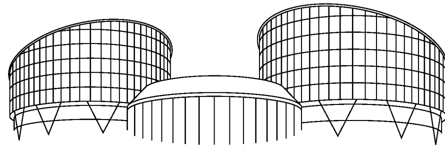

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KYRIACOU TSIAKKOURMAS AND OTHER v. TURKEY

(Application no. 13320/02)

JUDGMENT

STRASBOURG

2 June 2015

FINAL

02/09/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kyriacou Tsiakkourmas and Others v. Turkey,

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

András Sajó, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 14 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 13320/02) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by thirteen Cypriot nationals, Mr Panayiotis Kyriacou Tsiakkourmas, Ms Niki Kyriacou Tsiakkourma, Ms Eleni P.K. Tsiakkourma, Ms Maria P.K. Tsiakkourma, Mr Kyriacos P.K. Tsiakkourmas, Mr Georghios Kyriacou Tsiakkourmas, Ms Giovanna Andreou Theodosiou (née Kyriacou Tsiakkourma), Mr Ioannis (or Yiannis) Kyriacou Argyrou Tsiakkourmas, Ms Myrofora Kyriacou Nicolaou Spetsioti (née Kyriacou Tsiakkourma), Mr Nicolas Kyriacou Argyrou Tsiakkourmas, Mr Andreas Kyriacou Argyrou Tsiakkourmas, Mr Soteris Kyriacou Nicolaou Tsiakkourmas and Ms Evanthia Kyriacou Tsiakkourma (“the applicants”), on 11 June 2001.

2. The applicants were represented by Dr K. Chrysostomides and Company LLC and Georgiades and Pelides LLC, law firms operating in Nicosia. The Turkish Government (“the Government”) were represented by their Agent.

3. On 20 May 2008 the Court declared the application partly inadmissible; in particular, the complaints lodged by Ms Eleni Kyriacou Argyrou Tsiakkourma, the first applicant’s mother, were declared incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, as she had died prior to the lodging of the present application. On the same date, the Court also decided to communicate to the Government the first applicant’s complaints concerning the alleged violation of his rights under Articles 2, 3, 5, 6, 8, 10 and 14 of

the Convention, as well as the complaints raised by the remaining applicants under Articles 8 and 10 of the Convention.

4. On 27 October 2008 the respondent Government presented their observations on the admissibility and merits of the case. The applicants, however, did not submit any observations in reply or any just satisfaction claims within the required time-limit. In addition, on 12 March 2009 third-party comments were received from the Government of Cyprus, who exercised their right to intervene in the procedure (Article 36 § 1 of the Convention and Rule 44 § 1 (b)). The parties replied to those comments (Rule 44 § 5).

5. On 3 June 2014 additional questions were put to the parties in relation to the first applicant's complaints under Article 3 of the Convention regarding his alleged ill-treatment at the time of his arrest. Supplementary observations were received from the respondent Government on 6 August 2014 on the questions raised by the Court. The applicants and the third-party Government also submitted written comments on 30 October 2014.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1962, 1967, 1989, 1996, 1998, 1942, 1944, 1946, 1947, 1949, 1955, 1957 and 1960 respectively, and live in Larnaca, Nicosia and Famagusta. The first and second applicants are husband and wife. The third, fourth and fifth applicants are their children. The sixth to thirteenth applicants are the five brothers and three sisters of the first applicant.

A. Background to the case

7. On 1 December 2000 a Turkish Cypriot named Ömer Gazi Tekoğul was arrested by the police of the Republic of Cyprus in possession of two kilograms of heroin. His arrest brought protests from the authorities of the "Turkish Republic of Northern Cyprus" ("TRNC"), who alleged that he had been unlawfully arrested in the buffer zone controlled by the United Nations Peacekeeping Force in Cyprus ("the UNFICYP"), where neither the Greek Cypriot nor the Turkish Cypriot side was allowed to exercise authority. There were reports that Mr Tekoğul's vehicle had allegedly been found abandoned by the Turkish Cypriot authorities inside the United Nations ("UN") buffer zone, with its engine running and headlights on. The

Republic of Cyprus authorities maintained that the arrest had been effected within their jurisdiction just outside the buffer zone.

8. On 8 December 2000 Mr Tekoğul was charged with drug possession and smuggling, and was remanded in custody by the Larnaca District Court in the Republic of Cyprus.

9. According to a report of the UN Secretary General dated 30 May 2001 on the UN operation in Cyprus, UNFICYP's own investigation into the incident had not yielded sufficient evidence to confirm or refute either version of the events regarding the arrest of Mr Tekoğul[1].

10. In the meantime, on 20 March 2001 Mr Tekoğul was sentenced to ten years' imprisonment by the Larnaca Assize Court on various drug-related charges, but was subsequently pardoned by President Clerides and released on 28 September 2001.

B. Circumstances surrounding the first applicant's detention on 13 December 2000

11. The first applicant is a building contractor. At the time of the events giving rise to this application, he owned a construction company, Panicos Tsiakkourmas and Company Ltd., which employed workers from both sides of the island.

12. Like many other Greek Cypriot contractors employing Turkish Cypriot workers, the first applicant picked up his Turkish Cypriot workers each morning from a café ("Rabiye's café") located in the Sovereign Base Area ("SBA") of Dhekelia[2] in the vicinity of the Pergamos checkpoint, where people crossed from the "TRNC" to the SBA. The first applicant would collect his Turkish Cypriot workers from the café every weekday morning at approximately 5.45 to 6 a.m. and would drive them to work. At the end of the working day, he would drop them off at the same location.

13. The events that took place on the morning of 13 December 2000, which resulted in the first applicant's detention by the "TRNC" authorities, are disputed between the parties. They will therefore be presented separately.

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1. See paragraph 9 at http://www.unficyp.org/media/SG%20Reports/2001_05-30_S2001534.pdf

2. The Sovereign Base Area of Dhekelia is one of the two Sovereign Base Areas retained by the United Kingdom under the 1960 Treaty of Establishment that created the independent Republic of Cyprus, and which continues to fall under the exclusive sovereignty and jurisdiction of the United Kingdom. The Sovereign Base Areas have their own administration and police. With the exception of the Chief Constable, Deputy Chief Constable, and the two Divisional Commanders, all remaining officers are locally employed Greek and Turkish Cypriots (see the official website of the Sovereign Base Areas at http://www.sbaadministration.org/).

1. The first applicant's version of the events

14. At approximately 5.30 a.m. on 13 December 2000 the first applicant left his house in the village of Livadhia in Larnaca to collect his Turkish Cypriot workers from Rabiye's café in his red Chevrolet double-cabin pickup, as he did every workday. Since it had rained heavily the night before, parts of the road were flooded, which forced him to drive slowly. The heavy rain had stopped by the morning, but it was still drizzling when he left the house.

15. On the main road from Pyla to Pergamos leading to Rabiye's café, the first applicant noticed five to six metres ahead of him a white Isuzu pickup with the registration number UJ 100, which he recognised as belonging to a fellow Greek Cypriot contractor (V.Z.). As he was driving slowly behind that vehicle in the left-hand lane[3], the first applicant noticed further down the road another car, a red Renault, which had pulled up on the left side of the road just before the ex-Pergamos camp[4] junction, approximately 500 metres before Rabiye's café. The bonnet of the red car was open and two men in civilian clothes were checking the engine.

16. The white pickup driving in front of the first applicant slowed down as it approached the red Renault and the driver rolled down his window to talk to the two men. While one of the men continued to check the car's engine, the other one waved the driver of the white pickup to move along.

17. As the first applicant approached the stationary red Renault, another car, a white Renault which he had not previously noticed, emerged from the junction on the left-hand side and started heading towards him at full speed. The first applicant swerved his car to the right to prevent a collision and then applied the brakes. The white Renault also stopped right in front of his car and four men in civilian clothes leapt out. The first applicant then noticed that the white Isuzu pickup travelling ahead of him had also stopped, probably to check what was happening behind. In a matter of seconds, one of the men who had leapt out of the white Renault opened his driver's door, shouted some words in Turkish and put a gun to his forehead, while another tried to pull him out of the car. When the first applicant resisted, holding tight to his unfastened seat belt, the man holding the gun hit him on the head above the left ear with the handle of his gun, which caused him to fall down on the road into a puddle of rainwater measuring 20 to 25 cm, in a semi-conscious state as a result of the force of the blow. The men kicked and punched him on the ground, and twisted and bit his hands to force him to let go of the seat belt, while the first applicant called for help. After receiving some forceful kicks below the pelvis and to the ribs, which were so strong that he thought his ribs were broken, he let go of the belt and rolled on the ground. The four men then picked him up by the arms

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3. There is left-hand traffic both in the Republic of Cyprus and the "TRNC".

4. A former British military site.

and legs and dragged him to the white Renault, which was a left-hand drive car. The first applicant estimated that the whole ordeal, which had started at approximately 5.45 a.m., had lasted less than three minutes, and it had been witnessed by the driver of the white Isuzu pickup travelling ahead of him.

18. Once inside the car, with both his arms twisted behind his back, the first applicant received another strong kick from the man who was holding him by the right arm. The man holding the pistol sat in the front passenger seat and continued to point the pistol at him. They then started driving towards the Pergamos checkpoint. When the first applicant noticed that the right passenger door of the car was not fully closed, he started pushing the man to his right with his shoulder so that they would fall out of the car. As they were passing Rabiye's café, the first applicant saw a group of people standing outside and called out for help from the slightly open door, but he could not manage to attract their attention.

19. When the car reached the Pergamos checkpoint, the first applicant noticed that the barrier, which was normally down, had been lifted so that they were able to drive straight through to the "TRNC" without slowing down. After driving in the occupied area for a while, the man sitting to the first applicant's left placed a rope around his neck and tied his hands behind his back with the ends of the same rope, which prevented him from moving. When the applicant asked whether they were going to kill him, the same man answered yes and then the man sitting in the front passenger seat punched him in the face, which damaged his teeth and caused his mouth to bleed.

20. The first applicant could not understand the conversation in the car, which was in Turkish, except for the word "police", which was uttered frequently. Since he had lived in the occupied area until he was twelve years old, he recognised that he was being driven towards Famagusta. Once they reached the Famagusta industrial area, the car stopped, and the man sitting in the front passenger seat took off his sock and taped it around the first applicant's eyes, and then taped his mouth. A couple of minutes later, the first applicant heard another car drive up to them. He was quickly transferred to the other car, with his hands still tied behind his back with the rope that ran around his neck. After driving for another five to seven minutes the second car stopped and he was taken out of the car. He was subsequently taken into a building and put in a room on his own, where he waited for quite some time with his eyes and mouth taped, and his hands tied behind his back.

21. After a while, someone untied the rope around the first applicant's hands and neck, but left his hands cuffed behind his back, and removed the tape from his mouth. He was then asked personal questions regarding himself and his family, including whether he had any relatives working in the police force or the army. No one explained to him where he was or why he was being held. The person who spoke to him alternated between broken

Greek and English. His captors then made him sit in front of an electric heater so that he might dry, as his clothes were all wet from falling into the puddle of water outside his car during the struggle prior to his abduction.

22. When his captors eventually removed the sock from his eyes, the first applicant noticed that he was in an office, and the time was 11.55 a.m. Three men in civilian clothes, whom he had not seen before but later discovered to be Sub-inspector Ü.Ö. and police sergeants R.Ö. and H.M., were standing in front of him. When he asked them in Greek why he had been seized, one of them replied in broken Greek that he had been arrested for drug possession. They then gave him a fresh set of clothes and shoes and asked him to change out of his wet clothes. The first applicant suspected that he was in a police station, but his captors continued to conceal his whereabouts and the identity of the three persons interrogating him.

23. After changing into new clothes, the first applicant was led out of the building by the three men. In the reception area of the building, he saw police officers in uniform, which reinforced his assumption that he had been taken to a police station. He was subsequently taken to a hospital in Nicosia by two of his interrogators.

24. The first applicant was first examined by a doctor at the hospital in the presence of the two men who had taken him there. As the doctor did not speak English or Greek, they relied on the officers' interpretation to communicate. The first applicant explained to the doctor that he was diabetic and asked the doctor to check his blood sugar levels. Tests showed that his blood sugar level had increased considerably, so the doctor prescribed him an anti-diabetic drug. The first applicant also tried to tell the doctor that he was suffering from pain in his pelvis and ribs, and in particular that the pain in the ribs was making it difficult to breathe, but the doctor paid no attention to his grievances and merely registered the swelling in his head and some redness on his chest and back, without examining the injuries in his mouth or lower body.

25. The first applicant was subsequently referred to a radiologist, who X-rayed his chest and head. He was also examined by a specialist in pulmonary diseases. He was then taken for a drug test. When the first applicant refused to take the drug test and requested to see UN doctors instead, one of the men escorting him punched him in the stomach. It is not clear whether a drug test was subsequently performed on the first applicant.

26. Following the examinations at the hospital, which lasted about two hours, the first applicant was taken to another building, where he was again placed in an office. In that office, the men handling him showed him a black plastic bag with Turkish writing on it, and told him that the bag contained the drugs recovered from him. However, after some discussion among themselves, one of them went out of the room and came back with another black plastic bag, which bore no writing, and placed the drugs allegedly

recovered from him in the new bag. They then placed the bag in a plastic container and sealed it before his eyes.

27. At approximately 5.30 p.m., the first applicant was taken to yet another small office in a nearby building. There were six men in the office, including the two who had been escorting him and two interpreters. The men were speaking to each other in Turkish, without translating for him, and drinking tea; the first applicant did not understand where he had been taken. One of the interpreters then told him in broken Greek that he was before a judge, who had charged him with possession of drugs, and that he would be placed in custody for eight days. For the brief period he was in that room, the first applicant was not given the opportunity to respond, apart from stating that he had no involvement with drugs, or to ask questions; he was not informed of his rights, nor was he asked whether he wanted the assistance of a lawyer.

28. The first applicant was subsequently taken to the Atatürk Square police station (referred to as the "Saray police station") in Nicosia and placed in a very small cell, measuring approximately 1.80 by 1.20 metres, where he stayed for the next eight days. The cell was very cold, damp and mouldy in parts, because there was no glass in the small window. Despite the cold, he was given only one filthy blanket to keep warm. There were, moreover, no shower facilities in the police station. As for the toilets, they were very dirty; no soap or toilet paper was provided and the toilet did not flush. The first applicant had to call an officer each time he needed to use the toilet, and on many occasions he was not let out of his cell to go to the toilet, despite his need to urinate frequently on account of his diabetes. He solved the problem by urinating in a plastic bottle inside his cell. The first applicant further stated that he had not been given any food at the Saray police station and that he had had to purchase food from the canteen with his own money.

29. The first applicant claimed that the next day, a Turkish Cypriot detainee at the Saray police station approached him and told him in Greek that the police had asked him to confess to being the person who would pick up the drugs that the first applicant had intended to hide in the "TRNC", but that he had refused to collaborate with the police.

30. At 3 p.m. on 14 December 2000 the first applicant was visited by a UN inspector and a doctor. The inspector issued an incident report following the visit, the relevant parts of which read as follows:

> "During the visit the prisoner, who is a diabetic, stated that he had no complaints in relation to how he had been treated by the TCPE [Turkish Cypriot Police Element] but that he had been assaulted i.e. punched and kicked by six civilians and had been threatened with a gun by them a short time before his arrest by the TCPE. He stated that his arrest had occurred in the Dekelia [sic.] area.
>
> Since his arrest he had been taken to the Hospital by the TCPE where he was administered some drugs for his diabetes. He requested the UN to secure his own

clothes for him, to deliver his Diabetes Monitoring Kit to him and also to arrange a visit for his wife. He further stated that he did not do anything and that he was kidnapped at Dekelia. He was in a distressed state.

He consented to a medical examination by the UN doctor who found a number of tender areas with no bruising."

31. On 15 December 2000 the first applicant was visited at the Saray police station by a Turkish Cypriot lawyer, Mr M. Aziz, who was appointed by his family to represent him. The meeting was monitored by a number of police officers. On 16 December 2000 another Turkish Cypriot lawyer, Mr G. Menteş, visited him and they met, once again, in the presence of police officers. The first applicant claimed that all his subsequent meetings with his lawyers at the Saray police station had been held in the presence of police officers or other prison authorities.

2. The Government's version of the events

32. The Government's version of the events is based on the incident reports prepared by Sub-inspector Ü.Ö., who allegedly led the operation for the first applicant's arrest.

33. According to Sub-inspector Ü.Ö.'s report, on 12 December 2000 he received a tip-off call from a police informant, informing him that a Greek Cypriot named "Panayotis" would enter the "TRNC" through the SBA of Dhekelia the next morning with narcotics, which he would hide in a pre-designated spot just outside the Turkish cemetery to the west of the Pergamos checkpoint, to be picked up by a contact from the "TRNC".

34. At approximately 4.45 a.m. on 13 December 2000 Sub-inspector Ü.Ö., accompanied by police sergeants R.Ö. and H.M., took their positions in the vicinity of the drop-off point to wait in ambush. At around 6.05 a.m., before daybreak, they saw someone approaching on foot from the direction of the SBA, approximately seventy metres to the west of the Pergamos checkpoint. It was believed that this person, who was later identified as the first applicant, had crossed the ditch which ran along the boundary between the "TRNC" and the SBA and which was filled with rainwater at the relevant time, and then jumped over the wire fence between boundary stones nos. 96 and 97, where parts of the fence had shrunk. As the first applicant was walking towards an olive tree in the designated area, Sub-inspector Ü.Ö. came out of his hiding place and ordered him to stop, in Turkish. Upon hearing that order, the first applicant started to run back towards the SBA; however, the two police sergeants caught up with him and seized him after a struggle, during which the applicant fell to the ground. The sub-inspector then grabbed the package that the first applicant was holding in his hands, which was wrapped in a black plastic bag. In the meantime, Sergeant H.M. informed the first applicant in Greek that they were police officers and told him that he had entered "TRNC" territory without permission. He also asked the first applicant to identify himself and

to explain what he was carrying in the plastic bag. The first applicant gave his name and stated that he was innocent. The police officers then handcuffed him and placed him in the police car. Once inside the car, the police officers opened the plastic bag and found two plates of cannabis resin wrapped in a white cloth and a Greek newspaper. Sergeant H.M. informed the applicant once again, in Greek, that he had entered "TRNC" territory without permission and that he had in his possession prohibited drugs.

35. At approximately 6.50 a.m. the first applicant was taken to the Famagusta (Gazimağusa) police headquarters for an identity check, where he was also questioned about where he had obtained the drugs and to whom he was taking them in the "TRNC". The first applicant remained silent in response to those questions.

36. At approximately 8.30 a.m. Sub-inspector Ü.Ö. and Sergeant H.M. went to the narcotics bureau of the Nicosia (Lefkoşa) police headquarters to inform their superiors of the first applicant's arrest, while the first applicant stayed at the Famagusta police headquarters under the supervision of Sergeant R.Ö.. After going to the narcotics bureau, Sub-inspector Ü.Ö. and Sergeant H.M. went back to the scene of the incident, where Sub-inspector Ü.Ö. sketched a map of the area and another sergeant took photographs. Sub-inspector Ü.Ö. also took a soil sample from the area for forensic analysis.

37. At approximately 11.30 a.m. Sub-inspector Ü.Ö. and Sergeant H.M. went back to the Famagusta police headquarters, and took the first applicant's clothes and shoes as evidence.

38. At approximately 12.50 p.m. the first applicant was taken to the Dr Burhan Nalbantoğlu State Hospital ("the Nicosia State Hospital") for a general medical examination. After the examination, he was taken to the narcotics bureau of the Nicosia police headquarters, where the material which was obtained from him earlier and which was believed to be cannabis resin was sealed in his presence, to be dispatched to the laboratory for further examination. The first applicant's shoes, together with the soil sample collected from the area where he was believed to have crossed into the "TRNC", were also sealed before his eyes for forensic analysis.

39. Later the same evening, the first applicant was brought before the "TRNC" Nicosia District Court, where the presiding judge ordered his remand in custody for eight days to facilitate the police investigation. The hearing was held in the judge's office and the applicant was assisted by two interpreters.

40. According to the detailed incident report prepared by Sub-inspector Ü.Ö., on the night of 13 December 2000 various measures were taken in the area where the first applicant had been arrested to catch the person who was supposed to pick up the drugs, but no one showed up.

C. Results of various forensic analyses

41. The analysis report of 18 December 2000 drawn up by the Ministry of Health and Environment of the "TRNC" confirmed that the substance allegedly seized from the first applicant was cannabis resin, in the amount of 1.1 kilograms.

42. According to the report of the Ministry of Agriculture and Forestry of the "TRNC" dated 2 January 2001, various different kinds of soil were found under the first applicant's shoes, while the muddy specimen found on the heel appeared to be the most recent. The amount of soil extracted from the heel was not found to be sufficient for a comprehensive analysis. Nevertheless, the limited examinations conducted revealed that the sample obtained from the shoes resembled the sample obtained from the scene of the incident, without, however, being identical. The report indicated that variations in soil properties could be due to the depth from which the soil sample had been obtained, or whether it had been obtained from a fertilised part of the land or not.

D. Charges brought against the first applicant and the bail hearings

43. On 21 December 2000 Sub-inspector Ü.Ö. informed the first applicant of the charges against him, which were the possession of 1.1 kilograms of cannabis resin and its unlawful import into the "TRNC". The first applicant, who was provided with an interpreter, used his right to remain silent, merely stating that his lawyer would defend him. However, he refused to sign a written statement to that effect.

44. Later the same day, the first applicant was brought before the "TRNC" Nicosia District Court for a bail hearing, where he was represented by two lawyers, Mr M. Aziz, a local lawyer practising in "TRNC", and Mr P. Brogan, who practised at the English Bar. He was also assisted by an interpreter. At the hearing, the prosecution requested the court to order the first applicant's detention until the trial in view of the risk of his absconding, and called Sub-inspector Ü.Ö. as a witness.

45. The first applicant's counsel pleaded in favour of his release, and also argued that he had not been arrested in "TRNC" territory as alleged, but had been abducted from SBA territory by unknown persons and then taken to the "TRNC" after being badly beaten. The assault had left injuries on his body, as documented in various medical reports. The first applicant did not make any additional comments on his alleged ill-treatment, but merely stated that he would appear for trial if he were released on bail.

46. Sub-inspector Ü.Ö. denied the allegation that the first applicant had been assaulted and stated that the injuries observed on his body might have been caused as a result of the resistance he had shown to his arrest.

47. At the end of the hearing, the "TRNC" Nicosia District Court refused the first applicant's bail request on the weight of the arguments presented by the prosecution and ordered his pre-trial detention for a period not exceeding three months. The District Court indicated in this connection that it had not found the first applicant's statement that he would appear for trial if released on bail to be credible and reliable, but it did not comment on his counsel's allegations of ill-treatment. The first applicant was transferred to the Nicosia Central Prison after the hearing.

48. It appears that on 30 January 2001 the first applicant appeared before the court for another bail hearing. The Court has not been provided with the minutes of that hearing, but it appears that the hearing was adjourned until 8 February 2001 on account of the first applicant's deteriorating health, and that he was transferred to hospital for treatment for high blood sugar levels (see paragraphs 106-109 below for further details).

49. On 6 February 2001 the charges against the first applicant were lodged with the Famagusta District Court.

E. Preliminary Inquiry

50. On 8 February 2001 the Famagusta District Court convened for a preliminary inquiry in the case, which lasted until 15 February 2001, during which period the District Court sat for six full days. The first applicant was present throughout the hearings and was represented by both his lawyers. He was also assisted by interpreters.

51. During the preliminary inquiry the prosecution called five witnesses: the three police officers who had allegedly arrested the first applicant, namely Sub-inspector Ü.Ö. and police sergeants H.M. and R.Ö.; another police officer who had interpreted the formal charges against the first applicant; and the forensic chemist who had analysed the drugs allegedly seized from him. The first applicant, on the other hand, called one witness, Mr J.C., the UN Liaison Officer in Cyprus at the material time.

52. The Famagusta District Court first heard the prosecution witnesses, who gave testimonies consistent with the incident reports and presented evidence against the first applicant, including a sketched map indicating where the applicant had crossed into the "TRNC" and where he had been captured, photographs of the relevant areas taken a few hours after the arrest, the drugs allegedly recovered from the applicant, and the clothes and shoes he had been wearing on the relevant day, which were soiled with mud on account of the struggle on the ground, as well as copies of the medical reports drawn up following his arrest.

53. The prosecution witnesses were subsequently cross-examined by the defence counsel, who challenged the veracity and credibility of their testimonies in the light of the first applicant's account of events, according to which he had been kidnapped from his car in SBA territory and had then

been handed over to the "TRNC" police. The defence counsel accordingly asked detailed questions about the tip-off call which Sub-inspector Ü.Ö. had allegedly received the day before the first applicant's arrest and the identity of the police informant; the planning of the ambush and the weather conditions on the relevant morning; the route that the first applicant had followed to reach the "TRNC"; the exact point from which he had allegedly crossed into "TRNC" territory; and the paperwork undertaken by the police subsequent to the first applicant's arrest. The responses received appeared to be consistent with the earlier testimonies and did not reveal new evidence, apart from some factual details, such as the height of the border fence, which, according to the prosecution witnesses, was approximately 110 centimetres at the point of crossing but yielded when pressed, details of the conversation with the police informant, and the notes taken by the arresting officers in their police notebooks prior to and after the operation.

54. Sub-inspector Ü.Ö. was asked why he had not submitted the package of drugs allegedly recovered from the first applicant for a fingerprint examination, to which he responded that he had seen no need for such an examination as he had taken the package directly from the applicant's hands himself. He further maintained that no examination had been made of the footprints identified on the terrain, as the first applicant had apparently slipped and had not left very clear marks.

55. Sub-inspector Ü.Ö. was also asked whether he had recorded the tip-off he had received from his informant. He responded that he had recorded both the tip-off call and the subsequent operation conducted on the morning of 13 December 2000 for the first applicant's arrest in his police notebook, which had been submitted to the court as evidence.

56. On the last day of the preliminary inquiry the defence counsel called Mr J.C. as the defence's sole witness. Mr J.C. stated that he had been appointed by the UNFICYP as a Civil Affairs Police Liaison Officer. His duty was to liaise between the Greek and the Turkish Cypriot sides on policing and humanitarian issues. He explained that on 3 December 2000 his contact person on the Turkish side on humanitarian issues, Mr M.İ., who was the head of the Directorate on Consular Affairs and Minorities Issues of the Ministry of Foreign Affairs and Defence of the "TRNC", had called him for a meeting. During the meeting, Mr M.İ. had told Mr J.C. that he wanted to protest, through the UN, about the recent arrest of Ömer Gazi Tekoğul by the Greek Cypriot police in the UN buffer zone. Mr M.İ. had allegedly told him that if Ömer Gazi Tekoğul was not released before noon on 4 December 2000, Greek Cypriots from Pyla, a mixed village located in the UN buffer zone, would start disappearing. M.İ. had added that if the Greek Cypriot police had adopted a new policy of kidnapping suspects from the buffer zone, the Turkish Cypriot police would respond in the same manner.

57. In response to the objections of the prosecution regarding the admissibility of Mr J.C.'s testimony as evidence, the Famagusta District

Court held that it would accept Mr J.C.'s testimony not as evidence as to the truth of the statement allegedly made by Mr M.İ., which would be against the rule on hearsay evidence, but only as evidence of the fact that a meeting had taken place between Mr M.İ. and Mr J.C.

58. On the basis of the testimonies and other evidence presented before it, on 15 February 2001 the Famagusta District Court decided that there were sufficient grounds to commit the first applicant for trial before the Famagusta Assize Court. It also prolonged the first applicant's pre-trial detention.

59. The first applicant claimed that during the preliminary inquiry, he had seen one of his abductors amongst the audience, but that the latter had managed to leave the court room before he had had the chance to point him out to his lawyer.

F. The trial

60. The first applicant's trial commenced in the Famagusta Assize Court on 23 February 2001. He attended all of the hearings together with his two lawyers. He was also provided with an interpreter.

1. Evidence presented by the prosecution witnesses

61. In addition to the five witnesses who had testified at the preliminary inquiry, the prosecution called as witnesses a forensic police officer, a "TRNC" military officer stationed in Pergamos, the three doctors who had examined the first applicant on 13 December 2000 and the agricultural engineer who had analysed the soil obtained from the first applicant's shoes. The evidence provided by the prosecution witnesses, including during cross-examination, was, in general, consistent with the previous testimonies and official reports.

62. During his cross-examination Sub-inspector Ü.Ö. was asked a number of questions regarding the identity of his informant, which he refused to answer. However, he gave detailed information about the telephone conversation he had had with the informant, and also about his "exploratory visit" to the estimated drug drop-off point in the evening of 12 December 2000 together with the informant. Sub-inspector Ü.Ö. also stated that he had informed his supervisor about the information he had received from his informant prior to the operation conducted on 13 December 2000, while keeping the identity of the informant secret. However, he had not alerted the local police and military officers in Pergamos in order to protect the secrecy of the operation. In response to a question as to why no one had been left at the drop-off point following the first applicant's arrest to capture the latter's contact person in the "TRNC", Sub-inspector Ü.Ö. stated that he had suspected his informant to be that

contact person and that, in any event, a unit had been stationed at the drop-off point on the night of 13 December 2000 to catch any suspects.

63. During his cross-examination Dr E.A., who had conducted the initial medical examination of the first applicant after his arrest, was asked to provide details of the findings of his medical report (see paragraph 24 above). Accordingly, he indicated that on the relevant morning he had observed a swelling with a diameter of 4 centimetres on the left side of the first applicant's head, as well as redness measuring 0.5 cm by 4-5 cm behind the right ear, redness measuring 8-10 cm across the chest, and two areas of redness measuring 3-5 cm by 3-4 cm on the back, all of which appeared to have been sustained only hours before the examination. He stated that the swelling observed above the first applicant's left ear could have been caused by blunt-force trauma or by the impact of falling on a stone or similar hard object. He also confirmed that the examination had been conducted in the presence of two persons in civilian clothes, whom he had perceived to be police officers and who had also acted as interpreters between the first applicant and himself. He added that although he had raised the question specifically, the first applicant had not expressed any complaints of bodily injury, apart from stating that he was diabetic. The police, on the other hand, had explained that there had been a scuffle during his arrest.

64. Dr İ.A., who had examined the first applicant after Dr E.A. for any pulmonary problems, stated that the first applicant had presented symptoms of bronchitis. He had therefore prescribed medicine to him for that purpose but had not noted any other injuries or marks on his face or torso. He also indicated that the examination had been conducted in the presence of another person in civilian clothes, whom he assumed to be a police officer.

65. Dr H.K., a general surgeon, stated before the court that he had also examined the first applicant on the relevant day in response to his complaints of abdominal pain, but had not identified any causes for such pain. In response to a question from the first applicant's lawyer, he stated that a blow to the abdomen could cause pain in that area. He added that if the blow was strong, it would also leave a mark, but he had not noted any such marks on the first applicant's abdomen.

2. *Evidence presented by the defence witnesses*

66. On 23 March 2001, after the close of the case for the prosecution, the first applicant was called to make his defence statement. His sworn testimony was largely in line with the account of events he subsequently submitted to the Strasbourg Court, including the detailed allegations of his abduction and ill-treatment. However, he did not claim before the trial court that his abduction had been witnessed by the driver of a certain white Isuzu pickup.

67. Following the first applicant's statement and cross-examination, the defence called seventeen witnesses to testify in support of its case, including a number of SBA police officers. The pertinent witness statements are summarised below.

(a) Statement of Mr G.H. (Greek Cypriot builder)

68. Mr G.H. stated that he had left his house in Larnaca to go to work at approximately at 5.30 a.m. on the morning of 13 December 2000. While on his way to Pergamos to pick up his Turkish Cypriot workers, he had overtaken the first applicant's car, which was heading in the same direction. When asked whether he had actually seen the applicant in the car, G.H. answered in the negative and indicated that he had only identified the car from its number plate. Moreover, he had been unable to tell whether there had been only one person or more in the car. G.H. claimed that as he had approached Pergamos, he had noticed a stationary white car on the left-hand side of the road, with its bonnet open and a man examining its engine. Shortly afterwards, he had noticed a red car with a number plate starting with a "Z", parked to the right of the white car. He had driven past those cars without stopping, but while driving by, he had heard a man shouting. He had assumed that it was the driver of the white car calling for help with his car. He had arrived at Rabiye's café where his workers were waiting for him at approximately 5.45 a.m., had a coffee and then left with his workers. As he was driving past the spot where he had seen the two Renault cars previously, he had noticed the first applicant's car parked oddly, almost in the middle of the road and facing towards the roadside, with its driver's door open, its engine running and its headlights on. The two other cars, on the other hand, had gone.

(b) Statement of Mr A.G. (Greek Cypriot builder)

69. On the morning of 13 December 2000, as he was driving to Pergamos to pick up his Turkish Cypriot workers from Rabiye's café, Mr A.G. had noticed a red car with a red "Z" number plate parked on the left side of the road just before the junction leading to the ex-Pergamos camp. It had looked like the police cars that were used by the "TRNC" police in Pyla. The red car was facing Pergamos with its bonnet open, and there were two men standing in front of it. He had then noticed, on the opposite side of the road by the cypress trees, a white car, which had flashed its headlights at him. He had driven past both cars without stopping and arrived at Rabiye's café at approximately 5.40 to 5.45 a.m. He had left the café at approximately 6 a.m. and while driving past the place where he had previously seen the two cars, he had noticed that those cars had gone but this time the first applicant's car was parked on the right side of the road, facing the wrong direction, with its engine running, and its headlights and wipers on. The driver's door was also open.

(c) Statement of Mr N.M. (Greek Cypriot builder)

70. Mr N.M. left his house at approximately 5.30 a.m. on 13 December 2000 to pick up his Turkish Cypriot workers at their designated café by the Pergamos checkpoint. A red double-cabin pickup, which he later learned belonged to the first applicant, was driving approximately seventy metres ahead of him in the same direction. When he saw that part of the road was flooded, N.M. first turned his car around to return home, as he thought the weather would not be suitable for construction work that day, but then changed his mind and resumed his journey to Pergamos. On reaching the junction leading to the ex-Pergamos camp sometime between 5.40 and 5.50 a.m., he noticed the first applicant's car parked in the right-hand lane of the road, facing slightly to the right. He also saw someone getting out of that car and walking towards the fields on the right. There was no one else in the car, but the engine was running. The driver's door and both rear passenger doors were open. He also noticed three or four other people approximately twenty metres further down in the fields to the right, but did not see any other cars in the vicinity. He then heard someone yelling "Let me go!" in Greek from the direction of the fields, but was too scared to get out of the car to see what was going on, and drove back home.

(d) Statement of Mr Yiannis Tsiakkourmas (the eighth applicant, who is also the first applicant's brother and a builder)

71. While driving towards Pergamos to pick up his Turkish Cypriot workers at approximately 6.05 a.m. on the morning of 13 December 2000, Mr Yiannis Tsiakkourmas saw his brother's car parked just before the junction leading to the ex-Pergamos camp. He noticed that the engine was running and the wipers were on, the driver's door was open, but his brother was not around. His phone and bag were, however, in the car. He drove to Rabiye's café to ask about his brother, and when he found no further information he took two of his Turkish Cypriot workers with him and drove back to the place where he had found the first applicant's car. He then went to the SBA police to report his brother missing. Upon returning to the place of the incident, and prior to the arrival of any SBA police officers, he asked one of his Turkish Cypriot workers to move the car to avoid causing any accidents. The car was accordingly parked in a safer spot on the left side of the main road.

(e) Statement of Mr S.E. (Greek Cypriot builder)

72. On the morning of 13 December 2000, while driving to Pergamos to pick up his Turkish Cypriot workers, Mr S.E. saw a red Chevrolet double-cabin pickup, which he later learned was the first applicant's car, parked in the right-hand lane of the road approximately 500 metres from Rabiye's café, slightly facing the left-hand side of the road and with the

driver's door open. When he reached the café, one of the first applicant's Turkish Cypriot workers approached him and said that his boss had still not arrived. S.E. let the worker call the first applicant from his mobile phone, but the first applicant did not answer. S.E. then left the café with his workers. As he was driving past the first applicant's car again, he saw three or four people standing by it, including the first applicant's brother, Yiannis Tsiakkourmas.

73. Three other Greek Cypriot builders, Mr H.Z., Mr A.S. and Mr M.T., also gave similar accounts to that of S.E. regarding the location of the first applicant's car.

(f) Statement of Detective Sergeant P.P. (SBA police officer)

74. Detective Sergeant P.P., a Greek Cypriot, was the chief investigating officer appointed by the SBA police to investigate the first applicant's alleged abduction. He stated that at approximately 6.30 a.m. on the morning of 13 December 2000, he had seen Yiannis Tsiakkourmas at the SBA police station, reporting his brother missing. When he went to the scene of the incident at around 7 a.m., he found the first applicant's red Chevrolet pickup, which had already been moved from its original position, at the ex-Pergamos camp junction, on the left-hand side of the main road from Pyla to Pergamos. He noticed that the car key was still in the ignition, and there was a handbag and a mobile phone inside the car. He and a couple of other officers searched the vicinity for signs of the applicant, with the help of a sniffer dog, but found no clues to indicate his whereabouts. He claimed that in some parts of the fields by the side of the main road, the mud was 30 to 40 centimetres deep, which made walking in the fields very hard. He then instructed Sergeant N. to go to the Pergamos checkpoint to enquire whether the first applicant had been detained by the "TRNC" police that morning. The answer was negative.

75. Detective Sergeant P.P. presented to the trial court a map he had sketched on 3 January 2001, covering the area between boundary stones nos. 96 and 97 where the first applicant was alleged to have crossed into the "TRNC", as well as some photographs that the SBA police had taken in the area. The sketched map indicated a stream, with a barbed-wire fence to its north, marking the boundary between the SBA and the "TRNC". About fifteen metres from the barbed wire was an olive tree in an uncultivated field, which was the alleged drop-off point for the drugs the first applicant was accused of smuggling. According to the map, the barbed-wire fence in the relevant area was 120 to 140 cm high on average, but P.P. acknowledged that the fence had deformed and sunk in certain parts, which was also evident in some of the photographs. Moreover, there was a small hole measuring 6 by 20 cm at the bottom of the fence adjoining the field. According to P.P., the approximate depth of the stream on the relevant date was two and a half to three metres.

76. In the cross-examination, the prosecution argued that the exact location where the first applicant had been captured, including the deformed wire fences where he had crossed into the "TRNC", had intentionally not been photographed by the SBA police, so the photographs submitted to the trial court as evidence were irrelevant and misleading. Moreover, the wire fence on the SBA-"TRNC" border was not barbed throughout, contrary to P.P.'s suggestion. The prosecution claimed that the investigation conducted by the SBA police had lacked independence and impartiality.

(g) Statement of Mr N.P. (SBA police officer)

77. Mr N.P., a Greek Cypriot superintendent in the SBA police service, testified that at approximately 1.30 a.m. on 13 December 2000 he had received a call at the police station stating that some of the roads in the SBA of Dhekelia had been flooded because of the heavy rain that night. He therefore left the police station to check the roads and instruct the rerouting of certain roads as necessary. At approximately 5 a.m. he drove past the area where the first applicant's vehicle was later found abandoned. Although the heavy rain had stopped by that time, it was still drizzling and the road in the relevant area was covered with three to five inches of water. By 6 a.m. the rain had stopped completely.

78. When shown the photographs which the "TRNC" police had allegedly taken in the area later that morning, Mr N.P. said that the ground looked too dry, so those photographs could not have been taken on 13 December 2000.

(h) Statement of Sergeant A.E.N. (SBA police officer)

79. Sergeant A.E.N. was a Turkish Cypriot working in the SBA police force. At approximately 6.25 a.m. on the morning of 13 December 2000, he crossed from the "TRNC" to the SBA through the Pergamos checkpoint to report to his work station. As he was approaching the ex-Pergamos camp junction on the main road from Pergamos to Pyla, he noticed a stationary car further down his lane, facing his direction. Since the headlights of the car were bothering his eyes, he flashed his lights, but there was no reaction. As he approached, he saw that the stationary car was a red pickup and the driver's door was open. When A.E.N. pulled up by the red car to see what was going on, he noticed that the car's engine was also running, although there was no one inside it. Once he reached the police station he reported what he had seen and was accordingly instructed to go back to the place of the incident for further investigation. When A.E.N. went back at approximately 7.10 a.m., he found that Yiannis Tsiakkourmas and two Turkish Cypriot workers had moved the red pickup and had parked it about 25 metres down the road leading to the ex-Pergamos camp.

(i) Statement of Mr D.J.W. (dog trainer)

80. Mr D.J.W. was a search-dog trainer in the British armed forces. At approximately 8.15 a.m. on the morning of 13 December 2000 he was deployed to track the first applicant's whereabouts with his dog. When he arrived there were six SBA police officers at the scene of the incident. He first explained to the trial court how the tracking process worked in general and stated that the dog could only track one person at a time, and would follow the freshest track in the area. On that morning, they had started the search at the place where the first applicant's car was first found. They had covered the 400-metre perimeter, but had not been able to find any tracks. Since the recent rainfall had made the ground wet, it would not have been possible to walk on the grass by the asphalt road without leaving footprints, but they had found no such marks, which meant that the first applicant had not left the area on foot.

(j) Statement of Mr J.C. (UN Liaison Officer)

81. The defence lastly called Mr J.C. as a witness, to testify on his exchange with Mr M.İ., an officer of the "TRNC" Ministry of Foreign Affairs. The trial court, however, ruled that Mr J.C. could not testify on the content of Mr M.İ.'s statements in view of the rules on hearsay evidence.

(k) Other witnesses

82. At the hearing held on 10 April 2001, the first applicant's lawyer, Mr P. Brogan, told the trial court that while the defence had a number of Turkish Cypriot witnesses who wished to testify in favour of the defence, mainly to confirm the sighting of the abandoned vehicle, it had not been possible to secure their attendance as those witnesses were being intimidated by the Turkish Cypriot authorities. According to submissions made by the applicants, the President of the Court responded in a hostile manner and requested proof of service of witness summonses on the relevant Turkish Cypriot persons, but the exchange between the President and the defence counsel was not included in the minutes of the hearing.

83. At the hearing held on 11 April 2001, the first applicant's other lawyer, Mr M. Aziz, informed the trial court that the defence still had eight more witnesses to call. However, since they had not managed to duly serve those witnesses with official summonses, and most of them had no further information to share with the court than that already presented, they had decided to relinquish their right to call those witnesses and to close the defence case. The President of the Court asked in return why the said witnesses had not been served with a "short summons" to secure their attendance and stated that the court was very sensitive to this issue in view of Mr P. Brogan's allegations of witness intimidation made at the previous hearing. Mr M. Aziz stated in response that he had no information as to the

factual basis of Mr P. Brogan's allegations of intimidation and that he did not mean to blame any State officials for the non-attendance of the Turkish Cypriot witnesses.

3. The Famagusta Assize Court's ruling

84. On 26 April 2001 the Famagusta Assize Court delivered its judgment against the first applicant, which reads as follows:

> "The legislation, the testimonies and the evidence presented have been assessed [by the court] comprehensively.
>
> [The court] has carefully observed the prosecution witnesses, as well as the defendant and his witnesses during their depositions.
>
> While there are some small discrepancies between the testimonies of ... prosecution witnesses, their statements were mainly found to be credible, accurate and reliable.
>
> On the other hand, [the court] has not found the testimonies of the defendant and his witnesses to be credible, accurate and reliable. Moreover, we decided that these testimonies were not likely to be true, on the basis of the principle of "balance of probabilities".
>
> Since all witness testimonies and the evidence presented to the court are in the case file, we find it unnecessary to cite them one by one in our judgment.
>
> We believe that on the basis of the testimonies and evidence they presented, the prosecution have proven, beyond reasonable doubt, both charges against the defendant.
>
> Consequently, the defendant is found guilty of both charges brought against him."

85. The first applicant was sentenced to six months' imprisonment on the first count, with no sentence on the second count. The Famagusta Assize Court, however, ruled that he be released from prison in view of the time he had already spent on remand.

G. The first applicant's medical examinations

86. The medical examinations conducted on 13 December 2000 in the aftermath of the first applicant's arrest have been outlined in paragraphs 63 - 65 above. According to the information and documents provided by the parties, he underwent further medical examinations throughout his detention in the "TRNC", the details of which are as follows.

1. Medical examinations carried out by Dr S.T.

87. The day after his arrest, on 14 December, the first applicant was examined by a UNFICYP medical officer, Dr S.T., at his request. It appears that a "TRNC" official in civilian clothes supervised the examination and took notes.

88. According to the information in the case file, the first applicant told Dr S.T. that he had been punched and kicked at the time of his arrest and that he felt acute pain in his ribs and pelvis. The first applicant claimed before the Court that he had been prevented from saying more as the "TRNC" official supervising the examination had told him to keep quiet.

89. When conducting a physical examination, the doctor noted a slight swelling above the first applicant's left ear; a graze behind the right ear and the right side of the back; and tender areas on the right side of the chest and the left side of the back, behind the neck, and around the tail bone and the right hip. No handcuff marks were noted on his wrists.

90. It appears from Dr S.T.'s notes that the first applicant indicated that he had been treated well after being handed over to the uniformed police on 13 December 2000, and that he was being given his diabetes medication. Dr S.T. noted that the applicant's diabetes was the type that could usually be controlled by diet (type-2 diabetes) and further remarked that arrangements had been made for a blood glucose monitoring kit to enable him to monitor his diabetes. There were, however, no remarks regarding the first applicant's intimidation by the "TRNC" official supervising the examination.

91. On 28 December 2000 Dr S.T. made an unannounced visit to the central prison to check on the first applicant. During the visit he also performed a blood sugar test. In a report he issued the next day, Dr S.T. indicated that although the applicant's blood sugar level was somewhat high ("197 g/dL"), it was still within the normal range for him – he had informed the doctor that his levels were usually around "200g/dL". The doctor also noted that the applicant's request for a special diet for his diabetes was being met by the prison authorities. In conclusion, Dr S.T. was satisfied that the applicant was receiving adequate treatment for his diabetes and was being allowed to monitor his blood sugar levels.

92. Dr S.T. visited the first applicant again on 19 and 23 January 2001, together with a Turkish Cypriot doctor, H.S., to check his physical state and blood sugar levels. In his report dated 23 January 2001, Dr S.T. made the following remarks:

> "In my opinion a good standard of medical care is being given. However, because of Mr. Tsiakkourmas' mental state and the stress he is under, his diabetic control is poor. There is also a question as to whether or not he is complying fully with his treatment."

93. Dr S.T. also visited the first applicant on 16 February and 9 April 2001 for routine medical checks and noted that he was in reasonable health. In his latter report dated 9 April 2001, Dr S.T. also stated that the first applicant had made no complaints of ill-treatment by the prison staff.

2. Medical examinations carried out by Dr G.P.

94. On 8 January 2001 the first applicant was examined by Dr G.P., a Hungarian specialist in internal medicine and endocrinology practising in Limassol, in relation to his diabetes. The doctor noted that his blood sugar level was "340 mg/dL" and that he had lost a considerable amount of weight since his imprisonment. He then concluded his report as follows:

> "The obvious weight loss and marked hyperglycaemia without any other signs of concomitant disease can only be explained by a rapid metabolic deterioration that followed his imprisonment. The initial and ongoing stress situation, the involuntary immobilisation of a formerly physically active person in association with marked depression are factors which increase both hyperglycaemia and insulin resistance in the diabetic person and lead to catabolism. The present treatment is obviously insufficient to prevent further worsening.
>
> If his immediate return to his normal environment and daily activities is not achievable at present, I suggest this:
>
> 1. Glimepiride (Amaryl) 1.0 mg tablet to be taken twice daily
>
> 2. Metformin (Glucophage, Lipha) 500 mg tablet once daily
>
> 3. Diabetic food (food to be taken at least five times daily, no added sugar) with adequate water consumption
>
> 4. Regular daily physical exercise
>
> 5. Blood glucose testing three times daily
>
> If these measures do not improve his diabetes control significantly in few days' time or signs of further deterioration are detected, the commencement of insulin treatment and/or hospitalisation should be considered. His physical state should also be followed up to decide if medical treatment is necessary."

95. On 15 January 2001 Dr G.P. saw the first applicant once again at the Nicosia State Hospital, together with Dr H.S. and a UNFICYP medical officer, R.K. Dr G.P. noted his findings as follows:

> "The patient was in a very bad mood ... and he mentioned that he didn't want to comply with further medical assistance from whatever side. ... [He said that] he took this tablet [Amaryl] only once daily and didn't take the other tablet [Glucophage] recommended during my first visit.
>
> His physical examination was carried out by Dr H.S. in our presence.... His blood sugar was 349 mg/dL.... I advised an abdominal ultrasound examination which was carried out without delay by the X-ray department in our presence. Multiple small stones were found in both kidneys without any other pathological findings.
>
> After these I tried to convince him to comply with our medical recommendations ...
>
> The main problem now seems to be the lack of compliance with the medical recommendations.
>
> His parodontitis [sic.] and the presence of small renal stones are also warning signs that his diabetic control must be improved otherwise a progressing inflammation in the mouth and a urine infection can worsen his diabetes with severe acute

consequences. To avoid this, a proper compliance with the medical recommendations seems to be absolutely important.

In this situation a psychiatric exploration is also necessary, carried out by a doctor who speaks Greek as a mother tongue ... This exploration may help break his present denial of medical care and provide further opinion [on] how to proceed with his medication."

Dr G.P.'s findings coincided with the separate report prepared by the Turkish Cypriot doctor, H.S.

96. On 25 January Dr G.P. saw the first applicant for the third time and noted his findings as follows:

"... He complained of regular gastric pain ... He confirmed that he was taking the anti-diabetic drug according to the last recommendation.

... I took his blood sugar, which was 199 mg/dL in the fasting state this time.

We recommended hospitalisation for a better blood sugar stabilisation and follow-up. The idea was rejected by Dr H.S. who suggested a more frequent blood sugar monitoring to show if his blood sugar levels can be diminished, if required, with an elevated anti-diabetic dose without bringing him out of the prison. On my fears that the patient may have a stress mediated gastric ulceration that can progress into perforation or bleeding he promised to arrange a gastroscopy on 30 or 31st January next week."

97. On 15 March 2001 Dr G.P. examined the first applicant for the fourth and the last time, in the presence of Dr H.S. and a UNFICYP medical officer, and made the following notes:

"... He has not performed a blood sugar test since weeks but in general he felt somatically fit. Sometimes he does not take the Amaryl tablet in the evening when he 'feels alright'.

... I took his blood sugar, which was 191 mg/dL ... non-fasting.

There was an agreement among all three doctors present that it was time to carry out new laboratory and ECG tests. However, the patient denied all these and allowed only the aforementioned blood sugar test ...

His explanation was that he felt helplessness, nobody wanted to help him to take him out of prison, he didn't even ask for my visit or for any other medical help in the future. He also said that he would stop tablet taking on Monday and would start a hunger strike. I tried to explain to him that in his health situation this would be really dangerous, could lead to sudden worsening of his status. I could not convince him to abandon this idea, that he should comply with the medical suggestions to remain fit ...

His anger and negativistic attitude to health care can be signs of deepening depression."

3. Medical examinations carried out by Dr R.K.

98. On 12 January 2001 the first applicant was examined by another UNFICYP medical officer, Dr R.K., who made the following findings after his visit:

"Mr. Tsiakkourmas ... suffers from diabetes type II for about four years.

The patient was found in a good physical condition but seemed to be depressive ...

His blood sugar level [was] 220 mg/dL ...

The drugs recently prescribed by Dr G.P. are available at prison, but he refuses to take any other drugs than prescribed by his 'own doctor'. There is also the possibility to monitor the bodyweight and to check the blood sugar level three times a day, as recommended, but the patient refuses this as well, because he wants to avoid to be pricked too often and in his opinion doing this every two or three days seem to be sufficient. The perfect therapy plan developed by Dr G.P. is not accepted by the patient!

...

His blood sugar level is too high and has to be properly adjusted, but there is no acute danger to his life. The main problem at this moment seems to be the fact that he refuses any other medication prescribed or monitoring recommended than from his own doctor."

99. Dr R.K. issued the following "inter-office memorandum" on 16 January 2001 in relation to the first applicant's health situation:

"1. Dr. H.S., the [Turkish Cypriot] responsible doctor at Nicosia General Hospital North, is an endocrinologist and seems to be very competent and cooperative. All necessary drugs and means to carry out recommended tests (blood sugar level, blood pressure, weight etc.) and supportive measures (physical exercise, diet etc.) are available at the hospital as well as at the prison.

2. The main problem at this moment is the patient's unwillingness to follow the therapy plan for understandable reasons (lack of trust of foreign doctors, depressive situation ...).

..."

100. After his visit on 25 January 2001 Dr R.K. noted that the first applicant had still not been taking the recommended medication regularly.

4. Medical examinations carried out by Turkish Cypriot doctors

101. According to the documents submitted by the respondent Government, the first applicant was also regularly examined by Turkish Cypriot doctors.

102. On 3 and 8 January 2001 a Turkish Cypriot doctor, whose name cannot be discerned from the reports, examined the first applicant and measured his blood sugar levels. He also prescribed medication for his diabetes, including 1mg of Amaryl.

103. On 15 January 2001 Dr H.S. examined the first applicant in the presence of Dr G.P., Dr M.K. and a UN officer at the Nicosia State Hospital and noted the following in his report:

"Tsiakkourmas suffers from type-2 diabetes and takes Amaryl (1mg), twice a day. While his diabetes was controlled through diet previously, currently he is hyperglycaemic.

It was noticed during the examination that Tsiakkourmas was stressed and depressed ... The right lumbar region was sensitive to percussion and there was pain upon deep

palpation at the right hypochondriac region ... The results of the examination of the extremities were normal.

His blood sugar level was 347 mg/dl ...

Based on these results, his gallbladder and kidneys were examined in ultrasound. His gallbladder was empty and no stones were noted; there were stones in both kidneys. Liver, spleen, urinary bladder and prostate were normal."

Based on his findings, Dr H.S. recommended that the first applicant continue with his medication and special diet, exercise daily, measure his glucose levels regularly and be brought to the hospital for examination by him twice a week. He also recommended the first applicant's referral to a psychiatrist.

104. It appears that Dr H.S. continued to examine the first applicant regularly throughout his detention. In his report dated 22 January 2001, he noted that the first applicant had refused to be examined and had stated that he had not been taking his medication.

105. On 25 January 2001 the first applicant was examined by a Turkish Cypriot psychiatrist, Dr İ.T., with the assistance of an interpreter. The doctor noted no pathologies, apart from the applicant's distress. She stated in her report that she had offered to prescribe the first applicant a tranquiliser, but he had rejected it.

5. Hospitalisation and subsequent examinations

106. On 30 January 2001 the first applicant was admitted to the Nicosia State Hospital for closer monitoring of his health. He was kept there until 5 February 2001.

107. After visiting the first applicant at the hospital on 1 February 2001, Dr R.K. noted his improved physical condition. According to his report dated 6 February 2001, the first applicant's state of health continued to improve after his discharge from the hospital. Similarly, when he visited the first applicant on 20 and 28 February 2001 and 27 March 2001, Dr R.K. found him in a "sufficient health condition", although his psychological state appeared to have deteriorated. Dr R.K. stressed to the first applicant that if he had any health problems, he should approach the prison authorities and ask to be seen by a doctor.

108. Following his discharge from the hospital the first applicant was also visited twice by Dr S.T. for routine medical checks (on 16 February and 9 April 2001). Dr S.T. noted that he was in reasonable health and also stated that he had made no complaints of ill-treatment by the prison staff.

109. On 18 April 2001 the first applicant was examined by another UNFICYP medical officer, Dr J.G., who also found him to be in a very satisfactory state of health. Dr J.G. indicated that the first applicant continued to take the prescribed anti-diabetic drugs regularly, and that he had been receiving the proper diet. He also noted that the first applicant had

been performing physical exercises and was allowed to get books and newspapers.

6. Medical examinations after release from prison

110. The first applicant submitted a medical report dated 11 May 2001 issued by his dentist. The report stated that he was suffering from serious problems with his upper anterior teeth, including abscessed gums, and had a scar on his lower lip, which was consistent with a powerful blow to the face.

111. The first applicant also submitted other medical certificates that he had obtained from various doctors approximately six months after his release from prison, including one from his own doctor. According to those reports, while the first applicant's diabetes appeared to be under control by that time, he continued to suffer psychologically.

H. Family visits during the first applicant's detention

112. It appears from the information in the case file that the first applicant was allowed to receive visitors twice a week during his detention on remand, including from his friends, and was granted one hour for each visit. His allegation that he was not given permission to make telephone calls was denied by the Government.

113. Following special permission sought by the second applicant (the first applicant's wife), the first applicant was authorised to receive visits from his family on 15 April 2001, Easter Sunday, although it was not an ordinary visit day.

114. The parties disagreed as to whether the family visits in the Nicosia Central Prison were monitored. The applicants claimed that a prison officer had stood guard in or by the visit room during most visits, whereas the Government maintained that the applicants had been able to meet and communicate out of the sight of the authorities.

I. Documents submitted by the parties

115. The parties submitted photographs and sketched maps of the scene of the incident and its vicinity, as well as various documents concerning the events and evidence that unfolded following the detention of the first applicant by "TRNC" authorities. Those documents, in so far as they are relevant, are summarised below.

1. Police notebook of Sub-inspector Ü.Ö.

116. The Government submitted four pages from the police notebook of Sub-inspector Ü.Ö., including two handwritten entries.

117. The first of those entries, which was made at 6.30 p.m. on 12 December 2000, read as follows:

> "According to the information I received, at approximately 5.30 a.m. on the morning of 13 December 2000 a Greek Cypriot will enter the TRNC via Pergamos to hide illicit drugs in the empty lot located by the border crossing, to be picked up by his accomplice on this side. The superintendent put me in charge of taking the necessary precautions in the area. I informed sergeants R.Ö. and H.M.."

118. The second entry was made at 7.10 a.m. on 13 December 2000, after the arrest of the first applicant, and described the circumstances in which the latter had been captured with drugs as follows:

> "At 6.05 a.m. we captured a Greek Cypriot coming from the SBA on the lot by the cemetery located next to the Pergamos Gate, together with sergeants R.Ö. and H.M.. I took the bag he was carrying. Upon checking the bag, I found what I believed to be two plates of cannabis resin wrapped in newspaper. The defendant was informed by sergeant H.M., who acted as the interpreter, that he was being arrested for having made an unauthorised entry into the TRNC and possessing illicit drugs. The defendant said "I am innocent". I learned from Sergeant H.M. that the person's name was "Banayodis Giryagu" [sic.]. We transferred Banayodis Giryagu to the Gazimağusa Security Directorate. At 6.45 a.m. I interrogated [him] with the help of sergeant H.M. [to find out] where he had found the drugs in his possession and who he was taking them to. I could not get any responses. I left the detainee in Gazimağusa under the control of sergeant R.Ö.. I am now leaving for Lefkoşa together with the evidence."

2. *Investigation conducted by the SBA police*

119. After being informed about the discovery of the first applicant's car in SBA territory, in a seemingly abandoned state with his briefcase and mobile phone left inside the car, the SBA police[5] promptly started an investigation into his whereabouts. The forensic examinations conducted in and around the car, including with the help of a sniffer dog, did not yield any results. The police and the military in the "TRNC" initially denied any knowledge of the first applicant; it was not until 10.25 a.m. that the "TRNC" authorities informed the SBA police that the first applicant was in their custody, having been found in possession of drugs in "TRNC" territory.

120. On the basis of the information received from the "TRNC" authorities, the SBA police searched the first applicant's car for traces of drugs and fingerprints. It appears that they found no traces of drugs, and no further information was provided regarding fingerprints. Over the next

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5. SBA police are an independent police service with jurisdiction under Sovereign Base Areas law and are not connected with the Ministry of Defence Police of the United Kingdom, although funded by the latter. With the exception of the Chief Constable, Deputy Chief Constable, and the two Divisional Commanders, all remaining officers are locally employed Greek and Turkish Cypriots who are trained and equipped to UK policing standards to deal with the range of investigation, prevention and detection responsibilities (see http://www.sbaadministration.org/index.php/police for further details).

couple of months, they also interviewed some 104 people in an attempt to shed light on the events of 13 December 2000. Amongst the interviewees were the first applicant's Turkish Cypriot workers, his fellow Greek Cypriot contractors, including those who later testified before the Famagusta Assize Court, members of the SBA police force, and the residents of the houses in the area where the first applicant's car had been found and where he had allegedly crossed into the "TRNC".

121. A number of interviewees attested to having seen the first applicant's car on the morning of 13 December 2000 parked in an odd manner on the main road from Pyla to Pergamos, albeit with some inconsistencies as to its position and state, such as whether and which doors of the car were open, which way it was facing and whether the engine was running. Some others who had taken the same road around the relevant time stated that they had not noticed anything out of the ordinary or seen the first applicant's car. A number of persons approached for statements, including some Turkish Cypriots, refrained from giving statements altogether because they were afraid to talk for political reasons.

122. Of the 104 people interviewed, only two, G.H. and A.G., who also subsequently testified before the Famagusta Assize Court, had seen the Renault cars that had allegedly been used for the first applicant's abduction. Although A.G. stated before the Assize Court that he had seen two Renault cars, one white and one red (see above paragraph 69), he had not mentioned anything about a white car in his earlier statement to the SBA given on 19 December 2000. Moreover, the sketched plan attached to G.H.'s statement, indicating the respective positions of the red and the white Renault cars and the car of the first applicant, did not fully correspond to the statements given by the other witnesses and the first applicant himself, nor did it match his subsequent statement before the Assize Court, particularly as to where the red Renault car had been parked *vis-à-vis* the white one.

123. Amongst all those interviewed, only one person – a Greek Cypriot builder, Mr N.M., who also subsequently appeared before the Famagusta Assize Court as a witness – claimed to have witnessed anything suggesting an abduction on the relevant morning. In his statement to the SBA police on 18 January 2001, N.M. said that at approximately 5.50 a.m. on the morning of 13 December 2000, he had seen a red double-cabin pickup parked on the main Pyla-Pergamos road, with no other cars around it, and a man running from that car towards the field on the right side of the road. There were three or four other men in the field, who were pulling someone by the hands and arms towards the east side of the field, and he heard that man yelling "Let me go!".

124. On 16 December 2000 the SBA police interviewed Mr V.Z., the owner of the white Isuzu pickup with registration number UJ 100, which the first applicant claimed had been travelling in front of him towards Pergamos on the relevant morning. V.Z. stated that on the morning of 13 December

2000, his car had been driven by a Turkish Cypriot worker of his, whose name he did not reveal for safety reasons (but who will be referred to as "X" hereinafter). According to what V.Z. had heard from X, as he was driving from Pergamos to Pyla on the morning of 13 December 2000, X had noticed two civilian cars, one red and the other white, blocking the way of a double-cabin pickup that had been coming from the direction of Pyla (that is, the opposite direction to him). As he approached, he saw three or four persons running from one of the vehicles towards the pickup and by the time he was driving past those vehicles, they were pulling the driver out of the pickup, while three or four other people were sitting inside the other vehicle. V.Z. stated that X had not seen anything more because he had driven past without stopping. Allegedly, a couple of days after the incident the first applicant's nephew, Kyriacos Tsiakkourmas (who himself is an applicant before the Court), and an SBA police officer managed to track down X. Yet, apart from their allegations, there is no evidence in the case file to demonstrate that any contact was actually made with X or that X confirmed V.Z.'s testimony.

125. As for the interviews conducted with the residents of the area, it appears from their testimonies that none of them had seen anyone around on the morning of 13 December 2000. They had certainly not seen anything suggesting an arrest or abduction on the road. Some of them confirmed that the depth of the stream by the border fences, which the first applicant had allegedly crossed to enter the "TRNC", had been around eighty centimetres to one metre on the morning in question. It further appears from the documents submitted by the applicants that after finishing the interviews with the residents of the area around the Pergamos Gate, an SBA officer set off to walk from the point of the alleged crossing into the "TRNC" to the point of the alleged abduction in order to measure the time it would have taken the first applicant to walk that distance. According to the officer's notes, the relevant path could be covered in ten minutes at a normal pace.

126. The applicants also submitted various SBA police reports regarding the investigation conducted into the first applicant's alleged abduction. The report dated 15 December 2000 stated the following:

> "On 14.12.00 Panicos' [the first applicant's] wife, accompanied by a Turkish Advocate, visited him in custody in the Controlled Area of Northern Cyprus. It has been confirmed by both parties that Panicos alleges that at the location of his abandoned vehicle he saw a vehicle with the bonnet open and two men with their attention fixed on the engine compartment. He stopped to offer assistance, and at this point he was bundled into their vehicle and driven from the SBA into the controlled site via Pergamos gate. This was against his will. He was then driven around for approximately one hour, given a parcel and pushed out of the vehicle at an unknown location. Approximately five minutes passed and then a Turkish Cypriot Police car arrived. He went to them for assistance and was arrested for allegedly being in possession of a parcel of controlled drugs".

127. In another report prepared on 16 December 2000, SBA sergeant P.P. noted that the first applicant's nephew, Kyriacos Tsiakkourmas, had given him some information that he had received from his uncle's Turkish Cypriot lawyer regarding the alleged abduction. The relevant parts of the report read as follows:

> "Panicos also told his solicitor that following his abduction he was taken to a place where there were airplanes. During the journey the persons who abducted him were beating him up. On arriving at the aeroplane place (suspected to be Erdjian Airport [sic.]) the persons who abducted him dragged him out of the vehicle, threw a bag to him and left. Following that Turkish Police arrived at the said place and arrested him."

128. In a report prepared on 5 January 2001, SBA sergeant P.P. noted that the "Political Section" of the TRNC Police Plain Clothes Unit used two unmarked civilian vehicles, a red Renault and a white Renault, to patrol the area of Pyla and Pergamos. In his opinion, those vehicles had also been used for the abduction of the first applicant.

129. In their report issued on 23 January 2001, the SBA police made the following conclusions:

> "Turkish Cypriot Police Officers maintain that they arrested Tsiakkourmas inside the Turkish Controlled Area about 70 yards west of Pergamos Gate.
>
> If this account is accepted then Tsiakkourmas must have abandoned his vehicle, engine running, lights on and driver's door open, almost in the middle of what was then a fairly busy road. He must have left his briefcase and mobile telephone and (carrying a large quantity of cannabis) walked 500 metres across a muddy field, climbed a 1.5 metre high fence and crossed a 4 metre wide ditch. An SBA Police Officer will state that there was water to a depth of one metre in the ditch that morning. He thereafter must have tried to hide the cannabis under a 1 metre high olive tree (the only one in the area described by the Turkish Police). (This in an area with which Tsiakkourmas would be unlikely to be familiar – inside the Turkish Controlled Area). All of this he must have accomplished knowing that his employees were waiting for him at 0545 hrs, as they had been doing for the past ten years, at the Pergamos Check Point.
>
> ...
>
> Notwithstanding the fact that it is often much more difficult to prove innocence rather than guilt it is submitted that, in spite of the statements of the Turkish Cypriot Police to the contrary, all other available evidence indicates that Panicos Tsiakkourmas was taken from his vehicle at the locus where that vehicle was abandoned – well within the Eastern Sovereign Base Areas. Other than the statements of the Turkish Cypriot Police Officers there is absolutely no evidence – forensic or historical – to indicate that Tsiakkourmas had – or ever has had – illegal drugs in his motor vehicle or in his possession."

130. Some members of the SBA police also appeared before the Famagusta Assize Court as defence witnesses. Their statements have been noted above (paragraphs 74-79 above). In a separate affidavit he sent to the Court, SBA sergeant P.P. stated that various Turkish Cypriot witnesses who had wished to testify before the Assize Court for the defence had been intimidated by the Turkish Cypriot authorities. Sergeant P.P. claimed that

some of those witnesses had personally told him that they had been questioned and threatened by the Turkish Cypriot police. The Court notes that it cannot be inferred from the case-file that these allegations were brought to the attention of the Assize Court.

131. On 24 January 2001 the SBA police conducted a reconstruction of the first applicant's alleged abduction on the basis of the evidence available to them. The reconstruction was also recorded on video. It appears that a number of "TRNC" police officers also watched the reconstruction.

132. The SBA police were not permitted to interview the applicant during his detention in the "TRNC". However, following his release they took a statement from him, which was consistent with his account of the events submitted to the Court. They also showed him the video of the reconstruction exercise. According to the records of the SBA police, the first applicant recognised two of the bystanders in the reconstruction video as his abductors. Upon investigation, it was established that one of the persons recognised by the applicant was police officer E. of the Famagusta Intelligence Service and the second one was police officer Ü., who worked at the Pergamos police station. Arrest warrants were subsequently issued against those persons on 7 June 2001 on suspicion of the offence of abduction. There is no further information in the case file on this matter, nor is it clear whether this information was shared with the Turkish Cypriot authorities.

133. There is no information in the case file to suggest that the Government of the United Kingdom lodged any protests with the Turkish Government in relation to the alleged abduction of the first applicant from SBA territory.

3. Letter of the first applicant's lawyer to Mr Rauf Denktaş

134. On 7 July 2001 the applicant's Turkish Cypriot lawyer, Mr M. Aziz, gave the following information to Mr Rauf Denktaş, the President of the "TRNC" at the material time, regarding the allegations of witness intimidation during the trial of the first applicant before the Famagusta Assize Court:

> "At the close of the case by the Prosecution, the defense summoned 17 witnesses. The names of all the Greek, English and Turkish witnesses that were summoned were given to me by P. Brogan, the co-defense lawyer, after consultation with the British Sovereign Bases Police. However, due to reasons out of my knowledge, the names of some additional witnesses were withheld from me. An attempt was made to call these witnesses at the last minute. The names of these witnesses were given to me at the last minute. I issued the necessary summonses through the Registrar's Office of the Famagusta District Court. All the witnesses listed in the attached paper were issued with summons [17 witnesses in total] and these were brought to the Court to testify. Although the 3-4 witnesses whose names were given to me late were issued with summonses, these could not be served by the Court bailiff in time.

On the last day of the trial, I gave the Court the information I got from the English lawyer that these 3-4 witnesses had actually wanted to come to the Court but had been threatened or hindered. The Court asked me whether [they] had been summoned, in which case the court could order their presence. I told the Court that the summonses had not been served yet. As there was no service of the summons, the judge, under the Criminal Procedure Law and the related Regulation, could not order the arrest of these witnesses. As a result, the defense closed its case (without calling these additional witnesses) after calling 17 witnesses listed in the attached paper.

The reason a proper service of the summonses could not be done was the concealment of the names of these witnesses even from me till the last minute, and our attempt to summon them without applying for a short service order from the Court. As a defense lawyer, as well as not personally having seen the witnesses, I got to know about their identities just before the issuing of the summons, the day before in the afternoon, and issuing a summons the same day, I sent it by hand to the British Sovereign Bases Police. It is not again in my knowledge whether these witnesses were personally served with these summonses. We produced no evidence that they had been duly served. For this reason, the claims that the witnesses for defense had been prevented or threatened are not in my knowledge. Nothing was done to put such an allegation before the Court in the form of evidence."

135. On 17 July 2001 that letter was conveyed by Mr Rauf Denktaş to Mr Edward Clay, the British High Commissioner to Cyprus at the relevant time.

4. Letter of Mr Rauf Denktaş to the UN Secretary General

136. On 8 January 2001 Mr Rauf Denktaş sent the following letter to the UN Secretary General regarding the alleged abductions of the first applicant and of Mr Tekoğul.

"I understand that letters of protest about the arrest by the Turkish Republic of Northern Cyprus police of one Panicos Tsakourmas [sic], aged 39, while in possession of drugs is being circulated in all directions by the Greek Cypriot leadership. It is alleged that the said Tsakourmas was abducted by Turkish Cypriots in retaliation to "the arrest" by the Greek Cypriot police of Turkish Cypriot Ömer Gazi Tekoğul at Pyla, a mixed village.

Both Tsakourmas and the Turkish Cypriot Ömer Gazi Tekoğul, aged 42, are in custody pending their trial in respective courts, one in the Greek side and the other before the Assize Court to be held in February in the Turkish Republic of Northern Cyprus. Both sides allege that they were kidnapped by the police of the other side. Naturally, it is the relevant courts which will have to decide these issues. The allegation that Tsakourmas was arrested in retaliation to the unlawful arrest of Tekoğul is strenuously denied by the three policemen involved.

But the case of Tekoğul is a clear case of abduction by Greek Cypriot policemen who, concealing their identity, pretended to be a good friend of Tekoğul until the day he was abducted by them.

...

On 1 December 2000, at about 2040 hours [Tekoğul] had started his car, parked outside a Turkish coffee shop in Pyla, in order to go home when the two Greek Cypriot "friends" approached his car and beckoned him to enter their car for a chat.

As soon as Tekoğul entered their car, he was hit on the head, and driven away in the direction of Larnaca. Shortly, four other Greek Cypriot policemen joined them and Tekoğul was taken into custody while his car, outside the coffee shop in Pyla, continued to run. Some hours later, the family was informed by neighbours about the car and Tekoğul's father took it away.

In the mixed village of Pyla, under United Nations control, the rule is that if anyone is arrested by either side, the United Nations should immediately be informed. This was not done in the case of Tekoğul. The family was informed about the said "arrest" 12 hours after the abduction.

Tekoğul's Greek Cypriot advocate Andreas Constantinou made this statement to the Cyprus Mail, on 28 December 2000.

'I believe the police lied in their statements and I told the Attorney-General this when they said Tekoğul was arrested in the free areas, if they arrested him in free areas why didn't police show us the car?'

All in all it is clear that Tekoğul was abducted in line with the well-known, and long practiced Greek Cypriot policy of harassing Turkish Cypriots. Abduction of well-known or popular Turkish Cypriots had stopped for some time, but it appears that the practice is coming back unless United Nations authorities in Pyla take stern steps in this matter.

In view of growing publicity about the Tsakourmas' case I thought I should give this information to you for a fair appraisal of the situation."

5. Statements of Mr Rauf Denktaş to the media in the aftermath of the first applicant's arrest

137. A report prepared by the SBA police on 17 December 2000 noted the following:

"On 17/12/2000 at 1220 hrs, Turkish Cypriot leader Rauf DENKTAŞH [sic.] visited Pyla village...

...

He was then interviewed by the Media. Amongst others he stated about TSIAKKOURMAS case:

- He only knows that the arrest was affected within TCAs [Turkish Cypriot Administration].

- The arrest of TSIAKKOURMAS cannot be characterised that it occurred in retaliation to the arrest of the T/Cypriot, because everybody knows that he is employing about 15 Turkish Cypriot workers.

- No negotiations are taking place for an exchange between the two prisoners. The matters are in the hands of the Courts."

138. According to another report of the SBA police dated 12 January 2001, Mr Rauf Denktaş had allegedly said in a meeting with Sir David Hannay, Britain's Special Envoy to Cyprus at the time, that he would be prepared to release the first applicant on bail if Ömer Gazi Tekoğul were also granted bail, because both suspects were suffering from health problems.

6. Affidavit of Mr J.C., Civil Affairs Police Liaison Officer with the UNFICYP

139. The applicants submitted as evidence an affidavit made by Mr J.C. before a notary public in Dublin, Ireland, on 10 December 2001. The relevant parts of his affidavit read as follows:

> "On the morning of Sunday 3.12.2000 at approximately 9.30 a.m., I received a telephone call whilst in my apartment within the UN compound in the UN Headquarters in Nicosia. The telephone call ... was from Mr M.İ. Mr M.İ. wanted to meet the Chief of Mission of UNFICYP. He did not tell me the reason ... I was unable to contact the Chief of Mission. Mr M.İ. then wished to speak to the Special Adviser to the Chief of Mission who was also Head of the Civil Affairs Branch. I failed to make contact with the Special Adviser and informed him accordingly. He was very agitated and I agreed to meet him to discuss what he described was a serious matter ...
>
> Mr M.İ. was very agitated and very concerned about the arrest of Ömer Gazi Tekoğul who, he alleged, was arrested in the UN buffer zone in the Pyla area. Ömer Gazi Tekoğul is a Turkish Cypriot, who was arrested by the Police of the Republic of Cyprus on the night of Friday 1.12.2000 being found in possession of a substantial amount of the illegal drug heroin.
>
> ... he [Mr M.İ.] told me to take down a protest about Ömer Gazi Tekoğul's arrest. As he spoke, I noted his protest in my notebook.
>
> ...
>
> I then read out to Mr M.İ. the protest that he made in the format that I would present it which was as follows:
>
> "*PROTEST*
>
> *On 3/12/2000, 1100 hrs north Ledra Checkpoint, Nicosia, Mr M.İ. made the following protest to Insp. J.C., CAPLO, UNFICYP for the information of the Greek Cypriot Government and UNFICYP.*
>
> *I strongly protest the fact that the Greek Cypriot police kidnapped a Turkish Cypriot ÖMER GAZI TEKOĞUL in Pyla village within the UN controlled buffer zone on Friday night 01/12/00. I further state that if ÖMER GAZI TEKOĞUL is not released before 1200hrs (noon) on Monday 04/12/00 Greek Cypriots living in the Pyla area will disappear. If the Greek Cypriot police are engaging in a new policy of kidnapping suspects from the UN controlled buffer zone Turkish Cypriot police will respond in a similar manner.*"
>
> Mr M.İ. approved the format.
>
> ...
>
> I exhibit as Exhibit A to this affidavit page 53 of my notebook in which I recorded the protest as made by Mr M.İ."

II. RELEVANT DOMESTIC LAW

A. Constitution of the "TRNC"

1. Liberty and security of the person

140. The relevant parts of Article 16 of the Constitution read as follows:

"1. Every person has the right to liberty and security of person.

2. No person shall be deprived of his liberty save in the following cases when and as provided by law: -

...

(c) the arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

5. Every person arrested or detained shall be informed at the time of his arrest, in a language which he understands of the reasons for his arrest or detention and shall be allowed immediately to have the services of a lawyer to be chosen by him or by his relatives.

6. The person arrested shall, as soon as is practicable and in any event not later than twenty-four hours after his arrest, be brought before a judge, if he is not in the meantime released.

7. The judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person arrested and shall, as soon as possible and in any event not later than three days from such appearance, either release the person arrested on such terms as he may deem fit or where the investigation into the commission of the offence for which he has been arrested has not been completed remand him in custody. The judge may remand him in custody for a period not exceeding eight days at any one time provided that the total period of such remand or detention in custody shall not exceed three months from the date of the arrest; on the expiration of the said period every person or authority having the custody of the person arrested or detained shall forthwith set him free.

8. The exercise of the right of appeal against the decisions of the judge under paragraph (7) cannot be denied.

9. Every person who is deprived of his liberty by arrest or detention shall be entitled to take legal proceedings by which the lawfulness of his detention may be decided speedily by a court. If his detention is found to be illegal, the Court shall order his release."

2. Right to a fair trial

141. The relevant parts of Article 17 of the Constitution provide as follows:

"1. No person shall be denied access to the court assigned to him by or under this Constitution ...

2. In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law. Judgement shall be reasoned and pronounced in public session.

...

4. Every person has the right –

(a) to be informed of the reasons why he is required to appear before the court;

(b) to present his case before the court and to have sufficient time necessary for its preparation;

(c) to adduce or cause to be adduced his evidence and to examine witnesses according to law;

(ç) to have a lawyer of his own choice and to have free legal assistance where the interests of justice so require and as provided by law;

(d) to have free assistance of an interpreter if he cannot understand or speak the language used in court."

B. Criminal Procedure Law (Chapter 155) of the "TRNC"

1. Police officers' powers of arrest

142. The relevant part section 14 of the Criminal Procedure Law states:

"(1) Any officer may, without a warrant, arrest any person -

...

(b) who commits in his presence any offence punishable with imprisonment;".

2. Appeals to the Supreme Court

143. The relevant part of section 132 of the Criminal Procedure Law (Part V) reads as follows:

"1. Any person convicted by an Assize Court and sentenced to death or to any term of imprisonment or to a fine exceeding twenty five Cypriot liras may, subject to the provisions of sections 135 and 136 of this Law, appeal to the Supreme Court as the Court of Cassation ..."

C. Courts of Justice Law no. 9/1976 of the "TRNC"

144. The relevant parts of section 37 of the Courts of Justice Law provide as follows:

"2. Subject to the provisions of the Criminal Procedure Law, but save as otherwise provided in the subsection, every decision of a court exercising criminal jurisdiction shall be subject to appeal to the Supreme Court [acting as] the Court of Cassation. Any such appeal may be made as of right on any ground against a decision of conviction or a decision imposing sentence...

> 3. Notwithstanding anything contained in the Criminal Procedure Law or in any other Law or in any Rules of Court and in addition to any powers conferred thereby, the Supreme Court [acting as] the Court of Cassation, on hearing and determining any appeal either in a civil or a criminal case, shall not be bound by any determinations on questions of fact made by the trial court and shall have power to review the whole evidence, draw its own inferences, hear or receive further evidence and, where the circumstances of the case so require, re-hear any witnesses already heard by the trial court, and may give any judgment or make any order which the circumstances of the case may justify, including an order of retrial by the trial court or any other court having jurisdiction, as the Supreme Court may direct."

THE LAW

I. PRELIMINARY ISSUES

A. As to the respondent State's responsibility under the Convention in respect of the alleged violations

1. The parties' submissions

(a) The Government

145. The respondent Government disputed their liability under the Convention for the alleged events set out in the application. In their submissions to the Court, they claimed that the present application concerned the trial of the first applicant for a criminal offence and his conviction by a competent court in the "TRNC"; no Turkish authorities had been involved in the proceedings against the first applicant. The courts which tried the first applicant were not courts of Turkey; they did not apply Turkish law, but rather the substantive criminal law and criminal procedure law of Cyprus, which had been codified during the British colonial period and was applicable on both sides of the island. Moreover Turkey, as the respondent State, could not attempt to effect any change in the law of the "TRNC" for the simple reason that it could not legislate outside its own borders. In other words, the respondent Government claimed that the acts complained of were imputable exclusively to the "TRNC", an independent and sovereign State established by the Turkish-Cypriot community.

146. The respondent Government acknowledged that while examining the question of "jurisdiction" within the meaning of Article 1 in the case of *Loizidou v. Turkey* ((preliminary objections), 23 March 1995, § 62, Series A no. 310), the Court had held that "the responsibility of a Contracting Party may also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory", and had concluded that the acts complained of in that case were

capable of falling within Turkish jurisdiction. Similarly, in the subsequent case of *Cyprus v. Turkey* ([GC], no. 25781/94, § 77, ECHR 2001-IV), the Court had found that the reasoning in the *Loizidou* case was "framed in terms of a broad statement of principle as regards Turkey's general responsibility under the Convention for the policies and actions of the 'TRNC' authorities". Nonetheless, the Government claimed that the Court had not clarified the issue as to whether such general responsibility existed in respect of judicial decisions delivered by the courts of the "TRNC", over which the Turkish authorities had no control whatsoever.

(b) The applicants

147. The applicants did not submit any observations on this matter. Nevertheless, they had stressed at the time of lodging their application that the actions of the "officials", "courts" and "agents" of the "TRNC" were the responsibility of the respondent State under the Convention. Moreover, while the abductors of the first applicant had not been identified, the circumstances of his abduction and subsequent treatment clearly demonstrated that the abduction was the work of agents for whose acts the respondent State bore responsibility.

(c) The third-party intervener

148. The Government of Cyprus maintained that Turkey's effective control of the whole of the Turkish-occupied part of Cyprus had been clearly established by the Court in the case of *Loizidou v. Turkey* ((merits), 18 December 1996, § 56, *Reports of Judgments and Decisions* 1996-VI), as well as in the fourth inter-State case of *Cyprus v. Turkey* (cited above, §§ 75-80). They accordingly asked the Court to dismiss the respondent Government's denial of responsibility in the light of its findings in the said cases.

2. The Court's assessment

149. The Court observes that the respondent Government disputed its liability under the Convention for the violations alleged in the present application.

150. In this connection, the Court points out that in the case of *Cyprus v. Turkey* (cited above, § 77) it found that since Turkey exercised effective overall control over northern Cyprus, its responsibility could not be confined to the acts of its own soldiers or officials in northern Cyprus but had also to be engaged by virtue of the acts of the local administration, which had survived by virtue of Turkish military and other support. The Court also stressed that where the fact of such domination over the territory was established, it was not necessary to determine whether the Contracting State exercised detailed control over the policies and actions of the

subordinate local administration; the fact that the local administration had survived as a result of the Contracting State's military and other support entailed that State's responsibility for its policies and actions (see *Loizidou* (merits), cited above, § 56, and *Cyprus v. Turkey*, cited above). It follows that, in terms of Article 1 of the Convention, Turkey's jurisdiction must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified, and that violations of those rights are imputable to Turkey (see *Cyprus v. Turkey*, cited above).

151. The Court notes that according to the Government's own version of the facts, the first applicant was arrested in "TRNC" territory by police officers of the "TRNC", and was subsequently tried and convicted by the Famagusta Assize Court operating in the "TRNC", during which period he was entirely under the control of the "TRNC" authorities. Under those circumstances, and in view of the Court's case-law, the applicants must be regarded as coming "within [the] jurisdiction" of Turkey for the purposes of Article 1 of the Convention (see, *mutatis mutandis*, *Cyprus v. Turkey*, cited above, § 80; *Protopapa v. Turkey* (dec.), no. 16084/90, 26 September 2002; *Foka v. Turkey*, no. 28940/95, § 83, 24 June 2008; *Kallis and Androulla Panayi v. Turkey*, no. 45388/99, § 26, 27 October 2009; and *Boyacı v. Turkey* (dec.), no. 36966/04, § 31, 23 September 2014). The responsibility of the respondent State under the Convention is accordingly engaged.

B. As to the requirement to exhaust domestic remedies

1. The parties' submissions

(a) The Government

152. The respondent Government averred that the applicants had failed to comply with the exhaustion of domestic remedies rule in Article 35 § 1 of the Convention. They reasoned that the applicants had lodged their application without first having had recourse to the local remedies within the judicial system of the "TRNC", which were effective, sufficient and accessible to them and capable of providing redress for their complaints. The allegation that the "TRNC" courts did not afford an effective remedy had been made for purely political reasons.

153. Referring, among others, to the case of *Cyprus v. Turkey* (cited above, § 102), the respondent Government maintained that for the purposes of Article 35 of the Convention, the remedies available in the "TRNC" might be regarded as "domestic remedies" of Turkey as the respondent State and that the question of their effectiveness was to be considered in the specific circumstances of each case.

(b) The applicants

154. The applicants did not submit any observations on this matter. They had, however, made some remarks on it in their application form. They stated at the outset that the abduction of the first applicant had taken place in the territory of the SBA and under generally recognised rules of international law, which were applicable by virtue of Article 35 § 1 of the Convention, an individual who was abducted from the territory of one State to territory controlled by another was not required to exhaust remedies in the abducting State.

155. The applicants further argued that there were, in any event, no effective domestic remedies in the instant case. Firstly, the requirement to exhaust domestic remedies did not require an applicant to bring proceedings before a tribunal which had been established in violation of international law, as well as of the national law in force in the relevant territory, which remained the law of the Republic of Cyprus. Secondly, even if recourse to the "TRNC" courts was to be treated as a domestic remedy within the meaning of Article 35 § 1 of the Convention, the applicants were still not required to exhaust those remedies since the abduction and the subsequent treatment of the first applicant were part of an "administrative practice". Moreover, even assuming that such remedies existed in theory, they would not have been effective in practice in the applicants' case because they were not accessible to them because none of them resided in the "TRNC", and they offered no reasonable prospects of success.

(c) The third-party intervener

156. The Government of Cyprus made observations similar to those of the applicants. They submitted that given the existing legal and political context and the circumstances in which the first applicant had been abducted, detained and tried as a hostage as part of a State policy, it would have been unrealistic to expect the applicants "to seek remedies in the legal system of the perpetrator". The "TRNC" was not a valid and legal State and its courts had not been "established by law" within the meaning of Article 6 of the Convention, as they had not been set up by Turkey through legal acts of its democratic institutions, but rather as a result of an invasion and continuing military control. Turkey did not exercise control over the "TRNC" by rule of law, but simply by means of military occupation; as a consequence, the remedies available in the "TRNC" could not be considered remedies of the respondent High Contracting Party. They submitted that the illegality of those remedies in international law amounted to a "special circumstance" absolving the applicants from the requirement of exhaustion.

2. The Court's assessment

157. In its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 82-102), and in numerous subsequent judgments (see, for instance, *Adalı v. Turkey*, no. 38187/97, § 186, 31 March 2005; *Andreou v. Turkey* (dec.), no. 45653/99, 3 June 2008; and *Kallis and Androulla Panayi*, cited above, § 32), the Court held that for the purposes of Article 35 § 1 of the Convention, 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 in which it arose. However, that conclusion was not to be seen as in any way casting doubt on the view of the international community regarding the establishment of the "TRNC" or the fact that the Government of the Republic of Cyprus remained the sole legitimate government of Cyprus. In this connection, the Court had stressed in its *Demopoulos and Others* decision that "allowing the respondent State to correct wrongs imputable to it does not amount to an indirect legitimisation of a regime unlawful under international law" (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 96, ECHR 2010).

158. The Court sees no reason to depart from its previous findings on this point. In view of the above considerations, the question of exhaustion of domestic remedies, including issues such as whether or not a particular remedy could be regarded as effective and therefore had to be used, or whether there were any special circumstances which absolved the applicants from the obligation to exhaust those remedies in the circumstances of the instant case, should be examined separately for each specific complaint.

II. THE COURT'S ASSESSMENT OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS REGARDING THE CIRCUMSTANCES OF THE FIRST APPLICANT'S ARREST

A. The parties' submissions

159. The Court notes that the parties presented different accounts as to how the first applicant came to be under the control of the "TRNC" authorities. While the Government contended that he had been caught in possession of drugs after having illegally crossed into the "TRNC", the first applicant consistently claimed that he had been abducted within the SBA territory by "TRNC" agents in civilian clothes and had then been detained in the "TRNC" on the basis of fabricated charges of drugs smuggling.

160. According to the submissions of the Government, the location of the first applicant's arrest was an issue that had been taken up and examined scrupulously by the "TRNC" courts. The first applicant's lawyers had

subjected the main prosecution witnesses to extensive cross-examination, and the prosecution had likewise cross-examined the witnesses called by the first applicant. After hearing those witnesses, the domestic courts had accepted the version of the facts as presented by the prosecution. It had accordingly been established that the first applicant had entered the "TRNC" illegally from the SBA, between boundary stones nos. 96 and 97 separating the British bases from the TRNC. He had apparently left his car in SBA territory, but the location of the arrest was within the borders of the TRNC. There were a few witnesses who had allegedly seen the first applicant's car on the relevant morning; however, none of the passers-by had witnessed his arrest. Moreover, it was the Government's opinion that the evidence given by the defence witnesses was far from coherent, even on the issue of the original location of the first applicant's car.

161. Referring to the separate investigation conducted by the SBA police into the circumstances of the first applicant's detention, the Government further maintained that that investigation had been based on a "reconstruction" of the incident and on statements taken from persons who could not be described as "independent" and detached from the adverse political atmosphere prevailing in southern Cyprus, bearing in mind that this was a highly publicised case at the time. Moreover, the statements taken by the SBA were not subjected to the scrutiny of a court of law.

162. As to whether there was any link between the arrest of the first applicant and that of Ömer Gazi Tekoğul, the Government contended that the reason why the two names had been pronounced together was that both men had gone through similar experiences and that the incidents had taken place within a very short span of time. During both the preliminary inquiry and the subsequent hearing before the Famagusta Assize Court, the first applicant's lawyers had insisted on the alleged link between the two incidents. For that purpose, they had called the UN Liaison Officer in Cyprus at the material time, Mr J.C., to testify as to what Mr M.İ., the Director of Consular and Minority Affairs at the TRNC Foreign Ministry, had allegedly told him and they had protested when the said evidence was not allowed to be included in the case file for being hearsay. The Government could not understand, however, why the defence had not called Mr M.İ. directly as a witness so that he could testify on the content of his alleged statement, especially given that the domestic courts had the authority to compel M.İ. to testify.

163. The Government of Cyprus stated for its part that the evidence of a connection between the abduction of the first applicant and the earlier arrest of Mr Tekoğul was overwhelming. They referred in particular to the formal protest made by Mr M.İ. to the UN Liaison Officer, Mr J.C., and maintained that the first applicant had been targeted randomly in execution of the threat made in that protest. This was further evidenced by the numerous appeals

made by the Turkish Cypriot side for the exchange of the applicant for Ömer Gazi Tekoğul, including by Mr Denktaş himself.

164. Furthermore, the exhaustive and independent inquiry conducted by the SBA police also supported unequivocally the conclusion that the first applicant had indeed been abducted within the territory of the SBA. The Government of Cyprus maintained that where the accounts of the parties were diametrically opposed, the Court had to give conclusive weight to independent evidence, which had been provided by the SBA investigation report in the instant case. They added that while the respondent Government had claimed that the "TRNC" courts had thoroughly examined the allegations of both sides, what took place before those "courts" was not in any way determinative of the way in which the Strasbourg Court should approach the evidence and did not constrain the Court in its fact-finding exercise.

B. The Court's assessment

165. In cases in which there are conflicting accounts of events, the Court is inevitably confronted, when establishing the facts, with the same difficulties as those faced by any first-instance court (see, for instance, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 151, ECHR 2012). In this connection, the Court emphasises that it is sensitive to the subsidiary nature of its role, and that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. As a general rule, 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 it is for the latter to establish the facts on the basis of the evidence before them. Though the Court is not bound by the findings of domestic courts and remains free to make its own assessment in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the reasoned findings of fact reached by the national judicial authorities, particularly where, as in the present case, the Court has not itself had the benefit of examining the relevant witnesses and forming its own assessment of their credibility (see *Erdoğan and Others v. Turkey*, no. 19807/92, § 71, 25 April 2006, and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 61, ECHR 2012).

166. Turning to the facts before it, the Court notes that following the preliminary inquiry held between 8 and 15 February 2001, the Famagusta Assize Court commenced criminal proceedings against the first applicant on 23 February 2001. During the three-month trial that ensued, the Assize Court was presented with a substantial body of evidence about the events of 13 December 2000, including oral testimony and documentary and

photographic evidence submitted by both parties. Relying on that evidence, on 26 April 2001 the Assize Court ruled for the first applicant's conviction for drug-related crimes. It held that, having carried out a comprehensive examination of the testimonies and documentary evidence presented to it, the "testimonies of the prosecution witnesses had been found to be credible, accurate and reliable", whereas the "testimonies of the defendant and his witnesses had lacked credibility, accuracy and reliability". The Assize Court thus accepted the facts as presented by the prosecution and convicted the first applicant on that basis.

167. While the Court has no reason to suspect that the trial court's admission or assessment of the evidence before it was arbitrary *per se*, it notes that the Famagusta Assize Court provided no reasoning in relation to its findings of fact and assessment of evidence (see paragraph 84 above). The Court, therefore, cannot determine whether the judgment of the domestic court, which had not only the means but also the principal duty to clearly establish the facts contested by the parties, was the result of a fair and comprehensive consideration of the contradictory arguments before it, or whether it ruled in favour of the official version of the events presented by the prosecution following a perfunctory assessment that did not give sufficient regard to the first applicant's serious claims. The absence of such reasoning not only has implications *vis-à-vis* certain procedural rights of the applicant, which will be examined in further detail below, but also detracts from the reliance which might otherwise have been placed on the trial court's judgment by the Court. In these circumstances, the Court is compelled to make its own assessment of the facts on the basis of the evidence before it.

168. The Court reiterates in this connection that in assessing evidence in this context, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard: as applied by the Court, it has an autonomous meaning (see *Mathew v. the Netherlands*, no. 24919/03, § 156, ECHR 2005-IX for further details). According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see, amongst others, *Mathew,* cited above, § 156).

169. In the light of the foregoing principles, and the gravity of the allegations submitted by the applicants, the Court will subject the evidence presented by the parties to careful scrutiny in order to come to a conclusion

regarding the circumstances in which the first applicant was apprehended on 13 December 2000.

1. Evidence presented by the applicants

170. The Court notes at the outset that the first applicant was not able to present a direct and reliable eyewitness to corroborate his account of the events. He claimed before the Court that the driver of the white Isuzu pickup with registration number UJ 100, who had been driving ahead of him on the morning in question, must have witnessed his abduction. However, he made no such claims during the domestic proceedings, nor, to the Court's knowledge, was any attempt made to call that person as a witness.

171. The Court notes that the only defence witness who claimed to have seen what took place on the relevant morning, a Greek Cypriot contractor named Mr N.M., contradicted the first applicant's account of the events. In his statement before the Famagusta Assize Court, N.M. claimed that on the morning of the incident, he had seen a man getting out of a red pickup parked on the main Pyla-Pergamos road, which was the only car around. Three to four other men were in the fields to the right side of the road. One of them was being dragged by the arms and pleading to be let go (see paragraph 70 above). According to the account presented by the first applicant, however, there were at least two other cars on the road that had been used for his abduction, and after a struggle, he had been transferred directly from his car to the red Renault. Moreover, the first applicant made no mention of being dragged across the field by the side of the road, as alleged by N.M. The Court observes that the first applicant made no attempt to offer an explanation for N.M.'s conflicting account.

172. As for the other witnesses called by the first applicant during the domestic proceedings, including a number of SBA police officers, the Court notes that they mainly provided information as to the location and the state in which the first applicant's car had later been found in the SBA, and that there were some inconsistencies as to its exact location and state. Only two witnesses, Mr G.H. and Mr A.G., who were apparently driving a few minutes ahead of the first applicant on the morning in question, claimed to have seen the red and the white Renault cars that were allegedly used to orchestrate the first applicant's abduction. However, the descriptions they provided in relation to those cars were somewhat inconsistent: whereas G.H. claimed that there was a white Renault parked on the left-hand side of the road with its bonnet open, and a red Renault to the right of that white car, A.G. stated that the car parked on the left-hand side of the road with an open bonnet had been a red Renault, and that the white Renault had been waiting on the opposite side of the road by some cypress trees and had flashed its lights at him. Even more striking was the fact that in his earlier statement to the SBA police on 19 December 2000 – that is, only six days after the incident – A.G. had not mentioned anything about a white car, which is hard

to explain considering his later claim that that car had flashed its headlights at him. Moreover, as already mentioned in paragraph 122 above, the statement of G.H. before the Famagusta Assize Court did not match his earlier statement to the SBA police.

173. While the Court is ready to accept that some of the discrepancies noted above, in particular those concerning the exact state in which the first applicant's car was found, may be explained by the differences in the subjective assessments of individual witnesses and the passage of time, it considers in any event that the establishment of the location and the circumstances in which the car was found, despite the many valid questions it raises, does not on its own shed light on the circumstances in which the first applicant was detained. Similarly, the fact that the sniffer dog found no traces belonging to the first applicant around his abandoned car or any other traces in the fields, although it must certainly have been taken into account by the trial court in its consideration as to how the first applicant had reached "TRNC" territory, does not as such rebut the Government's allegations regarding his capture, particularly in view of Mr N.M.'s conflicting statement that he had seen a number of persons in the fields, whose tracks the dog did not pick up either. The Court stresses in this connection that the evidence presented by the applicants is not even sufficient to establish whether the first applicant himself was driving his car on the relevant morning or whether he was alone in the car.

174. Although the applicants alleged that a number of important Turkish Cypriot witnesses had been unable to testify in the first applicant's favour on account of the threats to which they had been subjected, the Court cannot make a conclusive finding on that issue either, particularly in view of the statements of Mr M. Aziz, the first applicant's lawyer, to the trial court and to Mr Rauf Denktaş suggesting his unawareness of such intimidation (see paragraphs 83 and 134 above, respectively), and given that there were no real attempts to substantiate the allegations of witness intimidation before the trial court during the criminal proceedings.

175. The Court also observes that although the first applicant referred in his application before the Court to a Turkish Cypriot detainee who had allegedly been asked by the "TRNC" police to falsely admit to being his drugs contact in the "TRNC" (see paragraph 29 above), the evidence in the case file indicates that he did not draw that serious allegation to the attention of his lawyers or the domestic courts, nor did he subsequently reiterate it in his statement to the SBA police following his release.

176. The Court further takes note of the separate investigation conducted by the SBA police into the circumstances of the first applicant's detention, which resulted in a finding that he had been "taken from his vehicle at the locus where that vehicle was abandoned – well within the Eastern Sovereign Base Areas" (see paragraph 129 above). The Court observes in this connection that according to the documents submitted to it, the SBA police

interviewed more than a hundred people within the framework of that investigation, and that it found the opportunity to review all of those interviews. As explained in detail in the “Facts” section, amongst the interviewees were the defence witnesses who subsequently appeared before the Famagusta Assize Court, a number of Turkish Cypriots who either worked for the first applicant or knew him otherwise, some other Greek Cypriot builders who had used the Pyla-Pergamos road on the relevant morning, as well as the residents of some of the houses in the vicinity. Even though the assessment of the SBA police may appear plausible having regard to the place where the applicant’s car was found and the latter’s state as well as the official information about the place of the applicant’s arrest, this assessment does not constitute sufficient evidence in support of the applicant’s account of events (see also paragraph 187 below).

177. The Court observes in the first place that none of the residents of the area where the first applicant allegedly abandoned his car in the SBA or crossed into the “TRNC” had seen anything suspicious on the morning in question. Similarly, none of the other Greek or Turkish Cypriot persons interviewed provided any additional information to that subsequently presented to the Famagusta Assize Court. Some of them had no information to share with the SBA police, other than the rumours they had heard; some others stated that they had not seen anything suspicious, not even the first applicant’s car, even though they had also used the Pyla-Pergamos road at around 6.30 to 7 a.m. that morning. Others, however, attested to having seen the first applicant’s abandoned car, although again with some inconsistencies as to its location and state – such as which way the car was facing, whether its engine was running, whether and if so which doors of the car had been left open and whether the headlights were on. The Court stresses at this juncture that the car had been moved to another spot following the instructions of the first applicant’s brother prior to the arrival of the SBA police officers at the scene of the incident. Therefore, the official SBA records only included second-hand information on where and in what condition the first applicant’s car had originally been found, instead of photographs or other such direct evidence.

178. In the Court’s opinion, four statements made to the SBA police are worth a special mention. The first three of those statements, made by N.M., G.H. and A.G. have already been discussed in detail in paragraphs 171 to 172 above. The fourth statement that the Court wishes to highlight is that of Mr V.Z., the Greek Cypriot contractor who owned the aforementioned white Isuzu pickup with registration number UJ 100, whose statement has been summarised in paragraph 124 above. The statement given by V.Z. regarding his employee X’s alleged witnessing of the first applicant’s abduction does not correspond to the latter’s testimony. Whereas the first applicant alleged that the white Isuzu had been travelling ahead of him in the direction of Pergamos, and had actually stopped by the red Renault car

and talked briefly to the persons standing in front of that car before driving away towards Pergamos, V.Z. claimed that X was travelling from Pergamos to Pyla, namely in the opposite direction, and had driven past the cars in question as the first applicant was being dragged out of his car, without stopping. The Court also finds it curious that although V.Z. informed the SBA police of X's alleged eyewitness account as early as 16 December 2000, neither V.Z. himself, nor Kyriacos Tsiakkourmas or the SBA police officer who had allegedly tracked X down had been called as witnesses by the defence during the subsequent criminal proceedings against the first applicant before the Famagusta Assize Court.

179. The Court also notes the contradictions in some SBA police reports regarding the circumstances in which the first applicant was abducted. While the first applicant had claimed during the domestic proceedings and subsequently before the Court that he had been forced to stop after his car had been intercepted by a white Renault on his way to Rabiye's café (see paragraphs 17 and 66 above), according to an SBA report dated 15 December 2000, he claimed that he had been forced out of his vehicle only after he had willingly stopped to offer assistance to a car which appeared to have an engine problem (see paragraph 126 above). Moreover, although the first applicant stated before the domestic courts and the Strasbourg Court that his abductors had personally handed him over to the Turkish Cypriot police and that he had not seen the drugs which he was accused of smuggling until later in the day at the police station (see paragraphs 20 and 26 above), two SBA police reports dated 15 and 16 December 2000 noted that the first applicant had been arrested by the Turkish Cypriot police after his abductors had abandoned him in the vicinity of an airport with a package of drugs (see paragraphs 126 and 127 above).

180. Apart from taking witness statements, the SBA police also conducted a crime-scene investigation. It has already been mentioned above that the sniffer dog was not able to find any tracks in the vicinity of the car that could have shed light on the events, nor were any traces of prohibited substances found inside the car. The Court also notes, however, that whereas the doors and the windows of the car were dusted for fingerprints, there is no information to suggest that foreign fingerprints were identified on the car, although the first applicant alleged that he had been dragged out of his car by force and his car was subsequently moved from its original location.

181. Lastly, during the preliminary inquiry the UN Liaison Officer, Mr J.C., made a statement regarding a meeting he had had with Mr. M.İ. on 3 December 2000 (see paragraph 56 above). The first applicant relied on that statement to argue that he had been kidnapped in retaliation for Ömer Gazi Tekoğul's earlier arrest by the Greek Cypriot authorities. While the Court has no reason to doubt the independence and impartiality of Mr J.C., it is not prepared to give decisive weight to that untested circumstantial

evidence. The Court also notes in this connection that the applicants have failed to respond to the Government's query as to why Mr M.İ. was not summoned to testify before the Famagusta Assize Court, which would have had the power to compel him to attend (see paragraph 162 above).

2. Evidence presented by the Government

182. In support of their arguments the Government chiefly relied on the evidence presented by the prosecution during the domestic proceedings, which consisted mainly of the official incident reports, as well as photographs and sketches of the relevant area where the first applicant had allegedly crossed into the "TRNC".

183. Like the first applicant, the Government did not present any eyewitnesses who could attest to their version of the events. According to the testimony of the three police officers from the drugs branch who had allegedly caught the first applicant *in flagrante delicto*, they were the only ones present at the scene of the incident, apart from the applicant himself. Sub-inspector Ü.Ö. claimed during the domestic proceedings that apart from his superintendent and the other two officers who had accompanied him that morning, no other officers or authorities had been informed of the tip-off call that he had received on 12 December 2000 from his informant, nor had advance notice been given to anyone else about the operation, including the officers on duty at the Pergamos checkpoint. Unfortunately, the Court is not in a position to verify the accuracy of any of that information, nor can it turn to the Famagusta Assize Court for such verification. As already indicated above, the Assize Court did not engage in a satisfactory discussion as to the veracity of the evidence before it.

184. The Court observes from the information in the case file that the forensic evidence submitted by the prosecution during the domestic proceedings was limited to an examination of the mud recovered from the first applicant's shoe on the date of his arrest, which partially matched the soil sample extracted from the area where he had allegedly crossed into the "TRNC". No fingerprint examination was conducted on the package of cannabis resin allegedly seized from the first applicant; it was explained that since the package had been taken directly from his hands by Sub-inspector Ü.Ö. himself, it had been deemed unnecessary to submit it for a fingerprint examination. Moreover, although the area where the first applicant had allegedly crossed into the "TRNC" had been photographed, including a couple of photographs showing footmarks allegedly belonging to the first applicant, it does not appear that any detailed examination was made to match those marks to his footwear.

185. The Court lastly notes that amongst the evidence submitted by the Government was also the sketched map of the area between border stones nos. 96 and 97, showing the point where the first applicant had allegedly entered the "TRNC", as well as photographs of the same area. According to

those photographs, the top of the fence in the relevant area had no barbed wire and was deformed in some parts, which the Government argued had made it easier for the applicant to jump over.

3. The Court's conclusion

186. The Court is of the opinion that the arguments and evidence submitted by the first applicant, albeit inconclusive and inconsistent in some respects, raise serious suspicions about the official account of events presented by the Government, particularly when viewed against the backdrop of the political climate on the island at the material time. The fact that the first applicant was arrested in "TRNC" territory for smuggling drugs only some ten days after the controversial arrest of Mr Ömer Gazi Tekoğul by the Greek Cypriot authorities, which apparently led to some strong protests from the Turkish Cypriot side, may cast some doubts on the accusations brought against him. Moreover, whereas the allegation remains that the first applicant entered the "TRNC" between border stones nos. 96 and 97 separating the SBA from the "TRNC", the Court notes that the domestic authorities, including the trial court, do not appear to have concerned themselves much with how he may have arrived there. Thus, they failed to establish where and in what condition he had left his car and which route he had followed, despite the consistent allegations that the car had been found abandoned on the wrong side of a road with its engine running and doors open.

187. The Court nevertheless considers that in view of the gravity of the first applicant's allegation that he was abducted from SBA territory by or with the connivance of "TRNC" agents, it needs very compelling evidence before it can uphold the allegation. In this connection, the Court wishes to emphasise that although it has no reason to doubt the independence of the investigation conducted by the SBA police, the findings that emerged from that investigation were not submitted to the scrutiny of a court of law and thus remain untested.

188. The Court is mindful of the fact that the difficulties it has encountered in establishing the facts are due, to a large extent, to the domestic judicial authorities' failure to discharge their duty to subject the evidence before them to a critical and thorough analysis in a reasoned judgment. However, while that significant failure certainly raises procedural issues that will be examined below in particular within the context of Article 5 § 4, it does not provide a sufficient evidentiary basis to allow the Court to find that the first applicant's allegations can be considered proven in accordance with the requisite standard of proof under the Court's case-law.

189. In view of the foregoing explanations and all the material before it, and while it in no way disregards the seriousness of the allegations made by the first applicant, the Court cannot but hold that there is an insufficient

evidentiary basis on which to conclude that the first applicant was kidnapped from SBA territory by, or with the connivance of, "TRNC" agents.

III. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

190. The first applicant maintained under Article 5 § 1 of the Convention that his "illegal seizure" or abduction from the territory of the SBA had been in flagrant violation of both international and domestic law. He further contended under the same provision that his subsequent detention by the "TRNC" authorities had not been "in accordance with a procedure prescribed by law", since in any event he had not been detained in accordance with the law of the Republic of Cyprus, the only law in force in both the occupied and unoccupied parts of the island. The applicant further complained, under Article 5 §§ 3 and 4 of the Convention, that he had been unlawfully remanded in custody without an adequate explanation as to why he had not been released and that he had been unable to challenge the lawfulness of his detention. He claimed in this connection that when he had first been brought before a judge, on 13 December 2000, he had not been offered the assistance of a lawyer and had thus been unable to follow the hearing or participate in the proceedings beyond sitting in the room as a passive spectator. He further argued that the subsequent remand hearings had similarly failed to comply with the fairness requirements under Article 6 of the Convention, as (i) the tribunal had not been impartial; (ii) the interpretation provided had been insufficient; and, most importantly, (iii) the restrictions placed on his ability to communicate with his lawyers had amounted to a denial of his right to adequate facilities for the preparation of his defence.

191. The Court notes that the crux of the first applicant's complaints under this head is the unlawful nature of his deprivation of liberty and the absence of any effective procedural means to have that fact established. The Court, being the master of the characterisation to be given in law to the facts of any case before it (see *Zorica Jovanović v. Serbia*, no. 21794/08, § 43, ECHR 2013, and *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), considers that these complaints fall to be examined under Article 5 §§ 1 and 4 of the Convention, which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

1. The parties' submissions

192. The Government pleaded that the first applicant had failed to exhaust domestic remedies with regard to the complaints under Article 5 §§ 1 and 4 and stated that it had been open to him to institute proceedings to determine the lawfulness of his arrest or detention. They claimed that he could have applied to the High Court to have a writ of *habeas corpus* issued. Alternatively, he could have challenged the lawfulness of his arrest during the course of the criminal proceedings against him by relying directly on Article 5 of the Convention, which was part of the corpus of "TRNC" law. The Government further argued that when the first applicant had been brought before a judge on 21 December 2000, at which point he had been legally represented, he had asked to be released on bail, but had not directly challenged the lawfulness of his arrest or detention.

193. The applicants and the third-party intervener did not make any specific submissions in relation to the Government's preliminary objection under this head in addition to their general arguments on the exhaustion issue as set out in paragraphs 154 to 156 above.

2. The Court's assessment

194. The Court considers that the issue of exhaustion of domestic remedies raised by the Government under this head is closely linked to the merits of the complaint that the first applicant did not have an effective remedy at his disposal to challenge the lawfulness of his detention. The Court therefore finds it appropriate to join the Government's objection to the merits of the complaint under Article 5 § 4 of the Convention, which it will deal with first (see *Öcalan v. Turkey* [GC], no. 46221/99, § 61, ECHR 2005-IV).

195. The Court further finds that the applicant's complaints under Article 5 §§ 1 and 4 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. The Court therefore declares those complaints admissible.

B. Merits

1. Article 5 § 4 of the Convention

196. The Court observes that the parties did not submit any further observations on the merits of the complaint under Article 5 § 4 of the Convention, beyond their arguments concerning the exhaustion of domestic remedies set out in paragraphs 152 to 156 and 192 above.

(a) General principles

197. The authors of the Convention reinforced the individual's protection against arbitrary deprivation of his or her liberty by guaranteeing a corpus of substantive rights which are intended to minimise the risks of arbitrariness by allowing the act of deprivation of liberty to be amenable to independent judicial scrutiny and by securing the accountability of the authorities for that act.

198. In this context, the purpose of Article 5 § 4 is to ensure that persons who are arrested and detained have the right to judicial supervision of the lawfulness of the measure to which they have been subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). The notion of "lawfulness" under paragraph 4 of Article 5 has the same meaning as in paragraph 1. Thus a detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1.

199. Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the "lawful" detention of a person in accordance with Article 5 § 1 (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 168, ECHR 2012). This means that in the context of a detention under Article 5 § (1) (c), the competent court has to examine not only the compliance with the procedural requirements of domestic law, but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Stašaitis v. Lithuania*, no. 47679/99, § 90, 21 March 2002). Moreover, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, Article 5 § 4 also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of the detention and ordering its termination if it proves unlawful (see *Sarban v. Moldova*, no. 3456/05, § 118, 4 October 2005).

200. Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, 28 October 1998, § 162, *Reports* 1998-VIII, and *Włoch v. Poland*, no. 27785/95, § 125, ECHR 2000-XI). The proceedings must be adversarial and must always ensure "equality of arms" between the parties.

201. Lastly, the Court reiterates that the obligation under Article 5 § 4 of the Convention applies independent of whether the detention has been declared lawful or not within the meaning of Article 5 § 1 of the Convention (see *Douiyeb v. the Netherlands* [GC], no. 31464/96, § 57, 4 August 1999, and *Mooren v. Germany* [GC], no. 11364/03, § 88, 9 July 2009).

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

202. Before embarking on an examination on the merits of the present complaint, the Court considers it appropriate to respond to the argument made by the applicants and the third-party intervener regarding the inherent unlawfulness of the "TRNC" courts, which in their opinion would render any review conducted by them ineffective for the purposes of Article 5 § 4.

203. The Court notes in this connection that it has already declared in the past that the court system in the "TRNC", including both civil and criminal courts, reflected the judicial and common-law tradition of Cyprus in its functioning and procedures, and that the "TRNC" courts were thus to be considered as "established by law" with reference to the "constitutional and legal basis" on which they operated (see *Cyprus v. Turkey*, cited above, § 237, and *Protopapa v. Turkey*, no. 16084/90, § 87, 24 February 2009). Therefore, unless their inexistence or ineffectiveness – in general or in the particular circumstances of the case – could be proven, resort had to be made to those remedies. The Court emphasises in this connection that it cannot be asserted, on the one hand, that there has been a violation of an Article of the Convention because a State has not provided a remedy, while on the other hand, that any such remedy, if provided, would be null and void (see *Cyprus v. Turkey*, cited above, § 101; *Djavit An v. Turkey*, no. 20652/92, § 31, ECHR 2003-III; and *Adalı*, cited above, § 187).

204. Turning to the facts of the instant case, the Court takes note of the respondent Government's contention that two options were available to the first applicant to challenge the lawfulness of his detention: (i) to apply for a writ of *habeas corpus*; or (ii) to raise his allegations regarding the unlawfulness of his detention within the framework of the criminal proceedings against him. The Court will therefore confine the scope of its examination to the availability and effectiveness of the remedies explicitly invoked by the Government, as per its ordinary practice (see *Čuprakovs v. Latvia*, no. 8543/04, § 29, 18 December 2012).

(i) Writ of habeas corpus

205. The Court notes at the outset that the first applicant did not file a writ of *habeas corpus* as indicated by the Government. However, in the Court's opinion, the lack of such a request cannot be held against him in the particular circumstances of the present case for the reasons set out below.

206. The purpose of a *habeas corpus* hearing is to subject the question of the lawfulness of a detention to the scrutiny of a court of law. In the first

applicant's case, he was first brought before a judge on 13 December 2000, soon after his "arrest", and that judge ordered his remand in custody. Subsequently, on 21 December 2000 and 15 February 2001, the first applicant appeared before the "TRNC" Nicosia District Court and the Famagusta District Court, respectively, and on both occasions it was decided to prolong his remand in custody, despite his consistent protests that he had been unlawfully abducted. The Court considers that in all those hearings, the question of the lawfulness of the first applicant's detention was incorporated in the decisions whether to order his detention or to prolong it. The respondent Government did not dispute this; in fact, they themselves claimed in their observations that it had been open to the first applicant to challenge the lawfulness of his detention within the criminal proceedings against him, including on those three occasions when he appeared before the Nicosia and Famagusta District Courts.

207. The Court is, therefore, of the view that while the aforementioned proceedings in which the first applicant's detention was ordered and extended may have been technically distinct from the *habeas corpus* procedure referred to by the Government, in the absence of any information to the contrary, they were ultimately directed towards the same end, which was the protection of the applicant from arbitrary deprivation of liberty. It was, therefore, not necessary for him to seek a separate writ of *habeas corpus*. The Court recalls in this connection that where a remedy has been pursued, use of another one which has essentially the same objective is not required (see *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009, and *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009).

208. In the light of the foregoing, the Court is unable to find that the *habeas corpus* procedure available in the "TRNC" provided the first applicant with an effective remedy, within the meaning of Article 5 § 4, to which he was expected to resort in the particular circumstances of the present case.

(ii) Challenging the lawfulness of detention during the criminal proceedings

209. The Court notes at the outset that while Article 5 does not contain any explicit mention of a right to legal assistance, certain special circumstances may call for such assistance for the effective exercise of the right provided under Article 5 § 4 (see *Lebedev v. Russia,* no. 4493/04, §§ 84-86, 25 October 2007). Bearing in mind that the first applicant possessed no legal knowledge, was before a foreign jurisdiction and was allegedly provided with insufficient interpretation, legal representation would appear to have been indispensable to enable him to exercise his right to challenge the lawfulness of his detention. The Court notes in this regard that although legal assistance was available to the first applicant some two days after his detention, he claimed, and the Government did not dispute, that at least until his transfer to the Nicosia Central Prison on the evening of

21 December 2000, he had not been allowed to confer with his lawyers in conditions of confidentiality; all their meetings were attended by police officers who stood within earshot. The Court reiterates in this regard that respect for lawyer-client confidentiality is as important in the context of Article 5 § 4 of the Convention as in that of Article 6 §§ 1 and 3 (c); confidential communication with one's lawyer is protected by the Convention as an important safeguard of the right to defence, which also applies in the context of Article 5 § 4 (see *Castravet v. Moldova*, no. 23393/05, §§ 49-50, 13 March 2007, and *Khodorkovskiy v. Russia*, no. 5829/04, § 198 and the cases cited therein, and § 232, 31 May 2011). The adverse circumstances in which the first applicant met with his lawyers in the first eight days of his detention, during which period he appeared before the "TRNC" Nicosia District Court twice (on 13 and 21 December 2000), without any apparent justification, inevitably inhibited free discussion and thus hampered his right to effectively challenge the lawfulness of his detention, including by way of seeking a writ of *habeas corpus* (see *Castravet*, cited above, § 51), whereas the opportunity for legal review must be provided soon after the person is taken into detention (see, among others, *Lebedev*, cited above, § 78, and *Molotchko v. Ukraine,* no. 12275/10, § 148, 26 April 2012).

210. In fact, the first applicant contended that at the time of his first appearance before a judge on 13 December 2000, he had been completely unaware of where he had been taken and what legal rights he possessed; he had not even realised he was before a judge until he was eventually told by an interpreter that he had been remanded in custody by the judge. Although he protested in vain that he was innocent, he was not given a realistic opportunity to challenge the legality of his detention, whereas the officers who had allegedly arrested him had been able to make submissions to the court freely. He was, therefore, initially denied some of the minimum procedural guarantees required for an effective exercise of the right under Article 5 § 4 of the Convention, including those of the right to adversarial proceedings and equality of arms (see *Lebedev*, cited above, § 76, and *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 240, 21 April 2011).

211. Moreover, the minutes of the hearings in the case file reveal that on no occasion did the relevant courts engage in a review of the procedural and substantive conditions of the first applicant's detention, despite the insistence of his lawyer, at the hearing on 21 December 2000, that he had been abducted by unknown persons within SBA borders. The Court reiterates in this connection that while Article 5 § 4 of the Convention does not impose an obligation on a judge examining the lawfulness of detention to address every argument raised by the detained person, its guarantees would be deprived of their substance if the judge could treat as irrelevant, or disregard, particular facts invoked by the detainee which could cast doubt on the existence of the conditions essential for the "lawfulness", in the sense

of the Convention, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 91, ECHR 1999-II).

212. As for the opportunity for the first applicant to challenge the lawfulness of his detention during the ensuing preliminary inquiry and the actual trial before the Famagusta Assize Court, the Court observes at the outset that the Government have not indicated how any challenges made during those proceedings would have provided a direct and speedy, and not merely indirect, protection of the rights guaranteed by Article 5 of the Convention (see, *mutatis mutandis*, *Molodorych v. Ukraine*, no. 2161/02, § 90, 28 October 2010, cited above, § 90).

213. The Court nevertheless notes that the lawfulness of the first applicant's detention was indeed contested throughout the proceedings, both by the applicant himself and by his numerous witnesses, all of whom provided detailed, albeit not always consistent, testimonies in support of his allegations that he had been abducted from SBA territory by Turkish Cypriot agents. However, although the relevant domestic courts ordered the prolongation of the first applicant's detention at the end of each hearing, there is no evidence in the case file to suggest that the issue of the lawfulness of his initial or continuing detention was subjected to a meaningful examination, which would have required an assessment of the compliance of the detention with domestic procedural requirements, as well as a review of the reasonableness of the suspicion underpinning the arrest and the ensuing detention (see *Jėčius v. Lithuania*, no. 34578/97, § 100, ECHR 2000-IX). Not even when it delivered its judgment against the first applicant did the Famagusta Assize Court explain why it had disregarded his allegations of abduction. It simply dismissed his arguments by stating that they were "not credible", without giving any further explanation. In those circumstances, the Court is of the view that the challenges made by the first applicant against the lawfulness of his detention within the domestic criminal proceedings proved ineffective in the instant case. Moreover, contrary to the Government's allegation, the fact that he did not explicitly invoke Article 5 of the Convention during those proceedings cannot be held against him, as he raised the substance of his Article 5 complaints before the relevant courts (see *Castells v. Spain*, 23 April 1992, §§ 24-32, Series A no. 236, and *Karapanagiotou and Others v. Greece*, no. 1571/08, § 29, 28 October 2010).

(iii) Conclusion

214. The foregoing findings are sufficient to conclude that the remedies suggested by the Government did not allow the first applicant to challenge effectively the lawfulness of his detention in a speedy manner on the particular facts of the instant case. There is, therefore, no need to examine separately his allegations regarding the lack of independence and

impartiality of the “TRNC” courts and the inadequacy of the interpretation provided during hearings.

215. The Court therefore dismisses the preliminary objection in respect of the complaints under Article 5 §§ 1 and 4 of the Convention. It further holds that there has been a violation of Article 5 § 4 of the Convention.

2. *Article 5 § 1 of the Convention*

(a) The parties’ submissions

216. The Court notes that the first applicant did not submit any observations on the merits of his complaints under Article 5 § 1 of the Convention.

217. The Government, for their part, maintained that the arrest and detention of the first applicant had been effected in accordance with Article 5 § 1 (c) of the Convention, by use of the authority granted to the police under the 1960 Constitution and the relevant provisions of the Criminal Procedure Law. They added that the use of the term “abduction” to describe any type of detention or arrest by the Turkish Cypriot police, whether lawful or unlawful, was part of the official terminology coined by the Greek Cypriots because they did not recognise the Turkish Cypriot authorities. The Greek Cypriot official policy was to refrain from using terminology that would imply recognition of the Turkish Cypriot authorities, particularly the police, and acknowledgment of the exercise of jurisdiction by such authorities.

218. The Government of Cyprus, as the third-party intervener, maintained that the first applicant had not been arrested on “reasonable suspicion of having committed an offence” within the meaning of Article 5 § 1, as alleged by the respondent Government, but had been abducted from within SBA territory, in violation of both international law and the law of the SBA. He had then been remanded on fabricated charges in order to procure the release of Mr Tekoğul by the authorities of the Republic of Cyprus.

219. The Government of Cyprus further contended that the first applicant’s subsequent detention had also been contrary to Article 5 § 1 of the Convention, since it had not been in accordance with the law. The respondent Government had claimed that the first applicant had been arrested in accordance with the relevant provisions of the 1960 Constitution and the Criminal Procedure Law of Cyprus, but the “officers” of the “TRNC” were not lawful officers under those provisions. Nor was the “court” before which the first applicant had been brought on the evening of his arrest a “competent legal authority”; the courts that had dealt with him had no legitimacy under the law of the Republic, which remained the applicable law in the occupied part of the island. They repeated that the Strasbourg Court could not recognise such judicial institutions without

giving recognition, contrary to international law and its earlier jurisprudence, to the unlawfully created regime installed by Turkey.

(b) The Court's assessment

220. The Court notes at the outset the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It is for that reason that the Court has repeatedly stressed in its case-law that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness (see *Chahal v. the United Kingdom*, 15 November 1996, § 118, *Reports* 1996-V).

221. Turning to the facts before it, the Court notes that the first applicant's complaints under Article 5 § 1 are limited to the following two claims: he claimed in the first place that his abduction from SBA territory had been in violation of both international and domestic law. Secondly, he argued that his subsequent detention by "TRNC" authorities had not been "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1, since he had not been detained in accordance with the law of the Republic of Cyprus.

222. As for the first of those complaints, the Court has already held above that the first applicant's allegation of abduction from SBA territory by or with the connivance of "TRNC" agents has not been proven to the satisfaction of the Court (see paragraph 189 above). Accordingly, no violation of Article 5 § 1 can be established on that account.

223. As regards the first applicant's complaint regarding the unlawfulness of his subsequent detention in the "TRNC" on account of the inherent unlawfulness of the so-called "laws" that governed his detention, the Court reiterates that all those affected by the policies and actions of the "TRNC" come within the jurisdiction of Turkey for the purposes of Article 1 of the Convention, given the overall control exercised by that State over the territory of northern Cyprus. The Court further reiterates that it would be inconsistent with the respondent State's responsibility under the Convention if the adoption by the "TRNC" authorities of civil, administrative or criminal-law measures, or their application or enforcement within that territory, were to be denied any validity or regarded as having no lawful basis in terms of the Convention. For that reason, the Court has held that when an act of the "TRNC" authorities was in compliance with laws in force within the territory of northern Cyprus, those acts should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention (see *Foka v. Turkey*, cited above, §§ 81-84, and *Protopapa*, cited above, § 60).

224. In the instant case, the first applicant was detained by virtue of the authority granted to the police under Article 16 of the 1960 Constitution and section 14(1) of the Criminal Procedure Law on suspicion of having committed a crime, and was brought before a court subsequently. In the absence of any allegations of specific flaws in the relevant domestic laws that governed the first applicant's detention, or any failure to comply with those laws, no violation of Article 5 § 1 may be found under this head either on grounds of "unlawfulness" of the deprivation of liberty.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

225. The first applicant complained under Article 5 § 2 of the Convention that in view of the unlawful circumstances in which he had been captured, he had not been promptly informed of the reasons for his deprivation of liberty.

226. The Court considers that it has examined the legal questions concerning the first applicant's deprivation of liberty, including the controversial circumstances of his detention, under Articles 5 §§ 1 and 4 above. In the light of all the facts of the case and its findings under the aforementioned provisions, the Court deems it unnecessary to rule separately on either the admissibility or the merits of the complaint under Article 5 § 2 of the Convention (see *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Recep Kurt v. Turkey*, no. 23164/09, § 70, 22 November 2011; and *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 72, ECHR 2012).

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

227. The first applicant complained under Article 6 §§ 1, 2 and 3 of the Convention that he had been denied the right to a fair trial by an independent and impartial tribunal established by law, as none of the courts that had overseen his case had been established in accordance with the law of the Republic of Cyprus. Moreover, the judges had been biased against him and had shown deference to the national authorities; certain evidence in his favour had been excluded and the prosecution had not disclosed relevant information in its possession that would have proved his innocence; a number of Turkish Cypriots who were ready to testify in his favour had been intimidated; the interpretation into Greek during the proceedings had been inadequate; and the restrictions placed on his ability to communicate with his lawyers had amounted to a denial of his right to adequate facilities for the preparation of his defence.

228. The relevant parts of Article 6 of the Convention read as follows:

> “1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

A. The parties’ submissions

229. The first applicant did not submit any observations on the admissibility of this complaint. The Court, however, refers to the applicants’ general remarks in paragraphs 154 and 155 above as to why they should be absolved from exhausting any domestic remedies in the instant case.

230. The respondent Government claimed that the first applicant had failed to exhaust the domestic remedies at his disposal for the purposes of Article 35 § 1 of the Convention, as he had not appealed against the judgment of the Famagusta Assize Court. The appeal court would have had the power to modify, uphold or reverse the judgment of the Assize Court. Maintaining their arguments set out in paragraphs 152 and 153 above, the Government stated that the Constitution of the “TRNC” clearly demonstrated that an effective and independent judicial system existed in the “TRNC” and the allegation that the “TRNC” courts had not been established “in accordance with law” was devoid of any basis. As regards the first applicant’s allegations that the “TRNC” courts were inaccessible, the Government claimed that there had been no obstacles to prevent him from lodging an appeal with the High Court, either by himself or through his lawyers. He could thus have brought his complaints to the attention of the High Court before submitting them to the Strasbourg Court.

231. The Government of Cyprus made no particular submissions as to the admissibility of this complaint, apart from those already set out in paragraph 156 above.

B. The Court's assessment

232. 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 (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV; *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports* 1996-VI; and *Vučković and Others v. Serbia* [GC], no. 17153/11, §§ 70-71, 25 March 2014).

233. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which an 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, § 68, and *Vučković and Others*, cited above, § 77).

234. The Government in the instant case have argued that the judgment of the Famagusta Assize Court was amenable to appeal, which would have allowed the first applicant to raise his grievances regarding the fairness of the proceedings conducted by that court before a higher instance and would have offered reasonable prospects of success.

235. The Court notes in this connection that the right to appeal against a decision of a first-instance criminal court is indeed set out under Part V of the Criminal Procedure Law, as well as in section 37(2) of the Courts of Justice Law, and there is no *prima facie* reason to doubt the effectiveness or availability of that right. It therefore falls on the first applicant to show that the remedy in question was for some specific reason inadequate or ineffective in the particular circumstances of the case or that there existed special circumstances absolving him from the requirement to have recourse to it.

236. The first applicant put forth two main reasons as to why he should be absolved from the obligation to appeal against the judgment of the Famagusta Assize Court. He claimed in the first place that the remedy in question could not be considered to be effective in theory, as both the first-instance court that had ordered his conviction and the higher court that would have reviewed it on appeal had been established by the occupying power in violation of both the national law of the Republic of Cyprus and international law.

237. The Court has already held in numerous cases, as well as in paragraphs 157 and 203 above, that remedies available in the "TRNC"

could be regarded as "domestic remedies" of the respondent State for the purposes of Article 35 § 1, regardless of the political circumstances in which they had been set up, and that they had to be exhausted, unless their ineffectiveness could be shown otherwise. The Court acknowledges that there may be circumstances where a court established by a *de facto* entity may not be regarded as a valid "court" for the purposes of the Convention, if it belongs to a system that does not operate on a "constitutional and legal basis" reflecting a judicial tradition compatible with the Convention (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 436, ECHR 2004-VII). However, the Court has already found that the court system set up in the "TRNC" was to be considered to have been "established by law" with reference to the "constitutional and legal basis" on which it operated, and it has not accepted the allegation that the "TRNC" courts as a whole lacked independence and/or impartiality (see *Cyprus v. Turkey*, cited above, § 237, and *Protopapa*, cited above, § 87).

238. Turning to the facts before it, the Court notes that while the criminal proceedings against the first applicant may have suffered from a number of serious shortcomings, and despite the turbulent political background against which they took place, they did not involve any flagrant arbitrariness that removed the legitimacy of the Famagusta Assize Court, or of the whole court system established in the "TRNC", for the purposes of Article 6 of the Convention (see, conversely, *Ilaşcu and Others*, cited above). The Court refers in particular to the various procedural guarantees offered to the first applicant during the criminal proceedings, which allowed him to defend himself in a public and adversarial hearing with the help of lawyers of his own choice, to call numerous witnesses and to present evidence on an equal basis with the prosecution. In those circumstances, the Court cannot accept the first applicant's argument that he was exempted from appealing against the Famagusta Assize Court's judgment in view of the inherent unlawfulness of the courts set up under "TRNC" authority.

239. The first applicant secondly maintained that the remedy suggested by the Government was ineffective in practice, for he had had no way of accessing that remedy because he was not a resident of the "TRNC". The Court reiterates in this regard that borders, factual or legal, are not an obstacle *per se* to the exhaustion of domestic remedies; as a general rule, applicants living outside the jurisdiction of a Contracting State are not exempted from exhausting domestic remedies within that State, practical inconveniences or understandable personal reluctance notwithstanding. As the Court held in the case of *Demopoulos and Others* (cited above, § 98), the fact that the first applicant lived outside the occupied area provided no excuse for not applying to a "TRNC" court, particularly bearing in mind that he was legally represented, including by a local lawyer practising in the "TRNC".

240. In the light of the foregoing, and bearing in mind the paramount importance of the principle of subsidiarity for the supervisory function of the Convention system, the Court holds that the first applicant has failed to exhaust domestic remedies in relation to his Article 6 complaints. The Court stresses that mere doubts which the applicant may have harboured regarding the effectiveness of an appeal against his allegedly unfair trial and conviction did not absolve him from the obligation to try it (see *Epözdemir v. Turkey* (dec.), no. 57039/00, 31 January 2002, and *Vučković and Others*, cited above, § 74).

241. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

242. The first applicant maintained that the ill-treatment inflicted on him during his arrest and the conditions of his detention from 13 December 2000 until his eventual release had violated his rights under Articles 3 and 8 of the Convention. He further complained under Article 2 that he had not been provided with adequate medical care for his diabetes during his detention.

243. The Court considers that these complaints should be examined from the standpoint of Article 3 of the Convention alone, which provides:

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

A. Ill-treatment during arrest

244. The first applicant alleged that at the time of his abduction on 13 December 2000 he had been subjected to treatment that violated his rights under Article 3 of the Convention. He maintained that the persons who had abducted him had assaulted him while trying to force him out of his car, including by hitting him on the head with the butt of a gun, and kicking and punching him once he had fallen on the ground. The ill-treatment had continued after he had been placed in the abductors’ car: he had been restrained with a rope tied around his neck and wrists, kicked, punched in the mouth and threatened with death at gunpoint. Afterwards at the hospital, he had received a strong punch from a police officer. Some of the injuries that he had sustained as a result of that ill-treatment had been documented in the medical reports issued subsequent to his arrest, although the medical examinations had been conducted in the presence of police officers in an intimidating atmosphere and not all of his complaints had therefore been tended to or reported by the doctors. He also claimed, in more general terms, that the evidence and arguments he had presented, including as regards his ill-treatment, had not been taken into account by the

domestic courts, which had shown too much deference to the submissions of the police and other "TRNC" officials.

1. Admissibility

(a) The parties' submissions

(i) The Government

245. The Government contended that the present complaint should be declared inadmissible for non-exhaustion of domestic remedies. They argued that a suspect who was under arrest was expected to raise allegations of ill-treatment by the police at the time of his appearance before a judge for a remand hearing. In deciding whether or not, and on what conditions, to issue the remand order, the judge would also take into account, as a material factor, the suspect's complaint that he had been ill-treated by the police and would, as necessary, give instructions for allegations of ill-treatment to be investigated and the suspect to be medically examined.

246. The Government claimed that when he was first brought before a judge on 13 December 2000, the first applicant had made no complaint of ill-treatment. However, when he appeared before a court once again on 21 December 2000 for a bail hearing, his lawyers claimed that he had been ill-treated by the persons who had abducted him. The allegation was denied by Sub-inspector Ü.Ö., who stated that any injuries noted on the first applicant's body must have been sustained during the scuffle that had broken out at the time of his arrest, which he had strongly resisted. The Government maintained that at the end of the bail hearing, the "TRNC" Nicosia District Court had refused the application for bail and, relying on the evidence presented by the prosecution, had found the first applicant's allegations of ill-treatment to be groundless. The first applicant had, however, failed to appeal against that decision.

247. In addition, the Government claimed that the allegations of ill-treatment had also been brought to the attention of the Famagusta Assize Court during the ensuing criminal proceedings. After testing the credibility of the evidence presented by both parties, the court had similarly found that the first applicant's arrest had taken place under the conditions as stated by the prosecution. However, despite that finding, the first applicant had once again failed to appeal against the Assize Court's judgment. The Government stressed that since the question of the applicant's ill-treatment had been *sub judice*, along with the charges against him, the Turkish Cypriot authorities had not considered it necessary to institute, *ex officio*, a subsequent or parallel official inquiry into his allegations of ill-treatment.

248. The Government lastly contended that the first applicant had also failed to resort to some other remedies that had been available to him, such as instituting a private criminal action against the suspect police officers or

bringing a civil action for assault, seeking an order of *mandamus* to compel the authorities to open an investigation, or lodging a disciplinary complaint against the officers who had allegedly ill-treated him.

(ii) The applicants and the third-party intervener

249. The first applicant stated in response that there had been no investigation into his allegations of ill-treatment, and that although he had raised those allegations during the criminal proceedings against him, the Famagusta Assize Court had not taken them into consideration. For that reason, any appeal against that court's judgment, which had concerned solely the criminal charges against him, would not have served to determine his allegations of ill-treatment. The first applicant also reiterated his general argument that in any event he had been under no obligation to exhaust any remedies suggested by the Government for the political reasons discussed in paragraphs 154 and 155 above.

250. The Government of Cyprus, for their part, stated that the first applicant had consistently argued before the domestic authorities that he had been ill-treated during his arrest by individuals in civilian clothes before he was handed over to the police. In response to the respondent Government's contention that the first applicant had not brought that complaint to the attention of the judge on 13 December 2000, the Government of Cyprus argued that he had not had the opportunity to raise any complaints on that occasion, as he had not even been told that he was before a judge; nor had he been given any legal advice at that stage. Allegations of ill-treatment had, however, been brought to the judicial authorities' attention on 21 December 2000, when the first applicant had appeared before the "TRNC" Nicosia District Court for a remand hearing with the assistance of his lawyers. The respondent Government contended that the District Court had found the allegations of ill-treatment to be groundless, whereas in reality, no such examination had taken place before that court; the District Court's judgment had instead been limited to the first applicant's bail request. As for the argument that the first applicant should have appealed against the judgment of the Famagusta Assize Court, the Government of Cyprus stated, *inter alia*, that the question of ill-treatment had been only a "peripheral" issue in the criminal proceedings before that court, the main aim of which had been to determine the charges against the first applicant, and the trial court had not addressed the allegations of ill-treatment. The fact that the first applicant had not appealed against that judgment was, therefore, immaterial for the purposes of his present complaint.

(b) The Court's assessment

251. Referring to its extensive case-law under Article 35 § 1 of the Convention, the Court reiterates that the only remedies that must be exhausted under that provision are those that are available and effective, that

relate to the breaches alleged and that are capable of redressing the alleged violation (see, among others, *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Vučković and Others*, cited above, §§ 74-77).

252. Turning to the specific remedies invoked by the respondent Government, the Court notes at the outset their argument that the first applicant could have instituted various civil and administrative proceedings against the officers who had allegedly ill-treated him. The Court, however, reiterates that in the area of unlawful use of force by State agents, civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, are not adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Article 3 of the Convention (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 227 and 234, ECHR 2014 (extracts)). It is not in dispute in the instant case that the injuries noted on the first applicant's body were sustained while he was under the "TRNC" authorities' control and as a result of their use of force, although the parties disagree as to the circumstances in which such force was used. In these circumstances, the first applicant cannot be reproached for not pursuing civil and administrative remedies in relation to his complaints, which the Government have not demonstrated would have been capable of ensuring the identification and punishment of those responsible as necessary (see, *mutatis mutandis*, *Shchukin and Others v. Cyprus*, no. 14030/03, § 82, 29 July 2010).

253. As for the criminal remedies available to the first applicant, the Court notes that he raised his complaints of ill-treatment before the "TRNC" Nicosia District Court on 21 December 2000, which was his first appearance before a judge after consulting with his lawyers, and then also repeated them during his trial before the Famagusta Assize Court. In the Court's opinion, those statements were sufficient in themselves to alert the authorities to the need to investigate his allegations, particularly in view of the findings in his medical reports and to the admission by the police that they had used some force in order to effect his arrest (see *Shchukin and Others*, cited above, § 85). The Court, however, notes, and the respondent Government do not deny, that no such investigation was instituted into the applicant's allegations of ill-treatment.

254. The Court notes in this connection the Government's argument that a separate investigation was not necessary, as the question of the first applicant's alleged ill-treatment was already *sub judice*, as part of the criminal proceedings brought against him. They claimed that both the

"TRNC" Nicosia District Court, at the time of the remand hearing, and the Famagusta Assize Court, during the subsequent criminal proceedings, had reviewed the first applicant's allegations of ill-treatment and had found them to be baseless in view of the arguments and evidence submitted by the prosecution. Given that the first applicant had failed to appeal against either court's judgment, he had thus failed to exhaust the available remedies in relation to his complaints of ill-treatment.

255. In the Court's opinion, the arguments put forth by the Government cannot be accepted in the circumstances of the present case. Firstly, the Government argued that the first applicant had failed to appeal against the decision of the "TRNC" Nicosia District Court despite the latter's rejection of his allegations of ill-treatment as lacking any credibility. However, the Court notes from the minutes submitted to it that the said court did not rule in any way on the applicant's allegations of ill-treatment, but rather confined its examination to the bail request lodged by the applicant. The District Court's reasoning that his statements lacked credibility and reliability referred only to the assurances given by the first applicant regarding his bail request, not to his allegations of ill-treatment. In those circumstances, and given that applicants are expected to pursue only those remedies which relate to the breaches alleged and which offer a reasonable prospect of success, the Court does not consider that the first applicant failed to exhaust the domestic remedies in relation to his Article 3 complaints by not appealing against a decision purely concerning his bail request and the prolongation of his remand in custody.

256. Secondly, the Court notes that although the first applicant also raised his complaints of ill-treatment during the criminal proceedings before the Famagusta Assize Court, and that the court had the opportunity to hear as witnesses both the police officers who had allegedly arrested him and the doctors who had examined him in the aftermath of his arrest, the proceedings before that court and the resulting judgment concerned only the criminal charges brought against him. The trial court rendered no decision on the allegations of ill-treatment raised by the first applicant, nor did it examine whether the force used against him during his alleged arrest had been proportionate. In those circumstances, the Court considers that the ruling of the Assize Court was irrelevant to the first applicant's specific Article 3 complaints.

257. In the light of the foregoing, the Court finds that the first applicant can be considered to have sufficiently brought the substance of his complaints of ill-treatment to the notice of the authorities, and did not have to resort to any other remedies suggested by the Government.

258. Accordingly, this complaint cannot be rejected for failure to exhaust domestic remedies. The Court further considers that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the

Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

(a) The parties' submissions

259. The first applicant reiterated his allegations of ill-treatment and maintained that since he had been injured while under the control of the "TRNC" authorities, it fell to the Turkish Government to provide a convincing and credible explanation for those injuries.

260. The Government denied any ill-treatment of the first applicant, although they admitted that the police had had to use some force to effect his arrest. They submitted that the applicant had tried to escape his arrest and "in the altercation and struggle that followed in order to prevent him from fleeing ... he fell on the ground and was pressed down to be pacified"; however, no more force had been used than necessary to ensure his detention. The Government further claimed that the allegations of ill-treatment made by the first applicant were not supported by appropriate evidence; the medical examinations conducted in the aftermath of his arrest, including by a UN doctor, had shown some superficial grazes behind the ears and the chest, and some tenderness on his back and behind his neck. While it was possible that those injuries had been sustained as a result of his resistance to the police, they were certainly not consistent with allegations of severe beating. Yet more significant, in the Government's view, was the fact that when the Turkish Cypriot doctor E.A., who had examined the first applicant on 13 December 2000, had asked him through a civilian interpreter if he had any complaints, the applicant had not mentioned having been assaulted.

261. The Cypriot Government largely reiterated the first applicant's arguments, and maintained that the "TRNC" authorities had used substantial force against him, which had not been made necessary by his conduct. They claimed that the injuries noted by the doctors on the first applicant's body were entirely consistent with his account of the events, although there was also reason to believe that the doctors' assessments had not fully reflected the extent and the severity of his injuries, on account of the presence of police officers during the medical examinations.

(b) The Court's assessment

262. The Court observes at the outset that according to the medical reports issued on 13 and 14 December 2000, the latter one of which was issued by a UN doctor, the first applicant had a swelling of 4 centimetres on the left side of his head above his ear, which had apparently mostly subsided by the time of his second examination, a graze behind his right ear, and red and tender patches across his chest as well as on both sides of his

back. The report issued on 14 December 2000 also noted tenderness around his waist, right hip and the back of his neck.

263. The Court notes that although the respondent Government argued that the severe beatings as alleged by the first applicant would have left more serious marks on his body, they did not suggest that the injuries noted in the medical reports of 13 and 14 December 2000 were not sufficient to bring his treatment within the scope of Article 3 of the Convention. The Court further notes that while the parties differ as to the exact circumstances in which the first applicant sustained the relevant injuries – the Government claiming that they had been inflicted on account of the applicant's resistance to his arrest and the latter arguing that he had been purposefully beaten at the time of his abduction by agents of the "TRNC" – it is not disputed that he was injured while under the control of "TRNC" agents and as a result of the use of force by the latter during his arrest. Taking into account the injuries noted in the medical reports of 13 and 14 December 2000 and the context in which they were sustained, the Court accordingly finds that this complaint is sufficiently serious to raise an issue under Article 3 of the Convention.

264. The Court reiterates that Article 3 does not, in principle, prohibit the use of force for effecting an arrest. However, such force may be used only if indispensable and must not, in any event, be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007 and the cases cited therein). Having regard to the conflicting submissions before it, it falls to the Court to determine whether the force used for the first applicant's arrest was excessive and thus violated Article 3 of the Convention. Since this particular issue was not the subject of a domestic investigation or assessment, the Court will have to arrive at a conclusion on the basis of the limited evidence before it, which consists of the aforementioned medical reports, as well as the statements made during the domestic proceedings by the first applicant, the police officers who allegedly arrested him, and the doctors who examined him in the aftermath of that arrest.

265. The Court notes in this regard that the first applicant's account of the events was consistent throughout both the domestic and the subsequent Strasbourg proceedings and it involved allegations of fairly serious blows to various parts of his body. By way of a preliminary observation, the Court shares the respondent Government's view that such forceful blows might have been expected to leave more serious marks, such as haematomas, bruises or swelling on the relevant parts of the body (see *Tüzün v. Turkey*, no. 24164/07, § 37, 5 November 2013). In particular, while the first applicant claimed that he had been hit forcefully above the left ear with the butt of a gun, to the extent that he tumbled out of the car as a result of the force applied and lost consciousness for a while (see paragraph 17 above), the Court notes that the medical examination conducted approximately eight hours after that incident noted only a small swelling above his left ear,

without any bleeding or bruising. It appears that the swelling had almost subsided by the time of his second examination by a UN doctor the next day, despite the lack of any particular treatment, which raises doubts as to the veracity of his allegations. The Court moreover notes that whereas the first applicant claimed to have received a strong punch in the face, which allegedly caused his mouth to bleed and damaged his teeth, neither of the medical reports recorded such injuries to the mouth. Similarly, although the first applicant argued that he had experienced problems breathing because of the strong blow to his ribs, the medical experts did not record any substantial injuries in the rib area to corroborate that allegation.

266. The Court does not disregard the first applicant's allegation that his medical examinations were conducted in the presence of police officers or other agents of the "TRNC", which allegation was confirmed by Dr E.A. and Dr İ.A. (see paragraphs 63 to 64 above) and was not successfully rebutted by the Government, and that the doctors did not fully report his complaints. However, these allegations alone do not enable the Court to accept the veracity of his allegations of ill-treatment, particularly in view of the consistency of the medical reports in question, which were issued by two different doctors, one of them working for the UN.

267. As for the statements made during the criminal proceedings by the police officers who had allegedly arrested the first applicant, the Court notes that they were limited to cursory remarks that did not go beyond stating that he must have been injured during the scuffle that broke out at the time of his arrest. Those statements were moreover not supported by an arrest record or any other official report, which would have been expected to state in detail the nature of the scuffle and the force used to restrain the applicant. As such, the Court considers that the statements of the police officers do not shed much light on the circumstances in which the first applicant was injured either, particularly because the first applicant does not deny having resisted his arrest.

268. In those circumstances, the Court concludes that there is not sufficient information before it to establish to the required standard of proof that the injuries sustained by him were the result of ill-treatment or the use of disproportionate force by the agents of the "TRNC". There has therefore been no violation of Article 3 of the Convention under its substantive limb.

269. The Court, however, also notes that the absence of adequate evidence to shed light on the circumstances in which the first applicant was injured, which led to the above finding of no substantive violation of Article 3, appears to stem to a large extent from the respondent Government's disregard for their procedural obligations under Article 3 of the Convention to duly investigate his complaints of ill-treatment (see, for a similar case, *Sapožkovs v. Latvia*, no. 8550/03, § 66, 11 February 2014). While the first applicant has not raised a specific complaint regarding the lack of an investigation into his allegations of ill-treatment, he has stated

time and again before the Court that his arguments and evidence, including as regards his alleged ill-treatment, were not taken into account by the judicial authorities and that the domestic courts showed "deference" to the arguments of the police and other "TRNC" officials. Having regard to those allegations, and to the intrinsic link in the instant case between the finding under the substantive limb of Article 3 and the procedural obligations under that provision, the Court deems it appropriate to undertake an examination of the respondent State's compliance with those obligations as well.

270. The Court reiterates that Article 3 of the Convention gives rise to a positive obligation to conduct an official investigation where an individual raises an arguable claim of ill-treatment (see *Assenov and Others*, cited above, § 102). Such an investigation must be launched *ex officio*, in the absence of an express complaint, if there are sufficiently clear indications that torture or other ill-treatment has occurred (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007). It must also be "thorough" and "effective" and must be capable of leading to the identification and punishment of those responsible (see *Gäfgen v. Germany* [GC], no. 22978/05, § 117, ECHR 2010).

271. The Court has already established in paragraph 257 above that the first applicant had brought the substance of his ill-treatment complaints sufficiently to the attention of the judicial authorities. In the Court's opinion, his submissions, coupled with the injuries noted in the medical reports issued in the aftermath of his arrest, created an arguable claim that the first applicant might have been subjected to excessive use of force or ill-treatment during his arrest and had thus triggered the obligation to conduct an *ex officio* investigation (see, *mutatis mutandis*, *Aksoy*, cited above, § 98-99, ECHR 1996-VI; *Çakıcı v. Turkey* [GC], no. 23657/94, § 112, ECHR 1999-IV; *Özbey v. Turkey* (dec.), no. 31883/96, 8 March 2001; *Arat v. Turkey*, no. 10309/03, § 43, 10 November 2009; and *Aysu v. Turkey*, no. 44021/07, § 40, 13 March 2012). However, the Court notes, and the Government have not denied, that the prosecutor's office did not conduct an investigation into his allegations of ill-treatment, and thus the questions regarding the substance of his Article 3 complaints remained unanswered. While the Government argued that those allegations had been considered and rejected by the "TRNC" Nicosia District Court, which examined the first applicant's bail request, and the Famagusta Assize Court which later tried him, the Court notes from the minutes of the relevant hearings that the said courts neither examined nor ruled on the question of the first applicant's ill-treatment (see also paragraphs 255 and 256 above to this effect).

272. In the light of the above considerations, the Court concludes that the first applicant's allegations of ill-treatment were not effectively investigated by the domestic authorities as required by Article 3 of the

Convention. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

B. Remaining complaints under Article 3 of the Convention

273. The first applicant complained that the material conditions of his detention in the "TRNC" had amounted to a breach of Article 3 of the Convention. He claimed in particular, in connection with his initial detention at the Saray police station, that the cell in which he had been placed had been very small, measuring only about 1.80 by 1.20 metres; that the window in the cell had not been covered with glass, so rain and cold air had come in from the outside; that he had been given only one very dirty blanket, despite being constantly cold; and that there had been mould on the walls. He added that there had been no onsite shower facilities and the toilets in the police station had been very unhygienic; no soap or toilet paper had been provided and the flush had not functioned. Moreover, on a number of occasions the police had not allowed him out of his cell to go to the toilet, whereas he had had to urinate often on account of his diabetes. He had therefore used a plastic bottle to urinate in his cell. He also complained that on the first two days of his detention at the Saray police station, he had hardly been given any food, and afterwards he had ordered food from the canteen with the money sent to him by his family.

274. The first applicant further complained that despite their knowledge of his diabetes, the relevant authorities had failed to provide him with adequate medical care during his detention.

275. In addition to their general preliminary objection concerning non-exhaustion of domestic remedies (see paragraph 152 above), the respondent Government denied the first applicant's allegations under this head and maintained that his conditions of detention had not gone beyond the inevitable consequences connected with a given form of legitimate treatment or punishment. They also maintained that the first applicant had been regularly examined by a number of doctors, including by those appointed by the UNFICYP. The diabetic condition of the applicant had existed prior to his detention and adequate medical care had been afforded to him by specialist medical practitioners to ensure that his condition would not deteriorate. However, he had often refused to take the prescribed medication.

276. The Government of Cyprus repeated the first applicant's allegations.

277. The Court finds it unnecessary to examine the respondent Government's preliminary objection concerning non-exhaustion of domestic remedies, as the first applicant's complaints under this head are inadmissible in any event for the reasons set out below.

1. Material conditions of detention

278. The Court reiterates that Article 3 imposes a positive obligation on the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure of detention do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Rivière v. France*, no. 33834/03, § 62, 11 July 2006). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

279. The Court also reiterates that in cases which concern conditions of detention, applicants are expected in principle to submit detailed and consistent accounts of the facts complained of and to provide, as far as possible, some evidence in support of their complaints (see *ibid* and *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010, with further references), so that the Court may determine the admissibility and the merits of those complaints.

280. Turning to the facts of the present case, the Court observes that following his arrest on 13 December 2000 the first applicant was initially detained at the Saray police station for eight days. He was subsequently transferred to the Nicosia Central Prison, where he was kept until his release on 26 April 2001.

281. The Court notes at the outset that the first applicant failed to provide any information whatsoever on the material conditions at the Nicosia Central Prison. That part of the complaint, therefore, remains unsubstantiated and must accordingly be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

282. As for his complaints regarding the initial part of his detention at the Saray police station, the Court finds that the first applicant has presented a fairly detailed description of the material conditions in that detention facility and how those conditions caused him personal suffering. However, he failed to provide any kind of evidence to substantiate his allegations.

283. While the Court acknowledges that information about the physical conditions of detention falls within the knowledge of the domestic authorities and, accordingly, applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection (see *Aden Ahmed v. Malta*, no. 55352/12, § 89, 23 July 2013), they are nevertheless expected to corroborate their allegations as much as the circumstances allow them. In similar situations the Court has considered, for example, written statements by fellow inmates provided by applicants in support of their allegations (see *Visloguzov*, cited above, § 45) or documents

showing that relevant issues had been brought to the attention of the domestic authorities as sufficient evidence to declare the complaint well-founded and shift the burden of proof to the Government (see *Daniliuc v. Romania* (dec.), no. 7262/06, § 53, 2 October 2012, and *Aleksandr Vladimirovich Smirnov v. Ukraine,* no. 69250/11, § 47, 13 March 2014). The Court notes that while the first applicant might have encountered understandable problems in submitting statements from other detainees, on account of the obvious language barrier and the fact that he did not share his cell with anyone else, it was nevertheless open to him to submit a copy of a complaint, made by himself or his lawyers, to any domestic authority describing in detail the physical conditions of his detention. The first applicant, however, has not submitted any evidence to show that he raised his complaints with the authorities, or even with his lawyers or the UN officials who visited him a number of times during his detention at the Saray police station, which inevitably raises doubts regarding the credibility of his allegations (see *Bragin v. Russia* (dec.), no. 8258/06, 28 January 2010). The Court particularly notes in this connection the report of the UN inspector dated 14 December 2000, in which the first applicant was quoted as saying that he had no complaints in relation to how he had been treated since his alleged handover to the Turkish Cypriot police, and had not mentioned his allegedly poor detention conditions (see paragraph 30 above).

284. The Court further notes that the applicant's submissions regarding the conditions of detention at the Saray police station cannot be verified by other credible sources either, such as reports of the CPT or findings of reputable non-governmental organisations, which are often used by the Court to provide a reliable basis for the assessment of conditions of detention (see, for instance, *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005).

285. In the light of the foregoing, the Court is not in a position to conclude that the first applicant has made a *prima facie* case as regards the poor physical conditions of his detention at the Saray police station. It follows that this part of the complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. *Inadequate medical assistance*

286. The Court reiterates that Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX, and *Kudła*, cited above, §§ 93-94). Hence, a lack of appropriate medical care and, more generally, the detention in inappropriate conditions of a person who is ill may in principle amount to treatment contrary to Article 3 (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII). In determining whether the authorities have discharged their health-care

obligations *vis-à-vis* a detainee in their charge, the Court's task is to assess the quality of the medical services provided to the detainee in the light of his state of health and "the practical demands of imprisonment" and to determine whether, in the circumstances of a particular case, the health-care standard applied was compatible with the human dignity of the detainee (see, for instance, *Kaverzin v. Ukraine*, no. 23893/03, § 138, 15 May 2012, with further references).

287. The Court, however, further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Kudła*, cited above, §91). Moreover, the failure to provide proper medical aid to a detainee would not fall under Article 3 unless there was actual detriment to his or her physical or mental condition, or avoidable suffering of a certain intensity, or an immediate risk of such detriment or suffering (see, for instance, *Mikalauskas v. Malta*, no. 4458/10, § 63, 23 July 2013).

288. The Court notes that the first applicant in the instant case had been suffering from type-2 diabetes for approximately four years prior to his detention, and that he generally kept it under control through diet. Soon after being detained, he informed the police officers of his medical condition. They accordingly took him to a hospital, where his blood sugar level was measured and he was prescribed anti-diabetic medication. The UNFICYP medical officer who examined the first applicant the day after his detention noted that he was being given medication for his diabetes. He further noted that arrangements had been made to provide him with a blood sugar monitoring kit.

289. It appears from the documents submitted by the parties that from the time of his detention until his release, the first applicant was under the medical supervision of a number of doctors, including three different UNFICYP medical officers and two different specialists in internal medicine and endocrinology, who examined him regularly to monitor his diabetes and overall health, and prescribed a course of treatment specific to his needs. The Court acknowledges that the mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). Nevertheless, relying on the information in the case file, the Court considers that in the instant case, the first applicant's condition was being monitored overall by doctors who frequently examined him and that the prison authorities generally responded adequately to his medical treatment requirements. There is no evidence of any complaint

raised by the first applicant during the course of his detention to suggest that the prison authorities had ignored his medical needs. Moreover, the doctors who examined the first applicant stated expressly on various occasions that he had been receiving satisfactory treatment and had been following a dietary regime in line with the requirements of his medical condition.

290. The Court notes that the first applicant's diabetes appears to have deteriorated somewhat during the course of his detention. However, the numerous medical reports submitted to the Court by the UN-appointed doctors indicated that to a great extent he was, himself, responsible for his worsening condition, as he refused to comply with the treatment prescribed by the specialists, particularly during the initial months of his detention (see paragraphs 87 to 105 above). The Court also notes that the authorities did not withhold medical assistance from the first applicant on account of his uncooperative attitude. Not only did the frequent visits of the doctors continue, but at some point he was admitted to a hospital, where he stayed for approximately a week for close monitoring of his condition and the administration of the appropriate course of treatment, which he had failed to duly follow when left to his own devices.

291. Having examined all the materials in its possession, including the medical reports obtained by the first applicant after his release, the Court finds no basis on which to conclude that the medical assistance provided to him during his detention was inadequate, that during that period his state of health deteriorated significantly beyond the natural course of his pre-existing medical condition, or that he suffered extensively as a result of insufficient medical care (see, *mutatis mutandis*, *Grishin v. Russia*, no. 30983/02, §§ 78-79, 15 November 2007, and *Austrianu v. Romania*, no. 16117/02, § 92, 12 February 2013). It follows that this part of the application must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

292. The first applicant complained that the manner in which he had been apprehended had constituted a violation of his right to respect for his private life, contrary to Article 8 of the Convention. He further maintained that the restrictions to which he had been subjected by the national authorities during his remand in custody, such as his constant monitoring and intimidation, and the curtailment or the outright refusal of his right to use the telephone and to communicate with his visitors, including with his family, his lawyers and the UN officials, had infringed his rights under Articles 8 and 10 of the Convention. He claimed in this connection that he had not been given the same rights as other prisoners to receive visitors and use the telephone, and that his visits had always been monitored.

293. The remaining applicants maintained that the aforementioned restrictions, to which the first applicant had been subjected during his detention, as well as his unlawful arrest and deprivation of liberty, had likewise violated their rights under Articles 8 and 10 of the Convention. They alleged in particular that there had been periods during the first applicant's detention when they had been refused any contact with him.

294. The Court notes at the outset that the applicants' complaints should be examined from the standpoint of Article 8 of the Convention alone, which reads as follows:

> "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."

295. The complaints submitted by the applicants under Article 8 are twofold: (i) complaints arising from the alleged unlawful abduction and subsequent detention of the first applicant; and (ii) complaints regarding the various restrictions allegedly imposed on their private and family lives during the first applicant's remand in custody.

A. Complaints concerning the first applicant's alleged abduction and ensuing detention

296. The Government maintained that the second to thirteenth applicants lacked victim status in relation to the complaints concerning the first applicant's arrest and detention.

297. The applicants and the third-party intervener did not comment on the admissibility of this complaint.

298. The Court does not find it necessary to rule on the Government's preliminary objection as the present complaint is inadmissible in any event for the reasons explained below.

299. The Court notes in this connection that the first applicant's complaints regarding the circumstances of his apprehension and subsequent detention are absorbed by the complaints made under Articles 3 and 5 § 1 of the Convention and do not therefore require a separate examination under this head.

300. As for the remaining applicants' complaints under this head, the Court notes that the applicants have not substantiated in any way how the particular circumstances of the first applicant's arrest and subsequent detention infringed their Article 8 rights. Consequently, this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Restrictions imposed on private and family life during the first applicant's remand in custody

301. The Government contested the applicants' arguments and submitted that there was no merit in the allegations of interference with communication, or the monitoring of visits or intimidation. They maintained in particular that the second to thirteenth applicants had been free to visit the first applicant in the prison in accordance with the relevant rules and regulations that governed prison visits, which applied equally to all detainees, and to communicate with him without any "monitoring".

302. The Government of Cyprus, as the third-party intervener, reiterated the applicants' allegations in this regard.

303. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on private and family life. It has been held by the Court that some measure of control of prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention (see *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts), and *Aliev v. Ukraine*, no. 41220/98, § 187, 29 April 2003). Nevertheless, the Court also recognises that it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see, for instance, *Trosin v. Ukraine,* no. 39758/05, § 39, 23 February 2012).

304. Having said that, the Court has also found no interference by the State with detainees' Article 8 rights in situations where they failed to provide sufficient evidence that they had solicited family visits or other means or modalities of communication with their families and friends which they claimed they had not received (see *Čistiakov v. Latvia*, no. 67275/01, § 86, 8 February 2007; *Savenkovas v. Lithuania*, no. 871/02, § 101, 18 November 2008; and *Epners-Gefners v. Latvia*, no. 37862/02, § 65, 29 May 2012).

305. Turning to the facts before it, the Court notes that the applicants complained of the following restrictions on family visits: (i) refusal of some of their requests for visits; (ii) refusal of the right to make telephone calls; and (iii) monitoring of the visits.

306. As regards the first two of those alleged restrictions, the Court finds that in order to bring them within the ambit of Article 8, the applicants should have provided evidence that they had actually sought permission for the visits and phone calls which they were allegedly refused, which they did not do (see *Zinchenko v. Ukraine*, no. 63763/11, § 100, 13 March 2014). It further appears from the documents in the file that neither the first applicant nor the remaining applicants lodged any complaints with the domestic authorities concerning the restrictions they allegedly faced in their visiting rights or the right to make contact by telephone, nor do they appear to have

brought those issues to the attention of the first applicant's lawyers or the UN authorities whom they met frequently. The Court notes that the first applicant, who was detained for approximately four months, was allowed to receive visits from his family members and friends at least twice a week for one-hour periods, without any apparent limitations on the number of visitors, or their relationship to him, or any restrictions on physical contact. According to the information in the case file, the applicants made a request for a special visit on only one occasion during the Easter holidays, which request was granted by the prison administration.

307. Moreover, while the applicants complained that their visits had been monitored by prison officers, it is not clear whether and to what extent such monitoring affected the intimacy of their communication, as the information before the Court does not allow it to establish with any certainty the form of that monitoring or whether the applicants' conversations were actually listened to (see, *mutatis mutandis*, *Trosin*, cited above, § 46).

308. In these circumstances, the Court has no basis on which to conclude that the prison administration disproportionately hindered the applicants' efforts to stay in closer touch with each other during the approximately four-month period in which the first applicant was remanded in custody.

309. Although the first applicant claimed that he had been intimidated during his detention, he has not explained what the alleged intimidation entailed, nor has he submitted any evidence to corroborate his allegation. His assertion that visits from the UN officers were restricted and/or monitored is likewise unsubstantiated; it is not clear how those visits were monitored, when they were restricted and why such official visits formed part of his private life. As for the allegation that some visits from his lawyers were monitored, the Court notes that that issue has already been dealt with under Article 5 § 4 of the Convention above and does not require a separate examination under this head.

310. It follows from the foregoing that the Court does not have sufficient grounds on which to conclude that the applicants' right to private and family life were unduly restricted in contravention of the requirements of Article 8 of the Convention (see, *mutatis mutandis*, *Savenkovas*, cited above, § 101; *Epners-Gefners*, cited above, § 65; and *Zinchenko*, cited above, § 101). The Court therefore finds it unnecessary to examine the Government's general preliminary objection concerning non-exhaustion of domestic remedies and rejects this part of the application as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

311. The first applicant complained that the alleged violations of his substantive rights under Articles 2, 3, 5, 6 and 8 was the result of the

discrimination he faced as a Greek Cypriot, which gave rise to a breach of Article 14 of the Convention.

312. The Government denied that allegation.

313. The examination by the Court of the material submitted to it in the light of its settled case-law under Article 14 of the Convention does not disclose any appearance of a violation of this provision. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible under Article 35 §§ 3 (a) and 4 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

314. 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."

315. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award the first applicant any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection as to the non-exhaustion of domestic remedies in relation to the complaints regarding the unlawfulness of the first applicant's detention (Article 5 § 1) and the absence of effective remedies to challenge the lawfulness of that detention (Article 5 § 4) to the merits of the complaint under Article 5 § 4 of the Convention and *dismisses* it;

2. *Declares* the complaints under Article 3 concerning the alleged ill-treatment of the first applicant during his arrest and the complaints under Article 5 §§ 1 and 4 admissible;

3. *Holds* that there is no need to examine the admissibility or the merits of the complaint under Article 5 § 2 of the Convention;

4. *Declares* the remainder of the application inadmissible;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

6. *Holds* that there has been no violation of Article 5 § 1 of the Convention;

7. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;

8. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb.

Done in English, and notified in writing on 2 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

András Sajó
President