CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION[1]

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46347/99
by Myra XENIDES-ARESTIS
against Turkey

The European Court of Human Rights (Third Section), sitting on 2 September 2004 and 14 March 2005 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mr K. TRAJA,
Mrs A. GYULUMYAN, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 4 November 1998,

Having regard to the observations submitted by the respondent Government and the observations in reply from the applicant,

Having regard to the replies of the respondent Government and of the applicant (seven sets of observations) and those from the Cypriot Government (three sets of observations), acting as a third-party intervener, to the Court's questions put on 3 July 2003 and 13 May 2004 respectively, and to their comments,

Having regard to the parties' oral submissions at the public hearing in the Human Rights building, Strasbourg, on 2 September 2004,

Having deliberated, decides as follows:

[1] In its composition before 1 November 2004.

THE FACTS

The applicant, Mrs Myra Xenides-Arestis, is a Cypriot national of Greek-Cypriot origin, who was born in 1945 and lives in Nicosia. The applicant is represented by Mr A. Demetriades, a lawyer practising in Nicosia.

At the oral hearing of 2 September 2004, the applicant was represented by Mr A. Demetriades and Mr I. Brownlie, CBE, QC assisted by Mrs J. Loizidou.

The respondent Government were represented by Prof. Dr Z. Necatigil, Mr D. Bethlehem, QC, Ms P. Nevill, Prof. Dr R. Ergeç, Mr E. Apakan, Mr D. Polat, Mr M. Özmen, Mr M. Gülşen and Mr I. Kocayiğit. A statement was read out by Mr D. Bethlehem on behalf of Prof. Sir Elihu Lauterpacht, CBE, QC, also representing the respondent Government, who was not present at the hearing.

The Cypriot Government, who had made use of their right to intervene under Article 36 of the Convention, were represented by their agent Mr S. Nikitas, Attorney-General of the Republic of Cyprus, Lord Lester of Herne Hill, QC, Mrs S. M. Joannides, Ms S. Fatima and Mrs M. A. Stavrinides.

The applicant was also present.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant claims to partly own property in the area of Ayios Memnon (Esperidon street), in the fenced-up area of Famagusta, that she acquired by way of gift from her mother. In particular, she states that she owns half a share in a plot of land with buildings thereon, which consist of one shop, one flat and three houses. She maintains that one of the houses was her home where she lived with her husband and children whereas the rest of the property was used by members of the family and/or rented out to third parties. Furthermore, the applicant states that she partly owns a plot of land with an orchard (her share being equivalent to 5/48). The rest is owned by other members of her family.

The applicant submits that in August 1974 she was forced with her family by the Turkish military forces to leave Famagusta and abandon their home, property and possessions. She states that since then she has been prevented from having access to, from using and enjoying her home and property, which are under the occupation and the control of the Turkish military forces. According to the applicant, only the Turkish military forces have access to the fenced-up area of Famagusta.

On 23 April 2003, new measures were adopted by the authorities of the "Turkish Republic of Northern Cyprus" ("TRNC") regarding crossings

from northern to southern Cyprus and *vice versa* through specified checkpoints. On 30 June 2003 the "Parliament of the TRNC" enacted the "Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus" ("TRNC") which entered into force on the same day ("Law no. 49/2003"). On 30 July 2003, under Article 11 of this "Law", an "Immovable Property Determination Evaluation and Compensation Commission" was established in the "TRNC". The rules of the commission were published in the "TRNC Official Gazette" on 15 August 2003 and the commission was constituted by a decision of the "TRNC Council of Ministers" published in the aforementioned gazette on 18 August 2003. On the basis of this decision the following commission members were appointed: Mr. S Dalioğlu as President, Mr K. Fuat as Deputy President, Mr Y. Boran, Mr G. Silman, Mr H. Giray, Mr N. Yazman and Mr T. Gazioğlu as members. By letter dated 16 June 2004, the Government informed the Court that the deadline for submitting applications to the abovementioned commission was extended for one more year (until 30 June 2005).

On 24 April 2004 two separate referendums were held simultaneously in Cyprus on the Foundation Agreement–Settlement Plan ("Annan Plan") which had been finalised on 31 March 2004. Since the plan was approved in the Turkish-Cypriot referendum but not in the Greek-Cypriot referendum, the Foundation Agreement did not enter into force.

B. Relevant domestic law

1. *"Constitution of the Turkish Republic of Northern Cyprus" (the "TRNC") of 7 May 1985*

Article 159 (1) (b) in so far as relevant provides as follows:

> "All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined ... and ... situated within the boundaries of the TRNC on 15 November 1983, shall be the property of the TRNC notwithstanding the fact that they are not so registered in the books of the Land Registry Office; and the Land Registry Office shall be amended accordingly."

Article 159 (4) reads as follows:

> "In the event of any person coming forward and claiming legitimate rights in connection with the immovable properties included in subparagraphs (b) and (c) of paragraph (1) above [concerning, *inter alia*, all immovable properties, buildings and installations which were found abandoned on 13 February 1975], the necessary procedure and conditions to be complied with by such persons for proving their rights and the basis on which compensation shall be paid to them, shall be regulated by law."

2. *"Law as to Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus, which are within the Scope of Article 159, paragraph (4) of the Constitution" (Law no. 49/2003)*

"The Republican Assembly of the Turkish Republic of Northern Cyprus enacts as follows:

Short title

1. This Law may be cited as the Law as to Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus, which are within the Scope of Article 159, paragraph (4) of the Constitution.

Interpretation

2. In this Law unless the context otherwise requires,

"Ministry" means the Ministry Responsible for Housing Affairs.

"Entitled person" means a person who has a legal claim in respect of immovable property coming within the scope of Article 159, paragraph (4) of the Constitution.

"Commission" means a commission constituted under Article 11 of this Law.

"Legal right" means the right to immovable property which is within the scope of Article 159, paragraph (4) of the Constitution.

"Immovable property" means immovable property within the scope of Article 159, paragraph (4) of the Constitution.

Purpose

3. The purpose of this Law is to regulate the necessary procedure and conditions to be complied with by persons to prove their legal rights which they claim in respect to immovable properties within the scope of Article 159, paragraph (4) of the Constitution of the Turkish Republic of Northern Cyprus as well as the basis on which compensation shall be paid to such persons.

Application

4.(1) Natural and legal persons who claim legal rights to immovable properties specified in this Law may bring a claim by way of an application, in person or through a legal representative, to the Immovable Property Determination, Evaluation and Compensation Commission constituted under the provisions of this Law, requesting compensation for such property. Such an application must be made within a period of one year from the entry into force of this Law. Applications made to the Commission shall be subject to the Rules made under the Civil Procedure Law and, notwithstanding any other provision to the contrary in any law or legislative

instrument, only a fee of 100,000,000 TL (one hundred million Turkish Liras) shall be paid for each application.

(2) The entry and exit in and out of the Turkish Republic of Northern Cyprus of persons, their legal representatives and agents applying to the Commission with a claim in virtue of the application of this Law, as well as of any person to be heard on their behalf, shall be free.

Production of Documents to the Commission

5. For Commission procedures specified in this Law, original documents, or copies of documents certified by a certifying officer for purposes of control together with the original documents which the parties wish to submit may be produced or filed with the Commission by the parties.

Burden of Proof and Factors as Basis of Decision

6. In proceedings before the Commission the burden of poof shall rest with the applicant who must satisfy the Commission as to the following in order that a decision may be taken in his favour:

(1) The immovable property in respect of which legal rights are claimed is or can be no other than that claimed in the petition.

(2) The immovable property to which the applicant claims legal rights was registered in his name before 20 July 1974 and/or he is the legal heir of the person in whose name the immovable property was so registered.

(3) There are no entitled persons according to the Land Registry records other than those claiming legal rights under this Law.

(4) Compensation to be paid to the entitled person represents the total of the market value of the immovable property on 20 July 1974 together with compensation for loss of use.

(5) The immovable property in respect of which legal rights are claimed was not subject to a mortgage and/or to any charge or restraint imposed by virtue of a judgment or order of a competent court before 20 July 1974, if otherwise, it must be clearly stated in whose favour such liabilities are, the amount of debt and the rate of interest, the date on which the debt has been incurred and the amount, and if part payment has been made the date and amount thereof.

Respondent Party to Applications

7. The respondent party to applications to be lodged under this Law may be the Ministry and/or the Office of the Attorney-General representing the Ministry.

Hearing the Parties and taking of the Decision

8. The Commission shall, after having heard the arguments of the parties and witnesses, and examined the documents submitted, decide that the applicant shall receive just and equitable compensation by taking into consideration the following matters:

(1) (A) If the immovable property is a building its market value on 20 July 1974, taking into consideration the date of its construction.

(B) Loss of income and increase in value of the immovable property between 1974 and the date of payment.

(C) Whether the entitled person is in possession of any immovable property in South Cyprus owned by citizens of the Turkish Republic of Northern Cyprus.

(D) Whether the applicant is receiving income from such property; if so, the amount of such income; whether such person is paying rent in respect of immovable property in his possession in South Cyprus which is owned by any citizen of the Turkish Republic of Northern Cyprus; if so, the amount and recipient of rent.

(2) Rules may be made by the Commission for the better implementation of the provisions of this section, which shall enter into force upon approval by the Council of Ministers and publication in the Official Gazette.

Right to Apply to the Administrative Court

9. Parties have the right to judicial review against the decisions of the Commission. The provisions in this respect shall apply *mutatis mutandis* subject to decisions of the High Administrative Court.

Loss of Ownership upon Award of Compensation

10. (1) Entitled persons who receive compensation in virtue of the provisions of this Law, shall, on no condition claim right of ownership of immovable property for which they have received compensation or claim compensation under any other basis whatsoever.

(2)Persons who claim legal rights under this Law may be compensated, should they agree, by being granted the title of immovable property which remained in the South and had been renounced in favour of the State in accordance with the provisions of the Housing, Allocation of Land and Property of Equal Value Law.

(3) The Commission may prepare rules for the better implementation of this Law which shall be subject to approval of the Council of Ministers and shall be published in the Official Gazette.

Composition of Immovable Property Determination Evaluation and Compensation Commission

11. (1) To ensure the implementation of this Law a sufficient number of Immovable Property Determination, Evaluation and Compensation Commissions shall be established upon the proposal of the Ministry and approval of the Council of Ministers which shall be composed of a Chairman, a Deputy Chairman, a minimum of 5 or a maximum of 7 members, whose qualifications are specified below, and the relevant decision shall be published in the Official Gazette.

(A) Chairmen, Deputy Chairmen and Members of the Commission may be appointed from among lawyers qualified for appointment as a Supreme Court judge or from among persons with experience in public administration and evaluation of property.

(B) The salary of the Chairman of the Commission is equal to that received by a Supreme Court judge at the time of his initial appointment. Salaries of other members are equivalent to the amount prescribed for the salary scale 18A.

(2) The Commission shall convene by a two-third majority of the total number of members and shall take decisions by simple majority of the members attending the meeting, including the Chairman.

(3) The term of office of a member not participating in the Commission meetings without a valid reason (ill health, official duty abroad, and the like) for more than three times may be terminated upon the proposal of the Ministry and decision of the Council of Ministers. In other cases, the conditions for the termination of term of office of a member of the Commission shall be the same as those applied to a Supreme Court judge.

(4) A secretariat shall be established in order to carry out the clerical and administrative work of the Commission. Sufficient number of personnel shall be employed in the secretariat upon the proposal of the Chairman of the Commission and the necessary authorisation of the Ministry of Finance. Employment of personnel under this section shall be on a contractual basis. The number of personnel employed in this manner shall be 10.

Provided that if the Chairman of the Commission is of the opinion that the secretariat is not able to carry out its legal obligations within a reasonable period of time, he shall have the authority to employ an additional number of personnel on contract, subject to the authorisation of the Ministry of Finance.

(5) All employees of the Commission, including the Chairman and members, shall be employed as long as their service is required and subject to conditions determined by the Council of Ministers, notwithstanding any provision to the contrary in any other law relating to duration of service, age limit, duration of contract, renewal of contract and condition of non-retirement from public service.

(6) The Chairman and members of the Commission shall not hold any other office during their term of office.

(7) Decisions taken shall be communicated to those concerned after having been signed by the Chairman and at least one member.

Duration of Term of Office of the Chairman and Members of the Commission

12. The Chairman and members of the Commission established in accordance with the provisions of this Law shall be appointed for a period of 5 years. At the end of this period the Chairman and members may be re-appointed subject to the same procedure. The Chairman and members of the Commission shall carry out their duties objectively and independently during their term of office which may be terminated before the end of term only subject to the provisions of section 11, above.

Powers and Duties of the Commission

13. The Commission shall have the following powers and duties:

(1) To examine and determine applications in respect of compensation made under this Law.

(2) To specify the manner and the procedure of payment of compensation.

(3) To take necessary measures and decisions in order to finalise procedures concerning the amount of compensation to be paid to entitled persons under this Law.

(4) The Commission, may, in carrying out its duties and exercise of the powers mentioned above, if it deems necessary, request written or oral testimony or hear witnesses.

(5) The Commission may require that written or oral testimony of any witness to be given for the purpose of solving any problem that may arise in the application of this Law be under oath or by way of a declaration. Such evidence on oath or declaration shall be the same as that required for testimony before a court.

(6) To summon any person residing in the Turkish Republic of Northern Cyprus to attend any meeting of the Commission in order to give testimony or produce any document in his possession and to be examined as a witness.

(7) To compel any person to give evidence or to produce a document when such person refuses to do so whether under oath or by way of declaration, if the person concerned does not offer any satisfactory excuse to the Commission for such refusal.

Provided that, no witness may be compelled to answer any incriminating question and no legal proceedings may be commenced for his refusal to do so.

(8) The Commission may decide that expenses shall be paid to any person summoned to give evidence in virtue of the provisions of this Law.

(9) In order to facilitate the implementation of this Law, the Commission may, subject to the approval of the Council of Ministers, make rules to be published in the Official Gazette.

Binding Effect of the Decisions of the Commission

14. The decisions of the Commission have binding effect and are of executory nature as those of the judiciary. Such decisions shall be implemented without delay upon communication to the authorities concerned.

Offences and Penalties

15. It is an offence to refuse, without lawful excuse, to produce any document or information required by the Commission in accordance with the provisions of this Law, or to fail to appear before the Commission upon being legally summoned to do so, or to refuse to give evidence, and any such person shall upon conviction be liable to a fine of 2,000,000,000 TL (two billion Turkish Liras) or imprisonment for one year, or both.

Procedure and Principles Applicable to Witnesses before the Commission

16. The processes to be carried out in accordance with the provisions of this Law, service of writs of summons to be issued to witnesses, the procedure for attendance before the Commission and that relating to the hearing shall be subject to the provisions of the Civil Procedure Law.

Criminal Responsibility

17. Members and other personnel of the Commission employed under this Law shall bear criminal responsibility in respect of their acts on the same basis as public servants and proceedings may be brought against them under the Criminal Law or other laws.

Payment of Compensation

18. The Ministry responsible for Financial Affairs shall make a provision under a separate item in the Budget Law for each year to enable and to effect payment of compensation awarded by the Commission and other expenses which have been incurred in virtue of the application of this Law.

Reservation of Rights of Persons who have Not Applied to the Commission

19. The period of time specified in section 4 may be extended only once for a maximum of one year by decision of the Council of Ministers based on reasonable grounds. Rights and benefits of entitled persons to immovable properties located within the boundaries of the Turkish Republic of Northern Cyprus who choose not to apply to the Commission to claim compensation within the period prescribed in section 4 or during the extended period shall be determined and dealt with in accordance with the framework and principles laid down in a binding political settlement regarding the Cyprus issue, including the property issue, to be reached after taking into consideration the public interest, housing and rehabilitation needs of refugees and the protection of public order.

Non-prevention of Proceedings under Certain Laws

20. Nothing in this Law shall prevent any proceedings to be carried out under the provisions of the Requisition of Property Law of 1962, and the Compulsory Acquisition of Property Law of 1962.

Execution of the Law

21. This Law shall be executed by the Ministry Responsible for Housing Affairs on behalf of the Council of Ministers.

Entry into force

22. This Law shall enter into force upon its publication in the Official Gazette."

COMPLAINTS

The applicant complains of a continuing violation of her rights under Articles 8 of the Convention and 1 of Protocol No. 1 that since August 1974 she has been deprived of her property rights, all her property being located in the fenced-up area of Famagusta which is under the occupation and the control of the Turkish military forces. She maintains that the latter prevent her from having access to, from using and enjoying her home and property. She submits that this is due to the fact that she is Orthodox and of Greek-Cypriot origin, contrary to Article 14 of the Convention.

THE LAW

The applicant complains of a continuing violation of her rights under Articles 8 of the Convention and 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention.

The relevant provisions read as follows:

Article 8 of the Convention

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

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

Article 14 of the Convention

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The respondent Government dispute the admissibility of the present case on several grounds:

1. *Jurisdiction* ratione temporis *and* ratione loci

(a) The respondent Government

The respondent Government reject the applicant's complaints and disagree with the findings of the Court in its judgments in the cases of *Loizidou v. Turkey* (preliminary objections, judgment of 23 March 1995, Series A no. 310; merits, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI; Article 50, judgment of 29 July 1998, *Reports* 1998-IV) and *Cyprus v. Turkey*, ([GC], no. 25781/94, ECHR 2001-IV).

They argue that the facts of the present application predate the Turkish Government's acceptance of the Court's jurisdiction on 22 January 1990. They contend that the process of the "taking" of property in northern Cyprus started in 1975 and ripened into an irreversible expropriation by virtue of Article 159 (1) (b) of the "TRNC" Constitution of 7 May 1985, well before Turkey's recognition of the Court's compulsory jurisdiction. The Court is therefore incompetent *ratione temporis* to examine the applicant's complaints.

The respondent Government dispute Turkey's liability under the Convention relying *inter alia* on the findings of the Commission in the case of *Chrysostomos and Papachrysostomou v. Turkey* (nos. 15299 and 15300/89, Commission's report of 8 June 1993, Decisions and Reports (DR) 86, p. 4). In general, the respondent Government submit that the acts complained of are imputable exclusively to the "TRNC", an independent and sovereign state established by the Turkish-Cypriot community in the

exercise of its right to self-determination. As a result of the intervening legislative, administrative and executive acts of the "TRNC", the applicant's property has been expropriated. Turkey can neither legislate in respect of matters of property in northern Cyprus, nor exercise control over such property situated outside its jurisdiction. The Turkish forces are in northern Cyprus for the security of the Turkish Cypriots and do not exercise any governmental authority.

The respondent Government maintain that the presumption of overall control on which the Court based its judgments in the cases of *Loizidou v. Turkey* and *Cyprus v. Turkey* is not tenable on the facts of the present case. In their view these cases have not created a *res judicata* that would preclude a reappraisal of relevant issues in the instant application. Due process and procedural fairness require that the applicant shows beyond reasonable doubt actual or overall control by Turkey over northern Cyprus. However, in their view, the applicant has not been able to do this. In this connection, the respondent Government rely, *inter alia*, on the Court's judgment in the case of *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-...) and its decision in the case of *Banković and Others v. Belgium and 16 Other Contracting States* ((dec.) [GC], no. 52207/99, ECHR 2001-XII).

Furthermore, the respondent Government aver that the applicant's property claim can only be resolved within the framework of the island's inter-communal talks and on the basis of a bi-zonal settlement. In this context they argue that the Annan Plan and the circumstances relied upon by the UN Secretary-General in its formulation clearly demonstrate the exclusive authority of the "TRNC" respondent Government over the people and territory of northern Cyprus. They state that it is implicit in the Annan Plan that Turkey does not, directly or indirectly, control the policies and conduct of the "TRNC" respondent Government and thus, that the latter is not a subordinate local administration of Turkey in northern Cyprus. The independence of the "TRNC" Government is cogently evidenced at every stage of the evolution of the UN Secretary-General's proposals by the manner in which he involved the Turkish-Cypriot side in the negotiations leading up to his plan as well as from the text of the plan. They refer to certain features of the plan in this respect and to statements made by representatives of various Governments and international organisations.

Although the respondent Government admit that the texts of the plan they refer to, do not, by reason of their rejection by the Greek Cypriots, have formal binding force, they emphasise that their content reflects the UN Secretary-General's assessment, widely endorsed by the international community, of the fair balance to be struck in the resolution of the Cyprus conflict as well as the irreversible and accepted factual position on the island, particularly the fact that the Turkish-Cypriot people were treated as an independent entity of equal status with the Greek-Cypriot people.

Thus, the respondent Government conclude that the Annan Plan reflects an acknowledgment that Turkey does not have "jurisdiction" in northern Cyprus and consequently, that the pending cases cannot be regarded as falling within the terms of Article 1 of the Convention. They stress that acceptance of the view that northern Cyprus does not fall within the Conventional jurisdiction of Turkey would not lead to international recognition of the "TRNC", since such recognition could only stem from positive action by states, individually or collectively. Furthermore, in their view, such an approach would not create a vacuum in the system of human rights protection, the possibility of which evidently concerned the Court in *Cyprus v. Turkey* (op. cit.). This is evident from the establishment of an effective remedial framework under "TRNC" law coupled with other developments affirming the responsibility of the "TRNC" for these issues as opposed to Turkey and the recognition and application of the Convention in the territory of northern Cyprus that will be relevant to the operation of the Commission.

Alternatively, the respondent Government contend that if the Court were to conclude that northern Cyprus remains subject to the jurisdiction of Turkey and that cases like the instant one are admissible, it will have to address the merits of each case. In such circumstances, they note that the Court should bear in mind that the property settlement proposed in the Annan Plan constituted the considered view of the UN Secretary-General, endorsed by the international community, that the reciprocal arrangements set out therein for the settlement of outstanding property claims would be a fair and reasonable resolution of that aspect of the dispute as part of an overall settlement.

(b) The applicant

The applicant disputes the submissions of the respondent Government relying essentially on the reasons given by the Court for rejecting similar objections raised by Turkey in its judgments in *Loizidou v. Turkey* (preliminary objections and merits, op. cit.) and *Cyprus v. Turkey* (op. cit.) and the conclusions of the European Commission on Human Rights in its report of 4 June 1999 (reported in *Cyprus v. Turkey*, [GC], no. 25781/94, ECHR 2001-IV). She emphasises that there has not been any material change of facts since the adoption of the above judgments and that Turkey continues to exercise effective control over the northern part of Cyprus.

Furthermore, she points out that in accordance with the report of the UN Secretary-General, the respondent Government are responsible for the status quo in the fenced-up area of Varosha (Famagusta) where the applicant's home and property are situated.

The applicant submits that the Annan Plan as such, whether or not in force, as a matter of general principle can have no effect on the powers and responsibilities of the Court, the application of the Convention or the Rules

of Court. The Annan Plan specifically laid out the consequences of rejection and acceptance; in the former case the plan would be null and void and in the latter the new Government would request the Council of Europe and the Court to take certain consequential steps. The plan, not being in force, does not have any legal consequences relating to the issue of admissibility.

The applicant argues that it was not in the contemplation of the parties that non-acceptance of the Annan Plan would affect the admissibility of existing applications or the validity of the prior decisions of the Court. The Commission and the Court have always adopted the position that the existence of parallel diplomatic processes seeking a settlement did not have an adverse effect on the admissibility of applications. In particular, the Court in its judgments in the cases of *Loizidou v. Turkey* (merits, op. cit., § 64) and *Cyprus v. Turkey* (op. cit., § 188) ruled that negotiations between the parties in Cyprus were not an admissibility or merits barrier to the lodging of applications alleging violations of the Convention. She alleges that the plan is *res inter alios acta* for the applicant in a case brought under the Convention. She is entitled to the standards of legal security embodied in the Convention. In her view, no reason exists, legal or moral, why she should be prevented from regaining the use of her property and family home in Famagusta. The applicant maintains that the absence of any legal justification for the exclusion of Greek Cypriots from their property was well recognised in its *Loizidou* judgment (merits, op. cit., §§ 63-64).

The applicant submits that the observations of the respondent Government in this connection are essentially political in character, neglecting the relevant legal framework and the conditional nature of the plan. She contends that the respondent Government attempt to use the provisions of the Annan Plan to justify assertions relating to the alleged previous political *status quo*. The main purpose of the plan was to establish a "new state of affairs" by negotiation and agreement. However, this was not accomplished and the plan for all intents and purposes was rendered legally null and void following the referendums. Therefore, it would be anomalous for the Court to take any account of, let alone involve itself in, the political background to the Annan Plan. The plan referred to a political future and not to an existing political and legal state of affairs. If the arguments of the respondent Government were correct, the existence of the plan alone would have pre-empted the outcome of the negotiations and the requirement of the referendums. She states that the respondent Government's assertions completely misrepresent the purpose and context of the plan. The facts that the plan refers to Greek-Cypriot and Turkish-Cypriots and that the parties had equal status in the negotiations do not elevate the "TRNC" to statehood. In this context, the applicant also refers to the various statements (made by representatives of various Governments and international organisations) quoted in the respondent Government's

observations and argues that they do not provide any support for their assertions.

The applicant notes that the Greek-Cypriot opinion was not necessarily opposed to the Annan Plan *tout court* but its precise modalities. She emphasises that she should not be punished because of the non-acceptance of the Annan Plan by the Greek-Cypriot community. There were many reasons other than the property issue which formed the basis of non-acceptance. Greek Cypriots were primarily concerned about their security given the continued presence of the Turkish armed forces. There was also little faith that the Turkish Government would actually implement the plan and grave concern about its willingness to honour its provisions. Under the plan only one third of some people's properties would be potentially returned whilst it was uncertain whether adequate compensation would be awarded to affected persons.

(c) The Cypriot Government

The Cypriot Government argue that there are no legal consequences, whether under the Convention or otherwise, of the failure of the Annan Plan, for the cases pending before the Court or for the fundamental human rights of the individual applicants. The Cypriot Government submit that there is no statement in the Annan Plan to the effect that Turkey was not and is not the correct respondent in the cases pending before the Court. The various statements referred to by the respondent Government in its observations, express regret at the lack of a united Cyprus and that more must be done to end the international isolation of the Turkish-Cypriots. These statements are not manifestly inconsistent with the view that northern Cyprus is an area under the jurisdiction of Turkey for the purposes of the Convention. Both communities were given the opportunity to express their views about the Annan Plan in the referendums. According to the Cypriot Government, the UN Secretary General's actions in treating the two communities as having equal status did not and could not confer statehood upon the "TRNC"; nor was that the aim of the Annan Plan. Nothing in the plan, whether for the purpose of the Convention or otherwise, "acknowledged" that Turkey does not have State responsibility and jurisdiction in northern Cyprus for the purposes of Article 1 of the Convention and the Convention as a whole.

The Cypriot Government aver that the Court should adhere to its previously adopted approach of rejecting Turkey's reference to inter-communal talks between the parties, on the basis that such talks failed to provide a justification for the interference with the human rights in the cases of *Loizidou v. Turkey* and *Cyprus v. Turkey* (op. cit.). If the respondent Government's arguments were correct there would indeed be a vacuum in the system of human rights protection since there would be no possibility of access to the Court for breaches of Convention rights in northern Cyprus for

which Turkey or its agents are responsible (given their control over the "TRNC" in military terms as well as actual authority). Victims of such violations would be confined to such remedies, if any, provided by the "TRNC" with no European supervision by the Court as the ultimate judicial guardian of the Convention system.

In their opinion, the Annan Plan represented an attempt to reach a political compromise that would, inter alia, have sought to provide domestic remedies for the claims against Turkey of breaches of the Convention rights of Greek Cypriots. The proposals in the plan were political in nature and were intended to form the basis of a political settlement; they were not and did not purport to be compatible with the Convention principles of law. They were firmly rejected by the Greek-Cypriot electorate as not providing a fair and reasonable solution. The reasons for the rejection of the plan are complex and political. The Cypriot Government point out that the Greek-Cypriot electorate were not voting on simply a single issue but on the entirety of the Annan plan, that is, a considerable range of issues, including for example governance and political rights. They consider that it is unthinkable that Greek-Cypriots, such as the applicant, should lose their recourse to the Court because they voted on a wide-ranging political plan. The rejection of the Annan Plan could not have legitimised and did not legitimise the continued Turkish occupation and the violations of the rights of the applicant.

The Cypriot Government point out that they continue to hope for a more balanced political solution to the problems caused by the Turkish invasion and its aftermath. In this context, they note that these matters are irrelevant to the just determination by the Court of the present application as well as in respect of other pending cases against Turkey, that concern the fundamental human rights of individual applicants that remain unaffected by the rejection of the plan. The Court cannot adjudicate on the Annan Plan which is null and void and without legal effect. Nor can it adjudicate on the reasons for its failure. They state that the Convention system is designed to secure the effective protection of individual rights, the Court being the ultimate judicial guardian and that it would destroy the very substance of the Convention system if the Court's role were to become political rather than judicial.

The Cypriot Government, in explaining their fundamental objections as well as those of the people to the Annan Plan, note that firstly, the domestic remedies provided in the plan did not cover the full spectrum of the violations complained of in respect of the applicant's property and home and were generally ineffective. No *restitutio in integrum* was provided and the damages were inadequate (being principally in the form of "property appreciation certificates" payable after twenty five years or longer from a compensation fund to be established under uncertain conditions and with no security of solvency). Secondly, they argue that the Annan Plan provided

for the constitutional division of the island of Cyprus on the basis of effective ethnic separation with major restrictions on the freedom of settlement, effective discrimination, confiscation of properties, deprivation of homes, denial of political rights and condemnation of war crimes, for example, the settlement of occupied territories through the transfer of civilian population from Turkey, an occupying state. In this connection, they draw the Court's attention to the draft principles on the refugees' right to return and to restitution of their properties by the UN Sub Commission on the Promotion and Protection of Human Rights.

Even though the rejection of the Annan Plan means that it is "null and void" in accordance with Article 1(2) of Annex IX to the Foundation Agreement, the Cypriot Government submit that it is that the respondent Government aims to involve the Court in political questions relating to the plan and its rejection by the Greek-Cypriot electorate in an attempt to persuade the Court, being heavily over-burdened with pending claims, to compel Greek-Cypriot applicants to have recourse to the ineffective and partial remedies contained in the "TRNC Law".

(d) The Court's assessment

The Court recalls that in the case of *Loizidou v. Turkey* the Court dismissed the respondent Government's preliminary objections as to Turkey's alleged lack of jurisdiction and responsibility for the acts in respect of which complaint was made (*Loizidou v. Turkey*, merits, op. cit., §§ 39-47 and 49-57). In that same judgment the Court rejected the respondent Government's objection *ratione temporis* and recognised the continuing nature of the alleged violations of Articles 8 of the Convention and 1 of Protocol No. 1 (op. cit., §§ 39-47). It further rejected their arguments regarding the effect which the Court's consideration of the applicant's claims could have on the inter-communal talks as well as on those concerning freedom of movement (op. cit., §§ 60-64). These findings were confirmed by the Court in its judgment of 10 May 2001 in the case of *Cyprus v. Turkey* (op. cit., §§ 75-81, 173-175 and 184-189, ECHR 2001-IV). The Court recalls that in its latter judgment it rejected the respondent Government's arguments according to which it had erred in its approach to the issues raised by the *Loizidou* case, especially on the matter of Turkey's liability for alleged violations of Convention rights, including allegations of continuing interferences with the right to respect for home and property rights under Articles 8 of the Convention and 1 of Protocol No. 1 occurring within the "TRNC", as well as on the question of the relevance of the inter-communal talks to the Court's examination of such allegations (op. cit., §§ 75-81, 173-175 and 184-189; see also *Demades v. Turkey*, no. 16219/90, §§ 29-37 and 44-46, 31 July 2003; and *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey,* no. 16163/90, §§ 28-31, 31 July 2003).

Concerning the latter, the Court notes that the Annan Plan would have been a significant development and break-through in inter-communal negotiations had it come into force. Consequently no change has occurred since the adoption of the above-mentioned judgments by the Court which would justify a departure from its conclusions as to Turkey's jurisdiction. In this connection, the Court points out, firstly, that the fact that the two communities were treated as having equal status in the negotiations leading up to the referendums, does not entail recognition of the "TRNC" or confer statehood thereupon. Secondly, the Court observes that the respondent Government continue to exercise overall military control over northern Cyprus and have not been able to show that there has been any change in this respect. Thirdly, the fact that the Greek-Cypriots rejected the Annan Plan does not have the legal consequence of bringing to an end the continuing violation of the displaced persons' rights for even the adoption of the plan would not have afforded immediate redress.

In the light of the above, the Court considers that the Government's pleas on inadmissibility on the grounds of lack of jurisdiction *ratione temporis* and *ratione loci* must be dismissed.

2. As to the victim status of the applicant

(a) The respondent Government

The respondent Government point out that the property allegedly owned by the applicant is listed in the books of the Turkish Moslem religious trust (*vakf*) as having being dedicated to the religious trust in perpetuity in accordance with the principles of Evkaf (*Ahkamül Evkaf*), the 1960 Constitution of Cyprus and the Evkaf and Vakfs Laws (Cap. 337 of the Laws of Cyprus). Under the latter law, following the registration of a deed of *vakf*, the relevant property cannot be alienated or transferred either by the dedicator or the beneficiary nor may it be inherited. Consequently, they maintain that the transfer of this property to the applicant was unlawful and therefore, null and void. Finally, they note that the Evkaf Administration of Cyprus operating in the "TRNC" has taken legal measures in respect of *vakf* properties which have been unlawfully occupied, including the property referred to in the present application, and intends to take further legal measures in respect thereof. Thus, they submit that the Court should not take any decisions that would prejudice the determination by domestic courts of the issues relating to title of the property.

(b) The applicant

The applicant disputes the arguments of the respondent Government and asserts that their allegation that the property belongs to a religious trust

known as *vakf* is false. She relies on the relevant copies of the certificates of ownership proving that she is the owner of the property at issue. She argues that although the Government are in control of the records of the Famagusta Land Registration Office, they have failed to substantiate their allegations and have not produced the relevant Land Registers. In addition, she claims that the document on the special nature of certain properties under religious trust annexed to the respondent Government's observations is irrelevant to the present proceedings. Finally, the applicant notes that in her observations dated 5 September 2000 she had stated that she had acquired the property by way of gift from her mother. However, the respondent Government did not contest the applicant's ownership of the property in their first observations on admissibility and thus, she contends that they should be prevented from raising this argument on the occasions additional questions raised by the Court that did not cover this point.

(c) The Cypriot Government

The Cypriot Government submit that the existence of these alleged pending proceedings by the Evkaf Administration of Cyprus does not preclude the Court from deeming admissible, and passing judgment upon, whether the applicant's rights under Article 1 of Protocol No. 1 have been violated. In this connection they maintain that the concept of "possessions" in that provision has an autonomous meaning which is not limited to ownership of physical assets; it is sufficient to show that the applicant has a legal right to some benefit. In their opinion, it is well established by the Court's jurisprudence that there may be a right to the enjoyment of possessions protected by Article 1 even where ownership is in dispute (relying on *Iatridis v. Greece* [GC], no. 31107/96, §§ 54-55, ECHR 1999-II).

(d) The Court's assessment

The Court observes that, under its case-law, for the purposes of Article 34 of the Convention, the word "victim" means the person directly affected by the act or omission in issue (see *Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997, *Reports* 1997-IV, § 26).

The Court notes that the applicant has provided the Court with official certificates of ownership from the Department of Lands and Surveys of the Republic of Cyprus proving that she is indeed the owner of the relevant property. It points out that the respondent Government have not substantiated their arguments disputing the applicant's victim status.

Therefore, the Court considers that the applicant can claim to be a "victim" within the meaning of Article 34 of the Convention and dismisses the respondent Government's objection of inadmissibility in this respect.

3. Exhaustion of domestic remedies

(a) The respondent Government

(i) Validity of "Law no. 49/2003"

The respondent Government submit that the ruling of the Court in the case of *Cyprus v. Turkey* (op. cit.) cannot be interpreted in such a way as to conclude that Article 159 of the "TRNC Constitution" is invalid for all intents and purposes and that no compensation law can be enacted with reference to that provision. This provision was cited to the Court in the abovementioned case in connection with the *ratione temporis* objection. They note that a distinction should be drawn between those provisions of Article 159 which take away rights, and those which grant rights, like Law no. 49/2003 enacted in virtue of paragraph (4) of that Article which grants rights in respect of Greek-Cypriot property in northern Cyprus. They state that it was not the Court's intention in its aforementioned judgment to imply that no law for compensation for Greek-Cypriot property could be enacted in the "TRNC". On the contrary, they allege that the Court referred to "purported expropriation without compensation", implying that absence of legal provisions on the matter of compensation was one of the factors that led the Court to find a violation of Article 1 Protocol No. 1. The Law was thus, enacted in pursuance of the relevant decisions of the Court in order to fill the gap in the legislative provisions. If the arguments of the applicant were correct, it would mean that the "TRNC" cannot validly enact any law to create domestic remedies, whatever its nature and content. Thus, in effect, the existence of the "TRNC" would be ignored, as though the northern part of Cyprus is a "vacuum".

According to the respondent Government, the theory of "subordinate" administration was invoked by the Court in connection with the requirement of exhaustion of domestic remedies. It would be paradoxical to say, on the one hand, that Turkey has "jurisdiction" and responsibility in northern Cyprus, and to conclude, on the other hand, that Turkey could not afford remedies to the inhabitants of this territory, which has its own system of law, separate and distinct from that of Turkey. The Court therefore had to endeavour to find a formula whereby it could be said that Turkey could provide remedies in northern Cyprus, through her "subordinate local administration", whereby such remedies could, by way of legal theory, be attributed to Turkey. Otherwise, the inability to provide remedies in northern Cyprus would not be compatible with the finding of Turkish "jurisdiction" in the first place. The reference by the Court in the above context to "inhabitants" of the "TRNC" should not, in view of the present situation, be interpreted in a restrictive manner to exclude Greek Cypriots staying in southern Cyprus, since the new remedies are accessible to all

Greek-Cypriots. The respondent Government note in this context that the scope of the *de facto* regime in international law is wider than that expressed within the parameters of the Advisory Opinion of the International Court of Justice on *Namibia* (I.C.J. Reports, 1971, p. 16). As for the applicant's arguments regarding use of force and alleged breaches of the UN Security Council, the Government state that these are irrelevant in the present context and are not issues to be decided by the Court. In any event they submit that the Security Council's resolutions have been subject to criticism and thus, the observations of the applicant in this respect need to be evaluated in this light.

The respondent Government state that the new law cannot be considered to be invalid merely because it is a legislative act of the "TRNC" nor does its validity depend on any determination of invalidity of Article 159 of the "TRNC Constitution". On the contrary, they maintain that it effectively addresses the concerns that the Court expressed in its judgment in the *Loizidou* case about Article 159.

Disputing the arguments of the applicant and the Cypriot Government, the respondent Government submit that both the Annan Plan and the new Law are cogent evidence of the fundamentally different situation that prevails today on the island of Cyprus. In this connection, they note that the significance of the plan lies, *inter alia*, in the acknowledgment of the reality that the physical restitution of property is likely to be limited and is only likely to be available as part of a wider political settlement and not by way of individual applications to the Court. The proliferation of applications like the instant one to the Court actively undermines the possibility of reaching such a settlement whereas the availability of a remedy at a domestic level affords an opportunity to move beyond a piecemeal and partial approach to a resolution of the problems in Cyprus and would relieve the Convention system of a burden (*Broniowski v. Poland* [GC], no. 31443/96, ECHR 2004-...).

As regards the temporal aspect of the application and the question of retrospective effect of Law no. 49/2003, the respondent Government argue that the fact that a remedy is introduced after an application is received or declared admissible does not mean that it cannot be considered an effective remedy for purposes of admissibility. Particularly the question of retroactivity assumes even less significance in the case of a breach which is regarded as "continuing", since there must also be a corresponding obligation to address that breach during its continuation by recourse to any effective domestic remedy that becomes available. They consider that there is nothing in the Convention that would prevent the Court to take into consideration the admissibility criteria at any stage of the proceedings. According to the Court's jurisprudence, there are exceptions to the general rule that the exhaustion requirement must be assessed with reference to the time at which the application was lodged (*Baumann v. France*,

no. 33592/96, § 47, ECHR 2001-V, and *Giacometti and Others,* op. cit.). They submit that in the present application there is ample justification for departure from this rule. The point of crystallisation for the purposes of assessing domestic remedies is not the date of the filing of the application but when the admissibility of the application is considered. Since the instant application has not yet been declared admissible and there is an available domestic remedy, it is incumbent upon the applicant to pursue her claim before the Commission.

The respondent Government contend that awards of compensation extend to all cases of expropriation dating back to 1974, no restriction existing under the new law on the filing of an application by the applicant in this case. Furthermore, they aver that the "Law" does not retrospectively establish criminal responsibility or impose penalties as prohibited under Article 7 of the Convention. Nor is there a presumption against retrospectivity or hardship that would follow as a result thereof in this case. On the contrary, the respondent Government note that a new remedial mechanism is establishing for the purposes of securing the rights of claimants.

Finally and without prejudice to their position as to the lack of jurisdiction, the respondent Government request the Court to use its power under Article 37 of the Convention to strike out the present application, signalling in its judgment that the applicant, as others in *Loizidou*-type cases, should proceed by way of recourse to the Compensation Commission.

(ii) Availability, effectiveness and adequacy of the new remedy proposed under "Law no. 49/2003"

The Government maintain that in the light of the new law enacted and adopted on 30 June 2003 by the "TRNC Parliament" and the compensation commission established under its provisions, the applicant needs to exhaust domestic remedies as required by Article 35 of the Convention. In this connection, they also argue that since a procedure now exists, recourse to which, would provide redress for the applicant's claims under Article 1 Protocol No. 1, the applicant can no longer be considered as a victim within the meaning of Article 34 of the Convention.

According to the respondent Government, the purpose of the Law is to regulate the necessary procedure and conditions to be complied with by persons in order to prove their legal rights which they claim in respect of immovable properties that fall within the scope of Article 159 (4) of the "TRNC Constitution" as well as the basis on which compensation shall be paid to such persons. All immovable properties in northern Cyprus, within the boundaries of the "TRNC", belonging to Greek Cypriots which had been described by existing laws as "abandoned" properties, now come within the scope of Section 3 of the Law. Consequently, Greek Cypriots,

like the applicant in the present case, can apply to the compensation commission set up under the Law in respect of properties that were registered in their names before 20 July 1974 and/or are the legal heirs of the person in whose name the property was so registered.

They submit that under the Law compensation will be calculated on the basis of the market value of their property in 1974 plus loss of use between 20 July 1974 and the date of payment and accretion in value during the same period. They observe that the competence of the commission extends to all cases of alleged expropriation dating back to 1974 and the remedy available under the Law in some cases would outstrip that awarded by the Court.

Alternatively, the respondent Government assert that persons who claim under this Law may be compensated, if they agree, through exchange of title deeds of immovable Turkish-Cypriot properties in southern Cyprus that have been renounced in favour of the State in accordance with the provisions of the "Housing, Allocation of Land and Property of Equal Value Law" ("Law no. 41/1977"). In their opinion, exchange and/or compensation would seem to be the most viable solution to the property issue under the existing circumstances, rather than restitution and/or return to old homes and properties as sought by the Greek-Cypriot authorities.

The respondent Government allege that it is not possible to reverse all dealings with the Greek-Cypriot property in northern Cyprus and Turkish-Cypriot property in southern Cyprus, in view of the developments during the last thirty years, which have substantially changed the landscape and lead to the creation of accrued rights in other persons. Moreover, the Court has stated the Convention does not guarantee, as such, the right to physical restitution of property found to have been taken in breach of Article 1 of Protocol No. 1. "Possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" or assets, including claims, in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will realised. The hope that a property right that was extinguished a long time ago can be revived cannot be regarded as a "possession" within the meaning of Article 1 of Protocol No.1; nor can a conditional claim which has lapsed as a result of the failure to fulfil the condition (*Polacek and Polackova v. The Czech Republic*, (dec.), no. 38645/97, 10 July 2002, § 62, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 40, 6 March 2003).

The respondent Government note that the Court should take into consideration the exceptional situation in Cyprus, just as it did in respect to German reunification in refusing to order restitution, taking into consideration the social interest of the community and the requirements of the protection of the individual's fundamental rights (*Wittek v. Germany*, no. 37290/97, ECHR 2002-X, and *Forrer-Niedenthal v. Germany*, no. 47316/99, 20 February 2003).

The respondent Government submit that with reference to the Court's jurisprudence, there is no requirement of specific *restitution* as a precondition for the adequacy of a domestic remedy. States are afforded a wide margin of appreciation when it comes to balancing the interests of society with the interests of the claimant (*Broniowski,* op. cit.).

Concerning the commission's operation and procedure, the respondent Government argue that they meet the requirements of Article 6 of the Convention. Specifically, applicants to the commission will have an opportunity to present their case, supported by evidence, and to respond to any submissions for the "TRNC Attorney-General" advanced in the name of the State. The application process is simple and easily accessible in view of the open borders between northern and southern Cyprus. Further, both the procedures and decisions of the commission are subject to the possibility of judicial review by the "High Administrative Court". In this regard, they state that the Convention forms part of the laws of Cyprus and is applicable in the "TRNC" courts as are the principles of international law. In this regard, they point out that the Law "was the outcome of close consultations with the Directorate of Human Rights of the Council of Europe focused on implementing a domestic remedy to address claims in respect of immovable property in northern Cyprus by members of the Greek-Cypriot community". As a consequence, *inter alia,* of the application of the Convention in the law of northern Cyprus, and the cognizance taken of it by the "TRNC" courts, the procedural and due process safeguards of the Convention will be available to the applicants. Furthermore, they maintain that is also possible to file complaints before the Court, challenging the compatibility with the Convention of the decisions of the High Administrative Court.

With regard to the constitution of the commission, its independence and impartiality, the respondent Government note that its members include the former President of the "TRNC Supreme Court" (Chairman), a lawyer and former judge of international reputation (Deputy Chairman) and former law officers and directors of the "TRNC Department of Lands and Surveys". They assert that there is no justification for the Cypriot Government's submissions in this respect. The respondent Government consider that it is unnecessary to go into the biographical details of its current members but note that there are material errors of fact in the personal information on its members as set out in the observations of the Cypriot Government. The respondent Government accept that the failure of a member of the commission to declare any interest in the matter that comes before them would give rise to questions under Article 6 of the Convention. However, they state that the possibility that such questions may arise at some hypothetical point in the future is not sufficient to sustain an allegation of a lack of independence and impartiality of the commission *per se* at this point.

They aver that the applicant's and Cypriot Government's allegations as to lack of independence or impartiality are premature. Even if the commission

did not itself comply fully with the requirements of Article 6 of the Convention, the existence of an appellate mechanism to the High Administrative Court would cure any defect. In accordance with the Court's jurisprudence it is clear that the impartiality of its members is to be presumed unless and until there is proof to the contrary.

In view of the fact that the function of the commission is limited to awarding compensation to meritorious claimants and not deciding on disputes as to title, the Government maintain that its members will not have a personal interest flowing from any property interests of their own. While the respondent Government state that they would expect that a commission member who had a direct interest in property that was subject to a particular claim would excuse himself/herself from the proceedings, it does not follow merely from the fact that certain members have interests in property that may hypothetically be the subject of a claim, that they will act with bias with regard to claims in general. The respondent Government contend that the situation regarding property in Cyprus is complex and thus it would not be possible for anyone living on the island, whether Greek-Cypriot or Turkish-Cypriot, to detach themselves entirely from the issues. Further, the bias will not be presumed simply by reference to the tenure of appointment of its members and other similar factors (*Campbell and Fell v. the United Kingdom*, judgment of 28 June 1984, Series A no. 80, § 79, and *Morris v. the United Kingdom*, no. 38784/97, § 38, ECHR 2002-I).

The respondent Government point out that the remedies available in the "TRNC" should be considered as domestic remedies of the Government and that they should be exhausted by Greek-Cypriot applicants before resorting to this Court, just as Turkish Cypriots who have property in southern Cyprus have to exhaust domestic remedies available therein. In this connection, they refer to the findings of the Court in the case of *Cyprus v. Turkey* (op. cit.) where the Court observed that despite the reservations the Greek-Cypriot community in northern Cyprus may harbour regarding "TRNC" courts, the absence of such institutions would work to the detriment of the members of that community and thus, the remedies available in the "TRNC" may be regarded as domestic remedies of the State and that the question of their effectiveness is to be considered, in the specific circumstances where it arises (§§ 90-92, 102). The existence of mere doubts as to the prospects of success of the particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (*Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII). The respondent Government submit that the arguments of the applicant and the Cypriot Government as to the inadequacy of the remedy on the grounds of flawed procedures and conflicts of interest are entirely speculative and premature. In particular, any challenge to the Compensation Commission, its composition, procedure and decisions must address actual shortcomings.

Disagreeing with the findings of the Court in its judgments in the cases of *Loizidou v. Turkey* and *Cyprus v. Turkey* (op. cit.), the respondent Government argue that those judgments should not be considered as precedent for the purposes of this application. In this connection, they maintain that the Court, in reaching these judgments, disregarded a number of relevant fundamental issues such as the complex historical and political dimension of the case. Furthermore, when these cases were decided, there was no law in the "TRNC" providing a mechanism for compensation to be paid to Greek Cypriots for their properties in northern Cyprus. Creation of such a mechanism is compatible with Article 13 of the Convention. The respondent Government submit that the aim of the new law is to remedy the situation as a result of the findings of the Commission and the Court in the aforementioned cases. Thus, they aver that this case has to be decided on its own facts and in the light of recent developments in Cyprus, particularly the new measures taken by the "TRNC" authorities providing accessible and effective administrative and judicial remedies to Greek Cypriots for properties that were registered in their names in 1974. In relation to this, the respondent Government also refer to the new measures taken by the "TRNC" authorities since 23 April 2003 regarding crossings from northern to southern Cyprus and *vice versa* through specified checkpoints. They submit that the new developments have brought about a change in the circumstances that constituted the *raison d'etre* on which the *Loizidou* judgments (merits and just satisfaction, op. cit.) were based.

Since the Convention applies as part of the legal framework of the "TRNC" it would be open to the applicant to raise arguments by reference to other provisions of the Convention in the proceedings before the compensation commission. Allegations of violations of Articles 8 and 14 of the Convention are contingent on the applicant being able to show a violation of Article 1 of Protocol No. 1. Even if the allegations of breach of these provisions were not contingent on showing a violation of Article 1 of Protocol No. 1, the evaluation of parallel claims such as these by the Court in previous cases has always proceeded by way of an initial assessment of the threshold claim of expropriation. Further, the respondent Government state that in any such assessment, a court or tribunal will be required to reach a determination of fact which would almost certainly be relevant to any subsequent assessment of the allegations of breach of Articles 8 and 14. In such circumstances, they consider that it would be wholly artificial and impractical to separate out the various elements of the claim for purposes of admissibility and to taint as inadequate a domestic remedy which addressed the principal element of the claim on the ground that it failed to address some tangential or peripheral claim.

In addition the respondent Government claim that Article 14 of the Convention has no relevance to the facts and circumstances of the present application. The creation of a domestic remedy for compensation payable to

persons for their properties in North Cyprus, which have been affected by the events of 1974, does not cause any unreasonable distinction or discrimination between people who are within the same class of persons, to whom the same set of facts apply.

The respondent Government also refer to the regulation, control and compulsory acquisition of Turkish-Cypriot property in southern Cyprus by the Greek-Cypriot administration. They disagree with the submissions of the Cypriot Government made in this respect, which they state are misleading. *Inter alia,* they note that there are Turkish-Cypriot properties in southern Cyprus that are being utilised by Greek-Cypriot authorities without having been formally compulsorily acquired in accordance with law. According to the respondent Government, these properties are not referred to in the statistics provided by the Cypriot Government. The measures taken by both sides on the matter of expropriation of property under their control clearly show that the issue of property is reciprocal and that the question of compensation cannot be solved by individual applications to the Court but by a more viable alternative such as exchange and/or compensation.

In conclusion, the respondent Government submit that the effectiveness of the new remedy must be tested on a case-by-case basis and any assessment of its adequacy must await an adjudication of the relevant claim by the commission. In their opinion, the applicant has failed to establish that the remedy is so inadequate and ineffective so as not to amount to a domestic remedy for the purposes of Article 35 § 1 of the Convention.

(iii) Recourse to the compensation commission

The respondent Government aver that the Cypriot Government have actively discouraged Greek Cypriots from submitting applications to the commission. They argue that the discouragement takes the form of official Government statements opposing applications as a matter of policy and asserting that the commission is illegal. These statements are widely reported in the Greek-Cypriot media and disclose a more widespread and insidious campaign at an official level against the law than that suggested in the Cypriot Government's pleadings. In this connection, the respondent Government refer to *inter alia,* various excerpts from press releases and public statements. Furthermore, they state that there are some suggestions in the Greek-Cypriot media of attempts by the Greek-Cypriot Government to identify individuals who have allegedly applied to the commission. In their opinion, it is not acceptable for the Greek-Cypriot authorities to actively work to undermine a *bona fide* attempt by the "TRNC" to establish an adequate and effective domestic remedy for the purposes of the adjudication of property claims.

The respondent Government point out that since its establishment the commission has received and heard three applications and is currently deliberating on these cases. However, they state that the campaign has had

the intended effect since no applications have been filed with the commission following the publication of the statements of the Greek-Cypriot Government, politicians and public figures.

Finally, the respondent Government claim that the result of the referendum, which is a clear manifestation of the exercise of the right to self-determination of the Turkish-Cypriot people, has demonstrated that Turkish Cypriots can decide on their future and that northern Cyprus is not a legal "vacuum". In this regard, they note that it is expected that this development will lead to a new political and legal situation on the island. It is due to the rejection of the plan after a negative campaign sponsored by the Greek-Cypriot Government that the Greek-Cypriots, by casting a negative vote in the referendum, that the achievement of a lasting settlement in Cyprus which would contribute to better enjoyment of human rights throughout the island has been prevented and thus, the property issue has remained unresolved. They maintain that responsibility for this should be attributed to that Government and not to Turkey.

(b) The applicant

(i) Applicability of "Law no. 49/2003"

The applicant submits extensive arguments as to the invalidity of the purported domestic remedy under international law.

The applicant considers that the respondent Government's arguments ignore the most significant legal dimension, namely, the relation between considerations of international law and the application of Article 35 § 1 of the Convention. The applicant points out that the answer to whether the provisions of Article 35 of the Convention call for recourse to the commission on the part of Cypriot citizens concerned, is not to be found by simply characterising the issue as being one of the rule of "exhaustion of domestic remedies" and then automatically applying the requirement of exhaustion. Instead, the issue is one of legality and validity or, otherwise, of the legislation of the subordinate local administration, which is the vehicle providing the remedies. Enquiry into the legal provenance of the remedies is essential. The applicant states that it is significant in this connection to note that the view of the Turkish Government is that the remedies are provided by the local administration, that is, the "TRNC". In the applicant's opinion, the issue of legal provenance requires examination of two questions. Firstly, the question of legality of the "TRNC" as such arises. In this context the applicant points out that only Turkey recognises the "TRNC" and that the illegality of the latter has been recognised and affirmed by authoritative decision-makers, including the Court itself. The second question that arises is whether the property regime, in its original form under the "TRNC Constitution" (1985) or its new form under the new law, both being based

upon a principle of discrimination in terms of national or ethnic origin, is compatible with general international law.

According to the applicant, the recognition of the "TRNC" as a state would involve the recognition of a secession from, and a partition of, the Republic of Cyprus in breach of the express provisions of the Treaty of Guarantee as well as a failure to implement the decisions of the Security Council concerning the situation in Cyprus. She points out that the Turkish invasion and occupation of northern Cyprus involved and continue to involve breaches of the rules of general international law and the provisions of Article 2 (4) of the UN Charter (use of force), the provisions of which prevail over the obligations of Member States under any international agreement including the Convention (Article 103 UNC). In this context she observes that it is necessary to affirm the proper relationship of the provisions of general international law and the provisions of the Convention. She also refers to the Advisory Opinion of the International Court of Justice on *Namibia* (op. cit.) case in which that court gave clear expression to the duty not to recognise situations involving illegality. The Court in its judgment in *Cyprus v. Turkey*, taking into account the aforementioned advisory opinion (§ 125), affirmed the invalidity of the contemporaneous property legislation in the Turkish occupied area (op. cit., §§ 180-187). Thus, property legislation based upon policies adopted by the subordinate local administration set up by Turkey has no validity in international law. The reason for this stems from the illegality of acts under international law that cannot be avoided by the creation of "local remedies". The Namibia advisory opinion cannot be used to validate acts contrary to the UN Charter and principles of general international law and discriminatory legislation.

In the alternative, the applicant maintains that the consistent policy of Turkey and its agents in the occupied area has been to exercise control over, and to exclude the owners of, properties and plots of land on a discriminatory basis. Such a discriminatory policy constitutes an affront to international standards of human rights. It is incompatible with the provisions of the Convention and the principle of general international law of non-discrimination, which has the quality of *jus cogens*, whether applied by administrative means or on the basis of legislative measures. Furthermore, the applicant contends that the determinations of the Court in the case of *Cyprus v. Turkey* (op. cit.) in relation to the position of displaced persons and the Greek Cypriots living in the enclaved Karpas area are readily applicable to the discriminatory policy of Turkey toward the property of the displaced Greek Cypriots. She notes that in its judgment the Court recognised the application of illegal measures both to the enclaved Greek Cypriots and the displaced Greek-Cypriot owners.

The applicant points out that the tactical purpose of the new law is to provide an admissibility hurdle for all the refugees and other property cases

brought before the Court by citizens of the Republic of Cyprus. She notes that it is based upon Article 159 of the "TRNC Constitution" and therefore is tainted with the same illegality as determined by the Court in the cases of *Loizidou v. Turkey* (op. cit., §§ 58-64), *Cyprus v. Turkey* (op. cit., §§ 178-189, esp. 186), *Demades v. Turkey* (op. cit., §§ 23-31) and *Eugenia Michaelidou and Michael Tymvios v. Turkey* (op. cit., §§ 23-31). Thus, the local remedies rule does not apply because of the effect of Article 159 the "TRNC Constitution" as applied in the "TRNC". The above decisions have created *res judicata* in respect of the illegality of that provision and the availability of remedies in the area under Turkish control. The applicant avers that there have been no changes which could justify a departure from these precedents, which constitute a consistent body of jurisprudence. As for the Court's findings concerning "TRNC" remedies in the *Cyprus v. Turkey* (op. cit.), the applicant asserts that these were limited to the Greek-Cypriot enclaved population, and did not extend to Greek Cypriots who have been displaced and are as a consequence living in the unoccupied area of Cyprus.

The new Law, according to the applicant, cannot be characterised as valid simply because certain "domestic remedies" are available since the remedies arise from an illegal source. No basis can be found in the Convention for the validation of legislation which creates and consolidates discrimination in the context of ownership and enjoyment of property. The Law assumes that an expropriation has taken place and constitutes a means of removing individual property rights (including those of the applicant) and dividing Cyprus into two ethnically distinct entities. In any event, the applicant maintains that the requirement of exhaustion of domestic remedies does not apply to legislative measures.

In her view, it would be contrary to the public order of Europe, the principles of general international law, and ordinary good sense, if a territorial usurpation could be consolidated by expropriation of property on a discriminatory basis. The offer of domestic remedies and of "compensation" involves no more than a technique of superficial validation of the taking of property which is unjustified in terms of general international law.

The applicant states that the respondent Government in their observations aim to denigrate the Security Council resolutions on which the Court relied in the judgment on the merits of the *Loizidou* case. Furthermore, they fail to acknowledge that the international community as a whole did not accept the legal position of Turkey and that only one state (i.e. Turkey) has recognised the "TRNC" as a state (subject to occasional threats to annex the "TRNC"). She points out that the reasoning that underpins the acceptance that certain domestic laws, even of entities lacking the qualitative conditions of statehood, may be recognised by the international legal order does not apply to the "TRNC Law" because that "Law" operates to the detriment of individuals by allowing the expropriation of their property. In this context

she emphasises that the respondent Government have at no stage in thirty years offered a legal justification for the interference with property.

As regards the temporal aspect of the application and the question of retrospective effect of the Law, the applicant maintains that on the date of the filing of her application, dating back to 1998, she had indeed complied with the requirement of exhaustion of domestic remedies under Article 35 since then no effective domestic remedies were available to her. She notes that, as admitted by the respondent Government in their observations, before 23 April 2003 administrative and judicial remedies in the "TRNC" were neither effective nor accessible to Greek Cypriots. In her view, Turkey cannot avoid this by purporting to set up a domestic remedy six years later. No exceptional circumstances have been put forward by the respondent Government justifying the departure of the Court from its normal practice, that is, considering the question of exhaustion on the dates on which their applications were lodged (*Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX). Thus, the applicant submits that the respondent Government have failed to discharge the required burden of proof in accordance with the Court's case-law (*Selmouni v. France* [GC], no. 25803/94, ECHR 1999-V, and *Djavit An v. Turkey*, no. 20652/92, ECHR 2003-III). Finally, the applicant notes that, in view of the fact that there is no reference in the law itself concerning its retroactive effect or that it covers cases that are already pending before the Court, it is to be presumed that it does not purport to have such effect or ambit.

(ii) Availability, effectiveness and adequacy of the remedy proposed under "Law no. 49/2003"

The applicant avers that, *inter alia*, under the provisions the Law she is not recognised as the legal owner of her land, contrary to the Court's case-law, she cannot claim *restitutio in integrum* and she is not given use and control of her property. In the cases of *Loizidou v. Turkey* (merits, op. cit.), *Cyprus v. Turkey* (op. cit.), *Demades v. Turkey* (no. 16219/90, 31 July 2003) and *Eugenia Michaelidou and Michael Tymvios v. Turkey* (no. 16163/90, 31 July 2003) the Court clearly stated that the displaced Greek Cypriots had not lost title to their land and that Turkey's acts constituted a continued interference with the peaceful enjoyment of their property without justification. Consequently any remedy for that interference necessarily requires the return of the property. The Law however does not allow the possibility of return or restoration of the applicant's property rights nor of compensation for moral damage whereas the illegality of the interference with her property and rights therein as guaranteed Article 1 of Protocol No. 1 cannot be determined, or indeed considered, by any court. If the Court were to require the applicant to pursue this remedy, she would lose her title over her property, and thus, in effect, the purported expropriation by an illegal regime of an occupying country would be legitimised. The

application of the "TRNC Law" would have the ultimate effect of creating a solution sought by the Government, which, *inter alia,* entails the global exchange of properties and populations putting an end to any prospect of fulfilling her right to return and of restitution. The applicant claims that this cannot be justified in the general interest provided for in Article 1 of Protocol No. 1. In the opinion of the applicant, the standard under the new law is that of forced sale, that is to say, upon the award of compensation, ownership is lost. This does not operate to the advantage, but to the detriment of individuals by allowing the "expropriation" of their property and loss of title (*Cyprus v. Turkey*, op. cit., § 91).

She emphasises that the core of her claim encompasses the establishment of a violation on the basis of recognition of title, return of the land and an award of damages for pecuniary and non-pecuniary damages. Thus she is not willing to give up her ownership and accept compensation for expropriation. She simply claims damages for loss of use of her property something the "TRNC" does not allow since it purports to expropriate her property. She draws the attention of the Court to the report of the Commissioner for Human Rights of the Council of Europe on Cyprus dated 12 February 2004 that refers to the Law and highlights the inability of applicants to recover possession and enjoyment of their property under its provisions (*Report by Mr Alvaro Gil Robles, The Commissioner of Human Rights,* Council of Europe, §§ 66-69). Under Article 46 of the Convention Turkey is under a legal obligation not just to pay amounts awarded under Article 41 for loss of use, but also to adopt legal measures that would end the violation and return the properties to the affected parties.

The applicant points out that the case-law referred to by the respondent Government in its observations with regard to restitution deals only with Article 6 of the Convention concerning the expeditious processing of cases under domestic law so that this provision is no longer violated. In this connection, the applicant notes that in the Italian Pinto Law there was specific provision as to its retroactive effect in respect of applications before the Court that have not yet been declared admissible (*Giacometti and Others,* op. cit.). On the contrary, the new law does not contain any provisions as to its retroactivity, something that, she claims, the respondent Government has failed to explain. In her opinion, the inability to remedy the violation is the main distinguishing factor of this case when compared to Article 6 cases from Italy (under the Pinto Law), Slovenia and Croatia.

Furthermore, the applicant emphasises that her application relates to violations of Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention as well as violations of Article 8 (right to home), alone and in conjunction with Article 14. Nonetheless, the Law does not provide a domestic remedy in relation to her claims under the latter provisions. As regards Article 8, the applicant notes that the Law does not refer to the

notion of home and that the respondent Government do not allege that the Law relates to violations of the applicant's rights under this provision.

Thus, the applicant maintains that the Court should declare the applicant's complaints under these provisions admissible, in conformity with its judgment in the case of *Demades v. Turkey* (op. cit.).

With regard to the compensation commission, the applicant notes that on the basis of the Cypriot Government's observations a high proportion of the commission's members have an interest in the property claims which the commission aims to address. Furthermore, the respondent Government's allegation that over a period of one year the commission has heard but not decided three applications, demonstrates its tardy procedure and, thus, the ineffectiveness of the purported remedy.

The applicant submits that the arguments of the Government in relation to the laws applicable to Turkish-Cypriot property in the non-occupied area of the Republic of Cyprus and acts of the Cypriot Government concerning such property, are irrelevant to the present application, that consists of an individual application regarding her own property situated in the district of Famagusta which is occupied by the respondent Government. If persons have complaints against the Republic of Cyprus, then they should challenge any alleged human rights violations before the Cypriot courts. According to the applicant, this cannot be used as an excuse by the respondent Government for continuing to violate the applicant's rights.

Finally, the applicant states that the considerations relating to illegality in terms of international law still apply and, in the circumstances, it would be surprising if the Cypriot Government were favourable to recourse to the commission which would result in the "legitimisation" of the Greek-Cypriot property that was purportedly expropriated and the termination of Turkish-Cypriot ownership of land in the non-occupied part of Cyprus.

(iii) Recourse to the compensation commission

The applicant considers that the machinery created by the respondent in June 2003 does not apply to her application filed in October 1998 and in any event does not provide an adequate or effective remedy and thus, has taken no action in the matter. She contends that recent developments have not changed the legal position that is, the illegality of the commission as such and, in any event, the absence of restitution.

The applicant maintains that in conformity with its jurisprudence the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicant (*Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69).

Firstly, as a matter of common sense, the fact that the acceptance of compensation under the Law involves relinquishment of title must have

deterred Greek Cypriots from taking action. In any case, the Court will with no doubt accept that even Greek Cypriots who are not specialists in international law are able to recognise that an entity created and sustained as a result of the use of force has no legitimate authority. She observes that the Law has been introduced by the respondent Government (as the country occupying that part of Cyprus where the applicant's property is situated) essentially in order to implement its political objectives, including ethnic cleansing. This would be achieved by preventing Greek Cypriots, including herself, from claiming title to her properties in the occupied areas and from having access to and possession thereof. She notes that this purported expropriation and consequent collaboration with the respondent Government (as the occupying force) has brought about public condemnation not only by the Government of the Republic of Cyprus and the political leadership but also by the public at large. Therefore, use of this alleged remedy would result in public condemnation as well as stigmatisation for anyone applying. As a result, the applicant concludes that, taking into account the general legal and political context this alleged remedy would operate in, it cannot be considered in the circumstances of the present case as being accessible or practical.

(c) The Cypriot Government

(i) Applicability of Law no. 49/2003

The Cypriot Government submit that Law no. 49/2003 has no valid legal basis in international law. In this connection, they note that the Court has clearly held in both the cases of *Loizidou v. Turkey* (merits, op. cit., §§ 44-45) and *Cyprus v. Turkey* (op. cit., § 186) that the purported taking of private property under Article 159 of the "TRNC Constitution", has no legal validity in international law; the premise of the Law, as set out in Section 3 thereof, being to implement Article 159 (4) of the "TRNC Constitution" under Article 159 (1). The Cypriot Government point out that in its judgment in *Cyprus v. Turkey* (op. cit.) the Court stated that Law no. 52/1995, which purported to give practical effect to Article 159 of the "TRNC Constitution" could not be attributed any more legal validity than its parent Article 159 which it professes to implement (op. cit., § 186).

The Cypriot Government state that it is important to note that in accordance with both the aforementioned judgments, it is *res judicata* that Greek Cypriots remain the legal owners of their property in the Turkish-occupied area of Cyprus (§§ 46-47 and 185-186 respectively); that use should be made of remedies only where they exist for the advantage of individuals; and that arrangements are to be recognised as legitimate where they can be ignored only to the detriment of individuals in the territory (§ 45 and § 91 respectively). Thus, the continuing relevance of the *Loizidou* judgments to the present application lies principally in the fact that

Article 159 of the "TRNC Constitution" is legally invalid and that, therefore, Greek-Cypriot owners of immovable property in northern Cyprus, just as the applicant, have retained their title and should be allowed to resume free use of their possessions. They observe that these important elements were reaffirmed in the cases of *Cyprus v. Turkey* (op. cit.), *Demades v. Turkey* (op. cit.) and *Eugenia Michaelidou and Michael Tymvios v. Turkey* (op. cit.) and continue to apply despite any purported "change" in the legal situation because of the content of the "Law".

They submit that it is clear from the Court's jurisprudence that it would not have allowed expropriation by the "TRNC" under Article 159 of the "TRNC Constitution", even if compensation had been available at the time. The fact that compensation may now be available under the new Law does not alter the validity and continuing relevance of the reasons why the Court was not willing to allow or recognise as expropriation the acts of the "TRNC". The Law is, according to the Cypriot Government, a means of expropriating the property of the applicant in the occupied area for the benefit of Turkey's subordinate administration, the "TRNC", contrary to the relevant principles of the Convention and international law.

In their view, the Law is also incompatible with the international law principle which prohibits the forcible displacement of populations as amounting to a crime against humanity and ethnic cleansing since following the illegal invasion of 1974, Greek Cypriots were displaced by Turkey from the Turkish-occupied area of Cyprus. The Cypriot Government assert that the Law is intended to implement and consolidate these breaches whilst its legal recognition would, in effect, amount to allowing Turkey, the wrongdoing State, by the promise of payment of compensation or the payment of compensation, to purchase the benefits of derogating from the international legal obligation to provide complete restitution. The original wrong would then be endorsed and entrenched, in its characteristics and its effects, and there would be a denial of justice to the victims of that wrongdoing. A vacuum would be created in the system of human rights protection given that the applicant and other victims of breaches of Convention rights would be confined to such remedies, if any, as made available in the "TRNC" with no supervision by the Court.

As regards the temporal aspect of the application and the question of retrospective effect of the Law, the Cypriot Government maintain that interpreting Article 35 of the Convention in a way as to allow the retrospective application of the Law to all applications, irrespective of when they were submitted, and not "at the relevant time" in accordance with the Court's case-law, would breach the principle of legal certainty and interfere unjustifiably with the acquired rights and legitimate expectations of the applicants to have their applications determined by the Court within a reasonable time in accordance with Convention standards. They point out that in fact, the Law itself does not contain any provision which expressly

permits it to take effect retrospectively. Applying the general rule of construction against retrospectivity, that is well recognised, for example, by the English common law, and the presumption for compatibility with the Convention principle of legal certainty, results in the conclusion that the Law does not, and cannot, apply to events which occurred before the date of its enactment, that is, 30 June 2003. They claim that whether the Law is capable of providing an adequate remedy must be considered by looking at the position when the application was filed, that is, in 1999 (see, *inter alia*, *Cyprus v. Turkey*, op. cit., § 116, and *Brusco*, op. cit.).

The Cypriot Government submit that the cases referred to by the respondent Government to justify the retrospective nature of the Law concerned a right to hearing without undue delay and in each case the domestic remedy was appropriate to secure this right in a practical and effective way, in full conformity with the Convention and without need for further recourse to the Court. According to the Cypriot Government there is no similarity between these cases and the circumstances of the present application as well as other pending cases. The respondent Government cannot bring this application within the "particular circumstances" of those cases and thus cannot rely on the general rule. Furthermore, in the cases of *Giacometti and Others v. Italy* and *Brusco v. Italy* (op. cit.) referred to by the respondent Government, the Court noted that "the provision in question affords Italian litigants a genuine opportunity to obtain redress for their grievances at national level", something the "TRNC Law" does not do.

Furthermore, the Cypriot Government point out that the exhaustion of the local remedies rule enshrined in Article 35 of the Convention is not applicable in cases where the applicant has shown a prima facie case that he/she is the victim of an administrative practice consisting of a repetition of acts incompatible with the Convention which is tolerated by state authorities to such an extent that the proceedings would be futile or ineffective. This exception to the domestic remedies rule was applied by the Court in *Cyprus v. Turkey* (op. cit.). The "TRNC" remedies contemplated by the Court, namely, the possibility of recourse to the "TRNC" courts, related, in that case, to remedies for complaints made on behalf of the inhabitants of northern Cyprus, whether Turkish-Cypriot or Greek-Cypriot. Consequently, it does not apply in respect of complaints made by the applicants in the cases pending before the Court, that is, Greek Cypriots, like the applicant, who were forcibly displaced from the Turkish-occupied area, and who are denied, as a matter of administrative practice, the right to return to their homes in the Turkish-occupied area of Cyprus and are prevented from using, selling, bequeathing, mortgaging, developing and enjoying their property, or the right to a remedy for the illegal appropriation of their property and its allocation to "State" bodies, Turkish Cypriots and settlers from the Turkish mainland by means of the assignment of "title deeds" to the new possessors. The Court held that such complaints involved general

administrative practices outside the scope of the domestic remedies rule (*Cyprus v. Turkey*, op. cit., §§ 171-175, 184-189 and 193). To require applicants, such as the present one, as a victim of such violations, to have recourse to the purported remedy would constitute a denial of justice contrary to the Court's settled jurisprudence. The Cypriot Government note that the administrative practice found by the Court in *Cyprus v. Turkey* still exists, since although Greek-Cypriot property owners may visit the Turkish-occupied area this is subject to stringent conditions such as producing passports at the checkpoint in order to be granted a visa to enter and that they are not able to travel freely therein. Furthermore, they may be able to go near their property but they are not allowed to enter it unless invited to do so by the Turkish Cypriots who occupy it.

(ii) Availability, effectiveness and adequacy of the remedy proposed under Law no. 49/2003

The Cypriot Government submit that the Law is incompatible with the findings of the Court it its judgments in the cases of *Loizidou v. Turkey* and *Cyprus v. Turkey* (op. cit.). Pursuant to these judgments, displaced Greek Cypriots, such as the applicant, remain the legal owners of their land and that their rights under Article 1 of Protocol No. 1 have been and are being violated by Turkey. Firstly, the Law only allows for limited form of compensation and does not allow the commission, to consider or require that the immovable property be returned to its rightful owner in such cases. It does not provide for *restitutio in integrum*. Secondly, one consequence of receiving compensation is to forfeit the right to claim ownership. Applicants would lose the right to complain to the Court for the deprivation of, or other interference with, the right to their property, contrary to Article 1 of Protocol No. 1, in cases where they are entitled to claim the right of ownership in addition to compensation. Thus, it would be paradoxical and inconsistent with the very notion of effective domestic remedies under Article 35 § 1 of the Convention, to oblige Greek-Cypriot property owners, before bringing an action against Turkey, to resort to a Law that in cases of success allows only compensation, automatically depriving the applicants of their ownership, when such ownership is the basis of their applications against Turkey before this Court.

Thirdly, the Cypriot Government point out that the Law relates only to claims regarding immovable property and excludes applicants from bringing claims regarding their movable property, furniture, fixtures and fittings.

In addition, the Cypriot Government claim that an occupying country, such as Turkey, cannot justify an interference with any property in a territory that it occupies by relying on the "public interest" exception in Article 1 of Protocol No. 1 where such interference arises in connection with the possession of alien property owners and is contrary to the relevant rules of international law. Under Article 53, the Convention, in this case

Article 1 Protocol No. 1, cannot properly be interpreted as limiting or derogating from the obligations imposed by the Hague Regulations. It is contrary to the relevant rules of international law for Turkey to deprive individuals, under any circumstances, of any immovable property in northern Cyprus, the area occupied by her troops. In this connection, the Cypriot Government refer to the Hague Regulations and Geneva Convention IV.

The Cypriot Government contend that the procedure for determination of the applicant's rights under the Law as well as the commission do not satisfy the fair trial guarantees provided for under Article 6 of the Convention. Firstly, there is restricted access to the commission in view of the time limit prescribed for the submission of applications. No grounds for the exercise of the "TRNC Government's" discretion to extend this time limit are set out in the Law. Secondly, it is unclear who will be the respondent in claims before the commission. Thirdly, the commission does not comply with the requirements of independence, impartiality and "established by Law". In this connection, the criteria set out in the Law concerning the appointment procedure of the commission's members as well as their qualifications are too vague to satisfy the requirements of legal certainty. The Law lacks adequate and effective safeguards against the abuse of discretion and does not include any specific mechanisms whereby external pressures on commission members will be prevented or reduced. The Cypriot Government observe that the "TRNC executive" has significant control over the establishment, organisation and functioning of the commission. In this respect, they claim that the Law contains no adequate checks and balances for monitoring the control of the executive and guaranteeing against such arbitrariness. Consequently, they argue that there is a strong and legitimate concern that the commission will be partial to the "TRNC" executive and therefore to the respondent Government.

According to the Cypriot Government, the commission members lack the required independence and impartiality to determine the applicant's Convention rights. In particular they underline the fact that the majority of its members have personal or family interests in Greek-Cypriot properties in northern Cyprus. In particular they allege that six out of the seven members of the Commission and/or members of their family are living in houses owned or built on properties owned by Greek Cypriots. The Cypriot Government support their arguments with documentation that include, *inter alia,* details from "TRNC" telephone directories, title deeds, maps and photographs. In this connection, they have requested the Turkish Government to clarify its position by providing full information and supporting documents about any Greek-Cypriot properties owner, occupied or disposed of by each member of the commission and their family since 1974 as well as the former or present links between members of the commission and the "TRNC" regime. They state that since the books and

registers of the Department of Lands and Surveys concerning the Districts of Kyrenia and Famagusta have been detained by the respondent Government since 1974, it is not possible for the Cypriot Government themselves to trace the ownership status of all the places of residence and land of commission's members and their families in the occupied area.

They note however that the respondent Government have not disputed the evidence submitted but deny that it is has any relevance as to the independence and impartiality of those members in determining Greek-Cypriot property claims. The Cypriot Government consider that Turkey's argument that only when a member has a direct interest in property which is the subject of a particular application will there be a lack of impartiality fails to deal with legitimate doubts that inevitably rise when members of the adjudicating tribunal are themselves in illegal possession of Greek-Cypriot property. There is a serious risk that their own self-interest as unlawful trespassers will influence their decisions, making them less inclined to recognise a Greek-Cypriot applicant's title to land. This is crucial because Section 6 of the Law requires the applicant to establish title and registration before 1974. It could also make then less generous as regards compensation awards. Any recourse to the "TRNC Administrative Court" would only add to the unreasonable delays already suffered and given the respondent Government's posture their outcome would be wholly uncertain. Consequently, the Cypriot Government deem that it is not premature for the Court to have regard to the evidence of the self-interest of commission members who are in unlawful occupation of Greek-Cypriot property.

Overall, the Cypriot Government consider that the respondent Government has not been able to satisfy the Court that the commission's status, including its composition, powers and procedures, are in compliance with the Convention.

The Cypriot Government contend that the Law is neither adequate nor effective. They state that it has limited scope and in this connection, they refer to, *inter alia*, a number of aspects.

Firstly, the Law does not address the applicant's claims under Articles 8 and 14 of the Convention. In this respect they note that the Court in its judgment in the case of *Cyprus v. Turkey* found a violation of the right of displaced Greek Cypriots of their right to respect for their home under Article 8 of the Convention.

Secondly, the Law appears to have *prima facie* "application" in relation only to an extremely restricted category of breaches of Article 1 of Protocol No. 1. In particular, taken in tandem with the "TRNC Constitution", the Law erodes the ability of one category of applicants to prove their claims. According to Section 6 of the Law an applicant must convince the commission that the immovable property to which he claims legal rights was registered in his name before 20 July 1974 and/or he is the legal heir of the person in whose name the immovable property was so registered. There

are no entitled persons according to the Land Registry records other than those claiming rights under the Law. An "entitled person" is defined in Section 2 as "a person who has a legal claim in respect of immovable property coming within the scope of in [sic] Article 159 § 4 of the Constitution". The effect of Article 159 (1)(b) of the "TRNC Constitution" is to vest in the "TRNC" by amending entries in the Land Registry Office records, the title to all immovable properties referred to in that part of the Article. Article 159 § 2 of the "Constitution" permits the transfer of this property to physical and legal persons. Thus, the Cypriot Government assert that under these provisions it is possible for the "TRNC" to acquire the title of immovable property of displaced Greek Cypriots and to transfer it to others; who will become the named owners in the Land Registry Office records. Section 6(3) of the Law precludes, in absolute terms, displaced Greek Cypriots from being able to prove claims relating to their property in such circumstances.

Thirdly, in connection to the issue of compensation, the Cypriot Government point out that the commission has no jurisdiction to decide whether the taking or other interference with the immovable property in question was against the public interest, arbitrary or discriminatory, in the assessment of the appropriate remedy and the level of damages to be awarded; to award aggravated or non-pecuniary damages; to award the payment of adequate and effective compensation in accordance with the "general principles of international law" in the "deprivation rule" in Article 1 of Protocol No. 1 that applies for the benefit of displaced Greek Cypriots (who are neither Turkish nor "TRNC" citizens and are thus, in the position of alien property owners); and finally, to award by way of just satisfaction the interest, or the costs incurred in bringing proceedings before the Court or the commission or the "TRNC" courts.

Further, the Cypriot Government point out that in the *Loizidou* case (Article 50, op. cit.) the substantial damages awarded were in respect of the applicant's loss of the use and enjoyment of her property, there being no claim for expropriation. The decision clearly recognised the right of a person in the situation of Mrs Loizidou to elect to maintain her property rights and not be limited to the remedy of compensation for their loss. Yet, the constitutional arrangements of the "TRNC" and Turkish policy do not recognise any Greek-Cypriot property in the Turkish-occupied area of Cyprus.

In the Cypriot Government's opinion, given the history and environment of the "TRNC" and the prevailing political circumstances, to require Greek Cypriots, such as the applicant, to exhaust this remedy, would in effect require them to seek a remedy in the hands of the occupying power and thus accord implicit recognition. Further, because of the general condemnation of the Law by the Cypriot Government and Cypriot citizens, the applicants would be stigmatised and victimised by their own community should they

seek to rely upon the Law. It is thus necessary to consider the practical effectiveness and accessibility of the administrative and judicial "remedies" in the "TRNC" rather than viewing them simply as a matter of theoretical possibility.

The Cypriot Government aver that it is clear that the practical effect of the Law is to hinder Greek Cypriots property owners from having effective access to the Court, whereas the circumstances in which it was introduced indicate that it is intended to exert unfair pressure upon such owners to acknowledge the legality of the "expropriation" and the new regime as the price of obtaining some compensation for the breaches of Convention rights. They submit that it would be wholly inconsistent with the judgments in *Loizidou v. Turkey* and *Cyprus v. Turkey* (op. cit.) for the Court to find, as the Government suggest, that a political solution constitutes an "adequate and effective remedy" under Article 35 of the Convention. The Court has already recognised that the property situation in Cyprus is not one where political and legal solutions are mutually exclusive (*Loizidou*, Article 50, op. cit., § 26). In their opinion, there is nothing to preclude or inhibit the Court's determination of the property claims as matters of law, rather than politics, against a background where political negotiations are or may be conducted.

The Cypriot Government refer to the inequality in the treatment by the Law to displaced Greek Cypriots, such as the applicant, as compared with Turkish or "TRNC" citizens contrary to Article 14 of the Convention. They argue that Turkish or "TRNC" citizens who own property in the "TRNC" falling with Article 159 (1) (b) of the "TRNC Constitution" are in an analogous or relevantly similar position to displaced (or indeed other) Greek Cypriots who also own property in the "TRNC". However, they note that the rights that can be invoked and relied upon by the two groups are, widely different. Article 36 of the "TRNC Constitution" contains general provisions relating to property rights. These provisions are confined to every "citizen" rather than to every person (which would include Greek Cypriots). Accordingly, the Cypriot Government maintain that the only "property rights" recognised by the "TRNC" in relation to Greek Cypriots are those set out in the "Law". Further, they note that there are significant differences of substance and procedure between Article 36 of the "TRNC Constitution" and the Law: for example, Article 35 of the "TRNC Constitution" provides that the property rights of Turkish and "TRNC" citizens can be restricted only by law and where it is in the public interest and that "just compensation" is payable for restrictions or limitations which materially decrease the economic value of the property. These rights are absent from the Law, and cannot therefore be enjoyed by non-citizens such as the applicant.

The Cypriot Government conclude that there is no objective and reasonable justification for the difference in treatment meted out to

displaced Greek Cypriots via the Law and that conferred upon Turkish and "TRNC" citizens under Article 36 of the "TRNC Constitution", contrary to Article 1 of Protocol No. 1 read together with Article 14 of the Convention.

They also disagree with the respondent Government's observations in relation to the temporary protection and administration of Turkish-Cypriot property and claim that the Government's observations do not provide a full and accurate representation of the treatment by the Cypriot Government of Turkish Cypriot property in the Government-controlled area but provide misleading information in this respect. They support their arguments in this connection with reference to the relevant laws and domestic jurisprudence as well as the existence of remedies in the event of violations of the rights of Turkish Cypriot owners before the Cypriot courts. The Cypriot Government point out that if violations of the Convention were being committed regarding such property, something they deny, it would be open to Turkish Cypriots to pursue claims against the Cypriot Government similar to those being pursued by Greek Cypriots against Turkey in the Cypriot courts or before this Court. They note that it is the latter context that the conduct of the Cypriot Government would be relevant, and not in the current application in which the respondent Government are attempting to justify the conduct of the "TRNC" regarding its treatment of Greek-Cypriot property in the Turkish-occupied area of Cyprus and to avoid State responsibility and legal liability under the Convention.

In the light of the above the Cypriot Government conclude that the Law does not provide an effective remedy as required by Article 35 of the Convention nor does it satisfy the requirements of Article 13. In this context, they express concern about the statement of the respondent Government in their observations that the Law was the outcome of close consultations with the General Directorate of Human Rights of the Council of Europe.

(iii) Recourse to the compensation commission

The Cypriot Government submit that they have made public statements, primarily through their spokesman, which have been reported in the media, regarding the property rights of their citizens, aimed at discouraging them from making applications to the commission. They note that in the case of *Cyprus v. Turkey* (op. cit.) they raised the property claims of Greek-Cypriot property owners before the Court, in order to protect the Convention rights of it citizens. Similarly, the Cypriot Government have sought to inform Greek Cypriots who have been excluded from the enjoyment and use of their properties of the principal dangers inherent in lodging individual applications to the commission. The first danger being that the lodging of such applications, contrary to the reasoning contained in the judgments of the Court in the cases of *Cyprus v. Turkey* and *Loizidou v. Turkey*, might seek to be exploited by Turkey as according some kind of recognition,

however invalid, to the fundamentally illegal nature of the "TRNC" regime and its emanations and instrumentalities. Secondly, the Cyprus Government state that they have sought to inform their citizens that, by making such applications, the applicants would be subjected to a regime under which they would be deprived of the practical enjoyment of their full and proper Convention rights, and of effective remedies for the violations of those rights by Turkey. The Cypriot Government point out that the Law allows only for a limited form of compensation and does not permit reinstatement of the property to its lawful owners whereas it fails to provide the commission with the discretion to consider or require that the immovable property be returned to its rightful owner in such cases. This aspect is juxtaposed to the aforementioned judgments of the Court that clearly establish that Greek-Cypriot property owners remain the legal owners of their land in northern Cyprus and that their Convention rights are being violated by the respondent Government.

They add that various Greek-Cypriot non-governmental organisations have also discouraged Greek-Cypriots from applying to the commission and that even Turkish-Cypriot politicians have accepted that there are fundamental flaws in this new system.

Further they argue that the respondent Government seeks to exploit the fact that the Court is heavily over-burdened with numerous pending cases in order to persuade the Court to compel the Greek-Cypriot applicants to have recourse to the ineffective and partial remedies contained in the Law. They suggest that other appropriate Convention procedures could be employed by the Court to apply Convention principles justly to the facts and circumstances of the pending cases in a way that would avoid placing excessive burdens upon the Court. In this connection the Cypriot Government point out that they stand ready to assist the Court in devising such procedures, with the consent of the applicants and of Turkey.

Finally, the Cypriot Government note that they have no direct knowledge of the advice given to individual applicants by their legal advisers although it is likely that is similar to that given by the Cypriot Government.

(d) The Court's assessment

i. General principles

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. However, there is no obligation under Article 35 § 1 to have recourse to remedies which are inadequate or ineffective. In addition, according to the "generally recognised rules of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust

the domestic remedies at his or her disposal; one such reason being the failure of the national authorities to undertake an investigation or offer assistance in response to serious allegations of misconduct or infliction of harm by State agents (see *Akdivar and Others*, op. cit., §§ 65-69, and *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 907, § 65).

It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicant has not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others*, op. cit., p. 1211, § 68, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 77, § 35).

The application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each case. This means, amongst other things, that the Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicant (see *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports* 1997-VIII, p. 2707, § 58).

Furthermore, the Court recalls the general principle referred to in its judgments in the cases of *Loizidou v. Turkey* (op. cit., § 45) and *Cyprus v. Turkey* (op. cit., §§ 89-102) that international law recognises the legitimacy of legal arrangements and transactions in certain situations akin to those existing in the "TRNC" and that the question of the effectiveness of these remedies provided therein had to be considered in the specific circumstances where it arose, on a case-by case basis.

ii. Application of these principles in the present case

As regards the application of Article 35 § 1 of the Convention to the facts of the present case, the Court notes at the outset that the compensation offered by Law no. 49/2003 in respect of the purported deprivation of the applicant's property is limited to damages concerning pecuniary loss for immovable property. No provision is made for movable property or non-pecuniary damages. Most importantly, however, the terms of compensation do not allow for the possibility of restitution of the property withheld. Thus, although compensation is foreseen, this cannot in the opinion of the Court

be considered as a complete system of redress regulating the basic aspect of the interferences complained of (see, *mutatis mutandis, Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, §§ 19-22, ECHR 2001-I, and *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-60, §§ 34-38).

In addition the Court would make the following observations concerning the purported remedy.

Firstly, the Law does not address the applicant's complaints under Article 8 and 14 of the Convention.

Secondly, the Law is vague as to its temporal application, that is, as whether it has retrospective effect concerning applications filed before its enactment and entry into force; it merely refers to the retrospective assessment of the compensation.

Finally, the composition of the compensation commission raises concerns since, in the light of the evidence submitted by the Cypriot Government, the majority of its members are living in houses owned or built on property owned by Greek Cypriots. In this connection, the Court observes that the respondent Government have not disputed the Cypriot Government's arguments on this matter and have not provided any additional information in their written and oral submissions. Further, the Court suggests that an international composition would enhance the commission's standing and credibility.

In view of the above, the Court considers that the compensation-based remedy proposed by the respondent Government cannot fully redress the negation of the applicant's property rights.

The Court confines itself to the above conclusion and does not consider it necessary to address the remainder of the arguments put before it by the parties and the intervening third-party.

Accordingly, the Court concludes that the remedy proposed by the respondent Government in the present case does not satisfy the requirements under Article 35 § 1 of the Convention in that it cannot be regarded as an "effective" or "adequate" means for redressing the applicant's complaints.

That being so it considers that the respondent Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

4. The merits

(a) The respondent Government

The respondent Government focus their observations primarily on the above preliminary objections and only make limited submissions on the merits. In particular, they dispute the applicant's complaint under Article 8 of the Convention, on the basis that the notion of "home" in Article 8 cannot be interpreted to "cover an area of the State where one has grown up and

where the family has its roots but where no longer lives (*Loizidou*, merits, op. cit., § 66). Concerning the applicant's complaint under Article 1 of Protocol No. 1, the respondent Government contend that it relates in essence to freedom of movement, guaranteed under Article 2 of Protocol no. 4 which Turkey has not ratified. They argue that the right to peaceful enjoyment of property and possessions does not include, as a corollary, the right to freedom of movement.

(b) The applicant

The applicant disputes the arguments of the respondent Government relying essentially on the reasons given by the Court for rejecting similar objections raised by Turkey in its judgments in the cases of *Loizidou v. Turkey* (preliminary objections and merits, op. cit.), *Cyprus v. Turkey* (op. cit.), *Demades v. Turkey* (op. cit., § 46) and *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* (op. cit., § 31).

Furthermore, she distinguishes the instant case from that of *Loizidou v. Turkey* (merits, op. cit.) in so far as Article 8 of the Convention is concerned, since unlike Mrs Loizidou, the applicant is complaining of an interference with her right to respect for the home in which she lived with her husband and children and of which she is the owner. This is irrespective of whether the area in which her home is situated is the same as that where she grew up and her family has its roots. In addition, she notes that the respondent Government have not submitted any arguments as to whether there is any justification for the interference with her right under Article 8.

The applicant points out that her property is part of the fenced up area of Famagusta which is under the occupation and overall control of the Turkish military. She maintains that that this continuous denial amounts to an interference with her rights under Article 1 of Protocol No. 1. In this connection, she submits that the respondent Government do not deny that the applicant is unable to access, possess or use her property.

Finally, the applicant contends that her proprietary rights are violated because of her country of birth and language, religion and ethnic origin, in breach of Article 14 of the Convention. In this regard, she refers to the Commission's report of 4 June 1999 in the case of *Cyprus v. Turkey* (op. cit., §§ 333 and 334). The applicant avers that the omission of the respondent Government to submit any arguments concerning her complaint under this provision amounts to a clear acceptance of a violation of Article 14 of the Convention.

(c) The Cypriot Government

The Cypriot Government adopt the observations submitted by the applicant in this respect.

(d) The Court's assessment

The Court considers, in the light of the parties' submissions, that the complaints raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Vincent BERGER
Registrar

Georg RESS
President