 8 and 14 of the Convention.

191. However, in so far as the Government's objection of non-exhaustion pertains to the applicant's complaint about the alleged interference with her right to freedom of assembly, the Court would point out that it has already examined this issue in the case of *Djavit An v. Turkey* (cited above) and found that a remedy before the administrative courts could not be regarded as adequate and sufficient in respect of the complaints concerning the refusal of permits at the "green line", since it was not

satisfied that a determination could be made in the course of such proceedings. In view of its considerations in the aforementioned *Djavit An* judgment (cited above §§ 32-36), the Court does not see any reason in the present case to depart from its previous findings. It therefore dismisses the Government's objection of non-exhaustion in so far as it relates to the applicant's complaints under Article 11 of the Convention.

### **B. Alleged failure to observe the six-month rule**

192. The Government submitted that, as the applicant claimed that the criminal investigation was ineffective, her application had to be rejected for having been lodged out of time. They observed that the applicant's husband was killed on 6 July 1996 whereas her application was introduced on 12 September 1997, which is more than six months later. They also distinguished the present case from the situation in the *Cyprus v. Turkey* case and asserted that there was no question of a continuing violation of the applicant's rights.

193. The applicant disputed the Government's submission and claimed that she had lodged her application with the Court within the six months' time-limit as required by the Convention. She stressed that she did not allege a breach of Article 2 of the Convention only in respect of the murder of her husband, but complained of a continuing failure by the authorities in the "TRNC", over which the respondent Government exercises effective control, to conduct a thorough and effective investigation into her husband's death, to bring his murderers to justice and to compensate her for his death. She also noted that, in addition to her complaint under Article 2 of the Convention, she complained of continuing violations of her rights under Articles 3, 6, 8, 10, 11, 13 and 14 of the Convention.

194. The Cypriot Government did not comment on this matter.

195. The Court notes that in the absence of domestic remedies or if they are judged to be ineffective, the six-month time-limit runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002; see also, *L.C.B. v. the United Kingdom*, no. 23413/94, Commission decision of 28 November 1995, Decisions and Reports (DR) 83, p. 31). Special considerations may apply in exceptional cases where an applicant first availed herself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Laçin v. Turkey*, no. 23654/94, Commission decision of 15 May 1995, DR 81, p. 76).

196. The Court notes that subsequent to the death of her husband the applicant made serious allegations to the authorities about the involvement of undercover agents of the State. She asked the local authorities, including

the President of the “TRNC” and the Security Forces Commander, to take steps to ensure that effective action was taken to find the killer(s) of her husband and later complained to those authorities that no proper investigation was being carried out (see paragraphs 31, 35 and 37 above). It appears that the applicant lodged her application under the Convention on 12 September 1997 after beginning to doubt that an effective investigation would be initiated into her allegations under Articles 2, 3, 6, 8, 10, 11, 13 and 14 of the Convention. In these circumstances, the Court accepts that the application has been brought within the six months' time-limit prescribed by Article 35 § 1 of the Convention.

In the light of the foregoing, the Court concludes that the Government's objection on the six-month rule must be dismissed.

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

197. The applicant complained that her husband had been killed by undercover agents of the Turkish and/or “TRNC” authorities and that the national authorities had failed to carry out an adequate investigation into his killing. She relied on Article 2 of the Convention, which provides:

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

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

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

### A. Submissions of the parties

#### 1. *The applicant*

198. The applicant claimed that in the absence of any effective, independent and official investigation, open to public scrutiny, she could not establish with certainty the identity of the killers. Further, in the absence of any cogent and compelling evidence from the respondent Government as to the circumstances of her husband's murder or the identity of the perpetrators, the Court should draw the inference that the murder of Kutlu Adalı had been carried out by or on behalf of the Turkish-controlled



authorities in northern Cyprus. In this respect, the applicant stressed that it was undoubtedly a political assassination of a prominent public critic of the regime. Following the publication of an article about the St Barnabas incident in the 17 March 1996 edition of *Yenidüzen* Mr Adalı had been threatened by unknown persons and by the Head of the Civil Defence Organisation through the editor of the aforementioned newspaper. On 6 July 1996, two days after the publication of another article in *Yenidüzen* on 4 July 1996, which was severely critical of the Turkish Government and “TRNC” regime, Mr Adalı had been murdered.

199. The applicant also pointed out, among other issues, that within only few minutes of the assassination of her husband, in the street outside the family house, some twelve police vehicles had come and sealed off the area. In her opinion, it would not have been possible for so many vehicles to arrive in such a short time unless they had been waiting nearby. She further noted that she had not been allowed to see her husband's body. It was not until receipt of the Government's observations of 1 April 1999 that she had been informed that a post-mortem examination had been carried out, and a copy of what purported to be a post-mortem report had been provided in an Appendix to the observations.

200. On 8 July 1996 the pro-“TRNC” government newspaper *Kıbrıs* had reported that it had received a statement from a fascist group calling itself the Turkish Revenge Brigade claiming that they had killed Kutlu Adalı. This group was linked to the so-called “Grey Wolves”, the youth movement of the Turkish Nationalist Action Party. They had close and long-standing links with members of the Turkish armed forces, the Turkish police, the Turkish National Intelligence Service (“MIT”), the Turkish paramilitary apparatus, Turkish ministers, and the Turkish mafia. Moreover, two days after the killing of Mr Adalı, the applicant's family had received a telephone call from an anonymous person who had given the names of Mr Hüseyin Demirci and a man whose first name was Orhan, who she said were responsible for the murder. The applicant had discovered that Mr Demirci was a member of the “Grey Wolves” and of the CDO and that he was being paid by the security forces. Orhan was a colonel in the Turkish occupying forces. The applicant had given this information to the police, but they had failed to investigate properly. Despite her complaints to the police and the security forces, no steps had been taken to bring the perpetrators to justice.

201. The applicant submitted that the above-mentioned central facts were largely undisputed and in any event not countered by any cogent evidence, as distinct from mere assertion, by the Government. They therefore constituted strong circumstantial evidence from which it could reasonably be inferred that the authorities in northern Cyprus, and hence the respondent Government, bore responsibility under the Convention for the murder of her husband.

202. Furthermore, the obligation to protect the right to life under Article 2, read in conjunction with Article 1, required that there should be some form of effective official investigation when individuals had been killed as a result of the use of force (here, the applicant cited *Shanaghan v. the United Kingdom*, no. 37715/97, § 88, 4 May 2001.). Such an investigation must be independent and open to public scrutiny. It was especially necessary to conduct a prompt and reasonably expeditious, independent and effective official investigation so as to secure the effective implementation of the domestic laws protecting the right to life, including the identification and punishment of those responsible, and to obtain compensation for wrongful death. There must also be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory (the applicant again cited *Shanaghan*, §§ 89-92, and also *Oğur v. Turkey* [GC], § 92, no. 21954/93, ECHR 1999-III). In this connection, the applicant maintained that the respondent Government had produced no cogent or convincing evidence to show that there had been a prompt, impartial and effective official investigation into her husband's death, including her allegation that he was killed by State agents. The applicant pointed to the following defects in the investigation:

(i) She had not been provided with the post-mortem report and the results of the ballistics examination until almost three years after her husband's death.

(ii) Potential witnesses had not been interviewed by the police. For example, no statements had been taken from Ms Feri Khan and her mother, who were potential eyewitnesses.

(iii) No statements had been taken from the *muhtar* and Ziya Kasaboğlu in the course of the investigation.

(iv) The assassins might have used a dark red car of the make “Şahin”, but this had been ignored by the police and no attempts had been made to trace such car.

(v) No statements have been taken from Mr Mustafa Asilhan to verify Mr Hüseyin Demirci's claim that he had spent the evening of 6 July 1996 with him.

(vi) The police had not properly investigated the repeated allegations that Mr Abdullah Çatlı had been involved in Mr Adalı's murder.

(vii) A coroner's inquest had not been held until after the application had been communicated to the respondent Government. The applicant and her family had been unable to attend the inquest and only five witnesses had been called to give evidence there;

203. The applicant finally claimed that the police in northern Cyprus were effectively under political and military control. Accordingly, the requirement that the persons responsible for carrying out the investigation had to be independent from those implicated in the events was not satisfied. For all these reasons, the applicant invited the Court to hold that the

authorities of the “TRNC”, for which the respondent Government were responsible, had failed to conduct a prompt, thorough and effective investigation into the murder of her husband.

## *2. The respondent Government*

204. The respondent Government submitted that there was no evidence to show that agents of the respondent Government and/or the “TRNC” had been involved in the murder of the applicant's husband. They challenged the applicant's contention that her deceased husband was a political figure. In this regard, they claimed that Mr Adalı had never held any political office. He had never been prosecuted for his writings and none of his publications had been seized or confiscated by the authorities. Nor had he been imprisoned for one week for having avoided military service, as alleged by the applicant.

205. With reference to the applicant's allegations concerning the involvement of the Civil Defence Organisation, the National Thought Foundation and a number of individuals, namely Mr Hüseyin Demirci, Orhan Ceylan, Ali Tekman, Abdullah Çatlı, Ziya Kasaboğlu and Altay Sayıl, in the killing of Mr Adalı, the Government maintained that they were inconsistent and unfounded. In this connection, they claimed that the applicant's allegations pertaining to the possible assassins of her husband had been thoroughly investigated by the “TRNC” police and that the latter had concluded that they were unsubstantiated and based on hearsay evidence, rumour or speculation.

206. The Government further contended that, prior to the killing of Mr Adalı, there had been no evidence indicating that his life was in danger. No such a risk or fear had ever been reported to the Turkish-Cypriot police. Nor was there anything to indicate that the Turkish-Cypriot authorities ought to have known that the applicant's life was at risk. The Government maintained that the true motive for the murder of Kutlu Adalı was not political as alleged, but was closely linked to information that Mr Adalı had about “secret organisations, drug traders and money launderers”. In this connection, they relied on the interview given by the applicant in which she stated that her late husband had been worried about his family (see paragraph 198 of the Appendix). The Government contended that the applicant had deliberately kept this aspect of the murder from the investigating authorities.

207. As regards the investigation carried out by the authorities, the Government averred that it had fulfilled the requirements of Article 2 of the Convention. They noted that immediately after the killing had been reported to the authorities, the police had gone to the scene of the incident, a plan of the site had been drawn up and a list of the relevant objects had been prepared. Relevant samples had been taken and scientifically examined. A post-mortem examination and an autopsy had been carried out on the body.

It had been established by the forensic expert that the cartridges used in the murder of the applicant's husband had no connection with previous allegedly “political” incidents. Statements had been taken from no less than sixty witnesses. The coroner's inquest had also been carried out and it had concluded that the death had been caused by organ dismemberment, internal haemorrhage and “subdural haemorrhage” in the head. Despite the efforts of the authorities it had not been possible to identify the culprits. The Government also noted the following, among other things, in relation to the investigation:

(i) The “TRNC” police had interviewed every available person living in the neighbourhood where the murder was committed. Statements had been taken from every potential witness who was able to give information that could be of help to the police in the investigation.

(ii) Ms Feri Khan, who had been named as a potential witness by the applicant, had not been at home on the night of the murder, nor had she been available in the course of the investigation.

(iii) The “TRNC” police had also taken statements from police officers who had arrived at the scene of the incident for the purpose of commencing the investigation. There was no need to take statements from every policeman who had arrived at the scene of the incident. No statement had been taken from the *muhtar* of the neighbourhood because the police had only looked into the house with a view to ascertaining if there was anyone there, but no search had been carried out.

(iv) The police had investigated the speculation about the involvement of Abdullah Çatlı in the killing of Mr Adalı. All records relating to the entry and exit of Mr Çatlı had been examined and it had been established that he had not been in northern Cyprus at the relevant time.

(v) The police had not needed to take statements from Mustafa Asilhan because the alibi of Hüseyin Demirci had been confirmed by an independent witness, Muharrem Göç, who had joined them at dinner and had stayed with them for some time.

(vi) The police had taken all necessary steps to find the car used by the assassins. There were approximately 47,640 cars of the “Şahin” make in northern Cyprus used by various walks of life and the allegation that these cars were generally used by the “Grey Wolves” was untrue.

### 3. *The Cypriot Government*

208. The Cypriot Government submitted that the respondent Government had put forward no facts or detailed arguments to rebut the overwhelming evidence that Mr Adalı had been murdered by their agents. They observed that Mr Adalı and his family had suffered a long history of intimidation and that therefore the murder of the applicant's husband had therefore been the last step in this campaign of political violence by the respondent State.

209. The Cypriot Government maintained that, in the absence of a comprehensive and effective investigation by the respondent Government, it had been impossible to identify the perpetrators of the murder of Mr Adalı. They submitted that the respondent State knew the identity of the murderers and had even orchestrated the murder. In their opinion, it was not surprising that the national authorities were not going to conduct a proper investigation.

210. Furthermore, the Cypriot Government claimed that the authorities had failed to pursue a number of obvious lines of inquiry and to interview a large number of witnesses. No inquest had been held into Mr Adalı's death until two years after the murder and only five witnesses had been called. The applicant and her family had not been notified of the inquest or told of the verdict. The authorities had commenced the defective inquiry only after the communication of the application to the respondent Government. It had been motivated by a desire to suggest to the Court that an appropriate investigation had been undertaken into the death. In view of the foregoing there had been a clear violation of Article 2 of the Convention.

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

### *1. As to the killing of the applicant's husband*

211. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

212. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002).

213. The Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the

domestic courts and as a general rule it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (Ibid., p. 18, § 30). The same principles apply *mutatis mutandis* where no domestic court proceedings have taken place because the prosecuting authorities have not found sufficient evidence to initiate such proceedings. Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)) even if certain domestic proceedings and investigations have already taken place.

214. Bearing in mind the above principles, the Court will examine the issues that arise in the instant case in the light of the oral evidence given by the witnesses, the documentary evidence adduced by the parties, in particular the documents lodged by the Government in respect of the judicial investigations carried out into the impugned incident, and the parties' written observations on the merits.

215. The Court notes that the applicant made serious allegations about the involvement of a number of individuals and institutions in the killing of her husband. In her submissions to the Court and in the statements which she made to the domestic authorities, the applicant placed great emphasis on the facts that her husband was a political figure and a public critic of the "TRNC" regime. She also relied on the alleged threats issued against her late husband on account of the latter's articles which were stigmatising or critical of certain persons, groups or State institutions in relation to sensitive issues in the public domain, such as the St Barnabas incident. In this respect, the Court considers that the alleged events preceding the death of Kutlu Adalı give some support for the applicant's allegation that the killing of her husband was related to his activities as a journalist. Accordingly, the applicant's allegation that her husband was killed by or at least with the connivance of State agents cannot therefore be discarded as *prima facie* untenable.

216. However, for the Court, the required evidentiary standard of proof for the purposes of the Convention is that of "beyond reasonable doubt", and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161). In this context, the Court reiterates that the responsibility of a State under the Convention, arising from the acts of its organs, agents and servants, is not to be confused with the criminal responsibility of any particular individuals (see *Avşar*, cited above, § 284).

217. Turning to the particular circumstances of the case, the Court notes that there was no eyewitness to the murder of the applicant's husband. The witnesses referred to by the applicant have remained anonymous and have failed to give evidence for various reasons (see paragraph 30 above and paragraph 82 of the Appendix). The only evidence available in this connection was two bullet shells extracted from the body of Mr Adalı (see paragraph 13 of the Appendix). A forensic examination of these bullet shells resulted in a finding that they did not match with any other cartridges or bullet shells found within the territory of the "TRNC" or recorded in the files on murders by unknown assailants (see paragraph 16 of the Appendix). The persons named by the applicant as suspects vigorously denied the allegations pertaining to their involvement in the murder of Kutlu Adalı (see paragraph 167 above and paragraphs 69, 117, 118, 124-138, 150 of the Appendix). The investigation conducted by the authorities into the alleged involvement of Abdullah Çatlı in the killing of Mr Adalı did not yield any result (see paragraph 84 of the Appendix).

218. Furthermore, the applicant failed to substantiate her allegations relating to the circumstances surrounding the killing of her husband. In this connection, the Court notes, *inter alia*, the following.

(a) It appears that the street lights at the scene of the incident and in the vicinity were not switched off at the time of the killing of Mr Adalı and that they were not powered by the power supply of the Civil Defence Organisation, as alleged by the applicant (see paragraph 58 above and paragraph 45 of the Appendix).

(b) It was not established that the Civil Defence Organisation was a secret organisation or that it performed special duties other than the ones assigned to it as alleged by the applicant (see paragraph 79 above).

(c) According to the oral evidence given by Mehmet Özdamar, no security forces commander was dismissed from or forced to relinquish his post for any reason, as opposed to the applicant's contention that the head of the security forces was removed from his post because of the articles written by Mr Adalı (see paragraphs 94 and 142 above). In particular, Galip Mendi was not removed from his post after the St Barnabas incident and he did not leave the island two days before the killing of Mr Adalı (see paragraphs 78 and 168 above).

(d) Ziya Kasaboğlu denied the applicant's allegations that he had called her family or the police on the night of the murder, that the father-in-law of the applicant was his superior and that he had settled in the village of İnönü after the incident (see paragraph 93 above and paragraph 150 on the Appendix);

(e) It was not established that Hüseyin Demirci had been admitted to the hospital for burns, and that the latter had not opened fire inside the hospital claiming that he had killed Mr Adalı (see paragraph 99 above and paragraphs 100 and 114 of the Appendix).

(f) It was not proven that Hüseyin Demirci had served as an adviser or a private secretary to Galip Mendi or received any salary or economic benefit from any state department of the “TRNC” (see paragraphs 30, 99 and 171 above and paragraph 141 of the Appendix).

(g) According to the ballistics examination carried out on Colonel Orhan Ceylan's weapon, the latter did not bear any resemblance to the bullet shells found at scene of the incident (see paragraph 125 above).

(h) Refik Öztümen denied having told the applicant's sister-in-law that he had been given instructions by the security forces not to conduct the investigation effectively (see paragraphs 104 and 150 above).

219. In the light of the above, the Court observes that the allegations concerning the circumstances in which the applicant's husband met his death did not go beyond speculation and assumption. It considers therefore that the material in the case file does not enable it to conclude beyond all reasonable doubt that the applicant's husband was killed by or with the connivance of any State agent or person acting on behalf of the State authorities in the circumstances alleged by the applicant.

220. Finally, the Court notes that it did not deem it necessary to accede to the Government's request to broaden its inquiry with a view to ascertaining whether Mr Kutlu Adalı was killed by underground organisations, since this would not have led to any different result (see paragraphs 198 and 199 of the Appendix).

It follows that there has been no violation of Article 2 on account of the killing of the applicant's husband.

## *2. As to the alleged inadequacy of the investigation*

221. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *Cyprus*, cited above, § 131; *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 105, ECHR 2001-III (extracts); *Akdeniz and Others v. Turkey*, no. 23954/94, § 89, 31 May 2001 and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any



investigative procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII, and *Avşar*, cited above, § 393). Furthermore, the next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Hugh Jordan*, cited above, § 109, and *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III where the family of the victim had no access to the investigation and court documents).

222. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82, and *Oğur*, cited above, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

223. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see *Kaya*, cited above, p. 324, § 87) and to the identification and punishment of those responsible (see *Oğur*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, a visit of the scene of the crime and ballistics examination as well as an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see, concerning autopsies, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; concerning witnesses, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; concerning forensic evidence, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000; concerning ballistics examination, *Oğur*, cited above). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard.

224. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-2440, §§ 102-104; *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80-87 and 106, ECHR 1999-IV; *Tanrıkulu*, cited above, § 109, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-107, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may

generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

225. The applicant has made a number of complaints concerning the alleged inadequacy of the investigation carried by the authorities, while the Government claimed that the investigation in question met the requisite standard under Article 2 of the Convention. The Court will therefore examine whether there has been compliance with this procedural aspect of Article 2.

226. It is to be observed that the local authorities indeed carried out an extensive investigation into the killing of the applicant's husband, as is demonstrated by the number of statements taken from possible witnesses and the inquiries made in response to various complaints made by the applicant. Nevertheless, there were serious shortcomings from the outset of the investigation.

227. In this connection, the Court would point out that the investigating authorities failed to take fingerprints on the terrace or inside the applicant's family home with a view to finding a clue which could have shed light on the tragic event (see paragraphs 117, 139 and 147 above). It is to be observed in this latter connection that there was no real coordination or monitoring of the scene of the incident by the investigating authorities. A typical example of this is that there was no report on what was found on the terrace and inside the house, whereas according to a photograph which was taken shortly after the incident and produced to the Court by the applicant there was a glass, a bottle and an ashtray on the terrace (see paragraph 139 above). It is also striking that the police officers who examined the scene of the incident did not consider taking photographs of the terrace or of the inside of the house.

228. The Court further considers that the ballistic examination carried out by the authorities was insufficient. In particular, although the investigators compared the bullet cartridges found at the scene of the incident against those held in the police laboratories of the "TRNC", there is no record of any attempt having been made to broaden the scope of the ballistic tests so as to cover the archives of the police in Turkey (see paragraphs 125 and 126 above). While the chief inspector, Mr Soyalan, advanced a claim to the contrary, no report of a ballistics test in Turkey has been furnished to the Court (*Ibid.*).

229. The Court further observes that the investigating authorities failed to take statements from some key witnesses. For instance, the authorities were aware of the suspicions voiced by the applicant concerning the link between the St Barnabas incident and the killing of her husband as well as the alleged threats made by Galip Mendi against the *Yenidüzen* newspaper and Kutlu Adalı. But no attempts were made to question Galip Mendi as regards the allegations concerning his involvement (see paragraphs 120, 140, 151

and 167 above). Likewise, it does not appear that the authorities, on being informed of the allegations in the press to the effect that Mr Ceylan had committed the murder along with Hüseyin Demirci, were prompted immediately to take statements from Orhan Ceylan (see paragraph 132 above). The investigation conducted into the possible involvement of Mr Ceylan and Mr Demirci was therefore far from satisfactory (see paragraphs 129, 132 and 152 above). Furthermore, it seems doubtful whether there was an effective control as to whether all persons in the neighbourhood had been questioned (see paragraphs 119 and 148 above) even if in the immediate aftermath of the shooting a considerable number of statements were taken by the police from the people living in the vicinity of the scene of the incident.

230. The Government have furnished the Court with a supplementary investigation file containing witness statements and reports from October 2002 (see paragraphs 81-152 of the Appendix), that is, almost six years and seven months after the death of the applicant's husband. It is striking that this investigation, which included key witnesses whose evidence could have shed light on the impugned incident, was conducted only after the application had been communicated and subsequent to two hearings had been held in Strasbourg. In this connection, the Court notes that until October 2002 the investigating authorities did not attempt to take statements from Eybil Efendi, a police officer who was the first to arrive at the scene of the crime, and Ali Rıza Görgüner, the then *muhtar* of the neighbourhood, who first entered the house with the police officers (see paragraphs 116 and 117 above). Neither did they consider taking statements from Mustafa Asilhan until 18 October 2002 (see paragraphs 128 above and 123 in the Appendix).

231. As noted earlier, the Court does not find the applicant's allegation that the killing of her husband was related to his activities as a journalist implausible (see paragraph 215 above). It considers, however, that the authorities failed to inquire sufficiently into the motives behind the killing of Mr Adalı. Thus it was not established that any adequate steps were taken to investigate the possibility that the murder was politically motivated or had any link with his work as a journalist. On the contrary it appears that the responsible authorities already at an early stage of the investigation and on an insufficient basis discarded that possibility (see paragraphs 120, 140, 144 and 156 above). Moreover, the Court points out that no search was conducted on the papers and other belongings of the deceased with a view to finding any evidence which could cast light on the motives behind the killing (see paragraphs 117 and 147 above).

232. Finally, the Court is also concerned about the lack of public scrutiny of the investigation carried out by the authorities and of the lack of information provided to the deceased's family. It notes that the investigation file was inaccessible to the applicant, who had no means of learning about

the conduct of or the progress made in the investigation. She was not given a copy of the post-mortem and ballistic reports until after the application was communicated to the Government and she was not invited to take part in the Coroner's inquest (see paragraph 123 above). The Court emphasises in this connection the importance of involving the families of the deceased or their legal representatives in the investigation and of providing them with information as well as enabling them to present other evidence (see *Hugh Jordan*, cited above, § 92; *Oğur*, cited above, § 92; and Section 16 of the UN Economic and Social Council Resolution 1989/65 of 24 May 1989 on the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions).

233. In the light of the foregoing, the Court considers that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of the applicant's husband. It accordingly dismisses the Government's objection of non-exhaustion of domestic remedies (see paragraph 190 above) and holds that there has been a violation of Article 2 under its procedural limb.

## II. ALLEGED VIOLATION OF ARTICLES 3, 8 AND 14 OF THE CONVENTION

234. The applicant alleged that subsequent to the death of her husband she had been subjected to continuing practices of harassment, intimidation and discrimination by the "TRNC" authorities, thus violating her rights under Articles 3, 8 and 14 of the Convention.

235. Article 3 provides:

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

Article 8 reads:

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

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

Article 14 provides:

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

## **A. The submissions of the parties**

### *1. The applicant*

236. With reference to various incidents (see paragraphs 38-45 above and paragraphs 119, 163, 165, 168, 169, 174, 176, 179, 183, 188 and 189 of the Appendix), the applicant asserted that the alleged acts amounted to both inhuman and degrading treatment or punishment as well as an interference with her right to respect for her private and family life. She also maintained that she had been subjected to discriminatory treatment by the authorities on account of her and her husband's political or other opinions and/or her status as the widow of a public critic of the policies and practices of the "TRNC" and of the respondent Government.

### *2. The respondent Government*

237. The respondent Government denied the factual basis of these allegations and averred that they had been proved to be unfounded following the investigation carried out by the authorities (see paragraphs 70, 73, 74, 90, 91, 120, 121, 164, 171, 172, 175, 178, 180, 184, 186 and 197 of the Appendix). They further noted that these complaints had not been brought to the attention of the authorities before they were filed with the Court.

### *3. The Cypriot Government*

238. The Cypriot Government submitted that the treatment received by the applicant had been such as to arouse in her feelings of fear, anguish and inferiority capable of humiliation and debasement and had thus amounted to inhuman and degrading treatment. They further claimed that each of the Convention violations alleged by the applicant had arisen out of her husband's political opinions or her continued courageous public criticism of the policies and practices of the respondent State.

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

239. The Court notes that the applicant made a number of allegations concerning practices of harassment, intimidation and discrimination by the "TRNC" authorities. The factual basis of these allegations was vigorously denied by the Government. The reasonableness of that assertion must therefore be tested in the light of the documentary and other evidence which the parties have submitted to the Court, having regard to the standard of proof which it habitually employs when ascertaining whether there is a basis for alleged violations of the Convention, namely proof "beyond reasonable doubt" (see *Ireland* cited above, § 161), it being understood that such proof

may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

240. In the instant case, a number of facts raise doubts as to whether the applicant suffered practices of harassment, intimidation and discrimination, as alleged. The Court points out, by way of a few examples, that the tyre of the applicant's car apparently deflated not because somebody sabotaged it but because it was old and worn out (see paragraphs 165 and 166 of the Appendix). It appears that Musa Öneral entered the applicant's garden to repair the water tank leaking water (see paragraph 90 of the Appendix). There is no proof that Mr Adali's photograph frame was stolen from the applicant's garden by someone acting on behalf of the "TRNC" authorities or the respondent Government (see paragraphs 163 and 164 of the Appendix). Nor has it been established that the applicant's dog was tortured or killed by State agents (see paragraph 161 above). Furthermore, the applicant has failed to adduce any concrete evidence capable of repudiating the Government's denial that her mail and correspondence had been interfered with by the authorities.

241. In view of these findings and in the absence of any concrete evidence to the contrary, and having regard to the requisite standard of proof for establishing the existence of acts of harassment, intimidation and discrimination against the applicant, the Court concludes that there has been no breach of Articles 3, 8 and 14 of the Convention.

This finding makes it unnecessary to examine the Government's objection of non-exhaustion (see paragraph 191 above).

### III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

242. The applicant complained that the authorities' failure to conduct a prompt, impartial, thorough and effective investigation into the circumstances of her husband's murder had given rise to violations of Article 6 § 1 and Article 13 of the Convention.

243. In so far as relevant, Article 6 § 1 reads:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal..."

Article 13 provides:

"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."

## **A. The submissions of the parties**

### *1. The applicant*

244. The applicant argued under Article 6 of the Convention that, as a result of the absence of an impartial and effective investigation into the circumstances of her husband's death, she had been denied effective access to the courts to determine her civil right to compensation for his murder allegedly committed by agents of the State. Furthermore, the political context in the area controlled by the "TRNC" regime and the special circumstances of the applicant's case made it all more unlikely that she would receive independent and impartial justice.

245. The applicant maintained under Article 13 of the Convention that the failure of the public authorities for which Turkey was responsible to conduct a prompt, impartial and thorough investigation into the circumstances of her husband's murder, and their failure to carry out a proper post-mortem examination, indicated that those responsible for investigation and public prosecution had a similarly blinkered approach to the allegations of a politically-motivated killing by agents of the "TRNC" regime or of the respondent Government. She claimed that the same considerations applied to her allegations of a campaign of monitoring, harassment, intimidation and discrimination against her. In further breach of Article 13, the applicant had been denied any effective remedy because of the failure to secure the independence of the legal profession in the territory controlled by the "TRNC" regime, with the result that qualified lawyers had repeatedly refused to give legal assistance to the applicant to obtain effective legal redress.

### *2. The respondent Government*

246. The respondent Government disputed the applicant's allegations and claimed that there were domestic remedies in the "TRNC" which were both practical and functioning and therefore available to the applicant. As an example, they pointed out that the "Kutlu Adalı Foundation" had been registered by a competent court of the "TRNC" following an application made by the applicant for that purpose.

247. Moreover, the authorities of the "TRNC" Government had conducted a prompt and sufficient investigation into the murder of the applicant's husband. The authorities had also carried out a post-mortem examination on Mr Adalı and had not had a blinkered approach to the allegations that his murder was politically-motivated. That allegation was an assumption which had never been established. In addition, the applicant's allegations of a "campaign of monitoring, harassment and intimidation" were unfounded and had never been brought to the attention of the

authorities. There was also no merit in her allegations that the courts and the legal profession in the “TRNC” were not independent.

### *3. The Cypriot Government*

248. The Cypriot Government submitted that the so-called courts of the “TRNC” were not independent and impartial in their constitution or in their functioning. Apart from the fact that the applicant could not obtain any legal representation in north and the lack of any prompt, thorough and impartial investigation into Mr Adali's death, the applicant did not have access to the courts to assert her rights to compensation and to private life. She had no practical remedy available. The respondent State and its “courts” were not likely to come to her assistance. Their record in cases currently pending before the Court was ample evidence of their lack of effectiveness.

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

### *1. As to Article 6*

249. The Court notes that the applicant made no attempt to seek compensation before the “TRNC” courts. It is therefore not possible in the instant case to determine whether these courts would have been able to adjudicate on her claims. The Court considers that the applicant's complaint of lack of access to a court is bound up with her more general complaint concerning the manner in which the investigating authorities dealt with the killing of her husband and the repercussions which this had on access to effective remedies to help redress the grievances which she harboured as a result of the killing. In these circumstances, the Court, in accordance with its own case-law (see, for example, *Gündem v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III p. 1136, § 74; and *Kaya*, cited above, p. 329, § 105), finds it appropriate to examine this complaint in relation to the more general obligation on States under Article 13 to provide an effective remedy in respect of alleged violations of the Convention.

### *2. As to Article 13*

#### **(a) The general principles**

250. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in



which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see the following judgments: *Aksoy*, cited above, p. 2286, § 95; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; and *Kaya*, cited above, § 106).

**(b) As to the killing of the applicant's husband**

251. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, pp. 330-31, § 107).

252. On the basis of the evidence adduced in the present case, the Court has not found it proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the killing of the applicant's husband (see paragraph 219 above). However, as it has held in previous cases, these findings do not preclude the complaint in relation to Article 2 from being an "arguable" one for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52; *Kaya*, cited above, pp. 330-31, § 107; and *Yaşa*, cited above, p. 2442, § 113). In this connection, the Court observes that it is not in dispute that the applicant's husband was the victim of an unlawful killing. Accordingly, it considers that the complaint under Article 2 is arguable for the purposes of Article 13 of the Convention.

253. The authorities thus had an obligation to carry out an effective investigation into the circumstances of the killing of the applicant's husband. For the reasons set out above (see paragraphs 221-233 above), no effective criminal investigation can be considered to have been conducted in accordance with the requirements of Article 13, which requirements are broader than the obligation to investigate imposed by Article 2 (see *Kaya*, cited above, pp. 330-31, § 107). The Court therefore finds that the applicant has been denied an effective remedy in respect of the death of her husband and thereby access to any other remedies at her disposal, including a claim for compensation.

There has therefore been a violation of Article 13 of the Convention.

**(c) As to the alleged practices of harassment, intimidation and discrimination against the applicant**

254. The Court reiterates that on the basis of the evidence adduced in the present case, it has not found it established that the applicant was subjected to the acts of harassment, intimidation and discrimination by the “TRNC” authorities (see paragraphs 239-241 above). That said, the Court reiterates that notwithstanding the terms of Article 13 read literally, the existence of an actual breach of another provision is not a prerequisite for the application of the Article (see *Boyle and Rice*, cited above, p. 23, § 52). However, having regard to its above findings on the applicant's substantive complaints under Articles 3, 8 and 14 of the Convention, the Court cannot conclude that the applicant has laid the basis of a prima facie case of misconduct on the part of the “TRNC” authorities. It refers in this connection to the applicant's failure to rebut the Government's submissions and the conclusions reached in the investigation conducted by the domestic authorities into her complaints (see paragraph 240 above).

255. In the light of the foregoing, the Court considers that the above mentioned situation cannot be regarded as a breach of the applicant's right to an effective remedy.

Accordingly, there has been no violation of Article 13 of the Convention in this respect.

#### IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

256. The applicant alleged that the unlawful killing of her husband also constituted an interference with his right to freedom of expression as guaranteed by Article 10 of the Convention, which provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

257. The applicant argued that Kutlu Adalı had been murdered because of the public expression of his views, which were strongly critical of the policies and practices of the respondent State and its agents in Turkish-controlled northern Cyprus.

258. The Government denied the factual basis of these allegations and stressed that there was no evidence that Mr Adalı had been killed for political motives or on account of his views.

259. The Cypriot Government contended that the reason for the killing of the applicant's husband was his vocal criticism of the respondent State's regime in occupied Cyprus.

260. The Court notes that the applicant's allegations arise out of the same facts as those examined under Article 2 of the Convention. It therefore does not consider it necessary to examine this complaint separately.

## V. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

261. The applicant complained that the refusal by the Turkish and Turkish-Cypriot authorities to allow her to cross the “green line” in order to attend a meeting organised by a radio station in southern Cyprus had prevented her from exercising her right to freedom of assembly and assembly with Greek Cypriots in breach of Article 11 of the Convention, which provides as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

### A. Submissions of the parties

#### 1. *The applicant*

262. The applicant contended that she had been invited to attend a meeting to be held on 20 June 1997, which had been organised by a radio station on the side of the line controlled by the Cypriot Government. The applicant and her daughter had applied, in advance, to the “TRNC” regime's Foreign Ministry for permission to cross over to that side. Permission had been refused without any reason being given but journalists from the northern side had been granted permission to go. This impugned measure had constituted an unjustified interference with her right to freedom of association under Article 11 of the Convention.

## 2. *The respondent Government*

263. The Government disputed the applicant's arguments and averred that there had been no violation of the applicant's right to freedom of assembly on account merely of one single meeting of this nature. They stressed in this connection that the crossing of the "green line" between the "TRNC" and southern Cyprus was regulated by laws of the former and that there were general restrictions on crossings. This depended on security precautions deemed necessary from time to time. When there were demonstrations and violent protests at checkpoints or on the border it became unsafe to cross and therefore permission could be suspended by the authorities on either side. Consequently, the intention of the "TRNC" authorities had not been to discriminate against the applicant or her daughter but to ensure the protection of all Turkish Cypriots and to maintain peace on the island.

264. As regards the meeting organised by a radio station on the Greek side of the island on 20 June 1997, that meeting had been solely for journalists and the applicant's presence at that meeting would have been likely to be exploited for political propaganda.

## 2. *The Cypriot Government*

265. In the Cypriot Government's opinion, the refusal of the authorities to allow the applicant to travel to the southern part of Cyprus had given rise to a violation Article 11 of the Convention and the respondent Government had failed to provide any convincing evidence to rebut the evidence furnished by the applicant.

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

### 1. *General principles*

266. The Court observes at the outset that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Djavit An v. Turkey*, cited above, § 56; *G. v. Germany*, no. 13079/87, Commission decision of 6 March 1989, DR 60, p. 256; *Rassemblement jurassien and Unité jurassienne v. Switzerland*, no. 8191/78, Commission decision of 10 October 1979, DR 17, p. 93; and *Rai and Others v. the United Kingdom*, no. 25522/94, Commission decision of 6 April 1995, DR 81-A, p. 146). As such this right covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals and those organising the assembly (*Rassemblement jurassien and Unité jurassienne*, cited above, at p. 119, and *Christians against Racism*

*and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, DR 21, p. 138, at p. 148).

267. The Court notes in addition that States must not only safeguard the right to assemble peacefully but must also refrain from applying unreasonable indirect restrictions upon that right (see *Djavit An*, cited above, § 57). Lastly, the Court considers that, although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of these rights (see *Christians against Racism and Fascism*, cited above, p. 148).

## 2. Application of the above principles to the present case

### (a) Whether there has been an interference

268. The Court reiterates at the outset its findings in the cases of *Cyprus v. Turkey* and *Djavit An v. Turkey* in relation to the rigorous approach taken by the “TRNC” authorities to bi-communal contacts after the second half of 1996 by the imposition of restrictions and, indeed, prohibitions (see both judgments cited above, §§ 368-69 and § 59 respectively).

269. In the present case, the Court notes that the applicant was refused permit to attend a meeting held on 20 June 1997 in southern Cyprus. That being so, the refusal of the authorities to grant a permit to the applicant barred her participation in a bi-communal meeting there, preventing her consequently from engaging in peaceful assembly with people from both communities. In this connection, the Court observes that that hindrance can amount to a violation of the Convention just like a legal impediment (see *Loizidou v. Turkey*, judgment of 18 December 1996, *Reports*, 1996-VI, § 63).

270. In view of the above, the Court concludes that there has been an interference with the applicant's right to freedom of assembly guaranteed by Article 11 of the Convention.

### (b) Whether the interference was justified

271. Such an interference will constitute a breach of Article 11 unless it was “prescribed by law”, pursued one or more legitimate aims under paragraph 2 and was “necessary in a democratic society” for the achievement of those aims.

272. The Court will first ascertain whether the interference complained of was prescribed by law. In this connection, it reiterates that one of the requirements flowing from the expression “prescribed by law” is the foreseeability of the measure concerned. A rule cannot be regarded as “law” unless it is formulated with sufficient precision to enable the citizen to

regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

273. In the instant case, the respondent Government referred to general restrictions concerning crossing of the “green line” between the “TRNC” and southern Cyprus. They did not refer to any law or measures in the “TRNC” regulating the issuance of permits to Turkish Cypriots living in northern Cyprus to cross the “green line” into southern Cyprus for the purposes of attending bi-communal meetings. Furthermore, they did not provide any indication as to when refusal of such permits is allowed.

274. Bearing in mind its finding in the *Djavit An v. Turkey* case (cited above, § 67) on a similar issue and having regard to the circumstances of the individual case before it, the Court concludes that there seems to be no law applicable in the present case regulating the issuance of permits to Turkish Cypriots living in northern Cyprus to cross the “green line” into southern Cyprus in order to engage in peaceful assembly with Greek Cypriots. Therefore, the manner in which restrictions were imposed on the applicant's exercise of her freedom of assembly was not “prescribed by law” within the meaning of Article 11 § 2 of the Convention.

275. In the light of the foregoing, the Court does not consider it necessary to examine whether the other requirements laid down by Article 11 § 2 of the Convention were satisfied.

There has therefore been a violation of Article 11 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

276. The applicant complained that the respondent Government had tried to hinder the effective exercise of her right to individual application to the Court in violation of Article 34 of the Convention which, in so far as relevant, provides:

“The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

277. The applicant maintained that on 4 December 1999 she had met Professor Bakır Çağlar, who is a former agent of the respondent Government, and that the latter had questioned her about her application to the Court. He further threatened her to the effect that if she won her case before the Court, she would be assassinated and her daughter's scholarship would be discontinued.

278. The respondent Government contested the applicant's allegation and submitted that Professor Çağlar, who had been the agent of the Government in the case of *Loizidou v. Turkey*, had resigned from his post

and that therefore he was not representing the Turkish Government in any way.

279. The Cypriot Government did not comment on this matter.

280. The Court observes that it was not argued, and nor is there any indication, that Professor Çağlar was acting on behalf of the Turkish Government at the material time. It also appears from the applicant's oral evidence before the Court's delegates that Professor Çağlar's aim was to represent the applicant before the Court rather than to discourage her from pursuing her application (see paragraph 45 above). For these reasons, the Court considers that the alleged behaviour of Professor Çağlar cannot be attributed to the respondent Government.

It follows that there has been no violation of Article 34 of the Convention.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

281. 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. Pecuniary damage

282. The applicant requested the Court to award her compensation for the loss of her husband's earnings. She noted that her family had lost the entitlement to the pension which Mr Adalı had received by reason of his public service in the “TRNC”. The widow's pension she received was substantially lower than the pension which Kutlu Adalı would have received. The applicant also requested the Court to take into account in its assessment of just satisfaction the fact that the careers of her children had suffered as a result of the efforts of the “TRNC” and the Turkish authorities to hinder the effective exercise of her right to apply to the Court.

283. The respondent Government made no submissions about the applicant's claim under this head.

284. The Court observes that there is no causal link between the matters held to constitute a violation of the Convention and the pecuniary damage allegedly suffered by the applicant (see *Çakıcı* and *Djavit An*, both cited above, §§ 127 and 80 respectively). It therefore dismisses the applicant's claim under this head.

## **B. Non-pecuniary damage**

285. Without specifying any amount, the applicant asked the Court to award her compensation for non-pecuniary damage. She requested the Court to take into account the great stress and anguish as well as the feelings of anxiety, helplessness and frustration that she and her children had suffered as a result of the killing of Kutlu Adalı and the failure to conduct any independent and efficient investigation into his death and to bring the perpetrators to justice. The applicant also asked the Court to bear in mind the suffering of the family resulting from the ongoing campaign of intimidation and harassment waged against them by the authorities.

286. The respondent Government did not comment on the applicant's claim.

287. The Court reiterates that it has found that the authorities failed to carry out an effective investigation into the circumstances surrounding the killing of the applicant's husband, contrary to the procedural obligation under Article 2 of the Convention and in breach of Article 13 of the Convention. It has also concluded that the applicant's right to freedom of assembly was breached on account of the authorities's refusal to allow her to travel to the southern part of Cyprus to participate in a bi-communal meeting with Greek Cypriots. In the light of its established case-law in similar cases (see *Tepe v. Turkey*, no. 27244/95, § 212, 9 May 2003; *Tekdağ v. Turkey*, no. 27699/95, § 117, 15 January 2004; and *Djavit An*, cited above, § 84) and having regard to the circumstances of the case, the Court awards EUR 20,000 plus any tax that may be chargeable, such sum to be converted into Turkish liras (TRL) at the rate applicable at the date of settlement and paid into the applicant's bank account.

## **C. Costs and expenses**

288. The applicant claimed a total amount of 319,783.85 pounds sterling (GBP) (EUR 464,534.44), plus any tax that might be chargeable, for fees and costs incurred in the preparation and presentation of her case before the Convention institutions. This sum included fees and administrative costs incurred (including legal work, translations and summaries from English into Turkish and from Turkish into English and in respect of expenses such as telephone calls, postage, photocopying and stationery) by her British representatives, a leading barrister and solicitors as well as a trainee lawyer and administrators from the Bindman & Partners law firm in London. The above-mentioned sum consisted of; (1) GBP 149,757.74 incurred up to 1 April 2000 (2) GBP 72,276.11 incurred up to 1 May 2002 and (3) anticipated costs in the amount of GBP 97,750 to be incurred up to the conclusion of the application.



289. The Court would point out that the applicant has only partly succeeded in making out her complaints under the Convention. Yet, the present case involved complex issues of fact and law that required detailed examination, including a hearing in Strasbourg and the taking of evidence from witnesses both in Strasbourg and Nicosia (Lefkoşa). The Court reiterates in this connection that only legal costs and expenses that have been necessarily and actually incurred can be reimbursed under Article 41 of the Convention.

290. In this regard, the Court is not satisfied that in the instant case all the costs and expenses were necessarily and actually incurred. It considers that part of the amounts claimed by the legal representatives for travel and consultations between themselves and with third parties are exaggerated. The Court also considers excessive the total number of hours of legal work and the amounts claimed for each hour's work for which the applicant submits claims in respect of her British lawyers and administrators. It therefore finds that it has not been proved that all those legal costs were necessarily and reasonably incurred. In the light of its case-law in similar cases (see *Tepe* and *Tekdağ*, both cited above) and having regard to the details of the claims submitted by the applicant, the Court awards the applicant the sum of EUR 75,000 plus any tax that may be chargeable, less EUR 7,236.74 received by way of legal aid from the Council of Europe, such sum to be converted into pounds sterling (GBP) at the date of settlement, payable into the bank account of the applicant's representatives in the United Kingdom.

#### **D. Default interest**

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

### **FOR THESE REASONS, THE COURT**

1. *Dismisses* unanimously the Government's preliminary objection of non-exhaustion of domestic remedies in so far as it relates to the applicant's complaint concerning her right to freedom of association;
2. *Joins* unanimously the Government's preliminary objection of non-exhaustion, in so far as it pertains to the applicant's complaints under Articles 2, 3, 8 and 14 of the Convention, to the examination of these complaints;

3. *Holds* unanimously that there has been no violation of Article 2 of the Convention as regards the killing of the applicant's husband;
4. *Holds* by 6 votes to 1 that there has been a violation of Article 2 of the Convention on account of the national authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the killing of the applicant's husband and, accordingly, *dismisses* the Government's preliminary objection of non-exhaustion;
5. *Holds* unanimously that there has been no violation of Articles 3, 8 and 14 of the Convention;
6. *Holds* by 6 votes to 1 that there has been a violation of Article 13 of the Convention in respect of the complaints under Article 2 of the Convention;
7. *Holds* unanimously that there has been no violation of Article 13 of the Convention in respect of the complaints under Articles 3, 8 and 14 of the Convention;
8. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 10 of the Convention;
9. *Holds* unanimously that there has been a violation of Article 11 of the Convention;
10. *Holds* unanimously that there has been no violation of Article 34 of the Convention;
11. *Holds* by 6 votes to 1
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, to be converted into Turkish liras (TRL) at the rate applicable at the date of settlement and to be paid into the applicant's bank account;
    - (ii) EUR 75,000 (seventy five thousand euros) in respect of costs and expenses, plus any tax that may be chargeable on that amount, less EUR 7,236.74 (seven thousand two hundred and thirty-six euros and seventy-four cents) such sum to be converted into pounds sterling at the date of settlement and paid into the bank account of the applicant's representatives in the United Kingdom;

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

12. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinion of Mr Türmen is annexed to this judgment.

C.L.R  
S.N.

## PARTLY DISSENTING OPINION OF JUDGE TÜRMEŒEN

1. To my regret, I am unable to agree with the majority of the Court that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of the applicant's late husband in violation of Articles 2 and 13 of the Convention. Nor do I share the view of the majority that the excessive sum awarded to the applicant in respect of her costs and expenses had actually and necessarily incurred.

2. However, I subscribe to the finding that the allegations concerning the killing of the applicant's husband were mere speculations and that it was not established to the requisite standard of proof that Kutlu Adalı had been killed by or with the connivance of any State agent or person acting on behalf of the State authorities or that, subsequent to the death of her husband, the applicant had been subjected to harassment, intimidation and discrimination by the local authorities. I also endorse the conclusions reached by the majority in respect of the complaints made under Articles 6, 10, 11 and 34 of the Convention.

3. Nevertheless, I am of the opinion that the national authorities carried out an adequate and meticulous investigation into the impugned incident as demonstrated by the voluminous investigation files which were submitted to the Court. It appears from the documents contained in the case files that the investigating authorities have taken statements from almost a hundred persons who either lived in the neighbourhood or who might have heard or seen anything at the time of the killing (see paragraphs 37-178 in the Appendix). The local police arrived at the scene of the crime within a few minutes of the incident, a pathologist performed post-mortem examination, photographs of the scene of the incident were taken and a sketch map was drawn up, an autopsy was carried out, later on the same day, on Mr Adalı's body and his personal belongings were secured as evidence (see paragraphs 48-52 of the judgment). Furthermore, a ballistics examination of the used cartridges found at the scene of the crime was carried out. As it can be seen from the meetings held between the applicant and the local authorities and also the numerous statements taken from family members, the applicant and her family members were provided with access to the investigation from the outset (see paragraphs 155, 160-163 in the judgment and paragraphs 37-43 and 170 in the Appendix). From the lowest ranking officer up to President Denктаş, the domestic authorities have attached great importance to the issue of solving the murder and there was sufficient public scrutiny. In addition, it is clear that domestic authorities have given a follow up to each and every one of the applicant's complaints of discrimination, harassment or intimidation and conducted a prompt investigation into them (see, paragraphs 121, 139, 164, 166, 167 and 168-178 in the Appendix).

4. As stated in the judgment, in conformity with the Court's case-law, the essential purpose of the investigation is, "in cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances... The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident" (see paragraphs 221 and 223 of the judgment). It is clear from the case-law mentioned above that the authorities have a margin of appreciation in conducting the investigation. However, in the present case, the majority not only refused to leave such a margin to the investigating authorities but was inclined to act as a private body of investigators replacing the national authorities. Following can be observed in respect of such attitude:

a) As one of the defects in the investigation, the majority relied on the fact that the investigating authorities had failed to take fingerprints on the terrace or inside the applicant's family home. As explained by the principal investigator Ahmet Soyalan and Mehmet Özdamar, such an examination was unnecessary because the incident had taken place on the street and the house or its terrace had not been a crime scene (see paragraphs 117 and 139 in the judgment). No reason was given by the majority as to why this explanation was not found plausible.

b) Furthermore, it is hard to accept the majority's consideration that there was no effective control of the authorities as to whether all persons in the neighbourhood had been questioned (see paragraph 229 in the judgment) although the investigating authorities drew up a list of residents in the neighbouring streets, visited those at home and took statements from thirty-three persons within a day of the incident (see paragraph 51 in the judgment). It is true that the Government have furnished the Court with a supplementary investigation file containing witness statements and reports from October 2002. In this connection, it need to be stressed that such a necessity arose only after the applicant had made numerous unfounded allegations concerning the possible involvement of certain individuals, such as Hüseyin Demirci, Altay Sayıl and Mustafa Asilhan, in the killing of her late husband.

c) Moreover, I cannot understand the necessity of taking statements from Eybil Efendi, a police officer who was the first to arrive at the scene of the crime, and Ali Rıza Görgüner, the then *muhtar* of the neighbourhood, who first entered the house with the police officers (see paragraph 230 in the judgment). They have seen what other police officers have seen.

5. Furthermore, the majority failed to take into account the negative effect of the applicant's behaviour on the investigation. The applicant from the very outset created imaginary scenarios, put forward inconsistent and untrue allegations and even concealed certain facts from the authorities. All this had a misleading impact on the investigation. Following are the examples of such behaviour:

a) Despite these conclusions, the majority accepted the applicant's assertion that the killing of her husband was a political crime although Mr Adalı had never been prosecuted for the opinions he had expressed in his newspaper and none of his publications had ever been seized or confiscated by the authorities. It is therefore hard to consider Mr Adalı as a “political figure” or an opponent of the local government by the mere fact that he used to write for a left-wing newspaper where he allegedly published articles criticising the policies of that government or of President Rauf Denktaş.

b) Moreover, the applicant advanced a further claim that her husband's killing was related to the so-called “St Barnabas incident” because he had published an article in *Yenidüzen* newspaper about the involvement of the Civil Defence Organisation and that he had been threatened by the head of the aforementioned organisation (see paragraph 198 of the judgment). However, it transpires from the submissions of the parties that *Yenidüzen* was not the only newspaper which reported the St Barnabas incident; *Kıbrıs* newspaper of 16 March 1996 reported the incident in detail a day before the *Yenidüzen* report. Furthermore, there is not even a shred of evidence that Mr Adalı had written an article about the St Barnabas incident because his name did not appear anywhere in *Yenidüzen*. It is therefore not possible for a reader of the newspaper of 17 March 1996 to deduce that Mr Adalı was the author of the report about the incident which would consequently prompt the alleged “threats”.

c) Be that as it may, it now appears from an interview given by the applicant that Mr Adalı's killing was not political or linked to the St Barnabas incident as alleged but could well be related to the information he had held about secret organisations, drug traders and money launderers (see paragraph 198 in the Appendix). It is striking that the applicant has never informed the national authorities about this aspect of the case but misled both the domestic investigating authorities and the Court with her allegations of political crime. Thus, in the absence of any allegation, the investigating authorities were unable to broaden the investigation so as to cover the alleged research or information held by Kutlu Adalı about the secret organisations.

6. Bearing in mind the above findings, it is worth pointing that in the case of *Denizci and Others v. Cyprus* (nos. 25316-25321/94 and 27207/95, ECHR 2001-V), which concerned, among other issues, the killing of one of the applicants' son and his friend in southern Cyprus, the Court held that the investigation was adequate and sufficient because the local police went to the scene, a plan of the incident site was drawn up and a list of the objects found established. Relevant samples were taken and scientifically examined. A pathologist who arrived at the scene a few hours after the killing performed the post-mortem examination and, later on the same day, carried out an autopsy on the bodies. The Court also attached great weight to the

fact the investigation into the killing of İlker Tufansoy and his friend comprised of a case file of more than 600 pages (*ibid.*, §§ 353-54). Having compared the investigation conducted in these two cases, I do not think that fewer steps had been taken in the instant case. To the contrary, the investigation in the present case was much more comprehensive and the investigation file which contains well over 1,000 pages of documents is an indication of the wide span of the investigation.

7. Finally, I find the sum awarded to the applicant for her costs and expenses to be excessive. As correctly pointed out in the judgment, the applicant has only partly succeeded in making out her complaints under the Convention (see paragraph 289 in the judgment). However, despite that fact, the majority considered it reasonable to award EUR 75,000. I should like to point out that only a week before the adoption of the present judgment, the very same First Section of the Court awarded EUR 20,000 to the applicants in respect of their costs and expenses in the case of *Akkum and Others v. Turkey* (no. 21894/93, 24 March 2005). In *Akkum and Others*, the applicants were represented by two eminent university professors, namely Mr Kevin Boyle and Ms Françoise Hampson, who have considerable experience in Convention proceedings. These two professors participated at a hearing in Strasbourg as well as at fact finding hearings in Turkey. Furthermore, the Court found in that case the Government responsible for the deaths of three relatives of the applicants and found multiple violations of Article 2 of the Convention as well as violations of Article 3 and Article 1 of Protocol No. 1 to the Convention. Accordingly, having regard to its facts, the number of applicants and the violations found, *Akkum and others* case was a far more complex case compared to the present one. The sum claimed by the applicants in *Akkum and Others* for the fees and costs of their lawyers, i.e. GBP 29,219.40, can be contrasted to the amount claimed by the applicant in the present case, i.e. GBP 319,783.85. In the light of the above, I am unable to see an objective and reasonable justification for the huge difference in respect of costs and expenses in the two cases.

## APPENDIX

### DOCUMENTS SUBMITTED BY THE PARTIES

1. The parties submitted various documents concerning the investigation into the killing of Kutlu Adalı and the alleged acts of harassment, intimidation and discrimination by the “TRNC” authorities.

*1. Documents in the investigation file and the coroner's inquest file (listed in the order they have in their respective files)*

**(a) Yenişehir Police Station's work schedule between 7 July 1996 and 30 July 1998 concerning the murder of Kutlu Adalı**

2. This document contains the timetable of the work carried out by the police assistant inspector Mr Ahmet Soyalan in the context of the investigation into the killing of the applicant's husband.

**(b) Report by the Head of the Directorate of Police, dated 7 July 1996**

3. This report was drafted to be sent to the relevant doctor at the Nicosia State Hospital. It summarised the initial events concerning the killing of Kutlu Adalı. It stated that Kutlu Adalı was a 60-year-old married journalist and that he had been shot and killed in front of his house by an unknown assailant or assailants. According to the report, the police were informed of the death by Mr Ali Rıza Kırçay on 6 July 1996 at 11.45 p.m. The Head of the Security Directorate requested the doctor in charge to carry out an autopsy.

**(c) Coroner's autopsy order addressed to Nicosia State Hospital**

4. On 7 July 1996 the coroner ordered Dr İsmail Budak to carry out an autopsy on the corpse of Kutlu Adalı and to draft a report when the corpse was sent to Nicosia State Hospital by the police.

**(d) Autopsy report of 7 July 1996**

5. According to the autopsy report, a 0.5 cm entry hole was observed in the front part of the left shoulder. In the rear part of the left zygomatic bone at a point marked between the nose and the ear lobe, another entry hole of 1 cm diameter was found close to the ear.

6. The body was opened along the trajectory of the hole in the shoulder. No bullet was found. The chest cavity was opened. It was observed that the lungs were of a pale colour and that there were black lines on the surface of the lungs. There was almost two and a half litres of blood.



There was a wound passing from the left to the right of the lungs; along the line of the wound, a hole in the aorta was observed.

7. When the skull was opened it was observed that the brain tissue was swollen and that there was widespread haematoma in the subdural region. When the brain tissue was taken out a round, fragmented hole was observed on the internal surface of the underside of the left temporal bone. The brain tissue in that area had been damaged.

8. The abdomen was opened and it was observed that there was a high degree of hepatomegaly. Furthermore, a fragmented area was seen at the edge of the lower lobe of the liver. There was blood in the abdomen. The bullet shells were extracted from the lower side of the left breast.

9. The death was found to have resulted from bullets fired from a firearm, which had caused disintegration of the internal organs, internal bleeding and cerebral haemorrhage.

**(e) Plan of the neighbourhood and the sketch of the scene of the incident**

10. Together with a letter dated 26 July 1996, the Title and Land Registry Office sent the Nicosia Security Directorate a plan of the neighbourhood, where Kutlu Adalı had been shot dead.

11. A sketch of the scene of the incident was drawn up indicating the direction of the shots, the position of the corpse and the location of the shells.

**(f) The investigating officer's report dated 16 July 1996**

12. This report was drafted and signed by Mr Ahmet Soyalan. According to the report, on 6 July 1996 an unidentified person called the Nicosia Directorate of Police and reported that there had been a murder. Assistant Inspector R. Öztümen, after examining the area, established the identity of the deceased as Kutlu Adalı. On 7 July 1996 Dr Fazilet Öztürk examined the corpse at the scene of the incident and established that Mr Adalı had died as a result of two bullet wounds sustained to the left temple and the left shoulder.

13. On the same day, Mr Öztümen arranged for photographs to be taken of the scene of the incident, prepared a sketch of the scene of incidents, took possession of the evidence and arranged for the body to be moved to the morgue. The evidence included blue coloured shorts, a striped T-shirt, a pair of slippers and a pair of glasses belonging to the deceased. The report further stated that on 7 July 1996 an autopsy had been carried out which had indicated that the applicant had died as a result of disintegration of the internal organs, internal bleeding and cerebral haemorrhage. Mr Soyalan noted that two 9-mm bullet shells had been extracted from the corpse and taken as evidence. He also noted that the investigation was continuing.

**(g) Assistant Inspector Muharrem Göç's statement of 24 July 1997**

14. Mr Göç, who was an assistant inspector working in the political department of the Directorate of Police, stated that on 6 July 1996 at 7 p.m. he had seen the Deputy Chief of Police, Mustafa Asilhan, and another man whose name he knew to be Hüseyin in a café and he had sat with them until 9 p.m. He stated that he had made his excuses and left as he had been on duty. He went off duty at 11 p.m. and did not know what time Mr Asilhan and Hüseyin had left the café.

**(h) Statement by Mr Enver Kuyucuoğlu dated 25 July 1996**

15. Mr Kuyucuoğlu, who was an expert working at the Photographic Fingerprinting Department in the General Directorate of Police, stated that on 6 July 1996 at 11.50 p.m. he took photographs for the investigation into the killing of Kutlu Adalı. He also had taken pre-autopsy photographs at 7.45 a.m. on 7 July 1996. He stated that after placing the films in a bath, he had developed the pictures from the photographic negatives, put the photographs in an album and added an explanatory index. He noted that the relevant negatives were held in the archives of the General Directorate of Police.

**(i) The forensic expert's report dated 6 August 1996**

16. The forensic expert, Mr Abdullah Iraz, examined the 14 used cartridges and stated that they were 9-mm Parabellum-type cartridges and had been fired from a single gun at a close range. It was further observed that the two bullet shells removed from the corpse had also been fired from a single gun. It was noted in the report that the cartridges and the bullet shells did not match any other cartridges or bullet shells found within the territory of the "TRNC" or recorded in the files on murders by unknown assailants.

**(j) Letter from the "TRNC" President Denктаş to the Head of the Nicosia General Directorate of Police dated 26 August 1996**

17. Mr Denктаş requested the Head of the Nicosia Directorate of Police, Mr Atilla Sav, to take statements from Mr Adalı's wife and children in order to ascertain whether Mr Adalı had been requested to testify before the European Court of Human Rights. He stated that there had been an allegation in a newspaper called *Ortam* that Mr Adalı would testify before the Court. In this connection, Mr Denктаş contended that Mr Adalı might have been killed by those who knew that he would not say anything of any value and who wanted to strengthen the argument that he was a key witness.

**(k) Report dated 23 September 1996 about the analysis of Mr Adalı's clothes**

18. This report was signed by the head of the State Laboratory, Ms Hatice Kale. It stated that the blood stains found on both the blue shorts and the T-shirt came from human blood of group “A”.

**(l) Police Inspector Refik Öztümen's report dated 4 October 1996**

19. After restating the facts set out in the report of 7 July 1996 and the findings of the autopsy report, Mr Öztümen noted that thirty-five statements had been taken from the residents of the neighbourhood. Following the taking of the statements from the residents, it was established that the assailants had used a vehicle of an unknown make and registration and that they had entered a oneway street, Akasya Street and had driven into Ardıç Street, from where they had entered Şehit Ecvet Yusuf Street; all traces had been lost after they had exited that street.

20. The report further reiterated the statements taken from the applicant and her children on 7 July 1996. It noted that an investigation had been conducted into the applicant's allegations and that at the time of the murder the street lights at the scene of the incident and in the vicinity had been switched off. Following the enquiries made by Mr Ali Horoz, an equipment engineer at the Turkish Cyprus Electricity Company, it was established that the street lights at the site of the incident and in the nearby Akasya, Akalan, Bağarası, Söğüt and Altınova Streets were connected to the “Sıdika Çatozlu” power box and not to the Civil Defence Organisation power supply as alleged by the applicant. It appeared from the statements of the residents in the area that there had been no power cut on the night of Mr Adalı's murder and that even if, as alleged by the applicant, the power supply in the courtyard of the Civil Defence Headquarters had been interfered with in order to affect the street lamps, it would not have been possible to switch off the street lights at the scene of the incident or in the streets in the vicinity.

**(m) Petition dated 15 October 1996 by the applicant to the Telecommunications Directorate and the note by the Deputy Director**

21. The applicant requested the Directorate to provide a breakdown of her telephone conversations as she thought that her conversations had been tapped. She further requested that she be allotted another phone number and that a monitoring device be set up on her line.

22. Further to the applicant's petition, the Deputy Director requested the Head of the Nicosia Regional Office to comply with the applicant's requests in so far as the technical facilities allowed and to inform her accordingly.

**(n) Letter dated 18 November 1996 from Mr Cahit Hüray to the Nicosia Telecommunications Directorate**

23. Mr Cahit Hüray informed the Telephone Directorate that his domestic telephone line had been cut off as his number had been traced after a call had been made from his number to the applicant's telephone number. He submitted that he had never dialled the applicant's number. Mr Hüray requested an inquiry to be carried out into this incident.

**(o) Malicious call report of 11 December 1996 by the Telecommunications Directorate**

24. On 11 December 1996 a malicious phone call received on the applicant's phone was traced.

**(p) The investigating officer Ahmet Soyalan's report of 4 March 1998**

25. Mr Soyalan, after having stated the facts of the case and summarised witness statements, concluded that the investigation had not produced any findings which could enable the security forces to identify the assailant(s). He therefore proposed to classify the case under the heading “Unsolved”.

**(q) Statement by Ahmet Soyalan dated 4 March 1998**

26. Mr Ahmet Soyalan, after having carried out an investigation into the murder of Mr Kutlu Adalı, concluded that it had not been possible to identify the murderer(s) and that he was therefore unable to reach a positive result in the investigation.

**(r) Statements by Refik Öztümen dated 4 March 1998**

27. Mr Refik Öztümen stated that, on 6 July 1996 at 11.40 p.m., he had received a phone call and that he had gone to the scene of the incident. He identified the deceased as Mr Kutlu Adalı and, following an initial examination, observed that he had died as a result of bullet wounds sustained to the left temple and left shoulder. He then found fourteen empty 9-mm empty cartridges and indicated the position of the body and the cartridges to be taken by drawing a sketch of the scene. He also arranged for photographs by Mr Enver Kuyucuoğlu and for the initial examination of the corpse to be carried out by Dr Fezile Öztürk. He checked the deceased's house and secured it.

28. Following enquiries made by the police among several residents, he established the unidentified feature of the assailants' vehicle and the direction in which the assailant(s) had gone after shooting the deceased. The next day Mr Refik Öztümen obtained an autopsy order. After the autopsy he took the bullet shells extracted from the deceased's body and the deceased's clothing and a pair of glasses as evidence. He gave some of the evidence to the forensic expert, Abdullah Iraz, for examination. He returned the rest of the evidence to Mr Ahmet Soyalan, the inspector who had conducted the

investigation. On 11 July 1996 he went to the scene of the incident with Mr Ahmet Soyalan and İlksen Ökter, an officer from the Land Registry office, and organised the preparation of a scale drawing of the scene of the incident.

**(s) Letter dated 31 July 1998 from the Head of the Nicosia Directorate of Police to the coroner**

29. The Head of the Nicosia Directorate of Police sent a letter to the coroner stating that Mr Kutlu Adalı had died after being shot, resulting in the disintegration of his internal organs, internal bleeding and cerebral haemorrhage. He also attached the report of the investigating officer, Mr Ahmet Soyalan, to his letter.

**(t) Record of the interview of Mr Ahmet Soyalan, dated 5 November 1998**

30. When questioned by Judge Emine Dizdarlı, Mr Ahmet Soyalan repeated the facts and the findings concerning the murder of Mr Kutlu Adalı which he had already stated in his reports dated 16 July 1996 and 4 March 1998.

**(u) Coroner's decision dated 11 December 1998 to conclude the inquiry into the murder of Mr Kutlu Adalı**

31. Judge Emine Dizdarlı decided to conclude the judicial inquiry in to the death in accordance with Sections 26 and 27 of the Death Inquiry Judges Act and ordered that a copy of the report on the inquiry procedure be sent to the Nicosia Directorate of Police.

**(v) Undated letter from Mr Erhan Arıklı to Mr Kutlu Adalı**

32. Mr Erhan Arıklı wrote a letter to Mr Kutlu Adalı on behalf of the Nationalist Thought Association, criticising his views as expressed in one of his articles published in the *Yenidüzen* newspaper on 27 June 1990. He particularly disapproved of Mr Adalı's opinions in support of federalism in Cyprus.

**(w) Newspaper article by E. Arıklı, published in *Birlik* on 23 November 1995**

33. The article described the leftist ideology as a disease called “Red”, listed its symptoms and explained the treatment of the disease in a pejorative style.

**(x) Newspaper article published in *Milliyet* on 18 July 1996**

34. The article contained an interview with the applicant and her children, who stated that Mr Kutlu Adalı had probably been murdered by more than one person whom he had known.

(y) **List of photographs**

35. The document contained the list of photographs of the deceased, Mr Kutlu Adalı, taken at the scene of the incident.

(z) **Petition signed by the residents of the Kızılay neighbourhood, including Mr Kutlu Adalı, and addressed to the mayor of Lefkoşa (Nicosia)**

36. The residents of the Kızılay neighbourhood, including Mr Kutlu Adalı, requested the mayor of Nicosia not to grant a licence for the establishment of a nightclub in their area.

2. *Witness statements in the investigation file*

(a) **Ms İlkay Adalı's statements of 7 July 1996, 27 July 1996, 4 October 1996 and 6 January 1997**

37. In her statement of 7 July 1996, the applicant contended that her husband had probably been killed as a consequence of his articles in the *Yenidüzen* newspaper. She stated that her husband had written articles for *Yenidüzen* newspaper and that he had mostly worked at home. He used to take their dogs out at night. She further stated that her husband had started receiving threatening letters and phone calls after he had written an article concerning the St Barnabas incident, and that he had not taken any precautions. The applicant told the investigating officer that she had been in Turkey when her husband had been killed and that she had talked to him on the phone at 11.15 p.m. on 6 July 1996. She said that she would furnish the threatening letters to the police.

38. On 27 July 1996 the applicant made an additional statement and submitted that she had received a phone call from an unidentified caller who had told her that he knew the assailants.

39. On 4 October 1996 the applicant gave a further statement. She submitted that Mr Kutlu Adalı had never been invited to be a witness before the European Court of Human Rights.

40. On 6 January 1997 the applicant gave the letter written by Mr Erhan Arıklı, the head of the Nationalist Thought Association, to the police.

(b) **Statements dated 7 July 1996 and 27 July 1996 by the applicant's daughter, sister and son**

41. On 7 July 1996 Ms Kut Adalı, the applicant's daughter, stated that Mr Adalı had received threatening calls and that he had repeatedly said that he had been threatened on account of his articles published in *Yenidüzen*. She testified that she had talked to her father at around 11 p.m. on 6 July 1996 and that he had not mentioned anything unusual during a phone call.

42. On the same day Ms Gültekin Karsu, the applicant's sister stated that she had been taken to Nicosia State Hospital and testified that the corpse shown to her was the corpse of her brother-in-law, Mr Kutlu Adalı.

43. On 27 July 1996 Mr Er Adalı stated that, on that day at 2.25 a.m., he had received a phone call from an unidentified caller who wanted to inform his mother about the identity of the murderers of Mr Kutlu Adalı. He submitted that the person on the phone had refused to talk to him and had asked for assurances that he would not tape the conversation. The unidentified caller told him that he did not trust the police.

**(c) Cahit Hüray's statement dated 12 December 1996**

44. Mr Cahit Hüray, the subscriber to the phone line from which a malicious call was allegedly made to the applicant's house, contended before the investigating officer that he had submitted petitions to the Telephone Directorate stating that he had never dialled the applicant's phone number and that someone could have intercepted the line using a radio since he had a cordless phone.

**(d) Statements dated 28 July 1996, 31 July 1996 and 3 August 1996 by Bora Baykara, Erinç Aydınova and Hüseyin Tekçe**

45. Mr Bora Baykara, one of the first persons to find the corpse of Mr Kutlu Adalı, submitted that he had been together with two friends of his, Mr Hüseyin Tekçe and Mr Erinç Aydınova, when they had seen the corpse in Ardiç Street. The body was under the street light. They did not see anyone in the area when they arrived at the scene of the incident. He stated that he had looked at his watch when they had seen the corpse and the time had been 11.34 p.m. He finally submitted that the electric lights on the lamp posts had been switched on.

46. Mr Erinç Aydınova contended that when they found the corpse he had not seen any cars in the one-way street. He further submitted that he had looked around and seen Ali Rıza Kırçay. When Mr Aydınova shouted that someone had been shot, Mr Kırçay came over and told him that the corpse was that of Mr Kutlu Adalı. Afterwards, an architect living in Ardiç Street came out of his house and when he was told to call the police, he said that he had already done so. The witness finally stated that he had only seen persons from the Özkonanlar Table Tennis Training Centre in front of the center's building in Akasya Street.

47. Mr Hüseyin Tekçe stated that he had been with two of his friends when they saw the corpse in Ardiç Street. One of his friends, Mr Erinç Aydınova, left to fetch Mr Ali Rıza Kırçay. Mr Hüseyin Tekçe and Mr Bora Baykara went to a house which was diagonally across from the scene of the incident and asked the girl in the house, whose name was Özlem, to call the police. She told them that she was already aware of the incident and had called the police. He submitted that he had not seen any vehicle attempting to get away from the area.

**(e) Statement dated 22 November 1996 by İrfan Özakalın**

48. Mr İrfan Özakalın is the Head of the Technical Section of the Telecommunications Directorate. He submitted that after receiving a complaint from the applicant, the Telecommunications Directorate had started monitoring her line.

49. On 12 November 1996 a call was received from the telephone number 2271851. The authorities found out that the number belonged to Mr Cahit Hüray, whose telephone line was then cut off. Following a request made by a Ms Berna Konuksever, the telephone was reconnected on payment of a certain amount of money. Mr Cahit Hüray lodged a complaint to the Telecommunications Directorate on 18 November 1996 stating that he had never dialled the applicant's number. Mr Hüray requested an inquiry to be carried out into this incident. Mr İrfan Özakalın lastly maintained that a technical investigation was continuing at the time of his testimony.

**(f) Statement by Ali Tekman dated 18 July 1996**

50. Mr Ali Tekman, who was a columnist using the pen-name “Timur Ali”, stated that his pen-name had been mentioned in an article published in *Milliyet*, which had referred to him as a member of the Nationalist Thought Association. The article referred to another article containing statements such as “Kutlu Adalı must be destroyed like a dog by the council”, which had appeared in the newspaper *Birlik* and had allegedly been made by Timur Ali. Mr Tekman submitted that he had never written such an article and that he had actually never written anything for *Birlik*.

**(g) Statements by Kutlu Adalı's friends and colleagues**

51. On 8 July 1996 Mr Erdoğan Volkan, a friend of Mr Kutlu Adalı, testified. He stated that Mr Adalı had been a dear friend and that they had never talked about politics. He submitted that he had seen Mr Adalı on 4 July 1996. They did not talk about politics. He went to the seaside on 5 July 1996 and learned that Mr Adalı had been murdered on the evening of 7 July 1996, following his return to Nicosia. The witness submitted that he did not know who had killed Mr Adalı. Mr Adalı had never talked to him concerning the threatening phone calls. He added that he went to the seaside every week and that the applicant, Ms İlkay Adalı had never talked to him about her husband's problems.

52. Mr Soner Ergin, a friend and a colleague of Mr Kutlu Adalı, who was a journalist working for the *Yeniçağ* newspaper, made a statement on 10 July 1996. He stated that he had visited Mr Kutlu Adalı once or twice a week at his house. He submitted that Mr Kutlu Adalı did not go out alone. Mr Kutlu Adalı used to take his dogs out at night. Mr Soner Ergin stated that he had never seen him out alone. Mr Adalı had told the witness that he had been threatened on the telephone and that members of his family had



been insulted. Mr Adalı further told the witness that he had started receiving the telephone calls after he had written articles about the St Barnabas incident. On 3 July 1996 he visited Mr Kutlu Adalı at around 9.30 p.m. and they talked about politics. The witness contended that Mr Adalı had not spoken about the threatening calls at their last meeting. Mr Soner Ergin lastly submitted that he had not been in Nicosia on 6 July 1996 and that he had learned about the murder on 7 July 1996 from Mr Alpay Durduran on his return to Nicosia.

53. On 10 July 1996 Mr Ahmet Cavit An, who was a close friend of Mr Kutlu Adalı, testified. He said that Mr Kutlu Adalı had told him that he had been receiving threatening calls and that the calls had started after he had written about the St Barnabas incident. However, he did not mention the name of anyone who was threatening him. Mr Ahmet Cavit An spoke to Mr Kutlu Adalı at 12.30 p.m on the day of his killing. Mr Kutlu Adalı's wife and daughter were in Turkey. Mr Kutlu Adalı told the witness that he was about to go out and that they would talk on Monday. Mr Ahmet Cavit An learned about the murder on 7 July 1996 on the radio. He submitted that Mr Adalı might have been killed by underground organisations. He further contended that the murder could have been politically motivated since the opinions of Mr Adalı had been disturbing for a group of people. He finally stated that Mr Adalı had asked the unidentified callers to disclose their identity but they had not done so. They had told Mr Kutlu Adalı that they were calling from Famagusta and Kyrenia.

54. On 13 July 1996 Mr Ahmet Cavit An made an additional statement. He submitted that he had made statements concerning undercover groups in his statement of 10 July 1996 and that he did not in fact know who these undercover groups were.

55. On 11 July 1996 Mr Altay Sayıl, another friend of Mr Kutlu Adalı, stated that he had been a friend of Mr Adalı for fifteen years and that they had never talked about politics. However, Mr Adalı had told the witness, two or three months prior to his death, that he had been threatened on the phone. The witness stated that he had gone to Mrs and Mr Adalı's house on 4 July 1996 to take a copy of a poem that Mrs İlkay Adalı would read on the same day on the occasion of the retired police officers' evening. Mr Sayıl submitted that Mrs and Mr Adalı had gone to the event that night. He stated that he had gone to Hamitköy for a wedding on 6 July 1996. He had learned that Mr Adalı had been shot dead at 1.30 a.m. on 7 July 1996. The witness stated that Mr Adalı had not talked about his problems and that in general had not gone out of his house.

56. On 13 July 1996 Celal Harun, a friend of the deceased, stated that he had known Mr Kutlu Adalı since his childhood. He submitted that Mr Adalı had never mentioned the threatening calls. He added that İlkay Adalı had told him once that they had been receiving silent calls. The witness saw Mr Adalı on 4 July 1996 when he and his wife went to see İlkay Adalı. They

did not enter Mr Adalı's house as it was 11.10 p.m. Celal Harun stated that he had gone to Hamitköy for a wedding on 6 July 1996. He had learned that Mr Adalı had been murdered on 7 July 1996 when he read the *Kıbrıs* newspaper. He stated that he did not know how and by whom Mr Adalı had been killed.

57. Hasan Kahvecioğlu, a colleague and friend of Mr Adalı, was the director of a company which published a newspaper called *Ortam*. On 14 July 1996 he stated that he had not met Mr Adalı very often in the last few years. He submitted that they had talked on 14 June 1996, when Mr Adalı had called him. Mr Adalı said that he wanted to write on specific issues and that he could not do so since the CTP was in power. Mr Adalı told Mr Kahvecioğlu that he wanted to give the witness some information and mentioned two mobile telephone numbers. The witness did not remember the numbers. Mr Adalı told the witness that these numbers had been given to the head of the Directorate of Police and the head of the Nicosia Directorate of Police by the mayor of Nicosia. He requested the witness to provide more information and write about the issue in the *Ortam* newspaper. After Mr Adalı had been murdered, the witness wrote in his column in *Ortam* that Mr Adalı had complained about the CTP and had told him that he had not been allowed to write on certain issues although he had been given information, and that Mr Kahvecioğlu should write on those issues. The witness submitted that Mr Adalı had not given any other information than the information outlined above and that he had not given him any documents.

58. On 17 July 1996 Hasan Kahvecioğlu made a further statement and said that he had found the telephone numbers. He submitted that Mr Adalı told him that the numbers were the numbers of mobile phones belonging to the Head of the Directorate of Police and to the Head of the Nicosia Directorate of Police. The mayor of Nicosia had given the mobiles to these persons as gifts. The witness stated that he had not had this information confirmed and that he had not given the names of these officials in his article published in *Ortam*, headlined “What Standard?”.

**(h) Statements dated 7, 8 and 13 July 1996 by 32 residents of the applicant's neighbourhood**

59. A number of residents in the neighbourhood where the applicant and Mr Kutlu Adalı lived gave evidence testified about the murder of Mr Adalı. Those who had been at their houses at the time of the incident stated that they had heard gunshots and then a car driving away speedily and that when they had looked out they had seen police and other residents of the neighbourhood.

60. Some witnesses submitted that they had first heard people arguing and then the gunshots. One of the witnesses, Emine Çağın, heard a quarrel. She submitted that someone had shouted “You have gone too far this time”

and that gunfire had then been heard. Some of the witnesses maintained that they had seen the car leaving after the sound of the gunshots. Other witnesses submitted that they had not seen the car but only the dust and earth it had left behind. None of the witnesses could specify the registration number of the car.

61. One of the witnesses, Mr Ali Rıza Kırçağ, contended that the car was a white one. He further submitted that his children had told him about a grey Ford Cortina which had passed by their street twice on 5 July 1996.

62. Four of the witnesses, Mr Ahmet Çağlan, Ms Özlem Özüner, Mr Erol Özüner and Ms Arzu Çağın, stated that the street lights had been on when they looked outside through their windows to see what had happened.

63. Some of the residents called the police after the incident. A number of residents maintained that they had not been in the neighbourhood at the time of the incident and that they had learned about the murder of Mr Adalı when they had returned to their homes.

64. Most of the witnesses stated that Kutlu Adalı used to take his dogs out every night between 11 and 11.30 p.m.

**(i) Statement by Birol Bebek dated 7 July 1996**

65. Mr Birol Bebek, a journalist working for the *Kıbrıs* newspaper, stated that on 7 July 1996 at 4.50 p.m. he had received a phone call from an unidentified caller. The person on the phone was a man who had said: “We killed Kutlu Adalı. The name of our organisation is 'Turkish Revenge Brigade'.”

66. Mr Bebek submitted that the person had a Turkish accent (with no trace of a Cypriot Turkish accent) and that his Turkish had been pure and correct. He had a deep and young voice. The witness guessed that he would have been around 25 -30 years old.

**(j) Statements by Hasan Türkmen dated 7 July 1996**

67. Mr Hasan Türkmen, an employee working for the *Kıbrıs* newspaper, was on duty as the switchboard operator on 7 July 1996. He stated that he had received a phone call at 4.40 p.m. from a man who had a Turkish accent and a deep voice. The caller asked Mr Türkmen to connect him to the news desk. Mr Türkmen asked the person to give his name twice. As the caller did not want to reveal his name, Mr Türkmen connected the line to the news desk. The witness submitted that he had later learned from Mr Birol Bebek who the caller was.

**(k) Statement by Hilmi Şen dated 1 November 1996**

68. Mr Hilmi Şen participated in a three-day mobilisation exercise within the military forces on 11, 12 and 13 October 1996. He was in Deneköyü, in Nicosia. He submitted that there had been a discussion about the murder of Mr Adalı and that he had stated what he had heard. He said that it was not certain whether Mr Adalı had been killed by the military, by the police or by terrorist groups. Someone among the crowd told Mr Şen that he was the nephew of Mr Adalı and asked him how he had heard about these rumours. Mr Şen told him that everybody was talking about it. The witness stated before the investigating officer that he did not know anything about the murder of Mr Kutlu Adalı.

**(l) Statement by Hüseyin Demirci dated 11 July 1996**

69. Mr Hüseyin Demirci, who was the head of the “İnönü National Culture and Solidarity Association” and whose name appeared in the investigation file as a result of a tip-off, stated that he had no connection whatsoever with the murder of Mr Adalı. He stated that he was a patriot and that he had sometimes led villagers in actions on the border with Greece. He submitted that this might have been a reason why his name had been given in connection with the murder of Kutlu Adalı. He finally added that in 1994 he had formed a scout group in their association, and that a comment article had appeared in *Yenidüzen* on the subject, headlined “Is this a military activity?”.

**(m) Statement by Celal Akıcı dated 12 July 1996**

70. Mr Celal Akıcı worked in the Merih Patisserie. He stated that on 6 July 1996 he had worked in the shop alone. At around 9.30 p.m. a woman and a man came to the shop. He guessed that they were a couple. They drank beer and left the shop at around 10.30 p.m. The witness did not remember exactly when they had left the shop. He could not remember their features as it had been the first and the only time that he saw them.

**(n) Statements by Ahmet Özipek dated 12 July 1996**

71. The witness stated that Mr Soner Ergin, who worked for the *Yeniçağ* newspaper, was the uncle of his son-in-law. He submitted that on 6 July 1996 his daughter's wedding had taken place. He stated that Mr Soner Ergin had been with him and had not left their village between 6 p.m. and 2.30 a.m. on 7 July 1996.

**(o) Statements by Harbil Doğan dated 13 July 1996**

72. Mr Doğan, the owner of the Merih Patisserie, went to his shop between 10.30 p.m. and 11.30 p.m. on 6 July 1996. He did not remember the exact time. He stated that he had seen a retired policeman whose first

name was Altay and a woman sitting in the shop. After midnight, when he returned to his shop, the man and the woman had left. He did not remember exactly when he had gone back to the shop.

**(p) Statements by Mehmet Özdağ dated 11 July 1996**

73. Mr Mehmet Özdağ stated that he had been a student of Mr Turgut Yaran at the high school. He said that he had seen Mr Yaran on 7 July 1996 at around 11 a.m. at Kocareis beach, in Famagusta. He stated that when he had told Mr Yaran that Mr Adalı had been murdered, Mr Yaran had left the beach. Mr Mehmet Özdağ finally submitted that he had seen Mr Yaran at the same beach a week before this statement.

**(q) Statements by Erol Ergün dated 15 July 1996**

74. Mr Erol Ergün stated that Mr Ahmet Elbasan was his friend and that he had heard that Mr Aydın Pabuçcu was to open a nightclub called Flamingo in the village of Demirkan and that Mr Elbasan would help him financially. He did not know whether the nightclub had in fact been opened. Mr Ergün stated that a week before he gave his statement, he had gone to Nicosia State Hospital to visit Mr Nihat Korkulu with Mr Elbasan. Mr Korkulu was in intensive care and they were not allowed to see him. They then went to Karaoğlanoğlu to see a friend of Mr Elbasan, Hamit. Mr Elbasan and Hamit talked about a purchase of about 40,000 United States dollars. Afterwards, Mr Elbasan and the witness went to Kyrenia, to the butcher's shop run by Mr Ahmet Fuat. They then went to Nicosia and Famagusta. The witness stated that he had never gone to the nightclub in the village of Demirkan and that he had never had a long conversation with Mr Fuat and Mr Elbasan.

**(r) Statements by Ahmet Fuat dated 15 July 1996**

75. Mr Ahmet Fuat stated that he was a butcher. He said that Mr Ahmet Elbasan and Mr Erol Ergün, whom he did not know, had visited him in his shop. He did not remember the date of the visit. He did not know anyone called Aydın Pabuçcu and he had never been to a nightclub with Mr Elbasan or Mr Ergün.

**(s) Statements by Ahmet Elbasan dated 15 July 1996**

76. Mr Ahmet Elbasan stated that he had gone to Mr Ahmet Fuat's shop with Mr Erol Ergün following an appointment they had made with Mr Fuat on the phone in order to receive a cheque. He submitted that after they had left the butcher's shop, they had gone to Famagusta. He stated that since then he had not been to Nicosia. He further contended that he had not been to the Flamingo nightclub with Mr Ahmet Fuat and Mr Erol Ergün the

week before he testified and that he had never gone anywhere with these two people. He stated that he had never gone to any nightclub.

**(t) Record of the Interview of Arzu Çağın by the public prosecutor, dated 20 October 1998**

77. Ms Arzu Çağın stated that on the night of 6 July 1996 she had been talking on the telephone. She looked out and saw the same car passing by twice. She realised that the car had not had a number plate. In fact, there was a lamp where the plate was supposed to be. She then heard a quarrel and two gunshots. She looked out but could not see anything. She submitted that she had heard only male voices. The car went towards the one-way street. She went to the living room where her sister was. They saw young boys from the neighbourhood on the street. Ms Çağın stated that she had called the police and then gone out. She submitted that the car had been dark maroon. She lastly stated that it could have been a Şahin brand car as it had round lights.

**(u) Record of the Interview of Bora Baykara by the public prosecutor, dated 20 October 1998**

78. Mr Bora Baykara submitted that on 6 July 1996 he had been with his friends and that they had heard gunshots at 11.26 p.m. He testified that there had been a man covered in blood on the street. He stated that a vehicle had passed by them speedily. He could not see whether it was a car.

**(v) Record of the Interview of Ali Rıza Kırçay by the public prosecutor, dated 20 October 1998**

79. Mr Ali Rıza Kırçay stated that on 6 July 1996 he had heard two gunshots and that he had seen a dark coloured vehicle passing by. He then called the police. When he realised that he had called the fire brigade by mistake, he called his neighbour and found that the line was busy. He stated that he had run to the scene of the incident. In three minutes the police arrived. He submitted that he had heard someone shouting “don't” and then the gunshots. He finally testified that he did not know the number of people.

**(w) Record of the Interview of Özlem Özünler by the public prosecutor, dated 9 December 1998**

80. Ms Özlem Özünler stated that on 6 July 1996 a car had passed by their house twice. When it came in front of their house for the second time, she heard shouting and then two gunshots. When she went out, she saw a man lying on the street. She later learned that that person was Mr Kutlu Adalı.

*3. Documents and witness statements in the supplementary investigation file*

**(a) Chief Inspector Ahmet Soyalan's report dated 31 October 2002 and the work schedule**

81. According to the report prepared by the Chief Inspector, Mr Ahmet Soyalan, on 16 October 2002 the “TRNC” Legal Directorate requested him to carry out an additional investigation in respect of the allegations put forward by Mrs İlkey Adalı before the European Court of Human Rights. Mr Ahmet Soyalan concluded, after investigating the allegations by Mrs Kutlu Adalı, that her allegations were unfounded. In this connection he made the following remarks.

82. According to the records of the immigration department of the Police General Directorate, Begum Shadia Jamal Khan and Farhat Jamal Khan left the “TRNC” on 18 May 1998. They had been residing at 31 Ardiç Street in Kızılay at the time of the murder of Mr Kutlu Adalı. The police visited their house on the night of the murder and the following day. They could not be found and statements could not be taken from them. Furthermore, Mrs İlkey Adalı had neither furnished any information to the police that these persons had had knowledge of the incident nor requested the police to take their statements.

83. Chief Inspector Eybil Efendi, the team leader of the police rapid response unit, went to the incident location very quickly since he and his team were mobile in a vehicle in the area as part of their duties.

84. The incident investigation officer Mr Ahmet Soyalan established that no person bearing the name Mehmet Özbay or Abdullah Çatlı had been in the “TRNC” on 6 July 1996. He further established that there was no organisation called “Turkish Revenge Brigade” (*Türk İntikam Tugayı*) in the “TRNC”.

85. Mrs Adalı never requested the police to provide her with the autopsy and the ballistics reports concerning the murder of Kutlu Adalı.

86. Şahin and Murat make cars are produced in Turkey and imported to the “TRNC” by Levent Oto Ticaret Ltd. These two makes are completely different externally. The body of the Murat is shorter than the body of the Şahin.

87. It was established that Mr Orhan Ceylan had no connection with the incident and consequently, no statement was taken from him. Statements were taken from him at a later stage. He retired from the Turkish armed forces on 25 September 1995 when he was a colonel. He consulted Mr Hüseyin Demirci and his lawyers in order to file a case against *Hürriyet* and *Aktüel*.

88. Mrs İlkey Adalı did not make a statement that she wanted to file a complaint against Mr Demirci and Mr Ceylan. The allegation that

Mr Demirci was a suspect was made by a woman who called the head of the Nicosia Judicial Branch, Mr Özkum. She did not reveal her identity.

After assessing this information, the Judicial Police Director, Mr Mehmet Özdamar, took statements from Mr Demirci. Mr Özdamar stated that the information had been relayed to Mr Özkum. An investigation was carried out by the “TRNC” Telecommunications Department. It was established that the system did not allow the identity of a caller to be ascertained unless prior notice had been given. Nevertheless, Mrs Adalı made a request for her calls to be monitored and her request was fulfilled. It was further established that Mr Hüseyin Demirci had never been suspected of a murder. Furthermore, the allegation that Mr Demirci fired a weapon in Nicosia State Hospital was inaccurate.

89. It was established that the telephone number 0392 727 7806 was the number of a public phone in the city of Lefke.

90. Mr Musa Öneral, who was helping Mrs Adalı to repair her house, stated that on 5 September 2002 at around 9.30 p.m. he had heard the sound of leaking water coming from the water tank in Mrs Adalı's garden and had gone into the garden. It was established that Mrs Adalı had seen him whilst leaving the garden. Mrs İlkay Adalı made a statement concerning this incident without filing a complaint against Mr Öneral.

91. Mrs İlkay Adalı found the corpse of her dog, Tin Tin, in a vacant plot in her neighbourhood at around 9 a.m. on 6 September 2002. The dog had been out between 6 a.m. and 9 a.m. The autopsy established that the dog's right rear leg and right ribs had been broken and that an excessive haemorrhage had been caused by trauma. The cause of death was established as haemorrhage due to trauma. Dr Mehmet İsfendiyaroğlu, the veterinary surgeon, maintained that he could not indicate the cause of the trauma from a medical point of view. He was therefore unable to determine whether the dog's death had been caused by torture or a car accident.

92. Mr Kutlu Adalı was not a member of the Civil Defence Organisation. He was conscripted as a member of the Civil Defence Service in accordance with the Civil Defence Act (no. 3/1972). He was discharged from the service on 1 January 1995.

93. Refik Öztümen was not a relative of Güler Özgencil, contrary to Mrs Adalı's claim. When he was the chief of the Yenişehir police station and subsequently the head of the Judicial Branch of the Nicosia Directorate of Police he met Mrs Adalı several times in connection with the murder of Mr Kutlu Adalı. Mr Öztümen did not use an intermediary to have these meetings. The requests for the interviews were made by Mrs Adalı. While Mr Öztümen was the chief of the Yenişehir police station the investigating officer was Mr Ahmet Soyalan, who was responsible for monitoring the case-file. The claim concerning the closure of the case-file was a deliberate lie put forward by Mrs İlkay Adalı. A case file on a murder could not be



closed unless the perpetrator of the offence had been identified and prosecuted. The case file was still open.

94. On the day of the incident the police officers entered Mr Kutlu Adalı's house through the open door with the elected executive officer (*muhtarı*) of the Kızılay neighbourhood, in order to establish whether there was any evidence concerning the murder and whether the belongings of the Adalı family had been damaged. The belongings of the family were definitely not moved elsewhere and the police officers inspected the house as part of their duties.

95. Mr Ziya Kasaboğlu was born in İnönü and moved to Nicosia when his parents died. He was brought up by his brother and married in Nicosia. Mr Kasaboğlu did not retire from the police force, but from the security forces command. On the night of the incident he was in the snack shop which belonged to his wife, located in Şehit Ecvet Yusuf Street. It was established that, at around 11 p.m., Kutlu Adalı went to the snack shop and bought some snacks. After Mr Kasaboğlu closed the shop he went to the house of his mother-in-law at number 5 Akalan Street. While he was passing by Mr Kutlu Adalı's neighbourhood he saw a crowd and learned that Mr Adalı had been killed. It was further established that on the night of the incident Mr Kasaboğlu did not phone anybody from Kutlu Adalı's family, that he did not know any members of his family and that he did not call the police command. Finally, Mrs İlkey Adalı did not call him to propose a meeting.

96. Altay Sayıl attended the funeral of Kutlu Adalı. Mr Sayıl and his wife also attended a religious ceremony at the Adalı family's house. Mr Sayıl stated that on 9 or 10 July 1996 he had gone to İlkey Adalı's house at her invitation in order to pay his condolences, that he had stayed there for around 25 minutes, and that on his arrival the dog had barked once or twice as usual. He stated that a few days after his visit an article had been published in one of the Turkish newspapers, in which Mrs Adalı had suggested that he had taken Mr Adalı out of his house on the night of the incident. Mr Sayıl denied Mrs Adalı's allegation. He maintained that he had been saddened by the allegation and that he had never called her again.

97. Mr Alp Aydınova worked at the post office as the director. Following the complaints made by Mrs Adalı that her letters had been opened and that they had not been put in the mailbox but had been pushed under the door, he called the postman working in her area and inquired into the complaints. It was understood that the letters to Mrs Adalı had been delivered without any delay and that despite the dog being at home, the letters had been pushed under the door in order to keep them safe as the mailbox in front of the house did not have a lock mechanism. It was further established that on 16 May 2002 a letter had been sent from London to the applicant with a postcode for Nicosia, Cyprus, instead of Mersin, Turkey. Consequently, the letter was directed to the Greek Cypriot section and was

eventually sent to the “TRNC” post office by the Greek Cypriot post office. Upon the examination of the letter, it was observed that it had not been subjected to the normal mailing procedure as it had not been totally moisturised. After receiving the letter on 24 May 2002, Mr Aydınova went to the house of Mrs Adalı to show her the state of the letter and to answer her questions promptly.

98. The following account was given by Mr Hüseyin Demirci. On 6 July 1996 Mr Demirci had dinner with Mustafa Asilhan, the second deputy to the chief of police and after the dinner he took Mr Asilhan to his house in his car, a Fiat 132 with the registration number DK 598. He then went to his house in Nicosia. Mr Demirci denied having ever killed anybody in his life and had never been accused of murder before a court despite the allegations. His sky-blue-coloured Fiat 132 had never been painted black. He had not lent his car to anyone. Mr Demirci met Mr Sayıl at the Dr Fazıl Küçük Museum after the murder of Mr Adalı. Mr Demirci was one of the founders of the Nationalist Justice Party (*Milliyetçi Adalet Partisi*) and was a nationalist. He was not a member of the Civil Defence Organisation, but had been enlisted for duty in the Civil Defence Service on 1 January 2002 in accordance with the Civil Defence Act (no. 3/1972). Mr Demirci wore trousers which looked like a military uniform. He had bought them at the marketplace and used them when he did construction work on his house. He denied the claim that he had given military training in the village of İnönü where he resided. He was aware of the fact that he would be prosecuted if he had given military training. Mr Demirci did not receive any monthly salary from the State. He called Mrs Adalı three or four months after the murder of Mr Adalı as he had been informed by the police that she wanted to meet him at the police station. He talked to her for around twenty five minutes. Mrs Adalı asked him whether he had any connection with the murder. He told Mrs Adalı that he had not known Mr Adalı and that at the time of the incident he had been in his house in İnönü. Mrs Adalı alleged that he had raised the walls of his garden to forty feet and that he could not go out of his house through fear. Mr Demirci told Mrs Adalı that she could record his house with a video camera so that she would believe him. He further stated that he had not lied on the telephone about being tried and convicted of murder. His car had not been set on fire and had not been painted any colour other than blue. He denied the allegations that he had health problems, that he had opened fire in Nicosia State Hospital, that he had been sent to Ankara for treatment and that he had been questioned by a commanding officer in connection with these lies.

99. It was established that Mr Demirci's vehicle with the registration no. DK 598 was blue and a photograph of the vehicle had been taken. Mr Erdoğan Serdenak examined the vehicle and established that only the corroded parts had been painted blue and that the vehicle had never been painted black.

100. A plastic surgery examination was carried out by Dr Adem Ademoğulları, who concluded that there was no trace of burns on Mr Demirci's body. Furthermore, there was no record at Nicosia State Hospital indicating that Mr Demirci had opened fire in the hospital. He had not been sent abroad for medical treatment since 1996. He had not been admitted to any hospital as a result of injuries caused by burning.

101. It was further established that Mr Demirci did not receive any monthly salary from the State, that he had owned a Fiat 132 make blue vehicle with the registration number DK 598 since 12 February 1996 and that he had not owned any other vehicle.

102. On an unspecified date Mustafa Asilhan invited Mr Hüseyin Demirci to his daughter's wedding, which was held on 5 July 1996. On the same day, Mr Demirci invited Mr Asilhan to dinner. On 6 July 1996 Mr Demirci went to Nicosia and called Mr Asilhan between 6.30 and 7 p.m. They had dinner in the restaurant belonging to the Gemikonağı Municipality. During the dinner, Mr Muharrem Göç was also with them until 9 p.m. After he had left, Mr Demirci and Mr Asilhan continued their meal and after having spent 3-4 hours in the restaurant they left and went to Nicosia. Mr Demirci took Mr Asilhan to his house. On the same evening, Mr Asilhan learned that Mr Adalı had been killed. He then went to the police to receive detailed information concerning the murder.

103. In August 2001 Mrs İlkey Adalı visited the Presidential Press Adviser, Mr Orbay Deliceirmak, and asked whether the President wished to buy copies of the CD named "Sounds of your footsteps on the stairs". Mr Deliceirmak took a sample copy of the CD to the President after the applicant had left his office. The President gave Mr Deliceirmak authority to buy a number of copies of the CD. After a while Mrs Adalı and her daughter went to Mr Deliceirmak's office. He told them that the President wanted to buy copies of the CD for the sum of TRL 200,000,000 and received ten copies. It was established that Mr Deliceirmak took Mrs Adalı to the office of Mr Tansel Çağış, the "TRNC" Presidential Director and Chief Treasurer, and returned to his office. It was further established that the allegations that the President had wished to see Mrs Adalı in order to talk about her application before the European Court of Human Rights and that Mr Deliceirmak had taken Mrs Adalı and her daughter to the President's office were not accurate.

104. In August 2001 Mr Deliceirmak went to the office of Mr Çağış with Mrs Adalı. He told Mr Çağış that, with the President's approval, he would buy ten copies of the CD entitled "Sounds of your footsteps on the stairs". Mr Deliceirmak instructed Mr Çağış to start the procedure for payment. Mrs Adalı was requested to come back later to collect the money. At a later stage Mrs Adalı received TRL 210,000,000. Mr Çağış did not take Mrs Adalı to his office or tell her that unless she withdrew her application to the Court she would be apprehended by the police. Furthermore, it was

established that Mr Çağış was not a relative of the chief of police, Mr Erdem Demirbağ.

105. Mrs Adalı claimed that she had been urged to withdraw her application to the European Court of Human Rights when she had been in the President's office. The investigation into this allegation revealed that there had not been any pressure on Mrs Adalı. On the contrary, she sent a petition to the President stating that in exchange for material benefits she might withdraw her application to the European Court of Human Rights. This letter demonstrated the fact that she had brought her application in order to receive material benefits but not to secure the rights of a deceased person.

106. It was established that the allegation that a statement had not been taken from Fatoş Efe, who resided in Akasya Street, was inaccurate as the real name of Fatoş Efe was Fatoş Yöney and a statement had been taken from her on 7 July 1996. Her husband, Mr Ali Yöney, was also at home at the relevant time and was asked to testify. It was deemed unnecessary to take a statement from Ayten Eruman since she resided in the same house as Mr Ali Yöney and Mrs Fatoş Yöney. Behiye Ahmet Kodal, who resided at 3 Akasya Street in Kızılay, left her house along with her grandson and her son as she was disturbed after hearing the gunshots. It was established that she had gone back to her house in the afternoon of 7 July 1996. No statement was taken from her at the time of the incident since she was not in her house. Her statement was taken at a later stage.

**(b) Letter from the chief public prosecutor of the “TRNC” to the Head of the Directorate of Police, dated 16 October 2002**

107. The chief public prosecutor requested Chief Inspector Ahmet Soyalan to contact Mr Zaim M. Necatigil and asked for a supplementary investigation to be conducted in the light of the allegations made before the European Court of Human Rights.

**(c) The records concerning the entry of Begum Shahida Jamal Khan, Farhat Jamal Khan and Mehmet Özbay to the “TRNC”**

108. The records show the dates of entry and departure of Begum Shahida Jamal Khan, Farhat Jamal Khan and Mehmet Özbay to and from the “TRNC”.

**(d) Letters dated 19 August 2001 and 25 October 2001 from the applicant to the President of the “TRNC”**

109. In her letter of 19 August 2001 the applicant requested the President, as the head of State, to provide employment for her two children Kut Adalı and Er Adalı, to award compensation to the Adalı family, to declare Kutlu Adalı a press martyr and to honour him, to allocate a building to the Kutlu Adalı Foundation and to help set up a library with the thirty-

five thousand books belonging to Kutlu Adalı. She undertook to withdraw her application immediately if her requests were fulfilled.

110. In her letter of 25 October 2001 the applicant requested the State to provide her and her daughter with air tickets to and from Istanbul to attend the TÜYAP Book Fair. Further to the applicant's request, the President asked the relevant authorities to supply an Istanbul-Ercan return ticket to the applicant.

**(e) Letter from the head of the Police Rapid Response Unit to the team commanders**

111. In a letter dated 12 February 1996 Mr Erdal Emanet, the head of the Police Rapid Response Unit, informed the commanders of the patrol teams about the new regulations concerning patrolling and the patrolling route.

**(f) Letter from the investigating officer to Nicosia State Hospital and note from Dr Adem Ademoğulları dated 23 October 2002**

112. On 23 October 2002 Mr Ahmet Soyalan, the investigating officer, requested the hospital authorities to conduct a medical examination on Mr Hüseyin Demirci and report whether there were any burn marks on his body. On the same day, Dr Adem Ademoğulları, following an examination, reported that there had been no burn related traces or marks on the body of Mr Hüseyin Demirci.

**(g) Letter from the Head of the Directorate of Police to the Ministry of Health and Social Assistance and the reply from the Medical Director of the Nicosia State Hospital, dated 23 October 2002**

113. The Head of the Directorate of Police, Mr Erdem Demirbağ, requested the Ministry to send a report concerning the allegations that Mr Hüseyin Demirci had opened fire in Nicosia State Hospital in the period between 1 January 1996 and 8 October 2002 and that Mr Hüseyin Demirci had been sent to Ankara for the treatment of burns on his body.

114. The Medical Director of the Nicosia State Hospital reported that Mr Hüseyin Demirci had been admitted to the hospital on 22 February 1997 and treated until 25 February 1997. He further reported that there had not been any complaint or information concerning the alleged firing of shots in the hospital building and that no such allegation had been brought to the attention of the hospital administration.

**(h) Letter dated 16 October 2002 from the Civil Defence Regional Director**

115. The Civil Defence Regional Director, Mr Mehmet Yılmazbaşı, stated that on 1 January 2002 Mr Hüseyin Demirci had been enlisted in the Civil Defence Service in accordance with the amended Civil Defence Act (no. 3/1972).

**(i) Witness statements**

*(i) Mr Orbay Deliceirmak's statement dated 17 October 2002*

116. Mr Orbay Deliceirmak, who was the presidential press adviser of the “TRNC” at the time of his statement, stated that in August 2001 the applicant had visited him in his office and had asked whether the President would buy copies of the CD named “Sounds of your footsteps on the stairs”. Mr Deliceirmak submitted that he had then taken a sample copy of the CD to the President after the applicant had left his office. He contended that a few days after the applicant had visited his office, the President had given instructions to purchase a number of copies of the CD released by the applicant for two hundred million Turkish liras. Soon after, the applicant visited Mr Deliceirmak again and asked whether the President would purchase the CDs. The witness stated that when he had told the applicant that the President had agreed to buy, she had left ten copies of the CD. Mr Deliceirmak then took the applicant to the office of the director in order for her to collect the money. The allegation that the President wanted to see the applicant and talk about the case before the European Court of Human Rights was untrue. Mr Deliceirmak stated that the President had been interested in the CDs. He further submitted that he had never gone to the President's office with Ms İlkay Adalı and her daughter. He noted that when the President wanted to receive persons in private the relevant steps were taken out by the director of his private office.

*(ii) Mr Altay Sayıl's statement dated 17 October 2002*

117. Mr Altay Sayıl stated that his statement taken on 11 July 1996 by the police was correct. He submitted that the applicant's allegations concerning him were false. In particular, the applicant's claim that he had taken Mr Adalı out on the night of the murder was false. The witness averred that after the incident he had gone to the applicant's house twice. He had also attended the funeral. He did not have a black car but had a green Beetle-type Volkswagen and a Vauxhall Cresta make car with a silver-coloured top and a black band around the side, which he used only at car shows. He further alleged that the applicant had attended the retired police officers' evening on 4 July 1996, had read a poem there and had submitted her handwritten poem.

118. Mr Altay Sayıl stated that he had not had any connection with Mr Hüseyin Demirci despite the applicant's claim. He contended that he had met Mr Demirci two or three months after the incident at the Dr Fazıl Küçük Museum. At the time of Mr Adalı's murder he had not known Mr Demirci. He submitted that, as he was a researcher and a writer, he had friends within artistic circles. His friendship with Mr Adalı had been a ten-year-long friendship, as could be seen in the article “Crickets and

Ants” written by Mr Adalı on 28 May 1985 in the newspaper *Ortam*. He provided a copy of this newspaper article and a handwritten copy of the applicant's poem, read out on 4 July 1996 to the police.

(iii) *The applicant's statement dated 6 September 2002 and the report by the veterinary surgeon*

119. The applicant stated that on 5 September 2002 at around 9 p.m. she had seen Mr Musa Öneral walking in her garden from the back towards the front of the house. When she asked him what he was doing, Mr Öneral told her that he had come to have a look at the water tank. She submitted that on 6 September 2002 she had let their dog, Tin Tin, out at 6 a.m. Since the dog did not return until 9 a.m. she went out to find it. She stated that she had found the body of the dog in a vacant garden across the street in front of their house. The bone of the right leg was protruding. She submitted that following an autopsy she had been told that the death of the dog had been caused by blows. She maintained that she did not know whether their dog had been run over by a car or killed by someone. She did not know whether Mr Öneral had any connection with the incident. She submitted that she did not wish to make a complaint concerning the incident and would not want to take a case against Mr Öneral. She contended that all her family wanted was for the incident to be noted by the police and that they did not want to be harassed.

120. On 6 September 2002 Mehmet İsfandiyaroğlu, a veterinary surgeon, drafted a report which stated that a trauma-connected fracture of the right hind foot, fractures of the right ribs and severe internal bleeding had been observed on the body of the applicant's dog.

(iv) *Mr Musa Öneral's statement dated 6 September 2002*

121. The witness stated that on 5 September 2002 he had gone out for his daily walk for the treatment of his illness, diabetes. At around 9.30 p.m., while he was passing by the applicant's house, he heard the sound of running water coming from the water tank next to the applicant's house. He went to see whether there was a leakage from the tank. He submitted that he did not want to disturb the applicant and her family. While he was leaving Mrs Adalı asked him who he was. He replied that he had been there to have a look at the water tank. He contended that he had not rung the applicant's doorbell as he did not want to disturb her. He learned from the police officer who took his statement that the dog was dead and contended that he had no knowledge of the incident.

(v) *Mr Ali Rıza Görgüner's statement dated 18 October 2002*

122. Mr Ali Rıza Görgüner stated that he had been the elected executive officer (*mahalle muhtarı*) of the Kızılay neighbourhood since 1974. He submitted that on 6 July 1996 after the corpse of Mr Adalı had been found,

he had gone into the house of the Adalı family with police officers. They wanted to see whether anything had happened to the applicant and her children. They could not find anyone in the house. Mr Görgüner stated that the police officers had then carried out a search of the house in order to find evidence concerning the murder without moving the belongings of the residents of the house elsewhere. He maintained that he could only remember the name of the commanding officer. He submitted that the applicant's allegations that the police officers had spread her belongings around and that they had opened six locked cupboards in order to find a letter from a fascist organisation was not accurate. He stated that the police officers had glanced around and had done their duty in his presence.

*(vi) Mr Mustafa Asilhan's statement dated 18 October 2002*

123. The witness was the second deputy to the Head of the Directorate of Police of the “TRNC” at the time of the killing of Mr Adalı. He stated that he had met Mr Hüseyin Demirci in 1970. He submitted that he had gone for dinner with Mr Demirci on 6 July 1996 after Mr Demirci had picked him up from his house at around 6.30–7 p.m. He maintained that they had gone to the restaurant belonging to the Gemikonağı Municipality. He stated that they had seen Mr Muharrem Göç and had invited him to their table. Mr Göç stayed with them until 9 p.m. and then left as he was on duty. The witness stated that after spending three to four hours in the restaurant they had left to go to Nicosia and that he had learned about the murder of Mr Adalı the same night when he had received a call on the police telephone.

*(vii) Mr Orhan Ceylan's statement dated 18 October 2002*

124. The witness, who was a retired colonel at the time of Mr Adalı's murder, stated that he had read the articles in the *Hürriyet* newspaper and the *Aktüel* magazine which had left him and Mr Hüseyin Demirci under suspicion. He submitted that he had realised that the title “Colonel Orhan” had referred to him as a friend of Mr Demirci. He had given authorisation to his lawyer to initiate legal proceedings against *Hürriyet* and *Aktüel*. He finally added that he had met Mr Demirci in 1994 during his term of office as the commander of the Military Central Office in Nicosia.

*(viii) Mr Hüseyin Demirci's statement dated 18 October 2002 and supporting documents*

125. Mr Hüseyin Demirci stated that he had already given a statement to the police on 11 July 1996 concerning the death of Kutlu Adalı. He said that his statement of 11 July 1996 was correct. He stated that he had learned of the allegations against him made by İlkay Adalı in her application to the European Court of Human Rights on 18 October 2002.



126. He stated that on the night of the incident he had had dinner with Mr Mustafa Asilhan. Mr Asilhan had come to his house to give him an invitation for his daughter's wedding and during their conversation they had decided to have a dinner together one night.

127. On 5 July 1996 he attended Mr Asilhan's daughter's wedding and after congratulating Mr Asilhan, he invited the latter for dinner the following day. Mr Asilhan asked him to call him the following day at around 7 p.m. The witness rang Mr. Asilhan, who described the location of his home. He contended that around 6.30-7 p.m. he had gone to Mr Asilhan's house in his car, which was a Fiat 132 of sky-blue colour.

128. Mr Hüseyin Demirci further submitted that he had picked up Mr Asilhan from his home and that they had gone towards Güzelyurt, passing through Gemikonağı. They finally went to a place called either Municipal Beach or Municipal Café. He said that this was a public place and that there were many people and families there. He stated that they had stayed there around three hours eating and drinking. He claimed that he had not seen anyone whom he knew throughout all this time. He contended that he had been introduced by Mr Asilhan to a person who had been passing by and whose name he did not remember but whom he knew to be a policeman. He stated that this person had been with them for a while and that Mr Asilhan had paid the bill.

129. The witness stated that around 10 p.m. they had left the place to go to Nicosia. He contended that he had not looked at his watch at that time but he guessed that it had been around 10 p.m. After taking Mr Asilhan to his house, he went directly to his own house in his village and slept. He submitted that his parents were old and were already asleep. He further contended that they did not lock their doors and that, therefore, he did not have a separate key to the house.

130. Mr Hüseyin Demirci stated that he had not known Mr Kutlu Adalı in person and that he had read in a newspaper that Mr Adalı had been shot dead. He submitted that he had had no idea of who he was or of his profession. He learned, after reading articles on Mr Adalı's life in newspapers, that Mr Adalı had been a journalist working for the *Yeni Düzen* newspaper. He maintained that he had neither any connection with nor any knowledge of the death of Mr Adalı.

131. He stated that he was forty-eight years old and that he had never killed anyone in his life. He claimed that the allegation that he had killed someone seven years ago and had been acquitted was totally invented and a lie. He submitted that had there been such an event, this would have been seen in police files and court records.

132. Mr Hüseyin Demirci affirmed that his car was a Fiat 132, an Italian make with its factory colour of sky blue and not a Murat. He further asserted that he had never had a car which was black and that his car had never been painted black.

133. Mr Hüseyin Demirci denied the allegations that he had given his car to Mr Altay Sayıl or to anyone else. He stated that he would never lend his car to anyone as he had principles concerning this issue. He did not know Altay Sayıl previously and had only learned of his name when his name had figured in the newspapers after Mr Adalı's death. He submitted that one day he had gone to the *Halkın Sesi* newspaper office and during a conversation he had learned that Mr Altay Sayıl worked at the Dr Fazıl Küçük Museum. According to Mr Hüseyin Demirci, it was only when he went to the museum and introduced himself to the person who was there that he learned that this person was Altay Sayıl.

134. Mr Hüseyin Demirci accepted that he was a nationalist. He pointed out that his name was the eleventh on the list of founders of the (Nationalist Justice Party) Milliyetçi Adalet Partisi. He stated that at the time of the incident he had had no relationship with the Civil Defence Organisation. He stated that it had been in 2002 that he had been conscripted, pursuant to the law, as a member of the Geçitkale Regional Civil Defence Organisation. He further stated that he had sometimes worn camouflaged military-style trousers while doing construction work or similar manual work at home. He denied the allegations that he was conducting military training in his village. He asserted that military training took place in military barracks under the supervision of the relevant commander. He added that if anyone attempted to conduct military training by themselves outside the barracks, the police would commence a legal investigation in respect of that person. He also emphasised that he did not receive any salary from the security forces.

135. He stated that he did not remember the exact date but that around three or four months after the incident he had received a phone call from the police, who informed him that Mrs İlkay Adalı was at the police station and that she wanted to speak to him. He contended that he had then called the number which Mrs İlkay Adalı had left with the police and had spoken for about twenty-five minutes with her. Mrs İlkay Adalı asked him if he had been involved in the killing of her husband and he told her that he had not known her husband and had been at home at the time of the incident. He further stated that İlkay Adalı had alleged that he had raised the walls around his house to forty feet and that he was frightened to go out. He had told her that he lived in the village of İnönü and that she could come any time with a camera or video camera to record his house and that if he was not there she could have a coffee with his parents. Mr Hüseyin Demirci stated that he had intended in this way to avoid that she believed in other persons' lies. He contended that during this telephone conversation he had not lied or said that he had been tried and acquitted in a murder case.

136. In his statement Mr Demirci submitted that he acquired his car in February 1996 and that since then he had been using the same car with the same colour and number plate. His car had never been burnt by anyone, nor

had anyone ever attempted to burn it. He contended that as could be seen, he was healthy and did not have any burn marks on his body. He asserted that he had never been to hospital or received any treatment as alleged. He further denied the allegations that he had fired shots with a gun in a hospital. He pointed out that if he had made such an error there would have been a legal investigation in relation to it. He contended that he had never been brought before a commander and had never been warned in respect of such an event because all these allegations were lies and the product of imagination. He further submitted that contrary to the allegations, he had never been sent to Ankara for treatment by the Turkish military forces.

137. He reiterated his previous statements concerning the colour of his car. He submitted that he had never changed the colour of his car, nor had he ever had the intention of doing so. He denied the allegation that he had had his car painted black in a military garage prior to the killing. He claimed that this allegation was also a lie and the product of imagination. He submitted that after the murder, a newspaper published in Turkey had printed some articles claiming that he and Colonel Orhan had committed the murder. Some parts of these articles were reprinted in other newspapers and *Aktüel* magazine. He stated that both he and Colonel Orhan had contacted their lawyer in order to sue the newspaper and that his lawyer had told him that he would take care of the matter. Mr Hüseyin Demirci stated that his lawyer had full authority in this matter. He said that he had known Orhan Ceyhan since 1994, when he had been the commanding officer of the Nicosia General Directorate and that they had been friends since that time. He lastly stated that all these allegations were lies and slander and that he did not understand why there was such slander against him.

138. Mr Hüseyin Demirci submitted a copy of the invitation dated 5 July 1996 to Mr Asilhan's daughter's wedding. He further submitted a copy of the records of his car as registered at the "TRNC" Motor Vehicle Records Office.

*(ix) Erdoğan Serdenak's statement dated 23 October 2002*

139. Mr Erdoğan Serdenak, who worked in an automobile company as the service director at the time of his statement, testified concerning the car belonging to Mr Hüseyin Demirci and the differences between the Şahin and Murat make cars.

*(x) Lema Ayhun's statement dated 23 October 2002*

140. The witness was an official working at the Motor Vehicle Record Office in Nicosia. He submitted that the 1978 model saloon-type Fiat 132 vehicle had been built in Italy and was registered in the name of Mr Hüseyin Demirci. He further stated that the registration number of the car was DK 598 and that it was a blue vehicle. He added that Mr Demirci did not have any other vehicles registered in his name.

(xi) *Fatma Bilen Görener's statement dated 23 October 2002*

141. The witness worked as head of the accounts branch of the Treasury and Accounts Department at the Ministry of State responsible for the “TRNC” Economy. She stated that she had examined the records at her office at the request of the police and had established that Mr Hüseyin Demirci did not receive any monthly salary, pension, social welfare disability benefit, labourer's wage, martyr's family benefit, disabled veteran's benefit or disability allowance from her office.

(xii) *Ahmet Aydoğdu's statement dated 23 October 2002*

142. Deputy Inspector Ahmet Aydoğdu, who was working at the Immigration Department attached to the General Directorate of Police, stated that he had carried out a computer check and had not found a record of any person called Abdullah Çatlı entering or leaving the “TRNC” between 1 January 1991 and 6 July 1996.

(xiii) *Ahmet Şensoy's statement dated 25 October 2002*

143. The witness was working at the Telecommunication Department attached to the Ministry of Public Works and Communications as an engineer at the time of his statement. He stated that in the telephone system, in order to ascertain the number calling a particular number, it was necessary to make an application for the monitoring of incoming calls. He submitted that it was therefore not possible to establish the identity of the unidentified caller who called the *Kıbrıs* newspaper on 7 July 1996.

(xiv) *Yusuf Özkum's statement dated 25 October 2002*

144. The witness was the head of the Judicial Branch of the Nicosia Directorate of Police. He submitted that approximately one week after the murder of Kutlu Adalı a woman had called and told him that Mr Hüseyin Demirci had killed Mr Adalı. He stated that he had then brought this information to the attention of the Judicial Police Director, Mr Mehmet Özdamar. He added that he did not know who this woman was and that he had never met Mrs Adalı.

(xv) *Eybil Efendi's statement dated 25 October 2002*

145. The witness, who was serving as the team leader in the police rapid response unit in Nicosia on 6 July 1996, submitted that they had heard gunshots while they were patrolling with the team's Land Rover brand vehicle around the area where important persons lived. They immediately went to the scene of the incident, where they saw a man lying on the street, whose name he later learned was Kutlu Adalı. Having seen the deceased's jacket covered in blood and the cartridges around the body, the witness realised that Mr Adalı had been shot. Mr Efendi stated that he had reported

the incident to the police centre by radio and had secured the area. He averred that the Judicial Branch officers and the officers from the Yenişehir police station had arrived at the scene of the incident and initiated the appropriate procedure. He finally stated that his team had taken the corpse to the morgue at Nicosia State Hospital in their Land Rover.

*(xvi) Ayten Eruman's statement dated 28 October 2002*

146. The witness resided in the same neighbourhood as the applicant. She stated that on the night that Mr Adalı had been killed she had been at home with her daughter and her son-in-law. She submitted that at around 11.30 p.m. they had heard gunshots and that within a few minutes her daughter Fatoş Güney had gone out. She stated that she had not gone out herself that night. She added that her daughter was known as “Fatoş Efe” and that she herself was known as “Ayten Efe” but her real surname was “Eruman”.

*(xvii) Behiye Ahmet Kodal's statement dated 28 October 2002*

147. The witness, who was a neighbour of the applicant, stated that on 6 July 1996 she had been at home with her grandson. After she had heard gunshots she had called her son and had asked him to pick her and her grandson up. Her son then came to her house and took them to his house. On their way they saw a crowd gathered in front of the applicant's house. She submitted that her son had not come from the direction of where Mr Adalı had been killed. She maintained that she had returned to her house on 7 July 1996 in the afternoon and she had heard then that Mr Adalı had been murdered.

*(xviii) Mehmet Yaşar Kodal's statement dated 28 October 2002*

148. The witness is the son of Ms Behiye Ahmet Kodal. He submitted that his mother had called him on 6 July 1996 and had asked him to collect her and his son, as his son had been crying. He stated that he had then collected his mother and his son and taken them to his house. He averred that he had used the street on the other side of the road from Mr Adalı's house to leave the neighbourhood. He stated that he had learned about the killing of Mr Adalı when he arrived at the neighbourhood. He lastly stated that he had moved to his mother's house four years prior to his statement.

*(xix) Mehmet İsfandiyaroğlu's statement dated 28 October 2002*

149. The witness, a senior veterinary surgeon, stated that on 6 September 2002 he had carried out an autopsy on the applicant's dog. He stated that subsequent to the autopsy he had established that the right rear leg had been broken, the ribs on the right hand side had been broken and there had been severe haemorrhage. He found that the cause of the death

was haemorrhage caused by a trauma. He denied having made a comment that the the dog's death had been caused by torture or a car accident. He maintained that, from a medical point of view, he could not determine the cause of the trauma.

*(xx) Ziya Kasaboğlu's statement dated 21 October 2002*

150. The witness was a retired policeman who had a snack shop in the applicant's neighbourhood. He stated that on 6 July 1996 at around 10 p.m. Mr Adalı had come to his shop, asked for some snacks, bought them and left. He stated that after around 45 minutes he had left the shop and had walked towards Akalan Street. When he arrived at the applicant's street he saw a crowd and the policemen. He learned that Mr Adalı had been killed. He then went to the house of his mother-in-law. The witness stated that he had not called anyone from the Adalı family or the police and that he did not know any of the family members. He further submitted that Mrs Adalı had not called him. He finally maintained that he had not stayed in the village of İnönü, where he was originally from, even for one night, after the murder of Mr Adalı. He stated that an allegation that he settled in İnönü after the murder was a lie.

*(xxi) Alp Aydınova's statement dated 21 October 2002*

151. The witness worked as the Director of the Post Office attached to the Ministry of Public Works and Communication at the time of his statement. He stated that in 2001 Mrs Adalı had complained that her letters had been opened and that they had not been put in the mailbox but pushed under the door. He submitted that he had talked to the postman in charge in the applicant's neighbourhood. The postman denied the applicant's allegations and stated that he had pushed the letters under the door, despite the presence of the dog, so that the letters would not be retrieved by anyone else. The witness submitted that given the applicant's complaints, the personnel had been more careful with letters addressed to her. He maintained that on 16 May 2002 a letter had been sent from London to the applicant with a postcode for Nicosia, Cyprus, instead of Mersin, Turkey. Consequently, the letter was directed to the Greek Cypriot section and was eventually sent to the "TRNC" post office by the Greek Cypriot post office. Mr Aydınova averred that the letter had not been sealed and that there had been a blue air mail sticker instead, which had been the same as the one on the front of the envelope. The sticker had the same Royal Mail title printed on it. He stated that after receiving it on 24 May 2002 he had gone to the applicant's house to show her the state of the letter and to answer her questions promptly. When the applicant saw the letter she told Mr Aydınova that the letter was from her lawyer and that she knew the content of the letter as it had been faxed before. Mr Aydınova told the applicant that they had carried out an investigation into her complaints and found that her

allegations were not true. He further told her that the personnel were even more sensitive with her letters.

*(xxii) Tansel Çağış's statement dated 17 October 2002*

152. The witness worked as the “TRNC” Presidential Director and Chief Treasurer. He stated that in August 2001, while he was in his office Mrs Adalı had come into his office with Mr Deliceirmak. Mr Deliceirmak told the witness that the President had approved the purchase of ten CDs entitled “Sounds of your footsteps on the stairs”. Mr Çağış then started the relevant procedure and told Mrs Adalı to go back and collect her money shortly after. The CDs were purchased for TRL 210,000,000. He stated that he had not seen the applicant when she had collected the money. He further denied the claim that he had had a conversation with the applicant or her daughter and the allegation that he had told her that he would have her apprehended unless she withdrew her case before the European Court of Human Rights. The witness maintained that he had no relationship whatsoever with Mr Erdem Demirbağ. He further submitted that on 13 August 2001 he had received a handwritten petition, which he believed to have been written by Mrs Adalı and which was entitled “Kutlu Adalı Charity Foundation”. He handed over a copy of this petition to the police.

*4. Documents requested by the Court from the Government following the hearing of 8 October 2002*

**(a) Documents relating to the investigation into the Saint Barnabas incident**

*(i) Statements given by Yaşar Acu and Mustafa Alibaba, dated 15 March 1996*

153. The witnesses, who at the relevant time were nightwatchmen, submitted that on 14 March 1996 at around 7 p.m. a squad of soldiers and a colonel had arrived at the St Barnabas Museum. The colonel told the witnesses that his name was “Koparı” and that they would carry out a small exercise. He then asked them to go inside the museum. When the witnesses went inside the building, first a Toros model Renault 12 non-military car and then three other non-military cars arrived. They all went towards the small church. The witnesses submitted that the cars had left at around 11 p.m. The witnesses then informed the patrolling officer and checked the small church with him. They could not see anything. The next morning, they went to the church again. They found that two stones had been removed and dumped outside. They also saw four cartloads of dumped soil. They stated that they had reported the incident to the department director later the same morning.

(ii) *Statements by Şinasi Koru dated 15 March 1996*

154. The witness was on duty at the telephone control office in the Alasya ruins on 14 March 1996 at 11 p.m. He stated that the nightwatchmen at St Barnabas had called him and asked him to go to the St Barnabas Museum. He submitted that on his way to the museum at the Tuzla-Nicosia intersection, he had seen a black Renault 21 with military plates and two green Ford Transit vehicles. The guards informed him that twelve soldiers and a colonel had arrived there at around 7 p.m. and had explored the area. The witness stated that they had not informed the police since it might have been a military exercise as the nightwatchmen had been told.

(iii) *Letter of 15 March 1996 from Nusret Mahirel to the Department of Antiquities and Museums in Nicosia*

155. Nusret Mahirel, the Head of the Regional Department of Antiquities and Museums, reiterated the version of facts stated by the two nightwatchmen and submitted that he had reported the incident to the Directorate of Police in Famagusta. He further stated that subsequent to the on-site examination carried out by the Head of the Police Department in Famagusta and his talk to the general staff, they had been informed that the incident should not be exaggerated and that the investigation should not be taken further.

(iv) *Letters dated 15 March 1996 from Mr Ali Kanlı to the Minister of Education and Culture*

156. In his first letter Mr Ali Kanlı, the director of the St Barnabas Museum, expressed his concerns regarding the incident. He stated that the nightwatchmen had been armed and that they might have attempted to use their weapons. He further stated that although the purpose had been to keep the operation secret, what had been done was likely to have the opposite effect. He further stated that as the nightwatchmen had not been informed, on another occasion they might not be prepared react to malevolent persons wearing the same clothing and that this might endanger the safety of the antiquities in the museum.

157. In the second letter Mr Ali Kanlı informed the Minister that an excavation had been carried out at the original entrance section (*Dromos*) which was situated to the north-east of the tomb under the small church housing the grave of St Barnabas and that some soil and two stones had been carried to the exterior courtyard and dumped there.

(v) *Letter dated 18 March 1996 from the Minister of Education and Culture to the Chief Public Prosecutor's office in Nicosia*

158. The Minister informed the Chief Public Prosecutor that the incident, which had occurred in the area of the St Barnabas Museum constituted an offence and requested him to initiate legal proceedings.



(vi) *Letter dated 18 March 1996 from the Chief Public Prosecutor to the Head of the Directorate of Police*

159. The Chief Public Prosecutor requested the Directorate of Police to initiate an investigation into the St Barnabas incident and to send the completed investigation file to his office.

(vii) *Newspaper articles concerning the St Barnabas incident*

160. A statement by the Prime Minister's office appeared in *Kıbrıs* newspaper on 20 March 1996. According to this declaration, the security forces went to the St Barnabas Museum after having received information and there was no damage in the Museum. The Prime Minister's office further added that no action had been taken except to determine the accuracy of the information received.

161. On 16 and 17 March 1996 two other articles appeared in *Kıbrıs* and *Yenidüzen* respectively, concerning the St Barnabas incident. The news coverage in these newspapers does not bear the name of the applicant's late husband, Mr Kutlu Adalı.

**(b) Work schedule of the Yenişehir Police Station dated 29 April 1998 (serial nos. 107 and 108)**

162. The Judicial Police Director, Mehmet Özdamar, requested the Chief Public Prosecutor to decide whether an inquest should be carried out. He stated that Kutlu Adalı had been shot dead by an unidentified person or persons at 11.35 p.m. on 6 July 1996 in Nicosia, at the intersection of Ardıç Street and Akasya Street, at a distance of 55 metres from his house. He submitted that the scene of the incident had been searched and that fourteen 9-mm used cartridges had been found and taken as evidence. He further stated that an autopsy had been carried out on the deceased's corpse and that the cause of death had been established as “disintegration of the internal organs, internal bleeding and cerebral haemorrhage as a result of injury caused by firearms”. He stated that the investigation to date had not yielded any result capable of leading to the identification of the perpetrators.

**(c) Documents concerning the applicant's complaint dated 24 January 1997**

(i) *The applicant's complaint dated 24 January 1997*

163. The applicant made a statement at the Yenişehir police station and submitted that a picture of her deceased husband had been stolen from her garden. She called for the person who had taken the picture to be captured.

(ii) *Report by Mr Fehim Selçuklu dated 16 March 1997 concerning the applicant's complaint about the theft of a framed photo of Mr Kutlu Adalı*

164. According to the report, on 24 January 1997 the applicant called the Yenişehir police station, reported that a framed picture of Mr Adalı which

had been on her garden wall had been stolen and asked the police officer Fehim Selçuklu to go to her house. The police officer stated in his report that the investigation and inquiries into the complaint had not produced any results and considered that the case file should be temporarily filed as an “unsolved case” given that there would not be any further developments.

**(d) Documents concerning the applicant's complaint dated 5 May 1997**

*(i) The applicant's complaint dated 5 May 1997*

165. The applicant, in a petition lodged with the Yenişehir police station, complained that on 5 May 1997 at around 2.30 p.m. she had noticed that the right-hand front tyre of her car had deflated. She submitted that the old style jack she kept in the boot at the rear of her car was stolen. She requested the police to patrol her neighbourhood more frequently.

*(ii) Statement by Mr Yusuf Çocuk, dated 5 May 1997*

166. Mr Yusuf Çocuk, who repaired and sold tyres, examined the applicant's deflated tyre and stated that it had deflated because it was very old and worn. He further submitted that there was no sign of a point or sharp instrument having been used.

*(iii) Yenişehir Police Station's work schedule of 5 May 1997*

167. The chief of the Yenişehir police station noted the complaint and the findings of Mr Yusuf Çocuk and added that the applicant's request for frequent patrols in her neighbourhood had been communicated to the relevant authorities. He considered it appropriate not to continue the proceedings.

**(e) Documents concerning the applicant's complaint dated 9 August 2000**

*(i) The applicant's statement dated 9 August 2000*

168. The applicant stated that on 8 August 2000 she had gone to a restaurant in Göçmenköy called Ercan Kebap Salonu with her daughter, Ms Kut Adalı. She submitted that after they had started eating, a man whose name she later learned was Ayhan Akkurt had come to the restaurant and said:

“I am a Denктаş follower. I belong to *Ülkü Ocakları*. They put the blame on Çatlı and he is a friend of mine. When he visited Cyprus under the name “Mehmet Özbay” he visited me. I was in prison with him. I also know Hüseyin Demirci. They blamed him, too. There is no such issue.”

169. The applicant submitted that she had told Ayhan Akkurt that Mr Demirci had claimed that he would be killed for killing Kutlu Adalı. Ayhan Akkurt told the applicant not to follow Hüseyin Demirci and that

they would talk about it later in private. She further claimed that when she had told Mr Akkurt that they would not be able to do any harm to Şener Levent, he had told her that was what she thought. She contended that she had told him that the *Ülkü Ocakları* had not sent a message of condolences, that Kutlu Adalı was the founder of the “Turkish Resistance Organisation” and that he had been more of a nationalist than them. She further told Mr Akkurt that Mr Denктаş had never helped them to get her daughter a job and that he had called Kut Adalı and asked whether she had made an application to the European Court of Human Rights. He told Ms Adalı that he would not employ her since she had made an application on such a minor matter. Ayhan Akkurt told Mrs Adalı that he would talk to her later. The applicant maintained that Mr Akkurt had been sitting and drinking at a table next to theirs. She stated that when leaving, Ms Kut Adalı told Mr Akkurt that he should replace his glasses with real ones in order to see the events through them. She contended that Mr Ercan Ergün and Mr Mehmet Kırmızı would have heard this conversation. She claimed that they had gone to their house with her daughter's car. On 9 August 2000 at around 11 a.m. she called Mr Osman Çolak and told her that Mr Akkurt had tried to threaten them using the name of “*Ülkü Ocakları*”. Mr Çolak told her that they did not have a member of that name and that she should inform the police immediately. She stated that after this conversation she had called the police and reported the incident. She did not file a complaint.

(ii) *Kut Adalı's statement dated 9 August 2000*

170. Kut Adalı stated that she had gone to the Ercan Kebap Salonu on 8 August 2000 with her mother. She contended that half an hour after they had arrived there, a person, whose name she later discovered to be Ayhan Akkurt, had arrived at the restaurant. He sat down at a table with Ercan Kırmızı, who pointed out her mother and her to Mr Akkurt, introducing them as the wife and the daughter of Kutlu Adalı. They then started to have a conversation. Mr Akkurt told them that Kutlu Adalı had not been killed by Abdullah Çatlı, that he had served a prison sentence and that Hüseyin Demirci was a friend of his. Kut Adalı contended that she had told him to change his glasses and see the truth. She further maintained that Mr Akkurt had alleged to be a member of the “*Ülkü Ocakları*”. Kut Adalı stated that her mother had asked Mr Akkurt why her daughter was unemployed. Mr Akkurt told them that everybody was unemployed. Ms Kut Adalı told Mr Akkurt that she had lost her job following her father's death and that although Mr Denктаş had promised to find a job for her she was still unemployed. She stated that Mr Akkurt had asked Mrs Adalı for their address and that Mrs Adalı had given him a visiting card on which their address and telephone number were mentioned.

*(iii) Ayhan Akkurt's statement dated 9 August 2000*

171. Ayhan Akkurt stated that on 8 August 2000 at around 8.30 p.m. he had gone to the Ercan Cafeteria and sat with Ercan Ergün and Mehmet Kırmızı. He learned that the two women sitting next to them were the wife and daughter of Kutlu Adalı. Mr Ergün told the women that he was a follower of Mr Denктаş. Mrs Adalı told the witness that her daughter was unemployed although the State had promised to offer her a job. Mr Akkurt stated that he had told Mrs Adalı not to talk about such issues there. He contended that Mrs Adalı had given him her card. He then left the restaurant.

*(iv) Ercan Ergün's statement dated 9 August 2000*

172. Ercan Ergün, the owner of the Ercan Cafeteria, which was located in Rauf Denктаş Street, contended that on 8 August 2000 at around 8 p.m. İlkay Adalı and Kut Adalı had come to his restaurant. After a while, Ayhan Akkurt arrived and sat at the table with him and his friend Mehmet Kırmızı, next to the Adalı family. He maintained that Ayhan Akkurt was drunk. Mr Akkurt, Mrs Adalı and Ms Adalı started having a conversation which he could not hear. He thought that they were having a friendly conversation. However, after a certain point he heard them raising their tone of voice. Kut Adalı told her mother to leave and they left.

*(v) Mr Mehmet Kırmızı's statement dated 9 August 2000*

173. Mr Mehmet Kırmızı stated that he had gone to the Ercan Cafeteria on 8 August 2000 at around 8 p.m. and had sat with Mr Ergün. He contended that after a while Mrs and Ms Adalı and, subsequently, Mr Akkurt had arrived. He maintained that Mr Akkurt had been intoxicated and had sat with them. He contended that he had heard Mr Akkurt saying to Mrs Adalı that he had known Abdullah Çatlı since he had been a student in Turkey. He stated that he had not heard the whole conversation since he had consumed alcohol. He finally maintained that when he had left he had seen Mr Akkurt and Mrs Adalı talking.

**(f) Documents concerning the applicant's complaint dated 7 May 2001**

*(i) The applicant's complaint dated 7 May 2001*

174. The applicant complained that she had received a letter sent from the Diyarbakır province of Turkey. The letter contained offensive remarks about the applicant and the deceased Kutlu Adalı and accused them of betraying the Turkish nation. The applicant stated that the letter had been sent to the *Yenidüzen* newspaper. She contended that she had given statements before the “TRNC” Parliament concerning the murder of Kutlu Adalı and that she had requested the retrial of certain persons. She

stated that those persons might have sent the letter. She requested the police to conduct an investigation concerning the letter.

*(ii) Report by the police officer Mehmet Emin Babahan, dated 16 May 2001*

175. Mehmet Emin Babahan reported that following the investigation into the applicant's complaint, it was established that the letter had been sent from Diyarbakır since the postmark on the envelope had been printed by the Diyarbakır automatic postmarking machine. He further stated that the envelope had been returned to Mrs Adalı after the examination. He lastly contended that the “TRNC” Presidential Office had sent a letter to the Nicosia police department requesting that an investigation be conducted about an article titled “A threat from Diyarbakır” which was published in *Yenidüzen* on 4 May 2001.

**(g) Documents concerning the applicant's complaint dated 16 September 2002**

*(i) The applicant's complaint dated 16 September 2002*

176. The applicant stated that on 14 September 2002 at 10.51 p.m. she had received a phone call from an unidentified caller who had told her the following:

“My name is Ali. I am calling the house of Kutlu Adalı. Tonight your destiny will be determined. We are coming.”

177. After the man hang up, the applicant saw his number on her telephone, which was “7277806”. She then checked the previous numbers that she had received calls from and found out that this number had called her before. She stated that she wished to lodge a formal complaint about the matter.

(ii) *Report by the police officer Erkan Karam, dated 5 October 2002*

178. Mr Erkan Karam reported that it was established that the number “7277806” was the number of a public cardphone in Lefke, Gemikonağı. Statements from two persons with the name of “Ali” were taken in a military establishment in Gemikonağı. These two persons stated that they did not know the applicant and had not called her. Mr Karam then collected all the phonecards belonging to the privates in the establishment and sent them to the telephone administration. None of the cards matched the card from which a call had been made to the applicant's telephone number. He maintained that the investigations had failed to identify the owner of the card. He proposed to classify the investigation file as “unsolved”.

5. *Other documents*

(a) **Two letters dated 22 May 2002 and 3 June 2002 from the Government concerning the applicant's allegation that her mail was opened**

179. In their letter of 22 May 2002 the Government asserted that the applicant had not brought her allegation concerning the interference with her correspondence to the attention of the “TRNC” authorities. They contended that if she had filed a complaint an investigation could have been initiated into her allegation.

180. By a letter of 3 June 2002 the Government maintained that the applicant's solicitors letter dated 15 April 2002, addressed to the applicant, had been examined by the “TRNC” post office. It was established that the letter had been sent unsealed, except that an “air mail” adhesive label was affixed across the back flap to close the envelope. The Government contended that there had been another label on the front of the envelope and that both labels had borne the phrase “By air mail /par avion/ British mail”. They stated that the labels must have been issued by the British Post Office. They further maintained that the solicitors had not used the correct postcode to send their letter to the applicant.

(b) **President Rauf Denktaş's letter to the Court, dated 3 December 1998**

181. Mr Denktaş stated that he had known the Adalı family since the 1960s. He maintained that the deceased Mr Adalı had worked as the President's private secretary and as Director of Registrations. After he had retired he started writing articles in an opposition newspaper, *Yenidüzen*, against the system in Cyprus and against Mr Denktaş. Mr Denktaş stated that he had a meeting with Kutlu Adalı's daughter, Kut Adalı, on 23 November 1998, when she had visited him in his office to ask whether he would be able to help her to find a job. He told Ms Adalı that he would help after the elections. Mr Denktaş asserted that he had learned about İlkey Adalı's application to the European Court of Human Rights the following

day. He noted that he had telephoned Kut Adalı and told her that she should not expect any favours from him as long as her mother continued to harass them by her court actions.

**(c) The Nicosia Family Court's decision of 2 April 1998 concerning the registration of the Kutlu Adalı Foundation**

182. On 2 April 1998 the Nicosia Family Court decided to register the Kutlu Adalı Foundation further to an application by eight persons, including the applicant.

**(d) Letters addressed to the Court by the applicant and the respondent Government concerning the investigation commenced in respect of the applicant's daughter**

*(i) The applicant's representative's letter of 10 July 2003*

183. The applicant's representatives informed the Court that the “TRNC” authorities had stopped paying a scholarship to the applicant's daughter, Kut Adalı, and that she had been contacted by the “TRNC” police and requested to report to the police headquarters in order to give evidence about her cancelled scholarship. They contended that the applicant and her daughter feared that Kut Adalı would be arrested and that summoning her to the Police Headquarters was an attempt to intimidate the applicant because of her application to the Court. They requested the Court to contact the Government to demand an explanation for the conduct of the “TRNC” authorities.

*(ii) Letter from the Government dated 12 August 2003*

184. The Government submitted that Kut Adalı had made a false statement concerning her family income in order to receive a scholarship and that her conduct constituted an offence under the Criminal Code of the “TRNC”. They maintained that the police investigation had been initiated in relation to Kut Adalı's false statement.

*(iii) Letter from the applicant's representative dated 5 September 2003*

185. The applicant's representatives informed the Court that the applicant rejected any allegation that her daughter had made false statements.

*(iv) Letter from the Government dated 17 October 2003*

186. The Government reiterated their statements of 12 August 2003 and maintained that the information concerning the allegation that Kut Adalı had made false statements required a police investigation.

**(e) Letter from the applicant's representative dated 28 November 2003**

187. The applicant's representatives sent copies of newspaper articles published in *Yenidüzen* and informed the Court that according to these articles the Police General Directorate in the “TRNC” had been reported to have issued a series of statements concerning the death of Kutlu Adalı in the days before 3 October 2003. They further submitted that Altay Sayıl had also made a statement.

188. The applicant's representatives asserted that Bülent Onakoğlu, the Deputy Head of the Security and Intelligence Department had requested to meet the applicant in order to give her information concerning the killing of Mr Adalı. The applicant further reported that she had been harassed by unidentified callers and that the street lights in her street had stopped working every two days.

189. They further maintained that close relatives of the applicant in the “TRNC” had been subjected to different types of pressure. In this connection, they maintained that the applicant's brother and the fiancé of the applicant's daughter had been dismissed from their jobs, that her sister had been telephoned by the “TRNC” Civil Defence Organisation and that she had been facing a trial. They further stated that the applicant's children's personal belongings, an identity card, keys, a mobile phone and a car had been stolen.

**(f) Interview with the applicant published in *Aktüel* on 24 September 2003**

190. The applicant stated in the interview that the bullet shells recovered from the corpse of Kutlu Adalı had been taken to Turkey in order to be examined and that they had not been examined in the last seven years. She further alleged that Abdullah Çatlı had been in the “TRNC” on 6 July 1996 when Kutlu Adalı had been killed. In this connection, she contended that Abdullah Çatlı had used four different names during his stay in the “TRNC”. She further asserted that the evidence concerning the killing of her husband had been deliberately hidden.

**(g) Letter from the Government dated 7 January 2004 and the accompanying documents**

191. The Government sent a copy of an interview with the applicant which had been published in *Aktüel*. They also sent copies of press releases made by the General Directorate of Police and the statements by Altay Sayıl and Yaşar Spor.

192. According to the interview with the applicant, published in *Aktüel* on 24 September 2003, Abdullah Çatlı was in the “TRNC” on the date of the murder of Mr Kutlu Adalı.

193. On 27 September 2003 the General Directorate of Police of the “TRNC” made a press statement and announced that, according to the official records, at the relevant time neither Abdullah Çatlı nor anyone using



the assumed name of Mehmet Özbay had been present in the “TRNC”. They maintained that on the basis of immigration records, Abdullah Çatlı had entered the “TRNC” on 11 July 1997 and departed on 13 July 1997 and that Mehmet Özbay had been in the “TRNC” between 26 April and 1 May 1996.

194. On 30 September 2003 the General Directorate of Police made a further press statement clarifying that the person with the name of Abdullah Çatlı who had been to the “TRNC” between 11 July and 13 July 1997 was not the same person as the Abdullah Çatlı who had died in the accident in Susurluk on 3 November 1996.

195. During the interview in *Aktüel* the applicant maintained that Mr Sayıl had gone to their house on the night of the killing of her husband. On 28 September 2003 Mr Sayıl sent a statement to *Aktüel* and to *Afrika*, which had reprinted the interview, and denied the allegations concerning him which had been published in the magazine. The applicant further alleged that in 1996 the security forces commander, Mr Yaşar Spor, had advised her husband not to write articles against the “TRNC” authorities.

196. On 8 October 2003 a correction submitted by Mr Yaşar Spor was published in *Aktüel*. He stated that he had left the “TRNC” in 1994 and that he had no connection with the incidents of 1996.

197. In connection with the allegations made in the applicant's representatives' letter of 28 November 2003, the Government asserted that the dismissal of the applicant's brother from his job had been due to inefficiency at work and that it was not possible to comment on the dismissal of the applicant's daughter's fiancé since the employer had not been mentioned in the applicant's letter. They further contended that the applicant's sister had never been telephoned by the Civil Defence Organisation and that no person with the name Bülent Onakoğlu had ever worked in the “TRNC” police or the Civil Defence Organisation. They maintained that the applicant had made four complaints concerning her telephone line and that on each occasion the lines had been repaired. In relation to the applicant's allegation concerning the street lights, they stated that the street lights in the area had been out of order and repairs had been carried out in October and November 2003. They finally averred that the “TRNC” police had not received any complaint from the Adalı family regarding their allegations of thefts.

198. The Government further contended that the statements made by the applicant in *Aktüel* were inaccurate, that Mr Adalı had been in possession of information about drug trafficking and money laundering and that he had received threats on account of this information. They highlighted the following passage from the interview:

**“Question:** Adalı wrote that Cyprus was the crossing point for secret organisations and dirty money and drug traders. Was any information sought from him on this matter before the accident at Susurluk took place?”

*The applicant:* Yes, it was. The journalist Çetin Yetkin came. They met at Saray Hotel. He obtained information from Kutlu. He recorded his voice on a cassette. Some of it was published in *Hürriyet* newspaper a few days after Kutlu died. We asked for the cassette to be returned. He said 'I am returning it immediately'. The cassette arrived blank! Kutlu spoke a little, the rest was totally blank! We telephoned him. He said it had been erased. This was a lie.

*Question:* Could it have been erased by mistake?

*The applicant:* If he did not take it from the cassette, how was it possible to write the information in *Hürriyet*? However, Adalı wrote down all the conversation in his own handwriting and there is a copy of it.

*Question:* In view of the threats it is said that he induced your children to establish their livelihood abroad. Did he ever talk about a possibility of being killed?

*The applicant:* It never crept into his mind. If so, he did not tell me. He is reported to have said to a friend of his, 'Could they perhaps kill my wife and children?'"

199. The Government maintained that this aspect of the case had been deliberately kept from the police by the applicant since she had wanted to prepare the ground for the allegation of a “political” motive. They asserted that the application by Mrs Adalı to the Court was politically motivated. For these reasons, the Government requested the Court to reopen the hearing of the case in order to hear evidence from the applicant and other relevant witnesses and to enable the Court to ascertain the facts.