



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

SECOND SECTION

**CASE OF ŞİMŞEK AND OTHERS v. TURKEY**  
*(Applications nos. 35072/97 and 37194/97)*

JUDGMENT

STRASBOURG

26 July 2005

**FINAL**

*26/10/2005*

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



**In the case of Şimşek and Others v. Turkey,**

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 28 June 2005,

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

**PROCEDURE**

1. The case originated in two applications (nos. 35072/97 and 37194/97) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twenty-two Turkish nationals, Mr Ali Şimşek, Ms Şaziment Şimşek, Ms Dilay Şimşek, Mr Erkan Şimşek, Mr Gökhan Şimşek, Ms Şenay Şimşek and Mr Hakkı Yılmaz, Mr Hüseyin Kopal, Mr Cemal Poyraz, Ms Hacer Baltacı, Mr Mustafa Tunç, Mr Mahmut Engin, Mr Arslan Bingöl, Mr Veli Kaya, Mr Mehmet Gürgen, Ms Çiçek Yıldırım, Mr Hüseyin Sel, Ms Mukaddes Gündüz, Mr Sabri Puyan, Mr Zeynel Abit Çabuk, Ms Aynur Demir and Mr Aligül Yüksel (“the applicants”), on 7 February and 12 May 1997 respectively.

2. The applicants, who had been granted legal aid, were represented by Mr S. Kuşkonmaz, a lawyer practising in Istanbul. In the instant case, the Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants alleged, in particular, that their relatives had been killed during demonstrations that had taken place in Istanbul as a result of the use of force by the police which was more than absolutely necessary. They further complained about the inadequacy and ineffectiveness of the domestic investigation into the events. In respect of their complaints, the applicants alleged that there had been a breach of Articles 2, 6, 14 and 17 of the Convention.

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

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

6. On 20 April 1999 the Court decided to join the applications and to communicate them to the Government (Rule 42 § 1).

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

8. By a decision of 4 May 2004, the Court declared the applications partly admissible.

9. The applicants and the Government each filed additional observations on the merits (Rule 59 § 1) and replied in writing to each other's observations.

10. On 1 November 2004 the Court again changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

11. The facts as submitted by the parties may be summarised as follows.

#### A. General background

12. All of the applicants reside in Istanbul.

##### *1. Application no. 35072/97*

13. The applicants Ali Şimşek, Şaziment Simşek, Dilay Şimşek, Erkan Şimşek, Gökhan Şimşek and Şenay Şimşek are relatives of Dilek Şimşek Sevinç, who died during the Gazi incident.

##### *2. Application no. 37194/97*

14. The following applicants are all relatives of persons who also died during the Gazi incident:

- Hakkı Yılmaz is the father of Dinçer Yılmaz (deceased);
- Hüseyin Kopal is the father of Reis Kopal (deceased);
- Cemal Poyraz is the father of Zeynep Poyraz, (deceased);
- Mustafa Tunç is the father of Fevzi Tunç (deceased);

- Mahmut Engin is the father of Sezgin Engin (deceased);
- Arslan Bingöl is the husband of Fadime Bingöl (deceased);
- Veli Kaya is the father of Mümtaz Kaya (deceased);
- Mehmet Gürgen is the father of Hasan Gürgen (deceased);
- Çiçek Yıldırım is the mother of Ali Yıldırım (deceased);
- Hüseyin Sel is the father of Hasan Sel (deceased); and
- Mukaddes Gündüz is the wife of Mehmet Gündüz (deceased).

The remaining applicants are relatives of persons who died during the Ümraniye incident:

- Hacer Baltacı is the wife of İsmail Baltacı (deceased);
- Sabri Puyan is the brother of Hasan Puyan (deceased);
- Zeynel Abit Çabuk is the father of Hakan Çabuk (deceased);
- Aynur Demir is the wife of Genco Demir (deceased); and
- Aligül Yüksel is the son of İsmihan Yüksel (deceased).

## **B. The facts as presented by the applicants**

### *1. The Gazi incidents*

15. Gazi is a neighbourhood located within the Gaziosmanpaşa district of Istanbul. A majority of residents living in the Gazi neighbourhood belongs to the Alevi sect.

16. At around 9 p.m. on 12 March 1995, a group of unidentified persons opened fire from a taxi on five cafés situated in the Gazi neighbourhood. The shooting continued for approximately five minutes. An elderly person, Halil Kaya, was killed and twenty-five persons were wounded. Many shops were badly damaged during the shooting. The perpetrators of the attack killed the driver of the taxi and fled.

17. Following this incident, residents of the neighbourhood gathered on the street outside the cafés and in front of the *Cemevi*<sup>1</sup> to protest against the indifference displayed by police officers after the shooting. People also gathered outside the hospitals, where injured people were being treated. At about midnight, the group started marching towards the local police station. The police set up barricades with panzers and subsequently attacked the group with their truncheons and the butts of their weapons.

18. At 4 a.m. on 13 March 1995, the Istanbul governor and the chief of police went to the Gaziosmanpaşa governor's office and held a meeting with the community leaders to stop the incidents. The demonstrators began to calm down.

19. At that moment two panzers approached the demonstrators and began firing at them. As a result, Mehmet Gündüz was killed on the spot and ten persons were injured.

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1. A meeting place for Alevis for social and religious gatherings.

20. In the morning of 13 March 1995 thousands of people from the surrounding neighbourhoods joined the demonstrators. According to the applicants, there was no provocation by any terrorist organisation. Some of the demonstrators started throwing stones and coins at the police barricades.

21. At 11 a.m. police began firing from behind their barricades. Snipers were positioned on nearby buildings, targeting the protesters. During the firing, Fadime Bingöl and Sezgin Engin were killed and a number of others were injured.

22. The killing of these two persons raised the tension and the demonstrators began advancing towards the police barricades at 2 p.m. Uniformed and plainclothes police officers, who had positioned themselves behind the barricades, on the side streets and on some of the buildings, fired intensively. For about twenty minutes, the police officers chased a number of demonstrators who were trying to run away from the scene and shot them. Zeynep Poyraz, Dilek Şimşek Sevinç, Ali Yıldırım, Reis Kopal, Mümtaz Kaya, Fevzi Tunç, Hasan Sel, Hasan Gürgen, Dinçer Yılmaz and Hasan Ersürer were shot and killed. More than a hundred persons were injured. The police prevented the demonstrators from taking the wounded persons to hospital.

23. At 3.15 p.m. the same day the police attacked the crowd who were attending the funerals of Halil Kaya and Mehmet Gündüz. Military reinforcements were called to the area. The applicants state that the group did not protest against the soldiers.

24. At 4 p.m. a curfew was imposed in the area.

25. In total, fifteen people, including a person in the café, Halil Kaya, and the taxi driver were killed, and 276 people were injured during these events.

## *2. The Ümraniye incident*

26. The events in the Gazi neighbourhood sparked widespread outrage throughout the country and a number of demonstrations were held in different parts of Turkey during which the actions of the police were condemned.

27. On 15 March 1995 a large crowd gathered in the Mustafa Kemal neighbourhood, located within the Ümraniye district of Istanbul. The group began marching towards the funerals of those who had been killed during the Gazi incident.

28. At 2.30 p.m. the same day, the crowd came across barricades which had been set up by the police in a square outside a primary school. A number of demonstrators started throwing stones towards the barricades, upon which, without any warning, uniformed and plainclothes police officers began firing at the crowd. No one in the group returned fire. None of the police officers were killed or injured. Hasan Puyan, İsmihan Yüksel,

İsmail Baltacı, Genco Demir and Hakan Çabuk were killed during the shooting. More than twenty people were injured.

### **C. The facts as submitted by the Government**

29. Upon receipt of information that five cafés in the Gazi neighbourhood were under fire, police officers were sent to the scene of the incident. When the police officers arrived in front of the cafés, they saw a crowd of forty people who were shouting slogans against the police. The crowd attacked the police vehicles and the police officers were unable to conduct an investigation. Therefore they called for reinforcements. Following the arrival of additional security forces, the police conducted an investigation and wounded persons were sent to hospital. At the same time, some people from the neighbourhood joined the protesting group. Together, they started shouting slogans, and throwing coins and stones at the police. Some of the protesters had fire bombs in their hands. With the participation of other people from the neighbourhood, the crowd became larger and they started to march towards the Gazi Police Station. Many shops and vehicles were set on fire. Some masked men in the crowd threw fire bombs towards the police officers. In order to prevent the crowd from going further, the police officers built barricades. Security forces verbally warned people to stop. They then used pressurised water and batons to disperse the crowd. When they were not able to disperse them, they fired warning shots in the air. However, the crowd continued to walk towards the security forces and attacked the panzers with fire bombs. The riot in the Gazi neighbourhood lasted for two days. At the end of the second day, a curfew was imposed in the area. During the riot, 13 people died and 195 persons (152 residents, 36 police officers and 7 soldiers) were wounded.

30. Following the incidents that took place on 12 March 1995, the security forces received intelligence reports about further possible riots in the Ümraniye area. In order to prevent any untoward occurrences, a meeting was organised on 14 March 1995 at the Ümraniye district security directorate building. The district director of security, the mayor of the neighbourhood and the president of the Pir Sultan Abdal Association participated in the meeting, which was presided over by the district governor. During the meeting, the situation was discussed and residents were requested not to be influenced by provocation. In the morning of 15 March 1995, upon threats from a terrorist organisation, all the shops in the neighbourhood closed down as a sign of protest. A second meeting was held to discuss the situation. At about 1 p.m. the same day, a group of 1,500 people gathered in front of the Pir Sultan Abdal Association in the Mustafa Kemal neighbourhood and started to march towards the Örnek neighbourhood. The security forces announced that the march was illegal and requested the participants to disperse. The group started shouting

slogans and continued to march. The number of people increased to thousands. Some of the protesters were wearing red berets and scarves. Some people from the crowd threw stones and coins at the security forces. As the tension increased, the group started attacking the security forces with bricks and stones. The security forces took precautions and established a security line. After some time, armed men, who were amongst the group, started shooting towards the security forces and the crowd. The security forces fired warning shots in the air and the attack stopped. The wounded persons were taken immediately to hospital. While the wounded were being evacuated, the crowd continued shouting slogans and throwing stones from behind the shelters. Traffic was also halted by burning tyres. Military forces arrived at the scene, a curfew was established and the entrance to the neighbourhood was placed under strict control.

31. Following the incidents, the domestic authorities immediately commenced investigating the events. Several witness statements were taken, autopsies were conducted and the bullets recovered from the bodies of the wounded and dead persons were sent for ballistic examination. Seven ballistic reports were prepared by the Istanbul Forensic Medicine Institute on 26 and 31 July, 11 September and 15 November 1995, 27 October 1997 and 12 October 1999, respectively. According to these reports, none of the bullets that had been recovered from the bodies of the victims matched the weapons of the security forces who were on duty during the two incidents.

32. In accordance with Article 22 of Law No. 3713 on the Prevention of Terrorism, in April 1995 the families of the deceased persons were paid 150,000,000 Turkish Liras (TRL), the equivalent of 2,800 euros (EUR), by way of compensation from the Social Collaboration and Solidarity Encouragement Fund (*Sosyal Yardımlaşma ve Dayanışmayı Teşvik Fonu*).

#### **D. The domestic proceedings concerning the Gazi and Ümraniye incidents**

##### *1. Proceedings concerning the Gazi incidents*

33. On 11 April 1995 Arslan Bingöl, Celal Sevinç, Çiçek Yıldırım, Mukaddes Gündüz, Sabahat Engin and Cemal Poyraz filed a criminal complaint with the Gaziosmanpaşa public prosecutor against the Ministry of the Interior, the Governor of Istanbul, the Director of the Istanbul Police and the police officers who were involved in the incidents of 12-13 May 1995 in the Gaziosmanpaşa district. They maintained that their relatives had been killed by police officers who had used more force than was absolutely necessary. They further alleged that the crowd which protested against the police had not used firearms and that the police had opened fire at the crowd without any warning. They maintained that the police should have first used pressurised water, tear gas or plastic bullets to disperse the demonstrators.



According to the complainants, the police deliberately used firearms against the demonstrators who were residents of the Gazi district and who belonged to the Alevi sect.

34. Following this criminal complaint, the Public Prosecutor commenced an investigation into the events. On 19 April 1995 he issued a decision of non-jurisdiction to examine the complaint against Hayri Kozakçıoğlu, the Governor of Istanbul. The prosecutor accordingly sent the file to the Ministry of the Interior for further investigation.

35. On 4 July 1995 the public prosecutor issued a decision of non-prosecution against Necdet Menzir, the Head of the Istanbul Security Department.

36. On 5 July 1995 the prosecutor decided that no criminal prosecution could be initiated against Nahit Menteşe, the Minister of the Interior. He held that, in his capacity as the Minister, Mr Menteşe did not have legal responsibility concerning the alleged events.

37. On the same day, the public prosecutor also decided to separate the investigation concerning the death of Dinçer Yılmaz, Sezgin Engin, Mümtaz Kaya, Hasan Gürgen, Hasan Sel and Hasan Ersürer from the other killings. This file was accordingly registered under file no. 1995/6570.

38. On 10 July 1995 the public prosecutor filed an indictment with the Eyüp Assize Court against twenty police officers who had been on duty during the demonstrations between 12 and 13 May 1995. The indictment involved the death of Dilek Şimşek Sevinç, Reis Kopal, Zeynep Poyraz, Fevzi Tunç, Fadime Bingöl, Ali Yıldırım and Mehmet Gündüz. In his indictment, the prosecutor relied on witness statements, medical reports, police reports, autopsy reports, video footage and newspaper clippings. He stated that, following the attack on the cafés located in the Gazi district and upon provocation from an illegal organisation, the residents of the neighbourhood had started protesting against the police. The crowd marched towards the local police station, chanting slogans, and throwing stones and fire bombs. Some people among the group fired at the police officers. The crowd was shouting slogans to incite hatred between the Alevis and Sunnis. The prosecutor further maintained that the police panzers had opened fire at the crowd to disperse the demonstrators and, as a result, Mehmet Gündüz was shot and killed. A police officer, identified as Adem Albayrak, had further shot and killed Ali Yıldırım, Dilek Şimşek Sevinç and Fadime Bingöl. Another police officer, whose identity could not be established, shot and killed Reis Kopal. Adem Albayrak, together with Officer Mehmet Gündoğan, killed Zeynep Poyraz. The prosecutor alleged that the officers in the panzer, together with Officer Gündoğan, had shot and killed Fevzi Tunç. The prosecutor therefore requested the court to prosecute these officers for intentional homicide under Article 448 of the Criminal Code.

39. Mukaddes Gündüz (wife of Mehmet Gündüz), Mustafa Tunç (father of Fevzi Tunç), Çiçek Yıldırım (mother of Ali Yıldırım), Cemal Poyraz

(father of Zeynep Poyraz), Celal Sevinç (husband of Dilek Şimşek Sevinç), Ali Şimşek (father of Dilek Şimşek Sevinç), Hüseyin Kopal (father of Reis Kopal) and Aslan Bingöl (husband of Fadime Bingöl) intervened in the proceedings.

40. On 13 July 1995 the Eyüp Assize Court decided to transfer the case to another city for security reasons as its location was very close to the vicinity where the incident had taken place.

41. On 15 August 1995 the Court of Cassation upheld the decision of the Eyüp Assize Court and decided to transfer the case to the Trabzon Assize Court, approximately 1000 kilometres away from Istanbul.

42. On 11 September 1995 the Trabzon Assize Court held a preliminary hearing. It decided to send letters rogatory to a number of courts to take statements from fifty eye-witnesses. It also decided that taking oral evidence from another 250 witnesses would be considered at a later stage. It finally requested the public prosecutor to find the current addresses of the twenty accused police officers who, since the incident, had been posted elsewhere in the country. It adjourned the examination of the case until 15 November 1995.

43. On 15 November 1995 the Trabzon Assize Court stayed the trial on the ground that the indictment lacked the prior authorisation of the Istanbul Provincial Administrative Council to initiate criminal proceedings against the police officers. It therefore sent the case-file to the governor's office in Istanbul, in accordance with the Law on the Prosecution of Civil Servants. The applicants filed an objection against this decision with the Court of Cassation.

44. On 8 October 1996 the Court of Cassation decided that the decision of the Trabzon Assize Court to stay the proceedings was not a final decision and, as such, the Court of Cassation did not have jurisdiction to examine this appeal. On 15 October 1996 the prosecutor at the Court of Cassation appealed against this decision.

45. On 17 December 1996 the Joint Criminal Chambers of the Court of Cassation confirmed that the Court of Cassation was not the competent forum to examine the appeal request. Accordingly, the case file was transferred to the Rize Assize Court.

46. On 3 March 1997 the Rize Assize Court found in line with the applicants' objection and decided to quash the decision of the Trabzon Assize Court dated 15 November 1995. It held that a prior authorisation from the Istanbul Provincial Administrative Council was not necessary to commence the prosecution of the accused police officers.

47. On 28 March 1997 the Trabzon Assize Court insisted that its decision of 15 November 1995 was valid and that the authorisation of the Istanbul Provincial Administrative Council was required to try the defendants. It decided to send the file to the Ministry of Justice to obtain a written order instructing the public prosecutor at the Court of Cassation to

refer the case to the Court of Cassation. The Trabzon public prosecutor was requested to forward the file to the Ministry of Justice.

48. On 31 March 1997 the Trabzon public prosecutor sent the file to the Ministry of Justice together with his observations, in which he stated that the issue had already been examined by the Joint Criminal Chambers of the Court of Cassation and that, in his opinion, it was not necessary for the Ministry of Justice to issue a written order.

49. On 13 May 1997 the Ministry of Justice returned the file to the Trabzon Assize Court, rejecting its request for a written order.

50. On 23 May 1997 the president of the Trabzon Assize Court submitted a two-page letter informing the court about his decision to abstain from sitting as a member of the court during the prosecution of the police officers. In his letter, the president stated that it was impossible for him to remain impartial and independent during the trial of the police officers when his own life was being protected by members of the security forces. He also stated that, in his opinion, the police officers were not guilty and the Gazi district incident was a premeditated riot against the security forces.

51. On 13 June 1997 the Trabzon Assize Court resumed the trial and held a preliminary hearing. The president of the court, who had abstained from hearing the case, was replaced by another judge.

52. On 16 September 1997 the Trabzon Assize Court held the first hearing in the case. The defendants did not attend the hearing but were represented by their lawyers. During the hearing, the court heard testimonies from the interveners, namely Mustafa Tunç, Çiçek Yıldırım, Ali Şimşek, Cemal Poyraz and Aslan Bingöl. All interveners complained that the police had used excessive force against the demonstrators, which had led to the killing of their relatives. As none of them were eye-witnesses to the events, they were unable to give precise details about the incident. However they asked the court to punish those who were responsible for the killings. The same day, the court heard evidence from two people who had been injured during the Gazi Incident. In their statements, both witnesses stated that they had been severely beaten by the police. They also identified the accused officer Adem Albayrak as the officer who had beaten them. At the end of the hearing, the court ordered the detention on remand of eight of the defendants. It also summoned the remainder of the defendants to the next hearing.

53. In its hearing held on 17 November 1997, the court took statements from fifteen accused police officers. Before the court, the defendants stated the following:

**Adem Albayrak**

“At that time, I was working at the Gaziosmanpaşa District Security Directorate Investigation Unit. Following the attack on the cafés, I was called to the scene with other police officers. I was in command of one of the units. During the incident, I was

in civilian clothes, equipped with a handgun. I did not have a rifle or other firearms. When I arrived at the scene, I saw that a huge crowd had already gathered in front of the police station. Some of the demonstrators were throwing stones and fire bombs at the police officers. There were terrorists amongst the demonstrators. They set fire to a white car and a gas container was thrown at this car from a nearby building. The demonstrations continued for about 4 hours. With the help of two panzers, the police officers were trying to disperse the crowd. At some point, the demonstrators marched back but I did not follow them. I stayed near the police station the whole time. Some civilians fired at the police officers from the roofs of the buildings. I did not fire at the crowd. I deny the charges brought against me.”

#### **Mehmet Gündoğan**

“When I arrived in the Gazi district, there was a huge gathering. The demonstrators were carrying banners. The officers warned them and fired in the air. Some of the demonstrators fired at the police. I was equipped with a handgun; I did not have a rifle. I admit that I am the person in the photograph holding a stick with my right hand and a gun with my left hand. However the security of the gun was locked. I did not fire at the demonstrators.”

54. The same day, the court heard the statements of thirteen other defendants who had been on duty in the panzers at the time of the incident. All of the accused officers denied firing at the crowd. They stated that there were three panzers at the scene on 13 March 1995. The panzers had acted as protective shields for the police officers who were trying to disperse the crowd. According to the accused officers, the crowd was not peaceful; the demonstrators were chanting slogans, and throwing stones and fire bombs at the police. The three panzers had been ordered to drive towards the demonstrators to force them to disperse. All the police officers acknowledged that they had had handguns but denied having had rifles.

55. On 15 December 1997 the court heard the statements of two other accused police officers, who maintained that the crowd was not peaceful, but was chanting slogans, and throwing stones and fire bombs at the police. They denied firing at the crowd and stated that some people in the group had fired at the police. The same day, the court took statements from Hüseyin Kopal, who had intervened in the proceedings, and six more eye-witnesses. Their accounts may be summarised as follows:

#### **Hüseyin Kopal**

“I am Reis Kopal’s brother. When Reis did not come home on the day of the incident, I was worried about him. I therefore went to the Gazi district looking for him. It was very crowded. There was a clash. The demonstrators were throwing stones at the police. I saw three dead bodies near a wall. I later learned that these belonged to Fevzi Tunç, Ali Yıldırım and Sezgin Engin. Uniformed and plainclothes police officers were firing at the crowd. I saw the accused officer, Adem Albayrak, shooting at the crowd with a M5 type rifle. I continued looking for my brother. A few minutes later, I witnessed the killing of Mümtaz Kaya. He was shot by a police officer near the high school. I was not able to find my brother and I returned home. Later that night, as

I was watching the events from the TV, I recognised my brother. He was amongst the demonstrators, throwing stones at the police. We were later informed that he was shot dead during the incidents.”

### **Şeyho Tunç**

“On 13 March 1995 I went to the Gazi district. When I arrived near the police station, a clash broke out. Police officers targeted the demonstrators and fired at them. I saw the accused police officer Adem Albayrak firing at Fevzi Tunç. Adem Albayrak was in civilian clothes, equipped with a rifle.”

### **Mahmut Türkmen**

“At the time of the incident, I was working at the Cemevi. Following the attack on the cafés, we tried to convince the residents to calm down. At about 4 a.m. a panzer drove towards our building and projected a light. Thereafter I heard gunshots. Mehmet Gündüz was shot and killed during the shooting. Because of the light, I was unable to see whether the firing came from the panzer or somewhere else.”

### **Erkan Şimşek**

“I am the brother of Dilek Sevinç who died during the Gazi incident. Following the attack on the cafés, together with Dilek and my younger sister Dilay we approached the police station to see what was going on. One plainclothes police officer, namely Mehmet Gündoğan, started beating me. Then some other police officers started firing at the crowd. Dilek was shot as a result of the shooting. She was shot by a plainclothes police officer who was wearing jeans and holding a rifle. I later learned from the press that his name was Adem Albayrak.”

### **Şahnaz Türkkkan**

“I am the neighbour of Fadime Bingöl who was shot dead during the Gazi incident. On the day of the incident, Fadime was worried about her daughter who had gone to school. When she saw that other students were returning to their houses, she wanted to go out and find her daughter. I accompanied her. Together, we went towards the crowd. When we were in front of the pharmacy, Fadime climbed on a ladder in order to be able to see her daughter in the crowd. Suddenly there was shooting, and I saw Fadime fall down. She was shot by a police officer who was standing on the opposite side of the road. I cannot identify the officer as he was wearing a helmet.”

### **Songül Bingöl**

“Fadime Bingöl is my relative. On the day of the incident, we went out to search for Fadime’s daughter who had gone to school in the morning. Fadime climbed on a ladder in front of the pharmacy, looking for her daughter. She was shot in the face by police officers standing on the opposite side of the building.”

**Safiye Obalı**

“On 13 March 1995 at about 10 a.m. together with my sister-in-law Fadime Bingöl, we went out looking for Fadime’s daughter. We first went to the Cemevi, then continued walking. Fadime saw a ladder and climbed on it to find her daughter in the crowd. At that time plainclothes and uniformed police officers started firing at the crowd. Fadime was shot in the face. I could not see who shot her. I just saw police officers shooting at the crowd.”

56. On 28 January 1998 the court held its fourth hearing and took the statement of an accused police officer, Sedat Özdemir. Mr Özdemir maintained that he had been on duty in one of the panzers during the Gazi incident. He explained that the panzers had been used as shields to protect the police officers from the crowd. He stated that all of the officers in the panzer were equipped with handguns.

57. The same day, the court further heard oral evidence from two witnesses, namely Sadık Bakır and Hıdır Elmas. Both witnesses had been working at the Cemevi at the time of the incidents. They maintained that, following the attack on the cafés on 12 March 1995, people started gathering in front of the Cemevi. While they were waiting peacefully in front of the building, at about 4 a.m. a panzer approached and projected its lights towards the Cemevi. The witnesses recalled hearing gun shots and maintained that Mehmet Gündüz had been shot and killed and several people wounded as a result of this shooting.

58. On 27 February 1998 the court heard witness statements, which may be summarised as follows:

**Petrikan Konak**

“I am a police officer. On the day of the incident, we were called to the Gazi district as reinforcement. We waited in front of the local police station for a long time. We were confronted with a large gathering. They were shouting slogans. In the morning, military forces arrived at the scene. The crowd was attacking the police barricade with stones and bricks. Fire bombs were thrown at the police. As I was behind, I could not see clearly what was going on near the barricades, but at some point the crowd started marching back. Some officers followed them. I heard screams and gunshots but I never left the police station. I saw that some of the police officers from the anti-terrorism branch were equipped with MP5 rifles and Kalashnikovs. They were wearing bullet proof vests.”

**Engin Turan**

“I was waiting in the Cemevi on the night of the incident. At about 4 a.m., I saw a panzer which projected its lights onto the building. Then from behind the panzer, I heard gun shots. Many people were hit during the firing. We tried to take the wounded persons to hospital. One of the wounded persons died on the spot. I later learned that his name was Mehmet Gündüz.”

**Fazıl Dural**

“I am a journalist. I work for one of the weekly magazines. On Sunday when I heard about the Gazi incident, I went to the district at about 11 p.m. When I was in front of the police station, I heard an explosion. Then I saw the panzers. They were trying to extinguish a taxi that was on fire. On the left side, I saw police officers shooting in the air with their hand guns. From their clothes, I understood that they were from Rapid Intervention Force. I saw that many of the police officers acted in panic. A commander shouted, “Stop or you will shoot each other”. Someone from a nearby building threw a gas container at the burning taxi. The car exploded. Children were attacking the shops by throwing stones. I saw some people with fire bombs; their faces were covered. I assumed they were members of an illegal organisation. They were throwing these fire bombs at the panzers. An announcement was made from the Cemevi, asking the residents to go home. The crowd started calming down. I went to a nearby café to wait. After some time, someone rushed into the café and shouted, “They’ve started attacking”. When we went to the Cemevi, I saw that a panzer was projecting lights on the crowd, and guns were fired from behind the panzers. Many people were wounded. Mehmet Gündüz died on the spot.”

**Maksut Doğan**

“I am the director of the Cemevi. I was watching TV when I heard about the attack on the cafés. Immediately, I went to the Cemevi. A group of 200-300 persons had gathered in front of our building. The mayor of the district talked to the group and told them to go home. While we were trying to organise the funeral of Halil Kaya, at about 4 a.m. two panzers approached our building. One of them projected its lights onto the building. At first, I heard two gun shots. Then the shooting continued. A person who was waiting in front of the Cemevi was shot and killed.”

**Nazmi Yükselen**

“Fevzi Tunç, who was killed during the Gazi incident, was my colleague. On the day of the incident, I was at Fevzi’s apartment in Gazi district. Together we were watching a football game. While we were watching TV, we heard about the attack on the cafés. We did not go out that night. The following morning at about 10 a.m. we went out. When we approached the Cemevi, we came across a huge crowd. Our aim was to catch the bus. However, at that moment we heard gun fire. We saw someone fall down. Fevzi went to help him. I then saw two police officers pointing their guns at us. One of them was wearing a uniform; the other was in civilian clothes. The police officer who was dressed in civilian clothes was holding a M5 rifle. They both fired at us. Fevzi was shot from a distance of 60-70 metres.”

59. On 2 April 1998 the court heard the statements of three interveners, Menevşe Poyraz, Haydar Kopal and Şaziment Şimşek, none of whom had been eye-witnesses to the incident. They all requested the court to punish those responsible for the killing of their relatives. The same day, the court heard evidence from Özlem Tunç and Mahmut Yağız. In her statement Özlem Tunç submitted that she was living in the Gazi district at the time of the incident. On the day of the incident, she was at home when she heard the attacks on the cafés. She went out with her mother to see what was going

on. She witnessed police officers attacking the crowd. She was severely beaten by the police. She saw the dead body of Fevzi Tunç and witnessed the death of Fadime Bingöl. She stated that Fadime was standing right in front of her when she had been shot in the face. However, the witness had not been able to see who had fired the shot.

60. When asked about his recollection of the incident, the second witness Mahmut Yağız explained that on 13 May 1995 at about 10 a.m. he had gone out to see the events. The streets had been extremely crowded. He recalled hearing gun shots and seeing a group of demonstrators throwing stones at the police. He also remembered seeing two police officers, in civilian clothes, firing with rifles from behind a car. He explained that, as a result of the firing, four persons had been shot and killed. He subsequently learned that amongst the dead were Fevzi Tunç, Reis Kopal and Sezgin Engin. The witness maintained that the killing of these persons had raised the tension and the crowd had started throwing stones at the police. He recalled seeing two uniformed police officers fire at the crowd, targeting the demonstrators.

61. While the proceedings before the Trabzon Assize Court were under way, on 5 March 1998 the Gaziosmanpaşa public prosecutor filed another indictment with the Eyüp Assize Court against the two police officers Adem Albayrak and Mehmet Gündoğan for the killing of Sezgin Engin and Mümtaz Kaya during the Gazi incident. On 10 March 1998 the Eyüp Assize Court decided to join these proceedings to those already pending before the Trabzon Assize Court. At its hearing on 2 April 1998, the Trabzon Assize Court endorsed this decision. The applicants Veli Kaya and Mahmut Engin intervened in those proceedings. At its hearing held on 7 May 1998, the court took their statements. Both Mr Kaya and Mr Engin asked the court to find the police officers who had shot and killed their sons.

62. On 7 May 1998 the court heard the testimony of Sevgili Kaya, the mother of Mümtaz Kaya. She gave the following account:

“On 13 March 1995 I went to the Gazi district together with my son to visit a friend. On the way, we saw a large group of people. Suddenly, the group started running away. My son panicked and tried to escape. Police officers in civilian clothes fired at the people who were running away. My son was shot. I saw the officer who shot Mümtaz. He was in civilian clothes wearing a coat. I also saw the same officer shoot Zeynep Poyraz.”

63. When asked to identify the officer who had shot her son, Sevgili Kaya identified Mehmet Gündoğan amongst the defendants. She also stated that it was the same police officer who had shot Zeynep Poyraz.

64. The same day the court heard the statement of Nuriye Yıldız. She stated:

“I was in the Gazi district to visit a relative. I stayed there on Sunday and on Monday morning I went out to go back to my house. Near the school, which is close to the Cemevi, I met Mümtaz Kaya and his mother. Suddenly a clash broke out and



Mümtaz was shot by a police officer. The officer, who shot Mümtaz from 15 metres away, was in civilian clothes, holding a truncheon with one hand and a gun with the other. People were chased by the police. I also saw panzers.”

65. When the witness was asked to identify the police officer who had shot Mümtaz, she pointed out Mehmet Gündoğan and confirmed before the court that it was Mehmet Gündoğan who had shot Mümtaz.

66. At its ninth hearing on 12 June 1998, the court took evidence from two eye-witnesses. Their accounts may be summarised as follows:

**Muharem Buldukoğlu**

“I was in the Gazi district when the incidents took place. I first saw the panzers and the officers who had been positioned behind the panzers. There was a group of people waiting in front of the panzers. Suddenly the panzers started driving towards the gathering. People started running away. I saw Zeynep Poyraz being shot and she fell down. She was shot from a distance of 50-60 metres. I did not see who shot her. Zeynep was not attacking the officers and she was not a member of an illegal group; she was just trying to run away from the police.”

**Yalçın Yılmaz**

“I was in the Gazi district at that time. There was a large group of people out on the streets. Amongst the group, I recognised Reis Kopal, who is a relative. Reis was throwing stones at the police. The police started firing at the group and Reis fell down. I saw two police officers equipped with rifles. One of them was wearing a uniform, the other one was in civilian clothes.”

67. When the witness was asked by the court to identify the police officer who had shot Reis Kopal, he pointed out Adem Albayrak amongst the defendants.

68. The Trabzon Assize Court further held 21 hearings until 3 March 2000 and heard testimonies from six more witnesses, mainly journalists who had reported the incidents. The defendant police officers Mehmet Gündoğan and Adem Albayrak were released from detention on 6 November 1998 and 3 March 2000 respectively pending trial.

69. On 3 March 2000 the court delivered its judgment. Basing itself on autopsy reports, ballistics reports, incident reports, testimonies, photographs and video footage of the incident, the court found it established that police officer Adem Albayrak had shot and killed Dilek Şimşek Sevinç, Reis Kopal, Fevzi Tunç and Sezgin Engin. It accordingly sentenced him to six years and eight months’ imprisonment, pursuant to Article 448 of the Criminal Code, and barred him from public service for four months and twenty-eight days. The court also found police officer Mehmet Gündoğan guilty of killing Mümtaz Kaya and Zeynep Poyraz and sentenced him to three years and four months’ imprisonment, and barred him from public service for two months and fourteen days, pursuant to Article 448 of the

Criminal Code. The remaining eighteen police officers were acquitted of the charges against them.

70. On 5 April 2001 the Court of Cassation upheld the judgment of the Trabzon Assize Court in respect of the acquitted police officers. However it quashed the first-instance court's judgment in respect of the convictions of Adem Albayrak and Mehmet Gündoğan. It held that the first instance court had failed to establish the facts of the case. Holding that the assize court's evaluation of evidence was insufficient, the Court of Cassation quashed this part of the judgment.

71. On 4 June 2001 the Trabzon Assize Court resumed the proceedings. It held four hearings and re-examined the case file.

72. On 5 November 2001 the court applied the decision of the Court of Cassation and rectified its former judgment. Accordingly, the Assize Court found Adem Albayrak guilty of killing Fevzi Tunç, Reis Kopal and Dilek Sevinç and sentenced him to five years' imprisonment. Adem Albayrak was further barred from public service for three months. The court acquitted him of the remaining charges against him, namely the killing of Sezgin Engin.

73. The court found that Mehmet Gündoğan was guilty of killing Mümtaz Kaya, contrary to Article 448 of the Criminal Code. It accordingly sentenced him to one year and eight months' imprisonment, and barred him from public service for three months. It acquitted Mehmet Gündoğan of the remaining charges against him, namely the killing of Zeynep Poyraz. Finally, pursuant to Section 6 of the Execution of Sentences Act (Law no. 647), the court decided to suspend the sentence of Mehmet Gündoğan, considering that the accused did not have a tendency to break the law again.

74. On 11 June 2002 the Court of Cassation upheld the judgment of the first instance court.

75. The investigation which had been commenced in April 1995 concerning the killing of Dinçer Yılmaz, Hasan Gürgen, Hasan Sel and Hasan Ersürer is still pending before the Gaziosmanpaşa Public Prosecutor under file no. 1995/6570 (see paragraph 37 above). During the investigation, the public prosecutor took oral evidence from witnesses, and examined the autopsy reports, the photographs taken during the demonstration and the video footage of the event. He further requested the list of police officers who had been on duty during the Gazi incidents and ordered a ballistic examination of their guns. As the bullet which killed Dinçer Yılmaz could not be found, no ballistic examination could be performed. According to the Government, the authorities are still searching the perpetrators.

## *2. Proceedings concerning the Ümraniye incidents*

76. On 11 April 1995 a criminal complaint was filed with the Üsküdar public prosecutor's office against the Ministry of Interior, the Governor of Istanbul, the Director of the Istanbul Security Department and the police

officers who were involved in the incidents of 15 March 1995 in the Ümraniye district. It was submitted that, as a result of the disproportionate use of firearms by the police, five persons, namely Hasan Puyan, İsmihan Yüksel, İsmail Baltacı, Genco Demir and Hakan Çabuk, were killed and twenty others were injured. It was argued that the Ministry of Interior, the governor of Istanbul and the director of the Istanbul police headquarters had been negligent in failing to control the actions of the police. The relatives of the deceased persons further argued that the police officers had even followed those running away from the scene and fired at them. They contended that the demonstrators had not fired at the police and, in support of this allegation, they maintained that no police officers had been injured or killed during the Ümraniye incident.

77. On 15 April 1997 the Üsküdar prosecutor's office decided not to prosecute the 238 police officers who had been on duty during the Ümraniye incident. He stated that police officers had fired warning shots in the air to disperse the demonstrators and concluded that the deceased persons had not been killed by fire opened by members of the Rapid Intervention Force. It had not been possible to establish the accuracy of the claims that a number of civilians who opened fire on the crowd were plainclothes police officers. In reaching this conclusion, the Üsküdar public prosecutor's office had regard to the eye-witness accounts of a number of persons, including the relatives of the deceased persons. A number of police officers working at the Ümraniye police headquarters had also been questioned. Eight bullets which had been removed from the bodies of the deceased and the injured persons had been compared with those obtained from the weapons of the 238 defendants. As a result, it was established that these eight bullets had not been fired from any of the weapons owned by the defendants. Video recordings and a number of pictures of the scene were obtained by the prosecutor's office but they turned out to relate to events which had taken place after the killing of the applicants' relatives. It was concluded that it had not been possible to identify the demonstrators who had opened fire at the crowd. The prosecutor further held that the firing in the air by police officers did not constitute a criminal offence. Finally, the prosecutor noted that, as the ballistic examinations of the weapons belonging to seven other police officers had not yet been concluded, a decision as to whether to prosecute these officers would be taken at a later date.

78. The applicants Sabri Puyan, Hacer Baltacı, Aynur Demir and Aligül Yüksel appealed against the decision.

79. On 13 November 1998 the appeal was dismissed by the Kadıköy Assize Court.

80. On 10 November 1998 the Üsküdar prosecutor's office decided not to prosecute the remaining seven police officers for the same reasons it had relied on in its decision of 15 April 1997.

81. On 30 November 1998 the applicants appealed against the decision of 10 November 1998 not to prosecute. Their appeal was rejected.

## II. RELEVANT LAW AND PRACTICE

### A. Domestic legislation

#### 1. *Constitutional provisions and administrative liability*

82. Article 125 of the Constitution provides as follows:

“All acts and decisions of the administration are subject to judicial review...

The administration shall be liable to indemnify any damage caused by its own acts and measures.”

83. This provision is not subject to any restrictions even in a state of emergency or war. The latter requirement of the provision does not necessarily require proof of the existence of any fault on the part of the administration, whose liability is of an absolute, objective nature, based on the theory of “social risk”. Thus the administration may indemnify people who have suffered damage from acts committed by unknown or terrorist authors when the State may be said to have failed in its duty to maintain public order and safety, or in its duty to safeguard individual life and property.

#### 2. *Criminal law and procedure*

84. The Criminal Code makes it a criminal offence to commit unintentional homicide (Articles 452 and 459), intentional homicide (Article 448) and murder (Article 450).

85. For all these offences, complaints may be lodged, pursuant to Articles 151 and 153 of the Criminal Procedure Code, with the public prosecutor or local administrative authorities. The public prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Criminal Procedure Code. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

#### 3. *Legislation concerning the use of firearms by the police*

86. The relevant provisions of Law No. 2559 on the Duties and Powers of the Police (*Polis Vazife ve Selahiyet Kanunu*), enacted in 1934, read as follows:

**Article 16**

The police may use firearms in the event of:

(a) Self defence, ...

(h) if a person or a group resists the police and prevents them from carrying out their duties or if there is an attack against the police.”

**Additional Article 6 (dated 16 June 1985)**

“In cases of resistance by persons whose arrest is necessary or by groups whose dispersal is necessary or of their threatening to attack or carrying out an attack, the police may use violence to subdue these actions.

Use of violence refers to the use of bodily force, physical force and all types of weapons specified in the law and it gradually increases according to the nature and level of resistance and attack in such a way as to restore calm.

In cases of intervention by group forces, the extent of the use of force and the equipment and instruments to be used are determined by the commander of the intervening force.”

87. Section 17 of the Regulation on the Duties and Powers of the Police (*Polis Vazife ve Selahiyet Nizamnamesi*) provides:

“Pursuant to Article 16 of the Law on the Duties and Powers of the police, police officers are entitled to use firearms. However recourse to firearms arms should be limited to cases when all other means remain ineffective. In this connection, it should be recalled that the police should not aim to kill but to capture the accused person(s) with minimum physical injury, and should try to avoid using firearms in crowded areas.”

**A. International legal materials**

88. According to Part A paragraph 13 of Resolution 690 on the Declaration on the Police adopted by the Parliamentary Assembly of the Council of Europe in 1979, “police officers shall receive clear and precise instructions as to the manner and circumstances in which they may make use of arms”.

89. Article 6 § 1 of the International Covenant on Civil and Political Rights provides:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

90. In this connection, the Human Rights Committee noted the following (see General Comment no. 6, Article 6, 16<sup>th</sup> Session (1982), § 3):

“The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee

considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”

91. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“UN Force and Firearms Principles”) were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Paragraph 1 of the Principles states that Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

Pursuant to paragraph 2, the Governments undertake to develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of the means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defence equipment such as shields, helmets, bullet-proof vests and bullet-proof transport, in order to decrease the need to use weapons of any kind.

Paragraph 5 of the Principles provides, *inter alia*, that law enforcement officials shall “act in proportion to the seriousness of the offence and the legitimate objective to be achieved”. In accordance with paragraph 7, “governments shall ensure that the arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law”. Paragraph 9 foresees that “law enforcement officers shall not use firearms against persons except in self-defence or the defence of others against the imminent threat of death or serious injury... In any event, the intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”. Paragraph 11 (b) states that national rules and regulations on the use of firearms should “ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm”.

In paragraphs 13 and 14 the following Principles are adopted for policing unlawful assemblies:

**Paragraph 13**

“In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”

**Paragraph 14**

“In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in Principle 9.”

92. Furthermore, Article 3 of the United Nations Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution on 17 December 1979, reads:

“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”.

93. In December 1998, Amnesty International further adopted ten basic human rights standards for law enforcement officials. The relevant standards read as follows:

**Basic Standard 3**

“Do not use force except when strictly necessary and to the minimum extent required under the circumstances.”

**Basic Standard 4**

“Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary. ”

**Basic Standard 5**

“Lethal force should not be used except when strictly unavoidable in order to protect your life and others.”

## THE LAW

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

94. The applicants complained that their relatives had been unlawfully killed by police officers in the course of the demonstrations between 13 and

15 March 1995. In this respect, they relied on Article 2 of the Convention, which provides:

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

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

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

## **A. Arguments before the Court**

### *1. The applicants*

95. The applicants submitted that the incidents that had taken place in the Gazi and Ümraniye districts in March 1995 had caused the death of seventeen persons. All these people had been shot and killed by the police. The applicants argued that police officers had fired at the demonstrators either intentionally to kill them or with a disregard for life. In any event, the force used had been more than absolutely necessary and disproportionate.

The applicants further stated that the criminal proceedings which ended with the conviction of two police officers had only covered the death of nine persons. In this respect, they complained of a lack of effective investigation into the events. They drew particular attention to the non-prosecution decision delivered by the Üsküdar Public Prosecutor on 10 November 1998. The applicants further maintained that, by transferring the case from the Istanbul Eyüp Assize Court to the Trabzon Assize Court, the domestic authorities had hindered their right to a fair hearing. During the proceedings, the applicants feared for their lives due to poor security measures.

### *2. The Government*

96. The Government contested the version of events given by the applicants. They highlighted the fact that the competent domestic authorities had properly conducted their investigations into the events in dispute. They also submitted that the relatives of the deceased persons had been paid compensation, pursuant to Article 22 of Law No. 3713.

97. The Government maintained that the Trabzon Assize Court had convicted two police officers of killing Fevzi Tunç, Reis Kopal, Dilek



Sevinç and Mümtaz Kaya. They underlined the fact that the assize court had rendered its decision following a detailed examination of the case file and had based itself on the witness statements, autopsy reports, medical reports, photographs and video footage.

98. The Government submitted that the use of force during both of the demonstrations was proportionate and necessary. They stated that the demonstrators, who were attacking the police officers with fire bombs and stones, had first been verbally warned to disperse, then pressurised water and sticks had been used and, as a last resort, the police officers had fired warning shots in the air. According to the Government, the demonstrators had been stirred up by members of an illegal organisation. The police officers, who had a duty to maintain public safety, were under great stress and psychological pressure as the incidents lasted for almost two days. Finally, the Government referred to the ballistics reports which indicated clearly that the bullets recovered from the bodies of the deceased did not match the bullets obtained from the weapons of the security forces.

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

99. In the present case, the Court is called on to determine whether the facts of the instant case disclose a failure by the respondent State to protect the right to life of the applicants' relatives and to comply with the procedural obligation imposed by Article 2 of the Convention to carry out an adequate and effective investigation into the incident.

100. The Court notes at the outset that it is confronted with divergent accounts of the events, in particular as regards the conduct of the police during the two demonstrations that took place in Gazi and Ümraniye districts respectively.

101. In assessing evidence, the Court recalls that it adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII, and *Ülkü Ekinci v. Turkey*, no. 27602/95, §§ 141-42, 16 July 2002).

102. The Court is sensitive to the subsidiary nature of its function and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the

findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas*, cited above, p. 18, § 30). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283), even if certain domestic proceedings and investigations have already taken place.

103. Accordingly, the Court must reach its decision on the basis of the available evidence submitted by the parties (see the most recent authority, *Çaçan v. Turkey*, no. 33646/96, § 61, 26 October 2004). It will thus examine the issues that arise in the light of the documentary evidence adduced in the present case, in particular the documents in respect to the investigations carried out before the domestic authorities and the parties' written observations.

*1. As to the responsibility of the Government for the deaths in the light of the substantive aspect of Article 2 of the Convention*

104. As the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. It goes without saying that a balance must be struck between the aim pursued and the means employed to achieve it (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 71). Unregulated and arbitrary action by State officials is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, police operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force (see *Makaratzis v. Greece* [GC], no. 50385/99, § 57, ECHR 2004; see also Human Rights Committee, General Comment no. 6, Article 6, 16th Session (1982), paragraph 90 above).

105. In view of the foregoing, in keeping with the importance of Article 2 in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force, but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 46, § 150). In the latter connection, police officers should not be left in a vacuum when exercising their duties, whether in the context of a prepared operation or a spontaneous pursuit of a person perceived to be dangerous. A legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have

been developed in this respect (see, for example, the “UN Force and Firearms Principles”, paragraph 91 above).

106. Against this background, the Court must examine in the present case not only whether the use of lethal force against the applicants’ relatives was legitimate but also whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to the life of the demonstrators.

107. It appears from the evidence produced before the Court that the demonstrations in the Gazi and Ümraniye districts were not peaceful. The demonstrators were chanting slogans, throwing stones and fire bombs at the police barricades and causing damage to the nearby buildings. This fact is confirmed by many witnesses who appeared before the assize court (see paragraphs 53, 54, 55, 58, 60 and 66 above). Confronted with resistance and acts of violence, the police asked for reinforcements and three panzers and additional police officers were deployed in the area.

108. The Court repeats that the use of force may be justified under Article 2 § 2 (c), in cases where the action is taken for the purpose of quelling a riot or insurrection. However in the instant case, the submissions of the applicants and the decision of the Trabzon Assize Court show that, in order to disperse the crowd, officers shot directly at the demonstrators without first having recourse to less life-threatening methods, such as tear gas, water cannons or rubber bullets. In this connection, the Court observes that Turkish legislation allows police officers to use firearms only in limited and special circumstances (see paragraphs 86-87 above). However, it appears that this principle was not applied during the Gazi and Ümraniye incidents.

109. In their observations, the Government maintained that the police officers had used lethal force as they had been under great stress and psychological pressure (see paragraph 98 above). The Court recognises that the police play a vital role in protecting the right to life. They should therefore be able to evaluate all parameters and carefully organise their operations. In the Court’s opinion, Governments should undertake to provide effective training to the police force with the objective of complying with international standards for human rights and policing. Furthermore, as indicated in many international documents (see, amongst many others, the Resolution adopted by the Council of Europe, paragraph 88 above), police should receive clear and precise instructions as to the manner and circumstances in which they should make use of firearms.

110. The Court observes that the Gazi incidents lasted for almost two days and the Ümraniye incident occurred the day after the Gazi events. It appears from the case file that the police officers who were on duty at both incidents enjoyed great autonomy of action, and they took initiatives whilst in the grip of panic and pressure, which they would probably not have taken had they had the benefit of proper training and instructions. The Court

therefore cannot accept the Government's argument and finds that the absence of a clear, centralised command was an important lacuna which must have increased the risk of police officers shooting directly at the crowd.

111. Furthermore, it was the responsibility of the Security Forces, who had been aware of the tense situation in both districts, to provide the necessary equipment, such as tear gas, plastic bullets, water cannons, etc., to disperse the crowd. In the Court's view, the lack of such equipment is unacceptable.

112. In conclusion, the Court considers that, in the circumstances of the instant case, the force used to disperse the demonstrators, which caused the death of seventeen people, was more than absolutely necessary within the meaning of Article 2.

113. There has therefore been a violation of Article 2 in that respect.

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

114. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV).

115. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, in general, *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-115, ECHR 2001-III).

116. The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. A requirement of promptness and reasonable expedition is implicit in this context (see *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 96-97, 4 May 2001).

117. In any event, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished. This is essential for maintaining public confidence and ensuring adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts (see, *mutatis mutandis*, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 108, ECHR 2001-III). The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the

case to the careful scrutiny required by Article 2 of the Convention; so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined.

118. Turning to the particular circumstances of the case, the Court observes that the domestic authorities initiated three separate investigations concerning the Gazi and Ümraniye incidents (see paragraphs 33 to 81 above). However there were striking omissions in the conduct of these inquiries.

119. As stated above, the investigation concerning the death of Dilek Şimşek Sevinç, Reis Kopal, Zeynep Poyraz, Fevzi Tunç, Fadime Bingöl, Ali Yıldırım, Mehmet Gündüz, Mümtaz Kaya and Sezgin Engin led to the prosecution of twenty police officers. At the end of the proceedings, which lasted for almost seven years, one police officer was found guilty of killing Fevzi Tunç, Reis Kopal and Dilek Şimşek Sevinç, and he was sentenced to five years' imprisonment. Another police officer was found guilty of killing Mümtaz Kaya, however his sentence was suspended by the court. Both officers were barred from public service for three months.

120. In connection with this part of the investigation, the Court observes that the steps taken by the assize court were dilatory and half-hearted. Although the case was initiated in July 1995, until June 1997 the case file was transferred between the domestic courts, first due to security reasons then due to jurisdictional problems (see paragraphs 38 to 51 above). Furthermore, at no stage of the proceedings did the domestic court examine the overall responsibility of the authorities for the deficiencies in the conduct of the operation and for their inability to ensure a proportionate use of force to disperse the demonstrators, notwithstanding that at the end of the proceedings, two officers were found guilty of killing four persons. In that respect, it may be noted that these officers received relatively light sentences (see paragraphs 72 and 73 above).

121. As regards the investigation into the death of Hasan Sel, Hasan Ersürer, Hasan Gürgen and Dinçer Yılmaz, the Court observes that this investigation is still pending before the Gaziosmanpaşa Public Prosecutor. In this connection, it observes that the investigation has been pending for more than ten years now, and does not appear to have produced any tangible results.

122. Finally, as regards the investigation concerning the Ümraniye incidents, which ended with the non-prosecution decision of the Üsküdar public prosecutor, the Court considers that, faced with such a serious allegation which concerned the disproportionate use of lethal force by the police, the public prosecutor should have shown greater initiative. It observes in this connection that the non-prosecution decision was based on the statements of the complainants, statements taken from some of the police officers who had been on duty that day and the ballistic examination

of eight bullets which had been found at the incident scene and which had been recovered from the bodies of the deceased and injured persons. However, the Court finds it striking that the authorities could only collect eight bullets after the incident. Furthermore, the ballistic reports were solely confined to the comparison of these bullets with the handguns of the two hundred and thirty eight police officers who had been on duty that day. There was no indication as to what sort of guns they had been fired from or from what distance.

123. Furthermore, it appears from the documents submitted to the Court that the public prosecutor seems to have accepted the police officers' account of the facts without question (see paragraph 77 above).

124. Against this background, the Court finds that the domestic authorities did not conduct prompt and adequate investigations into the killing of the applicants' relatives. The manner in which the Turkish criminal justice system operated in response to the tragic events of March 1995 failed to secure the full accountability of State officials or their authorities for their role in them. As a result, the authorities concerned disregarded their essential responsibilities in this respect.

125. In sum, the Court concludes that in the instant case there has been a violation of Article 2 of the Convention in its procedural aspect for failure to provide a prompt and adequate investigation into the circumstances surrounding the killing of the applicants' relatives.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

126. The applicants complained that they had been deprived of effective access to a court, in breach of Article 6 § 1 of the Convention. They contended that the facts of the case demonstrated that there was no commitment to carrying out an effective investigation into the killings of Dilek Şimşek Sevinç, Dinçer Yılmaz, Reis Kopal, Zeynep Poyraz, Fevzi Tunç, Sezgin Engin, Fadime Bingöl, Mümtaz Kaya, Hasan Gürgen, Ali Yıldırım, Hasan Sel, Mehmet Gündüz, İsmail Baltacı, Hasan Puyan, Hakan Çabuk, Genco Demir and İsmihan Yüksel. Article 6 § 1 provides:

“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 within a reasonable time by an independent and impartial tribunal established by law...”

127. The Government argued that the investigation into the incident and the prosecution of the police officers provided an effective remedy into the applicants' allegations.

128. The Court observes that the applicants' grievance under Article 6 § 1 of the Convention is inextricably bound up with their more general complaint concerning the manner in which the investigating authorities treated the death of their relatives and the repercussions which this had on

their access to effective remedies which would help redress the grievances which they had. It is accordingly appropriate to examine the applicants' Article 6 complaint in relation to the more general obligation on Contracting States under Article 13 of the Convention to provide an effective remedy in respect of violations of the Convention. It is to be noted that a violation of Article 2 cannot be remedied exclusively through an award of compensation to the relatives of the victim (see, *mutatis mutandis*, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2285-86, §§ 93-94, and *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1894-96, §§ 100-103).

129. On the basis of the evidence adduced in the present case, the Court has found that the Government are responsible under Article 2 of the Convention for the death of the applicants' relatives (see paragraphs 104 to 113 above). The applicants' complaints in this regard are therefore "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, § 107).

130. The authorities thus had an obligation to carry out an effective investigation into the circumstances surrounding the death of the applicant's brother. For the reasons set out above (see paragraphs 118-125 above), no effective criminal investigation can be considered to have been conducted in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 2 (see *Kaya*, cited above, § 107). The Court finds therefore that the applicants have been denied an effective remedy in respect of the death of their relatives and thereby access to other available remedies such as a claim for compensation.

131. Consequently, there has been a violation of Article 13 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLES 14 AND 17 OF THE CONVENTION

132. The applicants alleged under Articles 14 and 17 of the Convention that they were discriminated against on account of their religious beliefs.

133. The Government did not address these allegations beyond denying the factual basis of the complaints.

134. The Court has examined the applicants' allegations in the light of the evidence submitted to it, but finds them unsubstantiated. There has therefore been no violation of these provisions.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. Article 41 of the Convention provides:

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

##### **A. Damage**

136. The applicants each claimed 200,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

137. The Government contested the claim. They submitted it was excessive and devoid of any basis.

138. The Court notes that the applicants have not proved that they have suffered any pecuniary loss as a result of the death of their relatives. The file contains no information whether the deceased persons provided any financial assistance to their families or not. As a result, the Court does not find it appropriate, in the circumstances of this case, to make any award to the applicants for pecuniary damage.

139. The Court nevertheless considers that an award should be made in respect of non-pecuniary damage bearing in mind the seriousness of the violations which it has found in respect of Articles 2 and 13 of the Convention. Accordingly, having regard to the sums it has awarded in comparable cases and deciding on an equitable basis, it awards in respect of non-pecuniary damage

– EUR 30,000 to Ali Şimşek, Şaziment Simşek, Dilay Şimşek, Erkan Şimşek, Gökhan Şimşek and Şenay Şimşek jointly; and

– EUR 30,000 to each of the other applicants, namely Hakkı Yılmaz, Hüseyin Kopal, Cemal Poyraz, Hacer Baltacı, Mustafa Tunç, Mahmut Engin, Arslan Bingöl, Veli Kaya, Mehmet Gürgen, Çiçek Yıldırım, Hüseyin Sel, Mukaddes Gündüz, Sabri Puyan, Zeynel Abit Çabuk, Aynur Demir and Aligül Yüksel.

##### **B. Costs and expenses**

140. The applicants did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head. It notes that the applicants received legal aid from the Council of Europe to present their applications.



### C. Default interest

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

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there have been violations of Article 2 of the Convention in both its substantive and procedural aspects;
2. *Holds* that it is not necessary to consider the applicants' complaints under Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been no violation of Articles 14 and 17 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, free of any tax that may be chargeable, such sum to be converted into Turkish liras at the rate applicable at the date of payment and to be paid into the bank account in Turkey indicated by the applicants:
    - (i) EUR 30,000 (thirty thousand euros) to Ali Şimşek, Şaziment Şimşek, Dilay Şimşek, Erkan Şimşek, Gökhan Şimşek and Şenay Şimşek, jointly, in respect of non-pecuniary damage;
    - (ii) EUR 30,000 (thirty thousand euros) to each of the other applicants, namely Hakkı Yılmaz, Hüseyin Kopal, Cemal Poyraz, Hacer Baltacı, Mustafa Tunç, Mahmut Engin, Arslan Bingöl, Veli Kaya, Mehmet Gürgen, Çiçek Yıldırım, Hüseyin Sel, Mukaddes Gündüz, Sabri Puyan, Zeynel Abit Çabuk, Aynur Demir and Aligül Yüksel, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH  
Deputy Registrar

J.-P. COSTA  
President