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

Case of Cyprus v. Turkey

(Application no. 25781/94)

Judgment

Strasbourg, 10 May 2001

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(Application no. 25781/94)

JUDGMENT

STRASBOURG

10 May 2001

In the case of Cyprus v. Turkey,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr J.-P. COSTA,
Mr L. FERRARI BRAVO,
Mr L. CAFLISCH,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANȚÎRU,
Mr E. LEVITS,
Mr A. KOVLER,
Mr K. FUAD, ad hoc *judge in respect of Turkey*,
Mr S. MARCUS-HELMONS, ad hoc *judge in respect of Cyprus*,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 20-22 September 2000 and on 21 March 2001,

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

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")[1], by the Government of the Republic of Cyprus ("the applicant Government") on 30 August 1999 and by the European Commission of Human Rights ("the Commission") on 11 September 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 25781/94) against the Republic of Turkey lodged with the Commission under former Article 24 of the Convention by the applicant Government on 22 November 1994.

1. *Note by the Registry*. Protocol No. 11 came into force on 1 November 1998.

3. The applicant Government alleged with respect to the situation that has existed in Cyprus since the start of Turkey's military operations in northern Cyprus in July 1974 that the Government of Turkey ("the respondent Government") have continued to violate the Convention notwithstanding the adoption by the Commission of reports under former Article 31 of the Convention on 10 July 1976 and 4 October 1983 and the adoption by the Committee of Ministers of the Council of Europe of resolutions thereon. The applicant Government invoked in particular Articles 1 to 11 and 13 of the Convention as well as Articles 14, 17 and 18 read in conjunction with the aforementioned provisions. They further invoked Articles 1, 2 and 3 of Protocol No. 1.

These complaints were invoked, as appropriate, with reference to the following subject-matters: Greek-Cypriot missing persons and their relatives; the home and property of displaced persons; the right of displaced Greek Cypriots to hold free elections; the living conditions of Greek Cypriots in northern Cyprus; and the situation of Turkish Cypriots and the Gypsy community living in northern Cyprus.

4. The application was declared admissible by the Commission on 28 June 1996. Having concluded that there was no basis on which a friendly settlement could be secured, the Commission drew up and adopted a report on 4 June 1999 in which it established the facts and expressed an opinion as to whether the facts as found gave rise to the breaches alleged by the applicant Government[2].

5. Before the Court the applicant Government were represented by their Agent, Mr A. Markides, Attorney-General of the Republic of Cyprus. The respondent Government were represented by their Agent, Mr Z. Necatigil.

6. On 20 September 1999, the panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court).

7. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 (former version) of the Rules of Court in conjunction with Rules 28 and 29.

8. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the Grand Chamber (Rule 28). The respondent Government accordingly appointed Mr S. Dayıoğlu to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1). Following a challenge by the applicant Government to the participation of Mr Dayıoğlu, the Grand Chamber, on 8 December 1999, noted that Mr Dayıoğlu had communicated to the President his intention to withdraw from the case (Rule 28 §§ 3

2. *Note by the Registry*. The full text of the Commission's opinion and of the five partly dissenting opinions contained in the report will be reproduced as an annex to the final printed version of the judgment (in *Reports of Judgments and Decisions*), but in the meantime a copy of the Commission's report is obtainable from the Registry.

and 4). The respondent Government subsequently appointed Mrs N. Ferdi to sit as an *ad hoc* judge in the case.

Also on 8 December 1999, the Grand Chamber considered objections raised by the respondent Government to the participation in the case of Mr L. Loucaides, the judge elected in respect of Cyprus. Having examined the objections, the Grand Chamber decided on the same date to request Mr Loucaides to withdraw from the case (Rule 28 § 4). The applicant Government subsequently appointed Mr L. Hamilton to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

On 29 March 2000, following objections raised by the applicant Government to the participation of Mrs Ferdi in the case, the Grand Chamber decided that Mrs Ferdi was prevented from taking part in the consideration of the case (Rule 28 § 4). The respondent Government subsequently appointed Mr K. Fuad to sit as *ad hoc* judge in the case.

Following the death of Mr Hamilton on 29 November 2000, the Agent of the applicant Government notified the Registrar on 13 December 2000 that his Government had appointed Mr S. Marcus-Helmons to sit as *ad hoc* judge in his place.

9. The procedure to be followed in the case was determined by the President in consultation with the Agents and other representatives of the parties at a meeting held on 24 October 1999 (Rule 58 § 1). On 24 November 1999 the Grand Chamber approved the President's proposals concerning the substantive and organisational arrangements for the written and oral procedure.

10. In pursuance of those arrangements, the applicant Government filed their memorial within the time-limit (31 March 2000) fixed by the President. By letter dated 24 April 2000, and following the expiry of the time-limit, the Agent of the respondent Government requested leave to submit his Government's memorial before 24 July 2000. On 3 May 2000 the President, having consulted the Grand Chamber, agreed to extend the time-limit for the submission by the respondent Government of their memorial to 5 June 2000, it being pointed out that if the respondent Government failed to submit their memorial before the expiry of the new time-limit, they would be considered to have waived their right to submit a memorial.

Following the failure of the respondent Government to comply with the new time-limit, the President, by letter dated 16 June 2000, informed the Agents of both Governments through the Registrar that the written pleadings were now closed. A copy of the applicant Government's memorial was sent to the Agent of the respondent Government for information purposes only. The President further informed the Agents in the same letter that, with a view to the hearing, a preparatory meeting with the Agents of both parties would be held on 7 September 2000.

11. On 7 September 2000 the President met with the Agent and other representatives of the applicant Government in order to finalise arrangements for the hearing. The respondent Government, although invited, did not attend the meeting.

12. The hearing took place in public in the Human Rights Building, Strasbourg, on 20 September 2000 (Rule 59 § 2). The respondent Government did not notify the Court of the names of their representatives in advance of the hearing and were not present at the hearing. In the absence of sufficient cause for the failure of the respondent Government to appear, the Grand Chamber decided to proceed with the hearing, being satisfied that such a course was consistent with the proper administration of justice (Rule 64).

The President informed the Chairman of the Committee of Ministers of this decision in a letter dated 21 September 2000.

There appeared before the Court:

(a) *for the applicant Government*

Mr A. MARKIDES, Attorney-General of the Republic of Cyprus, *Agent*,
Mr I. BROWNLIE QC,
Mr D. PANNICK QC,
Ms C. PALLEY, Barrister-at-Law,
Mr M. SHAW, Barrister-at-Law,
Mrs S.M. JOANNIDES, Senior Counsel of the Republic of Cyprus,
Mr P. POLYVIOU, Barrister-at-Law,
Mr P. SAINI, Barrister-at-Law, *Counsel*,
Mr N. EMILIOU, Consultant, *Adviser*;

(b) *for the respondent Government*

The respondent Government did not appear.

The Court heard addresses by Mr Markides, Mr Brownlie, Mr Shaw, Mr Pannick and Mr Polyviou.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

A. General context

13. The complaints raised in this application arise out of the Turkish military operations in northern Cyprus in July and August 1974 and the continuing division of the territory of Cyprus. At the time of the Court's consideration of the merits of the Loizidou v. Turkey case in 1996, the Turkish military presence at the material time was described in the following terms (Loizidou v. Turkey judgment of 18 December 1996 (*merits*), *Reports of Judgments and Decisions* 1996-VI, p. 2223, §§ 16-17):

> "16. Turkish armed forces of more than 30,000 personnel are stationed throughout the whole of the occupied area of northern Cyprus, which is constantly patrolled and has checkpoints on all main lines of communication. The army's headquarters are in Kyrenia. The 28th Infantry Division is based in Asha (Assia) with its sector covering Famagusta to the Mia Milia suburb of Nicosia and with about 14,500 personnel. The 39th Infantry Division, with about 15,500 personnel, is based at Myrtou village, and its sector ranges from Yerolakkos village to Lefka. TOURDYK (Turkish Forces in Cyprus under the Treaty of Guarantee) is stationed at Orta Keuy village near Nicosia, with a sector running from Nicosia International Airport to the Pedhieos River. A Turkish naval command and outpost are based at Famagusta and Kyrenia respectively. Turkish airforce personnel are based at Lefkoniko, Krini and other airfields. The Turkish airforce is stationed on the Turkish mainland at Adana.
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> 17. The Turkish forces and all civilians entering military areas are subject to Turkish military courts, as stipulated so far as concerns 'TRNC citizens' by the Prohibited Military Areas Decree of 1979 (section 9) and Article 156 of the Constitution of the 'TRNC'."

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

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

of the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus.

15. According to the respondent Government, the "TRNC" is a democratic and constitutional State which is politically independent of all other sovereign States including Turkey, and the administration in northern Cyprus has been set up by the Turkish-Cypriot people in the exercise of its right to self-determination and not by Turkey. Notwithstanding this view, it is only the Cypriot government which is recognised internationally as the government of the Republic of Cyprus in the context of diplomatic and treaty relations and the working of international organisations.

16. United Nations peacekeeping forces ("UNFICYP") maintain a buffer-zone. A number of political initiatives have been taken at the level of the United Nations aimed at settling the Cyprus problem on the basis of institutional arrangements acceptable to both sides. To this end, inter-communal talks have been sponsored by the Secretary-General of the United Nations acting under the direction of the Security Council. In this connection, the respondent Government maintain that the Turkish-Cypriot authorities in northern Cyprus have pursued the talks on the basis of what they consider to be already agreed principles of bi-zonality and bi-communality within the framework of a federal constitution. Support for this basis of negotiation is found in the UN Secretary-General's Set of Ideas of 15 July 1992 and the UN Security Council resolutions of 26 August 1992 and 25 November 1992 confirming that a federal solution sought by both sides will be "bi-communal" and "bi-zonal".

Furthermore, and of relevance to the instant application, in 1981 the United Nations Committee on Missing Persons ("CMP") was set up to "look into cases of persons reported missing in the inter-communal fighting as well as in the events of July 1974 and afterwards" and "to draw up comprehensive lists of missing persons of both communities, specifying as appropriate whether they are still alive or dead, and in the latter case approximate times of death". The CMP has not yet completed its investigations.

B. The previous inter-State applications

17. The events of July and August 1974 and their aftermath gave rise to three previous applications by the applicant Government against the respondent State under former Article 24 of the Convention. The first (no. 6780/74) and second (no. 6950/75) applications were joined by the Commission and led to the adoption on 10 July 1976 of a report under former Article 31 of the Convention ("the 1976 report") in which the Commission expressed the opinion that the respondent State had violated Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1. On 20 January 1979 the Committee of Ministers of the Council of

Europe in turn adopted, with reference to an earlier decision of 21 October 1977, Resolution DH (79) 1 in which it expressed, *inter alia,* the conviction that "the enduring protection of human rights in Cyprus can only be brought about through the re-establishment of peace and confidence between the two communities; and that inter-communal talks constitute the appropriate framework for reaching a solution of the dispute". In its resolution the Committee of Ministers strongly urged the parties to resume the talks under the auspices of the Secretary-General of the United Nations in order to agree upon solutions on all aspects of the dispute (see paragraph 16 above). The Committee of Ministers viewed this decision as completing its consideration of the case.

The third application (no. 8007/77) lodged by the applicant Government was the subject of a further report under former Article 31 adopted by the Commission on 4 October 1983 ("the 1983 report"). In that report the Commission expressed the opinion that the respondent State was in breach of its obligations under Articles 5 and 8 of the Convention and Article 1 of Protocol No. 1. On 2 April 1992 the Committee of Ministers adopted Resolution DH (92) 12 in respect of the Commission's 1983 report. In its resolution the Committee of Ministers limited itself to a decision to make the 1983 report public and stated that its consideration of the case was thereby completed.

C. The instant application

18. The instant application is the first to have been referred to the Court. The applicant Government requested the Court in their memorial to "decide and declare that the respondent State is responsible for continuing violations and other violations of Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 17 and 18 of the Convention and of Articles 1 and 2 of Protocol No. 1".

These allegations were invoked with reference to four broad categories of complaints: alleged violations of the rights of Greek-Cypriot missing persons and their relatives; alleged violations of the home and property rights of displaced persons; alleged violations of the rights of enclaved Greek Cypriots in northern Cyprus; alleged violations of the rights of Turkish Cypriots and the Gypsy community in northern Cyprus.

D. The Commission's findings of fact in the instant application

19. The Court considers it appropriate at this stage to summarise the Commission's findings of fact in respect of the various violations of the Convention alleged by the applicant Government as well as the essential arguments advanced by both parties and the documentary and other evidence relied on by the Commission.

1. Alleged violations of the rights of Greek-Cypriot missing persons and their relatives

20. The applicant Government essentially claimed in their application that about 1,491 Greek Cypriots were still missing twenty years after the cessation of hostilities. These persons were last seen alive in Turkish custody and their fate has never been accounted for by the respondent State.

21. The respondent Government maintained in reply that there was no proof that any of the missing persons were still alive or were being kept in custody. In their principal submission, the issues raised by the applicant Government should continue to be pursued within the framework of the United Nations Committee on Missing Persons (see paragraph 16 above) rather than under the Convention.

22. The Commission proceeded on the understanding that its task was not to establish what actually happened to the Greek-Cypriot persons who went missing following the Turkish military operations conducted in northern Cyprus in July and August 1974. Rather, it saw its task as one of determining whether or not the alleged failure of the respondent State to clarify the facts surrounding the disappearances constituted a continuing violation of the Convention.

23. To that end, the Commission had particular regard to its earlier findings in its 1976 and 1983 reports. It recalled that in its 1976 report it had stated that it was widely accepted that a considerable number of Cypriots were still missing as a result of armed conflict in Cyprus and that a number of persons declared to be missing were identified as Greek Cypriots taken prisoner by the Turkish army. This finding, in the Commission's opinion at the time, created a presumption of Turkish responsibility for the fate of persons shown to be in Turkish custody. While noting that killings of Greek-Cypriot civilians had occurred on a large scale, the Commission also considered at the time of its 1976 report that it was unable to ascertain whether, and under what circumstances, Greek-Cypriot prisoners declared to be missing had been deprived of their life.

24. In the present case, the Commission further recalled that in its 1983 report it found it established that there were sufficient indications in an indefinite number of cases that missing Greek Cypriots had been in Turkish custody in 1974 and that this finding once again created a presumption of Turkish responsibility for the fate of these persons.

25. The Commission found that the evidence submitted to it in the instant case confirmed its earlier findings that certain of the missing persons were last seen in Turkish or Turkish-Cypriot custody. In this connection, the Commission had regard to the following: a statement of Mr Denktaş, "President of the TRNC", broadcast on 1 March 1996, in which he admitted that forty-two Greek-Cypriot prisoners were handed over to Turkish-Cypriot fighters who killed them and that in order to prevent further such killings prisoners were subsequently transferred to Turkey; the broadcast

statement of Professor Yalçin Küçük, a former Turkish officer who had served in the Turkish army at the time and participated in the 1974 military operation in Cyprus, in which he suggested that the Turkish army had engaged in widespread killings of, *inter alia*, civilians in so-called cleaning-up operations; the Dillon Report submitted to the United States Congress in May 1998 indicating, *inter alia*, that Turkish and Turkish-Cypriot soldiers rounded up Greek-Cypriot civilians in the village of Asha on 18 August 1974 and took away males over the age of 15, most of whom were reportedly killed by Turkish-Cypriot fighters; the written statements of witnesses tending to corroborate the Commission's earlier findings that many persons now missing were taken into custody by Turkish soldiers or Turkish-Cypriot paramilitaries.

26. The Commission concluded that, notwithstanding evidence of the killing of Greek-Cypriot prisoners and civilians, there was no proof that any of the missing persons were killed in circumstances for which the respondent State could be held responsible; nor did the Commission find any evidence to the effect that any of the persons taken into custody were still being detained or kept in servitude by the respondent State. On the other hand, the Commission found it established that the facts surrounding the fate of the missing persons had not been clarified by the authorities and brought to the notice of the victims' relatives.

27. The Commission further concluded that its examination of the applicant Government's complaints in the instant application was not precluded by the ongoing work of the CMP. It noted in this connection that the scope of the investigation being conducted by the CMP was limited to determining whether or not any of the missing persons on its list were dead or alive; nor was the CMP empowered to make findings either on the cause of death or on the issue of responsibility for any deaths so established. Furthermore, the territorial jurisdiction of the CMP was limited to the island of Cyprus, thus excluding investigations in Turkey where some of the disappearances were claimed to have occurred. The Commission also observed that persons who might be responsible for violations of the Convention were promised impunity and that it was doubtful whether the CMP's investigation could extend to actions by the Turkish army or Turkish officials on Cypriot territory.

2. Alleged violations of the rights of the displaced persons to respect for their home and property

28. The Commission established the facts under this heading against the background of the applicant Government's principal submission that over 211,000 displaced Greek Cypriots and their children continued to be prevented as a matter of policy from returning to their homes in northern Cyprus and from having access to their property there for any purpose. The applicant Government submitted that the presence of the Turkish army

together with "TRNC"-imposed border restrictions ensured that the return of displaced persons was rendered physically impossible and, as a corollary, that their cross-border family visits were gravely impeded. What started as a gradual and continuing process of illegality over the years had now resulted in the transfer of the property left behind by the displaced persons to the "TRNC" authorities without payment of compensation and its re-assignment, together with "title deeds", to State bodies, Turkish Cypriots and settlers from Turkey.

29. The respondent Government maintained before the Commission that the question of the Varosha district of Famagusta along with the issues of freedom of movement, freedom of settlement and the right of property could only be resolved within the framework of the inter-communal talks (see paragraph 16 above) and on the basis of the principles agreed on by both sides for the conduct of the talks. Until an overall solution to the Cyprus question, acceptable to both sides, was found, and having regard to security considerations, there could be no question of a right of the displaced persons to return. The respondent Government further submitted that the regulation of property abandoned by displaced persons, as with restrictions on cross-border movement, fell within the exclusive jurisdiction of the "TRNC" authorities.

30. The Commission found that it was common knowledge that with the exception of a few hundred Maronites living in the Kormakiti area and Greek Cypriots living in the Karpas peninsula, the whole Greek-Cypriot population which before 1974 resided in the northern part of Cyprus had left that area, the large majority of these people now living in southern Cyprus. The reality of this situation was not contested by the respondent Government.

31. The Commission noted with reference to its earlier findings in its 1976 and 1983 reports that there was no essential change in the situation obtaining at the time of the introduction of the instant application. Accordingly, and this was not disputed either by the respondent Government, displaced Greek Cypriots had no possibility of returning to their homes in northern Cyprus and were physically prevented from crossing into the northern part on account of the fact that it was sealed off by the Turkish army. The arrangements introduced by the "TRNC" authorities in 1998 to allow Greek Cypriots and Maronites to cross into northern Cyprus for the purposes of family visits or, as regards Greek Cypriots, visits to the Apostolos Andreas Monastery, did not affect this conclusion.

32. Nor did the respondent Government dispute the fact that Greek-Cypriot owners of property in northern Cyprus continued to be prevented from having access to, controlling, using and enjoying their property. As to the fate of that property, the Commission found it established that up until 1989 there was an administrative practice of the Turkish-Cypriot authorities

to leave the official Land Register unaffected and to register separately the "abandoned" property and its allocation. The beneficiaries of allocations were issued with "possessory certificates" but not "deeds of title" to the properties concerned. However, as from June 1989 the practice changed and thereafter "title deeds" were issued and the relevant entries concerning the change of ownership were made in the Land Register. The Commission found it established that, at least since June 1989, the Turkish-Cypriot authorities no longer recognised any ownership rights of Greek Cypriots in respect of their properties in northern Cyprus. The Commission found confirmation for this finding in the provisions of "Article 159 § 1 (b) of the TRNC Constitution" of 7 May 1985 and "Law no. 52/1995" purporting to give effect to that provision.

33. Although the respondent Government pointed out in their submissions to the Commission that the issue of the right of displaced Greek Cypriots to return to their homes was a matter to be determined within the framework of the inter-communal talks sponsored by the Secretary-General of the United Nations (see paragraph 16 above), the Commission found that there had been no significant progress in recent years in the discussion of issues such as freedom of settlement, payment of compensation to Greek Cypriots for the interference with their property rights, or restitution of Greek-Cypriot property in the Varosha district.

3. Alleged violations arising out of the living conditions of Greek Cypriots in northern Cyprus

34. The applicant Government adduced evidence in support of their complaint that the dwindling number of Greek Cypriots living in the Karpas peninsula of northern Cyprus were subjected to continuing oppressive treatment which amounted to a complete denial of their rights and a negation of their human dignity. In addition to the harassment and intimidation which they suffered at the hands of Turkish settlers, and which has gone unpunished, the enclaved Greek Cypriots laboured under restrictions which violated many of the substantive rights contained in the Convention. The continuous daily interferences with their rights could not be redressed at the local level on account of the absence of effective remedies before the "TRNC" courts. Similar but less extensive restrictions applied to the Maronite population living in the Kormakiti area of northern Cyprus.

35. The respondent Government maintained before the Commission that effective judicial remedies were available to all Greek Cypriots living in northern Cyprus. However, they claimed that the applicant Government actively discouraged them from taking proceedings in the "TRNC". The respondent Government further submitted that the evidence before the Commission did not provide any basis of fact for the allegations made.

36. The Commission established the facts under this heading with reference to materials submitted by both Governments. These materials included, *inter alia*, written statements of persons affected by the restrictions alleged by the applicant Government; press reports dealing with the situation in northern Cyprus; case-law of the "TRNC" courts on the availability of remedies in the "TRNC"; "TRNC legislation" and decisions of the "TRNC Council of Ministers" on entry and exit arrangements at the Ledra Palace check-point. The Commission also had regard to United Nations documents concerning the living conditions of enclaved Greek Cypriots and especially to the UN Secretary-General's progress reports of 10 December 1995 and 9 March 1998 on the humanitarian review carried out by UNFICYP in 1994-95 concerning the living conditions of Karpas Greek Cypriots, the so-called "Karpas Brief".

37. Furthermore, the Commission's delegates heard the evidence of fourteen witnesses on the situation of Greek Cypriots and Maronites living in northern Cyprus. These witnesses comprised two persons who were closely associated with the preparation of the "Karpas Brief" as well as persons proposed by both Governments. The delegates also visited, on 23 and 24 February 1998, a number of localities in northern Cyprus, including Greek-Cypriot villages in the Karpas area, and heard statements from officials and other persons encountered during the visits.

38. The Commission considered the above-mentioned "Karpas Brief" an accurate description of the situation of the enclaved Greek-Cypriot and Maronite populations at about the time of the introduction of the instant application and that the proposals for remedial action recommended by UNFICYP following the humanitarian review reflected the real needs of these groups in the face of administrative practices which actually existed at the material time. Although the Commission noted that there had been a considerable improvement in the overall situation of the enclaved populations, as evidenced by the UN Secretary-General's progress reports on the "Karpas Brief" recommendations, there still remained a number of severe restrictions. These restrictions were not laid down in any "TRNC legislation" and were in the nature of administrative practices.

39. The Commission further found that there existed a functioning court system in the "TRNC" which was in principle accessible to Greek Cypriots living in northern Cyprus. It appeared that at least in cases of trespass to property or personal injury there had been some successful actions brought by Greek-Cypriot litigants before the civil and criminal courts. However, in view of the scarcity of cases brought by Greek Cypriots, the Commission was led to conclude that the effectiveness of the judicial system for resident Greek Cypriots had not really been tested.

40. In a further conclusion, the Commission found that there was no evidence of continuing wrongful allocation of properties of resident Greek Cypriots to other persons during the period under consideration. However,

the Commission did find it established that there was a continuing practice of the "TRNC" authorities to allocate to Turkish-Cypriots or immigrants the property of Greek Cypriots who had died or left northern Cyprus.

41. In the absence of legal proceedings before the "TRNC" courts, the Commission noted that it had not been tested whether or not Greek Cypriots or Maronites living in northern Cyprus were in fact considered as citizens enjoying the protection of the "TRNC Constitution". It did however find it established that, in so far as the groups at issue complained of administrative practices such as restrictions on their freedom of movement or on family visits which were based on decisions of the "TRNC Council of Ministers", any legal challenge to these restrictions would be futile given that such decisions were not open to review by the courts.

42. Although the Commission found no evidence of cases of actual detention of members of the enclaved population, it was satisfied that there was clear evidence that restrictions on movement and family visits continued to be applied to Greek Cypriots and Maronites notwithstanding recent improvements. It further observed that an exit visa was still necessary for transfers to medical facilities in the south, although no fees were levied in urgent cases. There was no evidence to confirm the allegation that the processing of applications for movement was delayed in certain cases with the result that the health or life of patients was endangered; nor was there any indication of a deliberate practice of delaying the processing of such applications.

43. The Commission found it established that there were restrictions on the freedom of movement of Greek-Cypriot and Maronite schoolchildren attending schools in the south. Until the entry into force of the decision of the "TRNC Council of Ministers" of 11 February 1998, they were not allowed to return permanently to the north after having attained the age of 16 in the case of males and 18 in the case of females. The age-limit of 16 years was still maintained for Greek-Cypriot male students. Up to the age-limit, certain restrictions applied to the visits of students to their parents in the north, which were gradually relaxed. However, even today such visits are subject to a visa requirement and a reduced "entry fee".

44. As to educational facilities, the Commission held that, although there was a system of primary-school education for the children of Greek Cypriots living in northern Cyprus, there were no secondary schools for them. The vast majority of schoolchildren went to the south for their secondary education and the restriction on the return of Greek-Cypriot and Maronite schoolchildren to the north after the completion of their studies had led to the separation of many families. Furthermore, school textbooks for use in the Greek-Cypriot primary school were subjected to a "vetting" procedure in the context of confidence-building measures suggested by UNFICYP. The procedure was cumbersome and a relatively high number of school-books were being objected to by the Turkish-Cypriot administration.

45. Aside from school-books, the Commission found no evidence of any restrictions being applied during the period under consideration to the importation, circulation or possession of other types of books; nor was there evidence of restrictions on the circulation of newspapers published in southern Cyprus. However, there was no regular distribution system for the Greek-Cypriot press in the Karpas area and no direct post and telecommunications links between the north and south of the island. It was further noted that the enclaved population was able to receive Greek-Cypriot radio and television.

46. The Commission did not find any conclusive evidence that letters destined for Greek Cypriots were opened by the "TRNC" police or that their telephones were tapped.

47. As to alleged restrictions on religious worship, the Commission found that the main problem for Greek Cypriots in this connection stemmed from the fact that there was only one priest for the whole Karpas area and that the Turkish-Cypriot authorities were not favourable to the appointment of additional priests from the south. The Commission delegates were unable to confirm during their visit to the Karpas area whether access to the Apostolos Andreas Monastery was free at any time for Karpas Greek Cypriots. It appeared to be the case that on high religious holidays (which occur three times a year) visits to the monastery are also allowed to Greek Cypriots from the south.

48. Concerning alleged restrictions on the freedom of association of the enclaved population, the Commission observed that the relevant "TRNC" law on associations only covered the creation of associations by Turkish Cypriots.

4. Alleged violations in respect of the rights of Turkish Cypriots and the Turkish-Cypriot Gypsy community in northern Cyprus

49. The applicant Government contended before the Commission that Turkish Cypriots living in northern Cyprus, especially political dissidents and the Gypsy community, were the victims of an administrative practice of violation of their Convention rights. They adduced evidence in support of their claim that these groups were victims of arbitrary arrest and detention, police misconduct, discrimination and ill-treatment and interferences in various forms with other Convention rights such as, *inter alia*, fair trial, private and family life, expression, association, property and education.

50. The respondent Government essentially maintained that the above allegations were unsubstantiated on the evidence and pointed to the availability of effective remedies in the "TRNC" to aggrieved persons.

51. The Commission's investigation into the applicant Government's allegations was based mainly on the oral evidence of thirteen witnesses who testified before the Commission's delegates on the situation of Turkish Cypriots and the Gypsy community living in northern Cyprus. The

witnesses were proposed by both parties. Their evidence was taken by the delegates in Strasbourg, Cyprus and London between November 1997 and April 1998.

52. The Commission found that there existed rivalry and social conflict between the original Turkish Cypriots and immigrants from Turkey who continued to arrive in considerable numbers. Some of the original Turkish Cypriots and their political groups and media resented the "TRNC" policy of full integration for the settlers.

53. Furthermore, while there was a significant incidence of emigration from the "TRNC" for economic reasons, it could not be excluded that there were also cases of Turkish Cypriots having fled the "TRNC" out of fear of political persecution. The Commission considered that there was no reason to doubt the correctness of witnesses' assertions that in a few cases complaints of harassment or discrimination by private groups of or against political opponents were not followed up by the "TRNC" police. However, it concluded that it was not established beyond reasonable doubt that there was in fact a consistent administrative practice of the "TRNC" authorities, including the courts, of refusing protection to political opponents of the ruling parties. In so far as it was alleged by the applicant Government that the authorities themselves were involved in the harassment of political opponents, the Commission did not have sufficient details concerning the incidents complained of (for example, the dispersing of demonstrations, short-term arrests) which would allow it to form an opinion as to the justification or otherwise of the impugned acts. The Commission noted that, in any event, it did not appear that the remedy of habeas corpus had been invoked by persons claiming to be victims of arbitrary arrest or detention.

54. Regarding the alleged discrimination against and arbitrary treatment of members of the Turkish-Cypriot Gypsy community, the Commission found that judicial remedies had apparently not been used in respect of particularly grave incidents such as the pulling down of shacks near Morphou and the refusal of airline companies to transport Gypsies to the United Kingdom without a visa.

55. In a further conclusion, the Commission observed that there was no evidence before it of Turkish-Cypriot civilians having been subjected to the jurisdiction of military courts during the period under consideration. Furthermore, and with respect to the evidence before it, the Commission considered that it had not been established that, during the period under consideration, there was an official prohibition on the circulation of Greek-language newspapers in northern Cyprus or that the creation of bi-communal associations was prevented. In respect of the alleged refusal of the "TRNC" authorities to allow Turkish Cypriots to return to their properties in southern Cyprus, the Commission observed that no concrete instances were referred to it of any persons who had wished to do so during the period under consideration.

THE LAW

I. PRELIMINARY ISSUES

56. The Court observes that, in the proceedings before the Commission, the respondent Government raised several objections to the admissibility of the application. The Commission, at the admissibility stage of the proceedings, considered these objections under the following heads: (1) alleged lack of jurisdiction and responsibility of the respondent State in respect of the acts complained of; (2) alleged identity of the present application with the previous applications introduced by the applicant Government; (3) alleged abuse of process by the applicant Government; (4) alleged special agreement between the respective Governments to settle the dispute by means of other international procedures; (5) alleged failure of aggrieved persons concerned by the application to exhaust domestic remedies; and (6) alleged failure by the applicant Government to comply with the six-month rule.

57. The Court further observes that the Commission, in its admissibility decision of 28 June 1996, rejected the respondent Government's challenges under the third and fourth heads and decided to reserve to the merits stage the issues raised under the remaining heads.

58. The Court notes that on account of the respondent Government's failure to participate in the written and oral proceedings before it (see paragraphs 11 and 12 above), the objections which Turkey relied on before the Commission have not been re-submitted by her for consideration. Although it is open to the Court in these circumstances, in application of Rule 55 of the Rules of Court, to refuse to entertain the respondent Government's pleas of inadmissibility, it nevertheless considers it appropriate to examine them in the form of preliminary issues. It observes in this connection that the applicant Government have devoted a substantial part of their written and oral pleadings to these issues, including their relevance to the merits of their various allegations.

Issues reserved by the Commission to the merits stage

1. As to the applicant Government's locus standi

59. In the proceedings before the Commission, the respondent Government claimed that the applicant Government were not the lawful government of the Republic of Cyprus. Referring to it as the "Greek-Cypriot administration", they maintained that the applicant Government lacked standing to bring the instant application.

60. The applicant Government refuted this assertion with reference, *inter alia*, to the Court's conclusions in its Loizidou v. Turkey judgment of 23 March 1995 (*preliminary objections*) (Series A no. 310) and to the reaction of the international community to the proclamation of the establishment of the "TRNC" in 1983, in particular the two resolutions adopted by the United Nations Security Council and the resolution of the Council of Europe's Committee of Ministers condemning this move in the strongest possible terms (see paragraph 14 above).

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

62. The Court concludes that the applicant Government have *locus standi* to bring an application under former Article 24 (current Article 33) of the Convention against the respondent State.

2. As to the applicant Government's legal interest in bringing the application

63. The respondent Government pleaded before the Commission that Resolutions DH (79) 1 and DH (92) 12 adopted by the Committee of Ministers on the previous inter-State applications (see paragraph 17 above) were *res judicata* of the complaints raised in the instant application which, they maintained, were essentially the same as those which were settled by the aforementioned decisions of the Committee of Ministers.

64. In their reply, the applicant Government stated that neither of the above-mentioned resolutions precluded the Court's examination of the complaints raised in the instant application. In the first place, the Committee of Ministers never took any formal decision on the findings contained in either of the Commission's reports under former Article 31. Secondly, the application currently before the Court was to be distinguished from the earlier applications in that it set out new violations of the Convention, invoked complaints which were not the subject of any definitive finding by the Commission in its earlier reports and was, moreover, premised on the notion of continuing violations of Convention rights.

65. The Commission agreed with the applicant Government's reasoning and rejected the respondent Government's challenge under this head.

66. The Court, like the Commission, accepts the force of the applicant Government's reasoning. It would add that this is the first occasion on which it has been seised of the complaints invoked by the applicant Government in the context of an inter-State application, it being observed that, as regards the previous applications, it was not open to the parties or to the Commission to refer them to the Court under former Article 45 of the Convention read in conjunction with former Article 48. It notes in this connection that Turkey only accepted the compulsory jurisdiction of the Court by its declaration of 22 January 1990 (see the Mitap and Müftüoğlu v. Turkey judgment of 25 March 1996, *Reports* 1996-II, p. 408, § 17).

67. Without prejudice to the question of whether and in what circumstances the Court has jurisdiction to examine a case which was the subject of a decision taken by the Committee of Ministers pursuant to former Article 32 of the Convention, it must be noted that, in respect of the previous inter-State applications, neither Resolution DH (79) 1 nor Resolution DH (92) 12 resulted in a "decision" within the meaning of Article 32 § 1. This is clear from the terms of these texts. Indeed, it is to be further observed that the respondent Government accepted in their pleadings on their preliminary objections in the Loizidou case that the Committee of Ministers did not endorse the Commission's findings in the previous inter-State cases (see the Loizidou judgment (*preliminary objections*) cited above, pp. 21-22, § 56).

68. The Court accordingly concludes that the applicant Government have a legitimate legal interest in having the merits of the instant application examined by the Court.

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

69. The respondent Government disputed Turkey's liability under the Convention for the allegations set out in the application. In their submissions to the Commission, the respondent Government claimed that the acts and omissions complained of were imputable exclusively to the "Turkish Republic of Northern Cyprus" (the "TRNC"), an independent State established by the Turkish-Cypriot community in the exercise of its right to self-determination and possessing exclusive control and authority over the territory north of the United Nations buffer-zone. The respondent Government averred in this connection that the Court, in its Loizidou judgments (*preliminary objections* and *merits*), had erroneously concluded that the "TRNC" was a subordinate local administration whose acts and omissions engaged the responsibility of Turkey under Article 1 of the Convention.

70. As in the proceedings before the Commission, the applicant Government contended before the Court that the "TRNC" was an illegal entity under international law since it owed its existence to the respondent

State's unlawful act of invasion of the northern part of Cyprus in 1974 and to its continuing unlawful occupation of that part of Cyprus ever since. The respondent State's attempt to reinforce the division of Cyprus through the proclamation of the establishment of the "TRNC" in 1983 was vigorously condemned by the international community, as evidenced by the adoption by the United Nations Security Council of Resolutions 541 (1983) and 550 (1984) and by the Council of Europe's Committee of Ministers of its resolution of 24 November 1983 (see paragraph 14 above).

71. The applicant Government stressed that even if Turkey had no legal title in international law to northern Cyprus, Turkey did have legal responsibility for that area in Convention terms, given that she exercised overall military and economic control over the area. This overall and, in addition, exclusive control of the occupied area was confirmed by irrefutable evidence of Turkey's power to dictate the course of events in the occupied area. In the applicant Government's submission, a Contracting State to the Convention could not, by way of delegation of powers to a subordinate and unlawful administration, avoid its responsibility for breaches of the Convention, indeed of international law in general. To hold otherwise would, in the present context of northern Cyprus, give rise to a grave lacuna in the system of human-rights protection and, indeed, render the Convention system there inoperative.

72. The applicant Government requested the Court to find, like the Commission, that the Loizidou judgments (*preliminary objections* and *merits*) defeated the respondent Government's arguments since they confirmed that, as long as the Republic of Cyprus was unlawfully prevented from exercising its rightful jurisdiction in northern Cyprus, Turkey had "jurisdiction" within the meaning of Article 1 of the Convention and was, accordingly, accountable for violations of the Convention committed in that area.

73. In a further submission, the applicant Government requested the Court to rule that the respondent State was not only accountable under the Convention for the acts and omissions of public authorities operating in the "TRNC", but also those of private individuals. By way of anticipation of their more detailed submissions on the merits, the applicant Government claimed at this stage that Greek Cypriots living in northern Cyprus were racially harassed by Turkish settlers with the connivance and knowledge of the "TRNC" authorities for whose acts Turkey was responsible.

74. The Commission rejected the respondent Government's arguments. With particular reference to paragraph 56 (pp. 2235-36) of the Court's Loizidou judgment (*merits*), it concluded that Turkey's responsibility under the Convention had now to be considered to extend to all acts of the "TRNC" and that that responsibility covered the entire range of complaints set out in the instant application, irrespective of whether they related to acts or omissions of the Turkish or Turkish-Cypriot authorities.

75. The Court recalls that in the Loizidou case the respondent State denied that it had jurisdiction in northern Cyprus and to that end invoked arguments similar to those raised before the Commission in the instant case. The Court rejected those arguments in its Loizidou judgment (*merits*) with reference to the imputability principles developed in its preceding judgment on the respondent State's preliminary objections to the admissibility of the case.

76. More precisely, the Court considered in its Loizidou judgment (*merits*) (pp. 2234-36) and in connection with that particular applicant's plight:

> "52. As regards the question of imputability, the Court recalls in the first place that in its above-mentioned Loizidou judgment (*preliminary objections*) (pp. 23-24, § 62) it stressed that under its established case-law the concept of "jurisdiction" under Article 1 of the Convention is not restricted to the national territory of the Contracting States. Accordingly, the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory. Of particular significance to the present case the Court held, in conformity with the relevant principles of international law governing State responsibility, that the responsibility of a Contracting Party could also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration...
>
> ...
>
> 54. It is important for the Court's assessment of the imputability issue that the Turkish Government have acknowledged that the applicant's loss of control of her property stems from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the 'TRNC'... Furthermore, it has not been disputed that the applicant has on several occasions been prevented by Turkish troops from gaining access to her property...
>
> However, throughout the proceedings the Turkish Government have denied State responsibility for the matters complained of, maintaining that its armed forces are acting exclusively in conjunction with and on behalf of the allegedly independent and autonomous 'TRNC' authorities.
>
> ...
>
> 56. ...
>
> It is not necessary to determine whether, as the applicant and the Government of Cyprus have suggested, Turkey actually exercises detailed control over the policies and actions of the authorities of the 'TRNC'. It is obvious from the large number of troops engaged in active duties in northern Cyprus ... that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the 'TRNC'... Those affected by such policies or actions therefore come

within the 'jurisdiction' of Turkey for the purposes of Article 1 of the Convention. Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus."

77. It is of course true that the Court in the Loizidou case was addressing an individual's complaint concerning the continuing refusal of the authorities to allow her access to her property. However, it is to be observed that the Court's reasoning is framed in terms of a broad statement of principle as regards Turkey's general responsibility under the Convention for the policies and actions of the "TRNC" authorities. Having effective overall control over northern Cyprus, its responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's "jurisdiction" must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey.

78. In the above connection, the Court must have regard to the special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings and its mission, as set out in Article 19 of the Convention, "to ensure the observance of the engagements undertaken by the High Contracting Parties" (see the Loizidou judgment (*preliminary objections*) cited above, p. 31, § 93). Having regard to the applicant Government's continuing inability to exercise their Convention obligations in northern Cyprus, any other finding would result in a regrettable vacuum in the system of human-rights protection in the territory in question by removing from individuals there the benefit of the Convention's fundamental safeguards and their right to call a High Contracting Party to account for violation of their rights in proceedings before the Court.

79. The Court observes that the applicant Government raise the issue of imputability throughout their pleadings on the merits. Having regard to its conclusion on this issue, the Court does not consider it necessary to re-address the matter when examining the substance of the applicant Government's complaints under the Convention.

80. The Court concludes, accordingly, and subject to its subsequent considerations on the issue of private parties (see paragraph 81 below), that the matters complained of in the instant application fall within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State's responsibility under the Convention.

81. As to the applicant Government's further claim that this "jurisdiction" must also be taken to extend to the acts of private parties in northern Cyprus who violate the rights of Greek Cypriots or Turkish

Cypriots living there, the Court considers it appropriate to revert to this matter when examining the merits of the specific complaints raised by the applicant Government in this context. It confines itself to noting at this stage that the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention. Any different conclusion would be at variance with the obligation contained in Article 1 of the Convention.

4. As to the requirement to exhaust domestic remedies

82. The respondent Government maintained in the proceedings before the Commission that the "TRNC" had a fully developed system of independent courts which were accessible to every individual. Furthermore, Greek Cypriots and Maronites living in northern Cyprus were regarded as "TRNC" citizens and enjoyed the same rights and remedies as Turkish Cypriots living there. To illustrate their view of the effectiveness of local remedies, the respondent Government drew the Commission's attention to cases in which Greek Cypriots living in the Karpas region of northern Cyprus successfully sued the Attorney-General of the "TRNC" under the Civil Wrongs Law in respect of property matters. The respondent Government claimed in this connection that the applicant Government actively discouraged Greek Cypriots and Maronites living in northern Cyprus from recognising "TRNC" institutions, with the result that they did not seek redress for their grievances through the "TRNC" legal system.

83. The applicant Government, in the proceedings before the Court, maintained their opposition to the above arguments. They stressed that the description given by the respondent Government of the "TRNC"'s constitutional and legal order disregarded the context of total unlawfulness in which the "constitution and laws" were created. The applicant Government reiterated their view that the establishment of the "TRNC" in 1983 and its legal and constitutional apparatus stemmed directly from the aggression waged against the Republic of Cyprus by Turkey in 1974. This aggression continued to manifest itself in the continuing unlawful occupation of northern Cyprus. The applicant Government contended that, having regard to the continuing military occupation and to the fact that the "TRNC" was a subordinate local administration of the respondent State, it was unrealistic to expect that the local administrative or judicial authorities could issue effective decisions against persons exercising authority with the backing of the occupation army in order to remedy violations of human rights committed in furtherance of the general policies of the regime in the occupied area.

84. The applicant Government stated before the Court that their primary starting-point was that the relevant applicable law in northern Cyprus remained that of the Republic of Cyprus and that it was inappropriate to

consider other laws. However if, and only if, the Court were minded to consider such laws, this should not lead to approval of the Commission's findings and reasoning in relation to Articles 6, 13 and former Article 26 of the Convention. They submitted that, contrary to the Commission's view, it was not a necessary corollary of the "TRNC" being considered a subordinate local administration of the respondent State that the remedies available before the "TRNC" had to be regarded as "domestic remedies" of the respondent State for the purposes of former Article 26 of the Convention. The applicant Government pleaded in this connection that even the respondent State did not consider "TRNC" remedies to be remedies provided by Turkey as a Contracting Party. Moreover, given that the local administration was subordinated to and controlled by the respondent State not through the principle of legality and democratic rule but through military control and occupation, "TRNC" courts could not be considered to be "established by law" within the meaning of Article 6 of the Convention. The applicant Government claimed that it would be wrong in such circumstances to expect aggrieved individuals to have recourse to remedies for the purposes of the former Article 26 exhaustion requirement when these remedies did not fulfil the standards of either Article 6 or, it must follow, Article 13 of the Convention.

85. In the applicant Government's submission, the Commission, at paragraphs 123 and 124 of its report, misconstrued the scope of the Advisory Opinion of the International Court of Justice in the Namibia case (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), [1971] International Court of Justice Reports 16).

86. The Commission, for its part, recalled that, with the exception of the respondent State, the "TRNC"'s claim to independent statehood was rejected and condemned by the international community. However, it further observed that the fact that the "TRNC" regime *de facto* existed and exercised *de facto* authority under the overall control of Turkey was not without consequences for the question of whether the remedies which the respondent State claimed were available within the "TRNC system" required to be exhausted by aggrieved individuals as a precondition to the admissibility of their complaints under the Convention. The Commission noted in this respect, and with reference to the above-mentioned Advisory Opinion of the International Court of Justice in the Namibia case (see paragraph 85 above), that even if the legitimacy of a State was not recognised by the international community, "international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, ... the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory" (loc. cit. p. 56, § 125). On the understanding that the remedies relied on by the respondent State were intended to benefit the entire population of northern Cyprus, and to the extent that such

remedies could be considered effective, account must in principle be taken of them for the purposes of former Article 26 of the Convention.

87. In the Commission's conclusion, whether or not a particular remedy could be regarded as effective, and had therefore to be used, had to be determined in relation to the specific complaint at issue. The Commission observed in this regard that, to the extent that the applicant Government alleged that the complaints set out in the application resulted from administrative practices imputable to the respondent State, proof of the existence of such practices depended on the absence of effective remedies in relation to the acts alleged to constitute the said practices.

88. Having regard to these considerations, the Commission concluded that, for the purposes of former Article 26 of the Convention, remedies available in northern Cyprus were to be regarded as "domestic remedies" of the respondent State and that the question of their effectiveness had to be considered in the specific circumstances where it arose.

89. The Court notes that the Commission avoided making general statements on the validity of the acts of the "TRNC" authorities from the standpoint of international law and confined its considerations to the Convention-specific issue of the application of the exhaustion requirement contained in former Article 26 of the Convention in the context of the "constitutional" and "legal" system established within the "TRNC". The Court endorses this approach. It recalls in this connection that, although the Court in its Loizidou judgment (*merits*) refused to attribute legal validity to such provisions as "Article 159 of the TRNC Constitution", it did so with respect to the Convention (p. 2231, § 44). This conclusion was all the more compelling since the Article in question purported to vest in the "TRNC" authorities, irreversibly and without payment of any compensation, the applicant's rights to her land in northern Cyprus. Indeed, the Court in its judgment did not "consider it desirable, let alone necessary, in the present context to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the 'TRNC'" (ibid., p. 2231, § 45).

90. In the Court's opinion, and without in any way putting in doubt either the view adopted by the international community regarding the establishment of the "TRNC" (see paragraph 14 above) or the fact that the government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see paragraph 61 above), it cannot be excluded that former Article 26 of the Convention requires that remedies made available to individuals generally in northern Cyprus to enable them to secure redress for violations of their Convention rights have to be tested. The Court, like the Commission, would characterise the developments which have occurred in northern Cyprus since 1974 in terms of the exercise of *de facto* authority by the "TRNC". As it observed in its Loizidou judgment (*merits*) with reference to the Advisory Opinion of the International Court of Justice in the Namibia case, international law recognises the legitimacy of certain

legal arrangements and transactions in situations such as the one obtaining in the "TRNC", for instance as regards the registration of births, deaths, and marriages, "the effects of which can only be ignored to the detriment of the inhabitants of the [t]erritory" (loc. cit., p. 2231, § 45).

91. The Court disagrees with the applicant Government's criticism of the Commission's reliance on this part of the Advisory Opinion. In its view, and judged solely from the standpoint of the Convention, the Advisory Opinion confirms that where it can be shown that remedies exist to the advantage of individuals and offer them reasonable prospects of success in preventing violations of the Convention, use should be made of such remedies. In reaching this conclusion, the Court considers that this requirement, applied in the context of the "TRNC", is consistent with its earlier statement on the need to avoid in the territory of northern Cyprus the existence of a vacuum in the protection of the human rights guaranteed by the Convention (see paragraph 78 above).

92. It appears evident to the Court, despite the reservations the Greek-Cypriot community in northern Cyprus may harbour regarding the "TRNC" courts, that the absence of such institutions would work to the detriment of the members of that community. Moreover, recognising the effectiveness of those bodies for the limited purpose of protecting the rights of the territory's inhabitants does not, in the Court's view and following the Advisory Opinion of the International Court of Justice, legitimise the "TRNC" in any way.

93. The Court recalls that, in its Advisory Opinion on Namibia, the International Court of Justice stated the following (1971 ICJ Reports, p. 56, § 125):

> "In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory."

94. The Court observes that this passage was included in the Opinion as a result of various arguments made in the course of the proceedings preparatory to its adoption. Thus, the representative of the Netherlands pointed out to the International Court of Justice that the non-recognition of South Africa's illegal rule in Namibia "does not exclude taking into account the fact of exercise of powers in so far as that taking into account is necessary in order to do justice to the legitimate interest of the individual [who] is, in fact, subjected to that power" (Pleadings, vol. II, p. 130). The representative of the United States said that "[i]t would, for example, be a violation of the rights of individuals if a foreign State refused to recognise the right of Namibians to marry in accordance with the laws in force ... or

would consider their children to be illegitimate. A contract for the sale of goods also should not be declared invalid merely because it was entered into in accordance with ordinary commercial laws applied to Namibia by South Africa" (Pleadings, vol. II, p. 503). These statements, by logical necessity, must be taken to extend to decisions taken by courts and relating to such everyday relations. The above citations show that, despite having been invited to do so by the Secretary-General of the United Nations, the International Court resolutely rejected the approach refusing any effect to unlawful *de facto* regimes.

95. The Court notes that this rejection was echoed and amplified in the separate opinions of Judges Dillard, de Castro and Onyeama. Judge Dillard (1971 ICJ Reports, pp. 166-67) pointed out that the maxim "*ex injuria jus non oritur*" was not an absolute one and added that "[w]ere it otherwise the general interest in the security of transactions would be too greatly invaded and the cause of minimising needless hardship and friction would be hindered rather that helped". Judge de Castro (ibid., pp. 218-19) drew a distinction between acts of the *de facto* authorities in Namibia relating to acts or transactions "relating to public property, concessions, etc." and "acts and rights of private persons" which "should be regarded as valid (validity of entries in the civil registers and in the Land Registry, validity of marriages, validity of judgments of the civil courts, etc.)". Judge Onyeama said that, although there was an obligation for third States not to recognise the legality of South Africa's presence in Namibia, that duty did not necessarily extend "to refusing to recognise the validity of South Africa's acts on behalf of or concerning Namibia in view of the fact that the administration of South Africa over Namibia (illegal though it is) still constitutes the *de facto* government of the territory".

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

97. The Court notes that the view expressed by the International Court of Justice in the context described in the preceding paragraph is by no means an isolated one. It is confirmed both by authoritative writers on the subject of *de facto* entities in international law and by existing practice,

particularly judgments of domestic courts on the status of decisions taken by the authorities of *de facto* entities. This is true, in particular, for private-law relationships and acts of organs of *de facto* authorities relating to such relationships. Some State organs have gone further and factually recognised even acts related to public-law situations, for example by granting sovereign immunity to *de facto* entities or by refusing to challenge takings of property by the organs of such entities.

98. For the Court, the conclusion to be drawn is that it cannot simply disregard the judicial organs set up by the "TRNC" in so far as the relationships at issue in the present case are concerned. It is in the very interest of the inhabitants of the "TRNC", including Greek Cypriots, to be able to seek the protection of such organs; and if the "TRNC" authorities had not established them, this could rightly be considered to run counter to the Convention. Accordingly, the inhabitants of the territory may be required to exhaust these remedies, unless their inexistence or ineffectiveness can be proved – a point to be examined on a case-by-case basis.

99. The Court, like the Commission, will thus examine in respect of each of the violations alleged by the applicant Government whether the persons concerned could have availed themselves of effective remedies to secure redress. It will have regard in particular to whether the existence of any remedies is sufficiently certain not only in theory but in practice and whether there are any special circumstances which absolve the persons concerned by the instant application from the obligation to exhaust the remedies which, as alleged by the respondent Government before the Commission, were at their disposal. The Court recalls in this latter respect that the exhaustion rule is inapplicable where an administrative practice, namely a repetition of acts incompatible with the Convention and official tolerance by the State authorities, has been shown to exist and is of such a nature as to make proceedings futile or ineffective (see, *mutatis mutandis*, the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 66-67).

100. In view of the above considerations, the Court does not consider it necessary at this stage to examine the applicant Government's broader criticism of the court and administrative system in the "TRNC" under Articles 6 and 13 of the Convention.

101. The Court does wish to add, however, that the applicant Government's reliance on the illegality of the "TRNC" courts seems to contradict the assertion made by that same Government that Turkey is responsible for the violations alleged in northern Cyprus – an assertion which has been accepted by the Court (see paragraphs 75-81 above). It appears indeed difficult to admit that a State is made responsible for the acts occurring in a territory unlawfully occupied and administered by it and to deny that State the opportunity to try to avoid such responsibility by

correcting the wrongs imputable to it in its courts. To allow that opportunity to the respondent State in the framework of the present application in no way amounts to an indirect legitimisation of a regime which is unlawful under international law. The same type of contradiction arises between the alleged unlawfulness of the institutions set up by the "TRNC" and the applicant Government's argument, to be examined at a later stage (see, for example paragraphs 318-21 below), that there has been a breach of Article 13 of the Convention: it cannot be asserted, on the one hand, that there has been a violation of that Article because a State has not provided a remedy while asserting, on the other hand, that any such remedy, if provided, would be null and void.

102. The Court concludes accordingly that, for the purposes of former Article 26 (current Article 35 § 1) of the Convention, remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises.

5. As to the requirement of the six-month rule

103. The Court observes that although the Commission reserved this issue to the merits stage, neither Government submitted any arguments thereon; nor have the applicant Government reverted to the matter in their written or oral pleadings before the Court.

104. The Court, in line with the Commission's approach, confirms that in so far as the applicant Government have alleged continuing violations resulting from administrative practices, it will disregard situations which ended six months before the date on which the application was introduced, namely 22 November 1994. Therefore, and like the Commission, the Court considers that practices which are shown to have ended before 22 May 1994 fall outside the scope of its examination.

II. THE ESTABLISHMENT OF THE FACTS AND ASSESSMENT OF THE EVIDENCE

105. The Court notes that the Commission had regard to written as well as, in respect of certain categories of complaints, oral evidence in order to clarify and establish the facts underlying the allegations advanced by the applicant Government. As appropriate, the Commission further relied on the findings contained in its 1976 and 1983 reports (see paragraph 17 above) as well as documentary materials obtained of its own motion and, as a principal source, materials submitted by the parties. As to the written evidence of the parties, it observes that the Commission admitted to the case file all written submissions made by both Governments at the admissibility and merits stages up until 14 September 1998. The Commission's strict adherence to this deadline resulted in its decision of 5 March 1999 to reject

the respondent Government's request to have admitted to the file an *aide-mémoire* on "measures relating to the living conditions of Greek Cypriots and Maronites in the Turkish Republic of Northern Cyprus". The Court notes that this was the only document excluded by the Commission, all other materials having been admitted in accordance with respect for the requirements of procedural equality between the parties.

106. The Court observes that where it was impossible to guarantee full respect for the principle of equality of arms in the proceedings before the Commission, for example on account of the limited time available to a party to reply fully to the other's submissions, the Commission took this factor into account in its assessment of the evidential value of the material at issue. Although the Court must scrutinise any objections raised by the applicant Government to the Commission's findings of fact and its assessment of the evidence, it notes that, as regards documentary materials, both parties were given a full opportunity to comment on all such materials in their pleadings before the Court, including the above-mentioned *aide-mémoire*, which was admitted to the file by virtue of a procedural decision taken by the Court on 24 November 1999.

107. As regards oral evidence, the Court notes that the Commission appointed three delegates to hear evidence on the Convention issues relating to the general living conditions of the so-called "enclaved" Greek Cypriots and the situation of Turkish Cypriots living in northern Cyprus, in particular political dissidents and members of the Turkish-Cypriot Gypsy minority. Witnesses were heard in Strasbourg on 27 and 28 November 1997, in Nicosia (mostly) on 22 and 23 February 1998, and in London on 22 April 1998. The investigation also involved visits to certain localities (the Ledra Palace crossing-point over the demarcation line, the court building in northern Nicosia and Greek-Cypriot villages in the Karpas area). Oral statements were taken by the delegates from a number of officials and other persons encountered during the visit to northern Cyprus including the Karpas peninsula. At the first hearing, ten witnesses proposed by the applicant Government gave evidence, three of whom remained unidentified. At the second hearing, the Commission delegates heard the evidence of twelve witnesses, seven of whom were proposed by the respondent Government and five by the applicant Government (including four unidentified witnesses). At the third hearing in London, the delegates heard five witnesses proposed by the applicant Government, four of whom remained unidentified.

108. The Court observes that the Commission delegates took all necessary steps to ensure that the taking of evidence from unidentified witnesses complied with the fairness requirements of Article 6 of the Convention.

109. It further observes that, in so far as the respondent Government were critical of the arrangements drawn up by the delegates to hear the

evidence of the unidentified witnesses proposed by the applicant Government, those arrangements were consistent with the screening procedure requested by the respondent State itself to ensure the security of unnamed witnesses in an earlier and unrelated case (Sargın and Yağci v. Turkey, applications nos. 14116-14117/88). In the Court's opinion, the handicaps alleged by the respondent Government in the proceedings before the Commission were sufficiently counterbalanced by the procedures followed by the Commission. It also observes that the Commission, in its assessment of the evidence given by unidentified witnesses, adopted a cautious approach by ascertaining its evidential value with reference to the particular nature of each of the witnesses' testimony, and its findings were not based either solely or to a decisive extent on anonymous witness statements (see the Van Mechelen and Others v. the Netherlands judgment of 23 April 1997, *Reports* 1997-III, p. 712, §§ 54-55).

110. The applicant Government, in the proceedings before the Court, have not contested the modalities used for hearing the evidence of unidentified witnesses. They have, on the other hand, disputed the limits placed by the delegates on the number of witnesses who could be heard by them. This is particularly true of the Commission's inquiry into their allegations concerning the situation of Turkish Cypriots and members of the Gypsy community in northern Cyprus (see paragraph 338 below). Although the Court must revert to this matter when conducting its own assessment of whether the facts found by the Commission bear out the applicant Government's allegations, it considers it appropriate at this juncture to examine the substance of their criticism. It notes in this regard that the applicant Government were in fact requested by the Commission to select a limited number of witnesses to testify to the claim that the Convention rights of Turkish Cypriots and members of the Gypsy community in northern Cyprus were being violated by the respondent State. The Court does not consider that the Commission's approach can be criticised from the standpoint of procedural fairness. In the first place, the delegates heard the testimony of five witnesses proposed by the applicant Government and there is no reason to doubt that they were specifically selected in accordance with the applicant Government's perception of the importance of their testimony. Secondly, the effective discharge of the Commission's fact-finding role necessarily obliged it to regulate the procedure for the taking of oral evidence, having regard to constraints of time and to its own assessment of the relevance of additional witness testimony.

111. For these reasons, the Court rejects the applicant Government's criticism in this respect.

112. The Court also observes that in its assessment of the evidence in relation to the various complaints declared admissible, the Commission applied the standard of proof "beyond reasonable doubt" as enunciated by the Court in its Ireland v. the United Kingdom judgment of 18 January 1978

(Series A no. 25), it being noted that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (ibid., pp. 64-65, § 161).

113. The Court, for its part, endorses the application of this standard, all the more so since it was first articulated in the context of a previous inter-State case and has, since the date of the adoption of the judgment in that case, become part of the Court's established case-law (for a recent example, see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

Moreover, as regards the establishment of the existence of administrative practices, the Court does not rely on the concept that the burden of proof is borne by one or the other of the two Governments concerned. Rather, it must examine all the material before it, irrespective of its origin (see the above-mentioned Ireland v. the United Kingdom judgment, p. 64 § 160).

114. The Court notes, however, that the applicant Government have disputed the appropriateness of applying the above-mentioned standard of proof with respect to their allegations that the violations of the Convention of which they complain result from administrative practices on the part of the respondent State. In their submission, the Commission erred in not having regard to the existence of "substantial evidence" of administrative practices and its reliance on the "beyond reasonable doubt" standard prevented it from reaching the correct conclusion on the facts as regards a number of complaints. For the applicant Government, the standard of proof applied by the Commission is at variance with the approach followed by the Court in its Ireland v. the United Kingdom judgment, an approach which, they maintain, had already been anticipated in the Commission's decision in the "Greek case" (Yearbook 12).

115. The Court recalls however that in its Ireland v. the United Kingdom judgment, it rejected the Irish Government's submission that the "beyond reasonable doubt" standard of proof was an excessively rigid standard for establishing the existence of an administrative practice of violation of Article 3 of the Convention (loc. cit., pp. 64-65, § 161). The "beyond reasonable doubt" standard was applied in that case in order to determine whether the evidence bore out the allegation of a practice of violation. The Court will accordingly assess the facts as found by the Commission with reference to this standard. Furthermore, the Court will apply the definition of an administrative practice incompatible with the Convention set out in its Ireland v. the United Kingdom judgment, namely an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system (ibid., p. 64, § 159).

116. The Court further recalls that, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. In the context of the instant case, it is incumbent on the respondent Government

claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the aggrieved individuals' complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant Government to establish that the remedy advanced by the respondent Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving the persons concerned from the requirement of exhausting that remedy. One such reason may be constituted by the national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what the authorities have done in response to the scale and seriousness of the matters complained of (see, *mutatis mutandis*, the above-mentioned Akdivar and Others judgment, p. 1211, § 68).

117. Having regard to the above considerations, the Court recalls its settled case-law to the effect that under the Convention system prior to the entry into force of Protocol No. 11 to the Convention on 1 November 1998, the establishment and verification of the facts was primarily a matter for the Commission (former Articles 28 § 1 and 31). While the Court is not bound by the Commission's findings of fact and remains free to make its own assessment in the light of all the material before it, it is however only in exceptional circumstances that it will exercise its powers in this area (see, among many authorities, the above-mentioned Akdivar and Others judgment, p. 1214, § 78; and, more recently, *Salman* cited above, § 89).

118. The Court has already noted that the applicant Government have impugned the findings of the Commission as regards certain of their allegations, considering them to be against the weight of the evidence adduced. The Court proposes to address the applicant Government's challenges when considering the merits of their allegations.

III. ALLEGED VIOLATIONS OF THE RIGHTS OF GREEK-CYPRIOT MISSING PERSONS AND THEIR RELATIVES

A. Greek-Cypriot missing persons

1. As to the facts established by the Commission

119. At the hearing before the Court the applicant Government stated that the number of missing persons was currently 1,485 and that the evidence clearly pointed to the fact that the missing persons were either detained by, or were in the custody of or under the actual authority and responsibility of, the Turkish army or its militia and were last seen in areas which were under the effective control of the respondent State. They maintained, in addition, that the Court should proceed on the assumption that the missing persons were still alive, unless there was evidence to the contrary.

120. The Court notes at the outset that the applicant Government have not contested the facts as found by the Commission (see paragraphs 25-27 above). For its part, it does not see any exceptional circumstances which would lead it to depart from the Commission's findings of fact, bearing in mind the latter's careful analysis of all material evidence including the findings reached by it in its 1976 and 1983 reports. Like the Commission, the Court does not consider it appropriate to estimate the number of persons who fall into the category of "missing persons". It limits itself to observing that figures are communicated by the applicant Government to the United Nations Committee on Missing Persons ("CMP") and revised in accordance with the most recent information which becomes available.

121. Furthermore, the Court shares the Commission's concern to limit its inquiry to ascertaining the extent, if any, to which the authorities of the respondent State have clarified the fate or whereabouts of the missing persons. It is not its task to make findings on the evidence on whether any of these persons are alive or dead or have been killed in circumstances which engage the liability of the respondent State. Indeed, the applicant Government have requested the Court to proceed on the assumption that the persons at issue are still alive. The Court will revert to this point in the context of the applicant Government's allegations under Article 2 of the Convention.

122. On the above understanding the Court will examine the merits of the applicant Government's allegations.

2. As to the merits of the applicant Government's complaints

(a) Article 2 of the Convention

123. The applicant Government requested the Court to find that the facts disclosed a continuing violation of Article 2 from the standpoint of both the procedural and substantive obligations contained in that provision. Article 2 provides as relevant:

"1. Everyone's right to life shall be protected by law…"

124. In the applicant Government's submission, the procedural violation alleged was committed as a matter of administrative practice, having regard to the continuing failure of the authorities of the respondent State to conduct any investigation whatsoever into the fate of the missing persons. In particular, there was no evidence that the authorities of the respondent State had carried out searches for the dead or wounded, let alone concerned themselves with the burial of the dead. Furthermore, the respondent State, by virtue of the presence of its armed forces, directly continued to prevent investigations in the occupied area to trace those persons who were still missing and continued to refuse to account for their fate.

125. The applicant Government further stressed that the procedural obligation to protect the right to life devolving on the respondent State in application of Article 2 could not be discharged with reference to the ongoing work of the CMP (see paragraph 16 above), having regard to the limited scope of that body's mandate and to the characteristics of an "effective investigation" as defined in the Court's case-law in the context of the Convention provision at issue.

126. From the standpoint of the substantive obligation contained in Article 2, the applicant Government requested the Court to find and declare, in line with the Commission's conclusion, that the respondent State had failed to take the necessary operational measures to protect the right to life of the missing persons all of whom had disappeared in life-threatening circumstances known to, and indeed, created by, the respondent State.

127. The Commission observed that the missing persons had disappeared in circumstances which were life-threatening, having regard, *inter alia*, to the fact that their disappearance had occurred at a time when there was clear evidence of large-scale killings including as a result of acts of criminal behaviour outside the fighting zones. For the Commission, and with reference to the Court's case-law, the authorities of the respondent State had a positive obligation under Article 2 to conduct effective investigations into the circumstances surrounding the disappearances. Moreover, this obligation had to be seen as a continuing one in view of the consideration that the missing persons might have lost their lives as a result of crimes not subject to limitation.

128. The Commission found accordingly that Article 2 had been violated by virtue of a lack of effective investigation by the authorities of the respondent State and that that failing could not be compensated for by the respondent State's contribution to work undertaken by the CMP.

129. The Court observes that the applicant Government contend first and foremost that the missing persons must be presumed to be still alive unless there is clear evidence to the contrary (see paragraph 119 above). Although the evidence adduced before the Commission confirms a very high incidence of military and civilian deaths during the military operations of July and August 1974, the Court reiterates that it cannot speculate as to whether any of the missing persons have in fact been killed by either the Turkish forces or Turkish-Cypriot paramilitaries into whose hands they may have fallen. It is true that the head of the "TRNC", Mr Denktaş, broadcast a statement on 1 March 1996 admitting that the Turkish army had handed over Greek-Cypriot prisoners to Turkish-Cypriot fighters under Turkish command and that these prisoners had then been killed (see paragraph 25 above). It is equally the case that, in February 1998, Professor Yalçin Küçük, who was a serving Turkish officer in 1974, asserted that the Turkish army had engaged in widespread killings of civilians (see paragraph 25 above). Although all of these statements have given rise to undoubted concern, especially in the minds of the relatives of the missing persons, the Court considers that they are insufficient to establish the respondent State's liability for the deaths of any of the missing persons. It is mere speculation that any of these persons were killed in the circumstances described in these accounts.

130. The Court notes that the evidence given of killings carried out directly by Turkish soldiers or with their connivance relates to a period which is outside the scope of the present application. Indeed, it is to be noted that the Commission was unable to establish on the facts whether any of the missing persons were killed in circumstances for which the respondent State can be held responsible under the substantive limb of Article 2 of the Convention. The Court concludes, therefore, that it cannot accept the applicant Government's allegations that the facts disclose a substantive violation of Article 2 of the Convention in respect of any of the missing persons.

131. For the Court, the applicant Government's allegations must, however, be examined in the context of a Contracting State's procedural obligation under Article 2 to protect the right to life. It recalls in this connection that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by agents of the State (see,

mutatis mutandis, the McCann and Others v. the United Kingdom judgment of 27 September 1995, Series A no. 324, p. 49, § 161, and the Kaya v. Turkey judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105) or by non-State agents (see, *mutatis mutandis*, the Ergi v. Turkey judgment of 28 July 1998, *Reports* 1998-IV, p. 1778, § 82; the Yaşa v. Turkey judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 100; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 103, ECHR 1999-IV).

132. The Court recalls that there is no proof that any of the missing persons have been unlawfully killed. However, in its opinion, and of relevance to the instant case, the above-mentioned procedural obligation also arises upon proof of an arguable claim that an individual, who was last seen in the custody of agents of the State, subsequently disappeared in a context which may be considered life-threatening.

133. Against this background, the Court observes that the evidence bears out the applicant Government's claim that many persons now missing were detained either by Turkish or Turkish-Cypriot forces. Their detention occurred at a time when the conduct of military operations was accompanied by arrests and killings on a large scale. The Commission correctly described the situation as life-threatening. The above-mentioned broadcast statement of Mr Denktaş and the later report of Professor Küçük, if not conclusive of the respondent State's liability for the death of missing persons are, at the very least, clear indications of the climate of risk and fear obtaining at the material time and of the real dangers to which detainees were exposed.

134. That the missing persons disappeared against this background cannot be denied. The Court cannot but note that the authorities of the respondent State have never undertaken any investigation into the claims made by the relatives of the missing persons that the latter had disappeared after being detained in circumstances in which there was real cause to fear for their welfare. It must be noted in this connection that there was no official follow-up to Mr Denktaş's alarming statement. No attempt was made to identify the names of the persons who were reportedly released from Turkish custody into the hands of Turkish-Cypriot paramilitaries or to inquire into the whereabouts of the places where the bodies were disposed of. It does not appear either that any official inquiry was made into the claim that Greek-Cypriot prisoners were transferred to Turkey.

135. The Court agrees with the applicant Government that the respondent State's procedural obligation at issue cannot be discharged through its contribution to the investigatory work of the CMP. Like the Commission, the Court notes that, although the CMP's procedures are undoubtedly useful for the humanitarian purpose for which they were established, they are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 of the Convention, especially in

view of the narrow scope of that body's investigations (see paragraph 27 above).

136. Having regard to the above considerations, the Court concludes that there has been a continuing violation of Article 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.

(b) Article 4 of the Convention

137. The applicant Government requested the Court to find and declare that the circumstances of the case also disclosed a breach of Article 4 of the Convention, which states as relevant:

> "1. No one shall be held in slavery or servitude.
>
> …"

138. The applicant Government contended that, in the absence of any conclusive findings that the missing persons were now dead, it should be presumed that they were still being detained in conditions which, given the length of the period which had elapsed since the events of 1974, should be described as servitude. In the applicant Government's view, this proposition could only be contradicted if the Court were to find it proved that the missing persons were now dead, in which case it should be concluded that the respondent State was in breach of its obligations under Article 2.

139. The Commission found that there had been no breach of Article 4, being of the view that there was nothing in the evidence which could support the assumption that during the relevant period any of the missing persons were still in Turkish custody and were being held in conditions which violated Article 4.

140. The Court agrees with the Commission's finding. It notes in this respect that, like the Commission, it has refused to speculate on the fate or whereabouts of the missing persons. Furthermore, it has accepted the facts as established by the Commission.

141. It follows that no breach of Article 4 of the Convention has been established.

(c) Article 5 of the Convention

142. The applicant Government maintained that Article 5 of the Convention had been breached by the respondent Government as a matter of administrative practice. Article 5 provides as relevant:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ..."

143. According to the applicant Government, the fact that the authorities of the respondent State had failed to carry out a prompt and effective investigation into the well-documented circumstances surrounding the detention and subsequent disappearance of a large but indefinite number of Greek-Cypriot missing persons gave rise to a violation of the procedural obligations inherent in Article 5. The applicant Government reiterated their assertion that the respondent State was presumed responsible for the fate of the missing persons since the evidence clearly established that they were last seen in the control and custody of the Turkish military or their agents.

144. Furthermore, the detention of the missing persons could not be justified with reference to the requirements of Article 5 and was to be considered unlawful. The applicant Government averred in this connection that the respondent State had failed to keep any accurate or reliable records of the persons detained by its authorities and agents or to take any other effective measures which would have served to safeguard against the risk of disappearance.

145. The Commission concluded that the respondent State had failed in its obligation to carry out a prompt and effective investigation in respect of an arguable claim that Greek-Cypriot persons who were detained by Turkish forces or their agents in 1974 disappeared thereafter. For the Commission, a breach of the Article 5 obligation had to be construed as a continuing violation, given that the Commission had already found in its 1983 report on application no. 8007/77 that no information had been provided by the respondent Government on the fate of missing Greek Cypriots who had disappeared in Turkish custody. The Commission stressed that there could be no limitation in time as regards the duty to investigate and inform, especially as it could not be ruled out that the detained persons who had disappeared might have been the victims of the most serious crimes, including war crimes or crimes against humanity.

146. The Commission, on the other hand, found there had been no violation of Article 5 by virtue of actual detention of Greek-Cypriot missing persons. It noted in this regard that there was no evidence to support the assumption that during the period under consideration any missing Greek Cypriots were still detained by the Turkish or Turkish-Cypriot authorities.

147. The Court stresses at the outset that the unacknowledged detention of an individual is a complete negation of the guarantees of liberty and security of the person contained in Article 5 of the Convention and a most grave violation of that Article. Having assumed control over a given individual, it is incumbent on the authorities to account for his or her whereabouts. It is for this reason that Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been

seen since (see the Kurt v. Turkey judgment of 25 May 1998, *Reports* 1998-III, p. 1185, § 124).

148. The Court refers to the irrefutable evidence that Greek Cypriots were held by Turkish or Turkish-Cypriot forces. There is no indication of any records having been kept of either the identities of those detained or the dates or location of their detention. From a humanitarian point of view, this failing cannot be excused with reference either to the fighting which took place at the relevant time or to the overall confused and tense state of affairs. Seen in terms of Article 5 of the Convention, the absence of such information has made it impossible to allay the concerns of the relatives of the missing persons about the latter's fate. Notwithstanding the impossibility of naming those who were taken into custody, the respondent State should have made other inquiries with a view to accounting for the disappearances. As noted earlier, there has been no official reaction to new evidence that Greek-Cypriot missing persons were taken into Turkish custody (see paragraph 134 above).

149. The Court has addressed this allegation from the angle of the procedural requirements of Article 5 of the Convention and the obligations devolving on the respondent State as a Contracting Party to the Convention. Like the Commission, and without questioning the value of the humanitarian work being undertaken by the CMP, the Court reiterates that those obligations cannot be discharged with reference to the nature of the CMP's investigation (see paragraph 135 above).

150. The Court concludes that, during the period under consideration, there has been a continuing violation of Article 5 of the Convention by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the missing Greek-Cypriot persons in respect of whom there is an arguable claim that they were in custody at the time they disappeared.

151. The Court, on the other hand finds, like the Commission, that it has not been established that during the period under consideration any of the Greek-Cypriot missing persons were actually being detained by the Turkish-Cypriot authorities.

(d) Articles 3, 6, 8, 13, 14 and 17 of the Convention

152. The Court observes that, at the merits stage of the proceedings before the Commission, the applicant Government submitted that the facts of the case disclosed violations of the above-mentioned Articles. The Commission concluded that these complaints were outside the scope of its admissibility decision and on that account could not be examined.

153. The Court further observes that the applicant Government have not pursued these complaints either in their memorial or at the public hearing; nor have they sought to dispute the Commission's interpretation of the scope of its admissibility decision. In these circumstances the Court

considers that there is no reason to consider either its jurisdiction to examine these complaints or their merits.

The Court concludes therefore that it is not necessary to examine the applicant Government's complaints under Articles 3, 6, 8, 13, 14 and 17 of the Convention in respect of the Greek-Cypriot missing persons.

B. Greek-Cypriot missing persons' relatives

1. Article 3 of the Convention

154. The applicant Government, for the reasons given by the Commission, requested the Court to rule that the continuing suffering of the families of missing persons constituted not only a continuing but also an aggravated violation of Article 3 of the Convention, which states:

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

155. In the Commission's opinion, the circumstances relied on by the applicant Government disclosed a continuing violation of Article 3 regarding the relatives of the missing persons. For the Commission, in view of the circumstances in which their family members disappeared following a military intervention during which many persons were killed or taken prisoner and where the area was subsequently sealed off and became inaccessible to the relatives, the latter must undoubtedly have suffered most painful uncertainty and anxiety. Furthermore, their mental anguish did not vanish with the passing of time. The Commission found that the treatment to which the relatives of the missing persons were subjected could properly be characterised as inhuman within the meaning of Article 3.

156. The Court recalls that the question whether a family member of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the person concerned a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include the proximity of the family tie – in that context, a certain weight will attach to the parent-child bond –, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court further recalls that the essence of such a violation does not so much lie in the fact of the "disappearance" of the family member but rather in the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the

authorities' conduct (see *Çakici v. Turkey* [GC], no. 23657/94, § 98, ECHR 1999-IV).

157. The Court observes that the authorities of the respondent State have failed to undertake any investigation into the circumstances surrounding the disappearance of the missing persons. In the absence of any information about their fate, the relatives of persons who went missing during the events of July and August 1974 were condemned to live in a prolonged state of acute anxiety which cannot be said to have been erased with the passage of time. The Court does not consider, in the circumstances of this case, that the fact that certain relatives may not have actually witnessed the detention of family members or complained about such to the authorities of the respondent State deprives them of victim status under Article 3. It recalls that the military operation resulted in a considerable loss of life, large-scale arrests and detentions and enforced separation of families. The overall context must still be vivid in the minds of the relatives of persons whose fate has never been accounted for by the authorities. They endure the agony of not knowing whether family members were killed in the conflict or are still in detention or, if detained, have since died. The fact that a very substantial number of Greek Cypriots had to seek refuge in the south coupled with the continuing division of Cyprus must be considered to constitute very serious obstacles to their quest for information. The provision of such information is the responsibility of the authorities of the respondent State. This responsibility has not been discharged. For the Court, the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3.

158. For the above reasons, the Court concludes that, during the period under consideration, there has been a continuing violation of Article 3 of the Convention in respect of the relatives of the Greek-Cypriot missing persons.

2. Articles 8 and 10 of the Convention

159. The applicant Government further submitted in their memorial that the persistent failure of the authorities of the respondent State to account to the families of the missing persons constituted a grave disregard for their right to respect for family life and, in addition, a breach of their right to receive information. In the applicant Government's submission the responsibility of the respondent State was engaged in respect of Articles 8 and 10 of the Convention, both of which provisions should be considered to have been breached in the circumstances.

160. The Court observes that the Commission was of the view that the applicant Government's complaints under Articles 8 and 10 were in essence directed at the treatment to which the relatives of the missing persons were subjected in their attempts to ascertain the latter's fate. On that

understanding the Commission confined its examination to the issues which such treatment raised from the standpoint of Article 3.

161. The Court agrees with the Commission's approach. In view of its conclusion under Article 3, with its emphasis on the effect which the lack of information had on the families of missing persons, it finds it unnecessary to examine separately the complaints which the applicant Government have formulated in terms of Articles 8 and 10 of the Convention.

IV. ALLEGED VIOLATIONS OF THE RIGHTS OF DISPLACED PERSONS TO RESPECT FOR THEIR HOME AND PROPERTY

A. As to the facts established by the Commission

162. The applicant Government endorsed the facts as found by the Commission (see paragraphs 30-33 above). In respect of those findings they requested the Court to conclude that the facts disclosed violations of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 as well as of Article 14 of the Convention taken in conjunction with these provisions. They further submitted that the facts at issue gave rise to violations of Articles 3, 17 and 18 of the Convention.

163. The Court considers that there are no exceptional circumstances which would lead it to take a different view of the facts established by the Commission (see paragraphs 30-33 above). It notes in this regard that the Commission was able to draw on the findings contained in its 1976 and 1983 reports and took into account the impact of "legislative" and other texts in force in the "TRNC" on the enjoyment of the rights invoked by the applicant Government. It further notes that the respondent Government did not contest the accuracy of several allegations of fact made by the applicant Government in the proceedings before the Commission (see paragraph 29 above).

164. The Court will accordingly examine the merits of the applicant Government's complaints with reference to the facts established by the Commission.

B. As to the merits of the applicant Government's complaints

1. Article 8 of the Convention

165. The applicant Government maintained that it was an unchallengeable proposition that it was the respondent State's actions which had prevented the displaced Greek Cypriots from returning to their homes, in violation of Article 8 of the Convention which provides:

"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."

166. The applicant Government declared that the policy of the respondent State, aimed at the division of Cyprus along racial lines, affected 211,000 displaced Greek Cypriots and their children as well as a number of Maronites, Armenians, Latins and individual citizens of the Republic of Cyprus who had exercised the option under the Constitution to be members of the Greek-Cypriot community. They submitted that the continuing refusal of the "TRNC" authorities to allow the displaced persons to return to the north violated not only the right to respect for their homes but also the right to respect for their family life. In this latter connection, the applicant Government observed that the impugned policy resulted in the separation of families.

167. In a further submission, the applicant Government requested the Court to find that the facts also disclosed a policy of deliberate destruction and manipulation of the human, cultural and natural environment and conditions of life in northern Cyprus. The applicant Government contended that this policy was based on the implantation of massive numbers of settlers from Turkey with the intention and the consequence of eliminating Greek presence and culture in northern Cyprus. In the view of the applicant Government, the notions of "home" and "private life" were broad enough to subsume the concept of sustaining existing cultural relationships within a subsisting cultural environment. Having regard to the destructive changes being wrought to that environment by the respondent State, it could only be concluded that the rights of the displaced persons to respect for their private life and home were being violated in this sense also.

168. The Commission observed in the first place that the issue of whether the persons concerned by the impugned measures could have been expected to use local remedies to seek redress for their grievances did not have to be examined. In the Commission's opinion, the refusal of the "TRNC" authorities to allow the displaced persons to return to their homes reflected an acknowledged official policy and, accordingly, an administrative practice. In these circumstances there was no Convention requirement to exhaust domestic remedies.

169. As to the merits of the complaints concerning the plight of the displaced persons, the Commission found, with reference to its conclusions in its 1976 and 1983 reports and the findings of fact in the instant case (see paragraphs 30-33 above), that these persons, without exception, continued to be prevented from returning to or even visiting their previous homes in

northern Cyprus. In the Commission's opinion, the facts disclosed a continuing violation of Article 8 in this respect, irrespective of the respondent Government's appeal to the public-safety considerations set out in the second paragraph of Article 8. As to the respondent Government's view that the claim of Greek-Cypriot displaced persons to return to the north and to settle in their homes had to be solved in the overall context of the inter-communal talks, the Commission considered that these negotiations, which were still very far from reaching any tangible result on the precise matter at hand, could not be invoked to justify the continuing maintenance of measures contrary to the Convention.

170. Having regard to its Article 8 finding as well as to its conclusions on the applicant Government's complaint under Article 1 of Protocol No. 1 (see paragraph 183 below), the Commission considered that it was not necessary to examine the applicant Government's further allegations concerning the manipulation of the demographic and cultural environment of the displaced persons' homes.

171. The Court notes that in the proceedings before the Commission the respondent Government did not dispute the applicant Government's assertion that it was not possible for displaced Greek Cypriots to return to their homes in the north. It was their contention that this situation would remain unchanged pending agreement on an overall political solution to the Cypriot question. In these circumstances the Court, like the Commission, considers that the issue of whether the aggrieved persons could have been expected to avail themselves of domestic remedies in the "TRNC" does not arise.

172. The Court observes that the official policy of the "TRNC" authorities to deny the right of the displaced persons to return to their homes is reinforced by the very tight restrictions operated by the same authorities on visits to the north by Greek Cypriots living in the south. Accordingly, not only are displaced persons unable to apply to the authorities to reoccupy the homes which they left behind, they are physically prevented from even visiting them.

173. The Court further notes that the situation impugned by the applicant Government has obtained since the events of 1974 in northern Cyprus. It would appear that it has never been reflected in "legislation" and is enforced as a matter of policy in furtherance of a bi-zonal arrangement designed, it is claimed, to minimise the risk of conflict which the intermingling of the Greek and Turkish-Cypriot communities in the north might engender. That bi-zonal arrangement is being pursued within the framework of the inter-communal talks sponsored by the United Nations Secretary-General (see paragraph 16 above).

174. The Court would make the following observations in this connection: firstly, the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8

§ 2 of the Convention (see paragraph 173 above); secondly, the inter-communal talks cannot be invoked in order to legitimate a violation of the Convention; thirdly, the violation at issue has endured as a matter of policy since 1974 and must be considered continuing.

175. In view of these considerations, the Court concludes that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus.

176. As to the applicant Government's further allegation concerning the alleged manipulation of the demographic and cultural environment of the displaced persons' homes, the Court, like the Commission, considers that it is not necessary to examine this complaint in view of its above finding of a continuing violation of Article 8 of the Convention.

177. Furthermore, the Court considers it appropriate to examine the applicant Government's submissions on the issue of family separation (see paragraph 166 above) in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots.

2. Article 1 of Protocol No. 1

178. The applicant Government maintained that the respondent State's continuing refusal to permit the return of the displaced persons to northern Cyprus not only prevented them from having access to their property there but also prevented them from using, selling, bequeathing, mortgaging, developing and enjoying it. In their submission, there were continuing violations of all the component aspects of the right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1, which states:

> "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."

179. The applicant Government contended that the respondent State had adopted a systematic and continuing policy of interference with the immovable property of the displaced persons. They stated, *inter alia*, that the properties in question, of which the displaced persons were unlawfully dispossessed following their eviction from the north, were transferred into Turkish possession. Steps were then taken to "legalise" the illegal appropriation of the properties and their allocation to "State" bodies, Turkish Cypriots and settlers from the Turkish mainland. This was effected by means such as the assignment of "title deeds" to their new possessors.

No compensation had ever been awarded to the victims of these interferences. Furthermore, specific measures had been taken to develop and exploit commercially land belonging to displaced persons, Church-owned land had been transferred to the Muslim religious trust, and agricultural produce from Greek-Cypriot land was now being exported accompanied by Turkish certificates.

180. In the applicant Government's submission, the continuing violation of property rights clearly engaged the responsibility of the respondent State under the Convention in view of the conclusions reached by the Court in its Loizidou judgment (*merits*). Quite apart from that consideration, the applicant Government pointed out that, in so far as the respondent State sought to justify the interferences with the displaced persons' property rights by invoking the derogation contained in Article 1 of Protocol No. 1, the "legal" measures relied on had necessarily to be considered invalid since they emanated from an illegal secessionist entity and could not for that reason be considered to comply with the qualitative requirements inherent in the notion of "provided for by law".

181. The Commission observed that the applicant Government's complaints were essentially directed at the "legislation" and the acknowledged administrative practice of the "TRNC" authorities. On that account, the persons aggrieved were not required to take any domestic remedies, it being noted by the Commission that, in any event, it did not appear that any remedies were available to displaced Greek Cypriots deprived of their property in northern Cyprus.

182. As to the merits, the Commission considered that the nature of the alleged interferences with the property rights of displaced Greek Cypriots was in essence the same as the interference of which Mrs Loizidou had complained in her application. Although that application concerned one particular instance of the general administrative practice to which the complaints in the present case relate, the Court's reasoning at paragraphs 63 and 64 of its Loizidou judgment (*merits*) (pp. 2237-38) must also apply to the administrative practice as such.

183. The Commission, essentially for the reasons set out by the Court in the above-mentioned judgment, concluded that during the period under consideration there had been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

184. The Court agrees with the Commission's analysis. It observes that the Commission found it established on the evidence that at least since June 1989 the "TRNC" authorities no longer recognised any ownership rights of Greek Cypriots in respect of their properties in northern Cyprus (see paragraph 32 above). This purported deprivation of the property at issue was

embodied in a constitutional provision, "Article 159 of the TRNC Constitution", and given practical effect in "Law no. 52/1995". It would appear that the legality of the interference with the displaced persons' property is unassailable before the "TRNC" courts. Accordingly, there is no requirement for the persons concerned to use domestic remedies to secure redress for their complaints.

185. The Court would further observe that the essence of the applicant Government's complaints is not that there has been a formal and unlawful expropriation of the property of the displaced persons but that these persons, because of the continuing denial of access to their property, have lost all control over, as well as possibilities to enjoy, their land. As the Court has noted previously (see paragraphs 172-73 above), the physical exclusion of Greek-Cypriot persons from the territory of northern Cyprus is enforced as a matter of "TRNC" policy or practice. The exhaustion requirement does not accordingly apply in these circumstances.

186. The Court recalls its finding in the Loizidou judgment (*merits*) that that particular applicant could not be deemed to have lost title to her property by operation of "Article 159 of the TRNC Constitution", a provision which it held to be invalid for the purposes of the Convention (p. 2231, § 44). This conclusion is unaffected by the operation of "Law no. 52/1995". It adds that, although the latter was not invoked before the Court in the Loizidou case, it cannot be attributed any more legal validity than its parent "Article 159" which it purports to implement.

187. The Court is persuaded that both its reasoning and its conclusion in the Loizidou judgment (*merits*) apply with equal force to displaced Greek Cypriots who, like Mrs Loizidou, are unable to have access to their property in northern Cyprus by reason of the restrictions placed by the "TRNC" authorities on their physical access to that property. The continuing and total denial of access to their property is a clear interference with the right of the displaced Greek Cypriots to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1. It further notes that, as regards the purported expropriation, no compensation has been paid to the displaced persons in respect of the interferences which they have suffered and continue to suffer in respect of their property rights.

188. The Court notes that the respondent Government, in the proceedings before the Commission, sought to justify the interference with reference to the inter-communal talks and to the need to rehouse displaced Turkish-Cypriot refugees. However, similar pleas were advanced by the respondent Government in the Loizidou case and were rejected in the judgment on the merits (pp. 2237-38, § 64). The Court sees no reason in the instant case to reconsider those justifications.

189. For the above reasons the Court concludes that there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied

access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

3. Article 13 of the Convention

190. The applicant Government asserted that the manifest failure of the respondent State to provide an effective or indeed any remedy to displaced persons in respect of the violations of Article 8 of the Convention and Article 1 of Protocol No. 1 was in clear breach of Article 13 of the Convention, which provides:

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

191. The applicant Government approved in the main the reasoning which led the Commission to find a breach of Article 13.

192. The Commission referred to its finding that the displaced persons' rights under Article 8 of the Convention and Article 1 of Protocol No. 1 were violated as a matter of administrative practice. In so far as these practices were embodied in "legislation" of the "TRNC", the Commission noted that no provision was made to allow Greek Cypriots to contest their physical exclusion from the territory of northern Cyprus. On that account the Commission found that displaced persons had no remedies to contest interferences with their rights under these Articles and that there was a violation of Article 13 in consequence.

193. The Court notes that in the proceedings before the Commission the respondent Government pleaded that, pending the elaboration of an agreed political solution to the overall Cyprus problem, there could be no question of a right of displaced persons either to return to the homes and properties which they had left in northern Cyprus or to lay claim to any of their immovable property vested in the "TRNC" authorities by virtue of "Article 159 of the TRNC Constitution" and allocated to Turkish Cypriots with full title deeds in accordance with implementing "Law no. 52/1995". The respondent Government did not contend before the Commission that displaced persons could avail themselves of local remedies to contest this policy of interference with their rights. Indeed, the Court considers that it would be at variance with the declared policy to provide for any challenge to its application. The Court further recalls in this connection that, as regards the violations alleged under Article 8 of the Convention and Article 1 of Protocol No. 1, it concluded that no issue arose in respect of the exhaustion requirement. It refers to the reasons supporting those conclusions (see paragraphs 171-75 and 184-89 above).

194. For these reasons, the Court, like the Commission, concludes that there has been a violation of Article 13 of the Convention by reason of the respondent State's failure to provide to Greek Cypriots not residing in

northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1.

4. Article 14 of the Convention taken in conjunction with Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1

195. The applicant Government stated that the administrative practices, "legislation" and "constitutional provisions" at issue violated not only the rights guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1 but, being exclusively directed against Greek Cypriots not living in northern Cyprus, also Article 14 of the Convention. Article 14 of the Convention provides:

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

196. Elaborating on their submission, the applicant Government maintained that the aim of the respondent State was to discriminate against Greeks and Greek Cypriots since only these classes of persons were disentitled to acquire immovable property in the "TRNC". Other "aliens" such as British retired persons were not prevented from acquiring immovable property in the "TRNC", *inter alia* property which had been "abandoned" by Greek-Cypriot displaced persons. Furthermore, Turks from Turkey not resident in the "TRNC" were not treated as having abandoned their property and were permitted to acquire new property holdings or homes.

197. The applicant Government further submitted that, as a matter of practice, the respondent State failed, on a discriminatory basis, to provide remedies for Greek Cypriots and Greeks in respect of their property rights. In their submission, there was a breach of Article 14 of the Convention in conjunction with Article 13.

198. The Commission concluded that the interferences with the rights under Article 8 of the Convention and Article 1 of Protocol No. I concerned exclusively Greek Cypriots not residing in northern Cyprus and were imposed on them for the very reason that they belonged to this class of person. There was accordingly a breach of Article 14 read together with Article 8 of the Convention and Article 1 of Protocol No. 1. The Commission did not pronounce on the applicant Government's complaint under Article 13 taken together with Article 14.

199. The Court considers that, in the circumstances of the present case, the applicant Government's complaints under this heading amount in effect to the same complaints, albeit seen from a different angle, as those which the Court has already considered in relation to Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1. It has found that those Articles have been violated. In considers that it is not necessary to examine whether

in this case there has been a violation of Article 14 taken in conjunction with those Articles by virtue of the alleged discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for their homes, to the peaceful enjoyment of their possessions and to an effective remedy.

5. Article 3 of the Convention

200. The applicant Government claimed that the treatment to which the displaced persons were subjected amounted to an infringement of Article 3 of the Convention, which provides:

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

201. The applicant Government pleaded that the Court should find a violation of Article 3 since, in their view, treatment especially singling out categories of persons on racial and ethnic grounds, subjecting them to severe hardship, denying them or interfering with their Convention rights, and doing so specifically and publicly, amounted to conduct which was an affront to human dignity to the point of being inhuman treatment.

202. The Commission considered that it was unnecessary to examine whether the discrimination at issue also constituted inhuman or degrading treatment within the meaning of Article 3, having regard to its finding under Article 14.

203. Bearing in mind its own conclusion on the applicant Government's complaints under Article 14 of the Convention (see paragraphs 195 and 199 above) as well as its finding of a violation of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1, the Court, for its part, does not consider it necessary to examine whether the facts alleged also give rise to a breach of Article 3 of the Convention.

6. Articles 17 and 18 of the Convention

204. The applicant Government submitted that the facts of the case disclosed a violation of Articles 17 and 18 of the Convention, which provide:

Article 17

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

Article 18

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

205. The applicant Government maintained that Article 17 had been violated since the respondent State limited the rights and freedoms of persons, mainly Greek Cypriots, to a greater extent than was provided for in the Convention. They further submitted that the respondent State applied restrictions to the Convention rights for a purpose other than the one for which they had been prescribed, in violation of Article 18 of the Convention.

206. The Court considers that it is not necessary to examine separately these complaints, having regard to the conclusions which it has reached on the applicant Government's complaints under Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1.

V. ALLEGED VIOLATIONS ARISING OUT OF THE LIVING CONDITIONS OF GREEK CYPRIOTS IN NORTHERN CYPRUS

207. The applicant Government asserted that the living conditions to which the Greek Cypriots who had remained in the north were subjected gave rise to substantial violations of the Convention. They stressed that these violations were committed as a matter of practice and were directed against a depleted and now largely elderly population living in the Karpas area of northern Cyprus in furtherance of a policy of ethnic cleansing, the success of which could be measured by the fact that from some 20,000 Greek Cypriots living in the Karpas in 1974 only 429 currently remained. Maronites, of whom there were currently 177 still living in northern Cyprus, also laboured under similar, if less severe, restrictions.

208. The applicant Government invoked Articles 2, 3, 5, 6, 8, 9, 10, 11, 13, 14 of the Convention and Articles 1 and 2 of Protocol No. 1.

A. As to the facts established by the Commission

209. By way of a general submission the applicant Government maintained that the Commission, as regards certain of their complaints, erroneously concluded against the weight of the evidence that there was no violation of the Convention. In the applicant Government's submission, the Commission's findings on matters such as restrictions on the importation of books other than school-books, interference with correspondence and denial of access to medical services were not only at variance with the written and oral evidence of witnesses but also with the clear findings contained in the "Karpas Brief" (see paragraph 36 above) and the reviews of the action taken

by the "TRNC" authorities to give effect to the proposals for remedying the suffering which resulted for the Greek-Cypriot and Maronite populations from administrative practices of violating their Convention rights. The applicant Government further claimed that witnesses, whose number was regrettably restricted, only had a limited time to recount their experiences to the Commission's delegates. Furthermore, the applicant Government's lawyers were only left with negligible time in which to draw out all the relevant facts following the witnesses' statements.

210. The applicant Government insisted that the Court have regard to these and other shortcomings in the taking of evidence when reviewing the Commission's findings. They further submitted that, regarding the plight of the Maronites living in northern Cyprus, the Court should procure and examine the Humanitarian Review drawn up on this community. They observed in this connection that the United Nations Secretary-General offered to release the Review in the proceedings before the Commission. However, the objection of the respondent Government prevented its being included in the case file.

211. The Court recalls that the Commission established the facts with reference, *inter alia*, to the oral evidence given by witnesses proposed by both sides. It further recalls that it rejected the applicant Government's criticism of the manner in which the delegates heard the evidence and reaffirms that the hearing of witnesses was organised in a way which respected the principle of procedural equality between both parties (see paragraphs 110-11 above). It is to be noted in addition that, with a view to its establishment of the facts, the Commission made extensive use of documentary materials including the "Karpas Brief" on the living conditions of the enclaved Greek-Cypriot population in northern Cyprus and the UN Secretary-General's progress reports on the proposals for remedial action formulated in the Brief.

212. The Court observes that the applicant Government accept much of the Commission's findings of fact. Their criticism is directed at certain conclusions which the Commission drew from those facts. For its part, and having regard to the wide-ranging and thorough analysis of the evidence conducted by the Commission, the Court does not consider that there are any exceptional circumstances which would lead it to depart from the facts as established by the Commission. It will, on the other hand, scrutinise carefully whether the facts bear out all of the applicant Government's complaints. It reiterates that it will do so using the "beyond reasonable doubt" standard of proof including with respect to the alleged existence of an administrative practice of violating the Convention rights relied on (see paragraphs 114-15 above).

213. As to the applicant Government's request that the Humanitarian Review dealing with the living conditions of the Maronite community in northern Cyprus be obtained, the Court observes that the respondent

Government have not signalled that they have lifted their objection to the release of the document. It observes that, in any event, major aspects of the Review have been made public and have been included in the case file.

214. The Court notes that the Commission, in its examination of the merits of the applicant Government's complaints, made an overall assessment of the living conditions of Greek Cypriots living in northern Cyprus from the standpoint of Articles 3, 8 and 14 of the Convention. At the same time, the Commission examined the merits of the complaints about the living conditions under the relevant Convention Article (Articles 2, 5, 6, 9, 10 and 11 of the Convention and Articles 1 and 2 of Protocol No. 1), while addressing in the framework of its global assessment the specific complaints raised by the applicant Government under Article 8 concerning interferences with the right of the Karpas Greek Cypriots to respect for their private and family life, home and correspondence. Having regard to the fact that the applicant Government's arguments on the latter aspects of Article 8 are interwoven with their broader submissions on the violation of that provision, the Court considers that it is appropriate to discuss those arguments in the context of the living conditions of the Karpas Greek Cypriots seen from the angle of Article 8.

215. The Court will accordingly follow the Commission's approach in this regard.

B. As to the merits of the applicant Government's complaints

1. Article 2 of the Convention

216. The applicant Government maintained that the restrictions on the ability of the enclaved Greek Cypriots and Maronites to receive medical treatment and the failure to provide or to permit receipt of adequate medical services gave rise to a violation of Article 2 of the Convention.

217. In their submission, the respondent State must be considered, as a matter of administrative practice, to have failed to protect the right to life of these communities, having regard to the absence in northern Cyprus of adequate emergency and specialist services and geriatric care. In support of their submission, the applicant Government observed that aged Greek Cypriots were compelled to transfer to the south to obtain appropriate care and attention.

218. The Commission found that there had been no violation of Article 2 by virtue of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus. It considered in this respect that, although there may have been shortcomings in individual cases, in general access to medical services, including hospitals in the south, was available to them. In view of this conclusion the Commission did not consider it necessary to examine whether, in relation to this complaint, any domestic

remedies which might have been available in the "TRNC" had been exhausted.

219. The Court observes that an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State put an individual's life at risk through the denial of health care which they have undertaken to make available to the population generally. It notes in this connection that Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see the L.C.B. v. the United Kingdom judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36). It notes, however, that the Commission was unable to establish on the evidence that the "TRNC" authorities deliberately withheld medical treatment from the population concerned or adopted a practice of delaying the processing of requests of patients to receive medical treatment in the south. It observes that during the period under consideration medical visits were indeed hampered on account of restrictions imposed by the "TRNC" authorities on the movement of the populations concerned and that in certain cases delays did occur. However, it has not been established that the lives of any patients were put in danger on account of delay in individual cases. It is also to be observed that neither the Greek-Cypriot nor Maronite populations were prevented from availing themselves of medical services including hospitals in the north. The applicant Government are critical of the level of health care available in the north. However, the Court does not consider it necessary to examine in this case the extent to which Article 2 of the Convention may impose an obligation on a Contracting State to make available a certain standard of health care.

220. The Court further observes that the difficulties which the Greek-Cypriot and Maronite communities experience in the area of health care under consideration essentially stem from the controls imposed on their freedom of movement. Those controls result from an administrative practice which is not amenable to challenge in the "TRNC" courts (see paragraph 41 above). On that account, the Court considers that the issue of non-exhaustion need not be examined.

221. The Court concludes that no violation of Article 2 of the Convention has been established by virtue of an alleged practice of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus.

222. The Court will revert to the applicant Government's complaint in respect of the alleged interference with access to medical facilities in the context of the overall assessment of compliance with Article 8 of the Convention (see paragraphs 281 et seq. below).

2. Article 5 of the Convention

223. The applicant Government maintained that the evidence clearly established that the personal security of the enclaved Greek Cypriots had been violated as a matter of practice. The applicant Government relied on Article 5 of the Convention in this respect, the relevant part of which reads:

> "1. Everyone has the right to liberty and security of person…"

224. In the applicant Government's submission, the Commission was incorrect in its conclusion that this complaint was not borne out by the evidence. The applicant Government asserted that the written and oral testimony of witnesses clearly demonstrated the vulnerability and fear of the enclaved population and the impunity with which those responsible for crimes against the person and property could act. As to the latter point, the applicant Government observed that, although notified of complaints, the police failed to take action and without identification of assailants and suspects civil action, even if remedies were available, was impossible. They stressed that account had to be taken of the fact that the victims of these acts of criminality were aged and that the evidence given by certain witnesses to the Commission's delegates had to be seen against the background of their fear of retaliation.

225. The Commission noted that there were no cases of actual detention of enclaved Greek Cypriots during the period under consideration; nor did it find that the allegations of threats to personal security had been substantiated. In these circumstances, no issue as to the exhaustion of domestic remedies fell to be considered. It concluded that there had been no violation of Article 5.

226. The Court notes that the applicant Government have not claimed that any members of the enclaved Greek-Cypriot population were actually detained during the period under consideration. Their complaint relates to the vulnerability of what is an aged and dwindling population to the threat of aggression and criminality and its overall sense of insecurity. However, the Court considers that these are matters which fall outside the scope of Article 5 of the Convention and are more appropriately addressed in the context of its overall assessment of the living conditions of the Karpas Greek Cypriots seen from the angle of the requirements of Article 8 (see paragraphs 281 et seq. below).

227. For the above reason, the Court concludes that there has been no violation of Article 5 of the Convention.

3. Article 6 of the Convention

228. The applicant Government, referring to their earlier arguments on the issue of domestic remedies raised in the context of the preliminary issues (see paragraphs 83-85 above), claimed that Greek Cypriots in northern Cyprus were denied the right to have their civil rights and

obligations determined by independent and impartial courts established by law. They requested the Court to find a violation of Article 6 of the Convention, which provides as relevant:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law…"

229. The applicant Government criticised the Commission's failure to have regard to the essential illegality of the regime under which the "TRNC" courts function. They submitted in this connection that it could not be contended that those courts were "established by law" within the meaning of Article 6 as interpreted in the Court's case-law. Regrettably, the Commission erroneously considered that the "TRNC" courts had a sufficient legal basis within the "constitutional and legal system of the TRNC". Furthermore, the Commission overlooked clear evidence which supported the applicant Government's view that the enclaved Greek-Cypriot population had no faith in the independence and impartiality of the court system and that any rulings which might be given in favour of litigants were rendered meaningless on account of intimidation by Turkish settlers. To this were to be added the facts, firstly, that there was no system of legal aid which could facilitate the bringing of proceedings and, secondly, the authorities themselves did nothing to prevent intimidation by settlers, with the result that court decisions remained unenforceable. Furthermore, due account had also to be taken of the fact that the possibility of taking litigation was frustrated on account of the restrictions imposed on the movement of the enclaved Greek Cypriots and hence on their access to courts. In the applicant Government's submission, these severe impediments to justice were confirmed by the findings in the "Karpas Brief".

230. The Commission found on the facts that Greek Cypriots living in northern Cyprus were not prevented from bringing civil actions before the "TRNC" courts. In the Commission's conclusion, the applicant Government had not made out their claim that there was a practice in the "TRNC" of denying access to court.

231. As to the applicant Government's claim that "TRNC" courts failed to satisfy the criteria laid down in Article 6, the Commission noted, firstly, that there was nothing in the institutional framework of the "TRNC" legal system which was likely to cast doubt either on the independence and impartiality of the civil courts or the subjective and objective impartiality of judges, and, secondly, those courts functioned on the basis of the domestic law of the "TRNC" notwithstanding the unlawfulness under international law of the "TRNC"' s claim to statehood. The Commission found support for this view in the Advisory Opinion of the International Court of Justice in the Namibia case (see paragraph 86 above). Moreover, in the Commission's opinion due weight had to be given to the fact that the civil courts operating

in the "TRNC" were in substance based on the Anglo-Saxon tradition and were not essentially different from the courts operating before the events of 1974 and from those which existed in the southern part of Cyprus.

232. The Commission accordingly concluded that, during the period under consideration, there had been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus.

233. The Court notes that the applicant Government have confined their submissions under this head to the civil limb of Article 6 of the Convention. It recalls in this connection that the first paragraph of Article 6 embodies the right of access to a court or tribunal in respect of disputes over civil rights or obligations which can be said, at least on arguable grounds, to be recognised under domestic law; it does not of itself guarantee any particular content for such rights and obligations in the substantive law of the Contracting State (see, *inter alia*, the Lithgow and Others v. the United Kingdom judgment of 8 July 1986, Series A, no. 102, p. 70, § 192). Furthermore, a court or tribunal is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner. It must also satisfy a series of further requirements – independence, in particular of the executive; impartiality; duration of its members' terms of office; guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 (see, among other authorities, the Belilos v. Switzerland judgment of 29 April 1988, Series A no. 132, p. 29, § 64).

234. The Court observes that it is the applicant Government's contention that the enclaved Greek-Cypriot population is prevented, as a matter of administrative practice, from asserting civil claims before the "TRNC" courts. However this assertion is at variance with the testimony of witnesses heard by the delegates, including witnesses proposed by the applicant Government. It is also contradicted by the written evidence adduced before the Commission. It is clear that Greek Cypriots living in the north have on occasion successfully taken court actions in defence of their property rights (see paragraph 39 above), and they are not barred for reasons of race, language or ethnic origin from using the local courts. The Commission accepted this on the facts and the Court does not dispute the Commission's conclusion. For the Court, the applicant Government are required to show that the courts have been tried and found wanting. Absent this, it is being asked to speculate on the merits of their claim. Admittedly, the number of actions brought by members of the enclaved population is limited. However, that of itself does not corroborate the applicant Government's claim, especially if regard is had to the fact that the population is aged and small in numbers and, for reasons of allegiance, perhaps psychologically ill-disposed to invoking the jurisdiction of courts set up by the "TRNC".

235. The Court also considers that this conclusion is not affected by the fact that certain matters which may weigh heavily on the daily lives of the

enclaved Greek Cypriots are not amenable to challenge in the "TRNC" courts, for example restrictions on their freedom of movement or their right to bequeath property to family members in the south (see paragraphs 40-41 above). However, in the Court's opinion those measures, whether embodied in policy or "legislation", are to be addressed from the standpoint of the effectiveness of remedies within the meaning of Article 13 of the Convention and their compatibility with other relevant substantive provisions of the Convention and its Protocols. The existence of such measures does not improve the applicant Government's case concerning the alleged administrative practice of violating Article 6. It recalls in this connection that the applicability of Article 6 is premised on the existence of an arguable cause of action in domestic law (see the above-mentioned Lithgow and Others judgment, p. 70, § 192, and the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, pp. 16-17, § 36).

236. As to the applicant Government's challenge to the very legality of the "TRNC" court system, the Court observes that they advanced similar arguments in the context of the preliminary issue concerning the requirement to exhaust domestic remedies in respect of the complaints covered by the instant application (see paragraphs 83-85 above). The Court concluded that, notwithstanding the illegality of the "TRNC" under international law, it cannot be excluded that applicants may be required to take their grievances before, *inter alia*, the local courts with a view to seeking redress. It further pointed out in that connection that its primary concern in this respect was to ensure, from the standpoint of the Convention system, that dispute-resolution mechanisms which offer individuals the opportunity of access to justice for the purpose of remedying wrongs or asserting claims should be used.

237. The Court observes from the evidence submitted to the Commission (see paragraph 39 above) that there is a functioning court system in the "TRNC" for the settlement of disputes relating to civil rights and obligations defined in "domestic law" and which is available to the Greek-Cypriot population. As the Commission observed, the court system in its functioning and procedures reflects the judicial and common-law tradition of Cyprus (see paragraph 231 above). In its opinion, having regard to the fact that it is the "TRNC domestic law" which defines the substance of those rights and obligations for the benefit of the population as a whole it must follow that the domestic courts, set up by the "law" of the "TRNC", are the fora for their enforcement. For the Court, and for the purposes of adjudicating on "civil rights and obligations" the local courts can be considered to be "established by law" with reference to the "constitutional and legal basis" on which they operate.

In the Court's opinion, any other conclusion would be to the detriment of the Greek-Cypriot community and would result in a denial of opportunity to

individuals from that community to have an adjudication on a cause of action against a private or public body (see paragraph 96 above). It is to be noted in this connection that the evidence confirms that Greek Cypriots have taken successful court actions in defence of their civil rights.

238. The Court would add that its conclusion on this matter in no way amounts to a recognition, implied or otherwise, of the "TRNC"'s claim to statehood (see paragraphs 61, 90 and 92 above).

239. The Court notes that the applicant Government contest the independence and impartiality of the "TRNC" court system from the perspective of the local Greek-Cypriot population. However, the Commission rejected this claim on the facts (see paragraph 231 above). Having regard to its own assessment of the evidence, the Court accepts that conclusion.

240. For the above reasons, the Court concludes that no violation of Article 6 of the Convention has been established in respect of Greek Cypriots living in northern Cyprus by reason of an alleged practice of denying them a fair hearing by an independent and impartial tribunal in the determination of their civil rights and obligations.

4. Article 9 of the Convention

241. The applicant Government alleged that the facts disclosed an interference with the enclaved Greek Cypriots' right to manifest their religion, in breach of Article 9 of the Convention which states:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

242. The applicant Government contended that the interference with the concerned population's right under Article 9 was reflected in the "TRNC" policy of limiting its freedom of movement and thereby restricting access to places of worship. The applicant Government also condemned the failure of the "TRNC" to appoint further priests to the area. They endorsed the Commission's findings on the facts and its conclusion that there had been a breach of Article 9. They added that a similar breach should be found in respect of the Maronite population living in northern Cyprus on account of the fact that that population also had to contend with restrictions on its right to visit and tend to its holy places in the northern part of Cyprus.

243. The Commission observed that the existence of a number of measures limited the religious life of the enclaved Greek-Cypriot

population. It noted in this respect that, at least until recently, restrictions were placed on their access to the Apostolos Andreas Monastery as well as on their ability to travel outside their villages to attend religious ceremonies. In addition, the "TRNC" authorities had not approved the appointment of further priests for the area, there being only one priest for the whole of the Karpas region. For the Commission, these restrictions prevented the organisation of Greek Orthodox religious ceremonies in a normal and regular manner and amounted to a breach of Article 9 of the Convention. In the Commission's view, there existed no effective remedies in respect of the measures complained of.

244. The Commission accordingly concluded that during the period under consideration there had been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus.

245. The Court accepts the facts as found by the Commission, which are not disputed by the applicant Government. It has not been contended by the applicant Government that the "TRNC" authorities have interfered as such with the right of the Greek-Cypriot population to manifest their religion either alone or in the company of others. Indeed there is no evidence of such interference. However, the restrictions placed on the freedom of movement of that population during the period under consideration considerably curtailed their ability to observe their religious beliefs, in particular their access to places of worship outside their villages and their participation in other aspects of religious life.

246. The Court concludes that there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus.

247. The Court notes that the applicant Government have requested it to make a similar finding in respect of the Maronite community living in northern Cyprus. However, it considers that the evidence before it is insufficient to prove beyond reasonable doubt that members of this community were prejudiced to the same extent as the Greek-Cypriot population in the north in the exercise of their right to freedom of religion. It finds therefore that no violation of Article 9 has been established in respect of the Maronite population living in northern Cyprus.

5. Article 10 of the Convention

248. The applicant Government asserted that the "TRNC" authorities engaged in excessive censorship of school-books, restricted the importation of Greek-language newspapers and books and prevented the circulation of any newspapers or books whose content they disapproved of. In their submission, these acts violated as a matter of administrative practice the right of the enclaved Greek Cypriots to receive and impart information and ideas guaranteed by Article 10 of the Convention, which provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without

interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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

249. The applicant Government approved the Commission's finding that school-books destined for Greek-Cypriot children in the north were subject to excessive measures of censorship. However, in their submission the Commission had failed to give due regard to the ample evidence confirming that Greek-language books and newspapers were censored and confiscated by the "TRNC" authorities. The applicant Government stated that it would be stretching credulity to accept that these authorities censored school-books, however innocent their content, but permitted the unrestricted importation of other categories of books. The applicant Government relied on the oral affirmation of certain witnesses heard by the Commission's delegates that books, like newspapers, had to be surreptitiously taken into northern Cyprus for fear of confiscation.

250. The Commission found a violation of Article 10 in so far as the Turkish-Cypriot authorities had, during the period under consideration, censored or rejected the distribution of a considerable number of school-books on the ground that their content was capable of fostering hostility between the ethnic communities in northern Cyprus. The Commission noted that the books which had been censored or rejected concerned subjects such as Greek language, English, history, geography, religion, civics, science, mathematics and music. Even having regard to the possibility that such books contained materials indicating the applicant Government's view of the history and culture of Cyprus, the impugned action failed to comply with the requirements of paragraph 2 of Article 10. In the Commission's view there were no remedies which would have allowed parents or teachers to contest the action taken.

251. On the other hand, the Commission did not find it established on the evidence that restrictions were imposed on the importation of newspapers or Greek-Cypriot or Greek language books other than school-books, or on the reception of electronic media. As to the absence of a newspaper distribution system in the Karpas area, the Commission observed that it had not been informed of any administrative measures preventing the establishment of such a system.

252. The Court recalls that it has accepted the facts as established by the Commission (see paragraph 212 above). On that understanding it confirms

the Commission's finding that there has been an interference with Article 10 on account of the practice adopted by the "TRNC" authorities of screening the contents of school-books before their distribution. It observes in this regard that, although the vetting procedure was designed to identify material which might pose a risk to inter-communal relations and was carried out in the context of confidence-building measures recommended by UNFICYP (see paragraph 44 above), the reality during the period under consideration was that a large number of school-books, no matter how innocuous their content, were unilaterally censored or rejected by the authorities. It is to be further noted that in the proceedings before the Commission the respondent Government failed to provide any justification for this form of wide-ranging censorship, which, it must be concluded, far exceeded the limits of confidence-building methods and amounted to a denial of the right to freedom of information. It does not appear that any remedies could have been taken to challenge the decisions of the "TRNC" authorities in this regard.

253. The Court notes that the applicant Government consider that the Commission erred in its assessment of the evidence in respect of other categories of Greek-language books as well as newspapers. It has given careful consideration to the matters relied on by the applicant Government. However, the Court does not find that the evidence of individual cases of confiscation at the Ledra Palace check-point adduced before the Commission and highlighted by the applicant Government in their memorial and at the public hearing substantiate their allegations with reference to the "beyond reasonable doubt" standard of proof.

254. The Court finds therefore that there has been a violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject, during the period under consideration, to excessive measures of censorship.

6. Article 11 of the Convention

255. The applicant Government asserted that their complaint under this head related to their claim that the Karpas Greek Cypriots were victims of interferences with their right to freedom of assembly, in breach of Article 11 of the Convention, which provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the

exercise of these rights by members of the armed forces, of the police or of the administration of the State."

256. The applicant Government contended that the Commission had failed to give due weight to the evidence of the respondent State's long-standing policy of impeding the enclaved population's right to take part in organised or *ad hoc* gatherings. They maintained that the Commission erroneously found that impediments to bi-communal meetings only occurred as from the second half of 1996 and were thus outside the scope of the case. The applicant Government argued that these impediments had in fact been continuing since 1974 on account of the respondent State's general and restrictive policy in the area of freedom of movement. They maintained that their claim was borne out by the UN Secretary-General's observations on the measures being implemented by the Turkish-Cypriot authorities in respect of Greek Cypriots and Maronites located in the northern part of Cyprus (UN document S/1995/1020, Annex IV, 30 November 1995). By way of an example of restrictions on the right to freedom of assembly during the period under consideration, the applicant Government observed that the Turkish-Cypriot authorities, on 13 November 1994, refused permission for a Greek singer to give a concert in the Karpas region.

257. The applicant Government further complained that the administrative practice at issue also resulted in a violation of Article 8, given that the Greek-Cypriot and Maronite populations were prevented from freely foregathering, meeting or assembling either outside their villages in the "TRNC" or by crossing the cease-fire line to the buffer-zone, or by visiting the free area.

258. The Commission proceeded on the understanding that the applicant Government's essential complaint under Article 11 concerned an alleged violation of the right of the population concerned to freedom of association in the sense of founding or joining associations or taking part in the activities of associations with a minimum organisational structure, to the exclusion of social contacts. The Commission found on the evidence that, during the period under consideration, there was no restriction on any aspect of the right as defined. As to impediments to the participation of enclaved Greek Cypriots in bi-communal events organised by the United Nations, the Commission noted that UN documents mentioned impediments having been placed in the way of inter-communal meetings as from the second half of 1996. However, given that these events were based on distinct facts occurring after the date of the admissibility decision, any complaints based thereon could not be entertained.

259. Having regard to its conclusion that there had been no violation of the right of Greek Cypriots living in northern Cyprus to freedom of association, the Commission considered that it was unnecessary to examine

whether any available remedies had been exhausted in respect of the applicant Government's allegations.

260. The Court observes that the matters raised by the applicant Government are essentially issues of fact which have been carefully examined by the Commission in the context of the fact-finding procedure. It observes that on the basis of the evidence analysed the Commission found it impossible to conclude that during the period under consideration there was any interference by the "TRNC" authorities with attempts by Greek Cypriots to establish their own associations or mixed associations with Turkish Cypriots, or interference with the participation of Greek Cypriots in the activities of associations (see paragraph 258 above). The Court accepts the Commission's finding and would add that the evidence does not allow it to conclude, beyond reasonable doubt, that an administrative practice of violating the right of the enclaved Greek Cypriots to freedom of association existed during the reference period.

261. Like the Commission, the Court also considers that its conclusion does not require it to examine whether any available domestic remedies have been exhausted in relation to these complaints.

262. As to the applicant Government's complaints in respect of an alleged practice of imposing restrictions on Greek Cypriots' participation in bi-communal or inter-communal events during the period under consideration, the Court considers, having regard to the subject-matter of the events relied on, that it is more appropriate to consider them from the standpoint of Article 8 of the Convention. It will do so in the context of its global assessment of that Article (see paragraphs 281 et seq. below).

263. The Court concludes that no violation of Article 11 of the Convention has been established by reason of an alleged practice of denying Greek Cypriots living in northern Cyprus the right to freedom of association.

7. Article 1 of Protocol No. 1

264. The applicant Government complained that Greek Cypriots and Maronites living in northern Cyprus were victims of violations of their rights under Article 1 of Protocol No. 1. They contended that the authorities of the respondent State unlawfully interfered with the property of deceased Greek Cypriots and Maronites as well as with the property of such persons who decided to leave permanently the northern part. Furthermore, landowners were denied access to their agricultural land situated outside a three-mile radius of their villages. The applicant Government requested the Court to confirm the Commission's conclusion that Article 1 of Protocol No. 1 had been violated in these respects.

265. In a further submission, the applicant Government pointed to their claim that third parties interfered with the property of the persons concerned, whether situated inside their villages or beyond the three-mile

zone and that the "TRNC" authorities acquiesced in or tolerated these interferences. In the applicant Government's view, the evidence adduced before the Commission clearly demonstrated that the local police did not, as a matter of administrative practice, investigate unlawful acts of trespass, burglary and damage to property, contrary to the respondent State's positive obligations under Article 1 of Protocol No. 1. They observed with regret that the Commission had failed to find a violation despite the existence of substantial evidence of an administrative practice. The applicant Government requested the Court to depart from the Commission's finding on this particular complaint.

266. The Commission accepted on the evidence that there was no indication that during the period under consideration there were any instances of wrongful allocation of Greek-Cypriot property to other persons and that the property of resident Greek Cypriots was not treated as "abandoned property" within the meaning of "Article 159 of the TRNC Constitution" (see paragraph 184 above). It observed in this connection that the local courts had ruled in favour of a number of Greek Cypriots who claimed that their properties had been wrongfully allocated under the applicable domestic "rules". However, the Commission did find it established that Greek Cypriots who decided to resettle in the south were no longer considered legal owners of the property which they left behind. Their situation was accordingly analogous to that of displaced persons (see paragraph 187 above) and, as with the latter, there were no remedies available to them to contest this state of affairs.

267. The Commission was not persuaded either that heirs living in southern Cyprus would have any realistic prospects of invoking remedies before the "TRNC" courts to claim inheritance rights to the property of deceased Greek Cypriots situated in the north. In the Commission's opinion, the respondent Government had not shown to its satisfaction that such property would not be considered "abandoned" in application of the relevant "rules". In any event, the very existence of these "rules" and their application were, for the Commission, incompatible with the letter and spirit of Article 1 of Protocol No. 1.

268. As to the criminal acts of third parties referred to by the applicant Government, the Commission considered that the evidence did not bear out their allegations that the "TRNC" authorities had either participated in or encouraged criminal damage or trespass. It noted that a number of civil and criminal actions had been successfully brought before the courts in respect of complaints arising out of such incidents and that there was a recent increase in criminal prosecutions.

269. The Court notes from the facts established by the Commission that, as regards ownership of property in the north, the "TRNC" practice is not to make any distinction between displaced Greek-Cypriot owners and Karpas Greek-Cypriot owners who leave the "TRNC" permanently, with the result

that the latter's immovable property is deemed to be "abandoned" and liable to reallocation to third parties in the "TRNC".

For the Court, these facts disclose a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory.

270. The Court further observes that the evidence taken in respect of this complaint also strongly suggests that the property of Greek Cypriots in the north cannot be bequeathed by them on death and that it passes to the authorities as "abandoned" property. It notes that the respondent Government contended before the Commission that a court remedy could be invoked by an heir in order to assert inheritance rights to the property of a deceased Greek-Cypriot relative. The Court, like the Commission, is not persuaded that legal proceedings would hold out any prospects of success, having regard to the respondent Government's view in the proceedings before the Commission that the property of deceased Greek Cypriots devolves on the authorities in accordance with the notion of "abandoned" property. It further notes that heirs living in the south would in fact be prevented from having physical access to any property which they inherited.

Accordingly, Article 1 of Protocol No. 1 has also been breached in this respect, given that the inheritance rights of persons living in southern Cyprus in connection with the property in northern Cyprus of deceased Greek-Cypriot relatives were not recognised.

271. Concerning the applicant Government's allegation of a lack of protection for Greek Cypriots against acts of criminal damage to their property, the Court considers that the evidence adduced does not establish to the required standard that there is an administrative practice on the part of the "TRNC" authorities of condoning such acts or failing to investigate or prevent them. It observes that the Commission carefully studied the oral evidence of witnesses but was unable to conclude that the allegation was substantiated. Having regard to its own assessment of the evidence relied on by the applicant Government, the Court accepts that conclusion. It further observes that the "domestic law" of the "TRNC" provides for civil actions to be taken against trespassers and criminal complaints to be lodged against wrongdoers. The "TRNC" courts have on occasion found in favour of Greek-Cypriot litigants. As noted previously, it has not been established on the evidence that there was, during the period under consideration, an administrative practice of denying individuals from the enclaved population access to a court to vindicate their civil rights (see paragraph 240 above).

272. The Court concludes accordingly that no violation of Article 1 of Protocol No. 1 has been established by reason of an alleged practice of failing to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons.

8. Article 2 of Protocol No. 1

273. The applicant Government averred that the children of Greek Cypriots living in northern Cyprus were denied secondary-education facilities and that Greek-Cypriot parents of children of secondary-school age were in consequence denied the right to ensure their children's education in conformity with their religious and philosophical convictions. The applicant Government relied on Article 2 of Protocol No. 1, which states:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

274. The applicant Government approved the reasons given by the Commission for finding a violation of the above provision. However, they requested the Court to rule that this provision had also been breached on account of the prevention by the respondent State of appropriate primary-school teaching until the end of 1997. Before that date, the "TRNC" had not permitted the appointment of a primary-school teacher. In the applicant Government's submission this policy interfered with the right of Greek-Cypriot children to a primary education.

275. The Commission, with reference to the principles set out by the Court in the Case relating to certain aspects of the laws on the use of languages in education in Belgium (*merits*) (judgment of 23 July 1968, Series A no. 6), observed that the secondary educational facilities which were formerly available to children of Greek Cypriots had been abolished by the Turkish-Cypriot authorities. Accordingly, the legitimate wish of Greek Cypriots living in northern Cyprus to have their children educated in accordance with their cultural and ethnic tradition, and in particular through the medium of the Greek language, could not be met. The Commission further considered that the total absence of secondary-school facilities for the persons concerned could not be compensated for by the authorities' allowing pupils to attend schools in the south, having regard to the fact that restrictions attached to their return to the north (see paragraph 44 above). In the Commission's conclusion, the practice of the Turkish-Cypriot authorities amounted to a denial of the substance of the right to education and a violation of Article 2 of Protocol No. 1.

276. As to the provision of primary-school education in the Greek language, the Commission considered that the right to education of the population concerned had not been disregarded by the Turkish-Cypriot authorities and that any problems arising out of the vacancy for teaching posts had been resolved.

277. The Court notes that children of Greek-Cypriot parents in northern Cyprus wishing to pursue a secondary education through the medium of the

Greek language are obliged to transfer to schools in the south, this facility being unavailable in the "TRNC" ever since the decision of the Turkish-Cypriot authorities to abolish it. Admittedly, it is open to children, on reaching the age of 12, to continue their education at a Turkish or English-language school in the north. In the strict sense, accordingly, there is no denial of the right to education, which is the primary obligation devolving on a Contracting Party under the first sentence of Article 2 of Protocol No. 1 (see the Kjeldsen, Busk Madsen and Pedersen v. Denmark judgment of 7 December 1976, Series A no. 23, pp. 25-26 § 52). Moreover, this provision does not specify the language in which education must be conducted in order that the right to education be respected (see the above-mentioned Belgian linguistic judgment, pp. 30-31, § 3).

278. However, in the Court's opinion, the option available to Greek-Cypriot parents to continue their children's education in the north is unrealistic in view of the fact that the children in question have already received their primary education in a Greek-Cypriot school there. The authorities must no doubt be aware that it is the wish of Greek-Cypriot parents that the schooling of their children be completed through the medium of the Greek language. Having assumed responsibility for the provision of Greek-language primary schooling, the failure of the "TRNC" authorities to make continuing provision for it at the secondary-school level must be considered in effect to be a denial of the substance of the right at issue. It cannot be maintained that the provision of secondary education in the south in keeping with the linguistic tradition of the enclaved Greek Cypriots suffices to fulfil the obligation laid down in Article 2 of Protocol No. 1, having regard to the impact of that option on family life (see paragraph 277 above and paragraph 292 below).

279. The Court notes that the applicant Government raise a further complaint in respect of primary-school education and the attitude of the "TRNC" authorities towards the filling of teaching posts. Like the Commission, it considers that, taken as a whole, the evidence does not disclose the existence of an administrative practice of denying the right to education at primary-school level.

280. Having regard to the above considerations, the Court concludes that there has been a violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them.

C. Overall examination of the living conditions of Greek Cypriots in northern Cyprus

1. Article 8 of the Convention

281. The applicant Government asserted that the respondent State, as a matter of administrative practice, violated in various respects the right of Greek Cypriots living in northern Cyprus to respect for their private life and home. The applicant Government invoked Article 8 of the Convention.

282. The applicant Government requested the Court to confirm the Commission's finding that Article 8 was violated, firstly, on account of the separation of families brought about by continuing restrictions on the right of Greek Cypriots to return to their homes in the north and, secondly, as a result of the effect of the entirety of these restrictions on the enclaved population.

283. In their further submissions, the applicant Government maintained that the Commission had failed to make an express finding that Article 8 had been breached by virtue of the effect which the various restrictions on freedom of movement of the enclaved Greek Cypriots had during the period under consideration on their right to respect for private life. They highlighted in this connection the restrictions which prevented the enclaved Greek Cypriots from assembling or meeting with other individuals on an informal or *ad hoc* basis or attending bi-communal meetings or other gatherings (see paragraphs 256-57 above). The applicant Government also contended that a further and separate breach of the right to respect for private life should be found in view of the consequences which the restrictions on movement had on the access of enclaved Greek Cypriots to medical treatment (see paragraphs 216-17 above). In this connection, the applicant Government observed that the requirement to obtain permission for medical treatment and the denial of visits by Greek-Cypriot doctors or Maronite doctors of their choice interfered with the right of Greek Cypriots in the north to respect for their private life.

284. The applicant Government further contended that the evidence before the Commission clearly showed that Article 8 had been breached in the following additional respects: interference by the "TRNC" authorities with the right to respect for correspondence by way of searches at the Ledra Palace crossing-point and confiscation of letters; denial by the same authorities for a lengthy period, and on a discriminatory basis, of the installation of telephones in homes of Greek Cypriots and interception of such calls as they were able to make.

285. The applicant Government reiterated their view that the respondent State through its policy of colonisation had engaged in deliberate manipulation of the demographic and cultural environment of the "home" of

the Greek Cypriots (see paragraph 167 above). They requested the Court to find a breach of Article 8 on that account.

286. The applicant Government stated in conclusion that the Court should address the Commission's failure to deal individually with each of the above interferences and to find that they gave rise to separate breaches of Article 8.

287. The Commission examined the applicant Government's complaints from a global standpoint while not losing sight of the distinct aspects of that provision (see paragraph 214 above). It found on the facts that the restrictions imposed by the "TRNC" authorities during the period under consideration on the freedom of movement of Greek Cypriots to and from the south had the effect of gravely interfering with the right of the enclaved Greek Cypriots to respect for family life. Furthermore, their movement within the Karpas region, including to neighbouring villages or towns, was accompanied by measures of strict and invasive police control. The Commission noted that visitors to their homes were physically accompanied by police officers who, in certain cases, stayed with the visitors inside the host's home. In the Commission's opinion, this administrative practice amounted to a clear interference with the right of the enclaved Greek Cypriots to respect for their private life and home.

288. The Commission observed that no remedies were available to challenge the measures applied to the enclaved population and that they could not be justified in any manner with respect to the provisions of paragraph 2 of Article 8.

289. In view of the above finding the Commission did not consider it necessary to address the merits of the applicant Government's complaint concerning the alleged effect of the respondent State's colonisation policy on the demographic and cultural environment of the Greek Cypriots' homes.

290. Furthermore, the Commission did not find it established on the evidence that, during the period under consideration, there had been an administrative practice of disregarding the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

291. The Commission noted however that, taken as a whole, the daily life of Greek Cypriots in northern Cyprus was characterised by a multitude of adverse circumstances, which were to a large extent the direct result of the official policy conducted by the respondent State and its subordinate administration. In the Commission's view these adverse factors served to aggravate the breach of the enclaved Greek Cypriots' right to respect for their private and family life and respect for their home.

292. The Court observes in the first place that the facts as found by the Commission confirm that, during the period under consideration, the right of the enclaved Greek Cypriots to family life was seriously impeded on account of the measures imposed by the "TRNC" authorities to limit family reunification. Thus, it was not disputed by the respondent Government in

the proceedings before the Commission that Greek Cypriots who permanently left the northern part of Cyprus were not allowed to return even if they left a family behind (see paragraph 29 above). Although arrangements were introduced by the "TRNC" authorities to facilitate to a limited extent family visits in 1998, the period under consideration for the purposes of the instant application was characterised by severe limitations on the number and duration of such visits. Furthermore, during the reference period schoolchildren from northern Cyprus attending schools in the south were not allowed to return permanently to the north after having attained the age of 16 in the case of males and 18 in the case of females. It is also to be observed that certain restrictions applied to the visits of those students to their parents in the north (see paragraph 43 above).

293. In the Court's opinion, the imposition of these restrictions during the period under consideration as a matter of policy and in the absence of any legal basis resulted in the enforced separation of families and the denial to the Greek-Cypriot population in the north of the possibility of leading a normal family life. In the absence of any legal basis for these restrictions, the Court does not have to consider whether the interferences at issue can be justified with reference to the provisions of Article 8 § 2 of the Convention. For the same reason it does not have to consider either whether aggrieved individuals could have been expected to exhaust domestic remedies to challenge what in effect amounts to an administrative practice of interference with the right to respect for family life.

294. As to the alleged interferences with the right of the enclaved Greek Cypriots to respect for their private life and home, the Court notes that the Commission found it established on the evidence that, during the period under consideration, this community was in effect monitored in respect of its contacts and movements (see paragraph 287 above), Greek Cypriots having to account to the authorities for even the most mundane of reasons for moving outside the confines of their villages. The Court further notes that the surveillance effected by the authorities even extended to the physical presence of State agents in the homes of Greek Cypriots on the occasion of social or other visits paid by third parties, including family members.

295. The Court considers that such highly intrusive and invasive acts violated the right of the Greek-Cypriot population in the Karpas region to respect for their private and family life. No legal basis for these acts has been adduced, less so any justification which could attract the provisions of Article 8 § 2 of the Convention. They were carried out as a matter of practice. As such, no question as to the exhaustion of local remedies arises in the circumstances.

296. Having regard to the above considerations, the Court concludes that there has been a violation of the right of Greek Cypriots living in northern

Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention.

297. The Court further notes that the applicant Government contest the Commission's finding that it has not been established that during the period under consideration the correspondence of the enclaved Greek Cypriots was intercepted or opened as a matter of administrative practice. Having regard to its own assessment of the evidence, the Court considers that the applicant Government's challenge to the Commission's conclusion cannot be sustained. It observes that the evidence does bear out that in certain cases persons at the Ledra Palace crossing-point were searched for letters. However, the evidence before it does not substantiate to the required standard the allegation that such searches were carried out as a matter of administrative practice; nor does it support the view that there was a consistent practice of tapping telephone calls made to and from the homes of Greek Cypriots.

298. In view of the above considerations, the Court concludes that no violation of Article 8 of the Convention has been established by reason of an alleged practice of interference with the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

299. The Court notes that the applicant Government do not dispute the Commission's decision to examine globally the living conditions of Greek Cypriots in northern Cyprus from the standpoint of Article 8. They do, however, request the Court to isolate from that examination a number of alleged specific interferences with the right to respect for private life and to rule separately on their merits (see paragraphs 283-86 above). In the Court's opinion, the matters relied on by the applicant Government in this connection are in reality bound up with their more general allegation that the respondent State pursues a policy which is intended to claim the northern part of Cyprus for Turkish Cypriots and settlers from Turkey to the exclusion of any Greek-Cypriot influence. The applicant Government maintain that this policy is manifested in the harshness of the restrictions imposed on the enclaved Greek-Cypriot population. For the Court, the specific complaints invoked by the applicant Government regarding impediments to access to medical treatment and hindrances to participation in bi- or inter-communal events (see paragraphs 216-227, 257 and 283 above) are elements which fall to be considered in the context of an overall analysis of the living conditions of the population concerned from the angle of their impact on the right of its members to respect for private and family life.

300. In this connection the Court cannot but endorse the Commission's conclusion at paragraph 489 of its report that the restrictions which beset the daily lives of the enclaved Greek Cypriots create a feeling among them "of being compelled to live in a hostile environment in which it is hardly possible to lead a normal private and family life". The Commission noted in

support of this conclusion that the adverse circumstances to which the population concerned was subjected included: the absence of normal means of communication (see paragraph 45 above); the unavailability in practice of the Greek-Cypriot press (see paragraph 45 above); the insufficient number of priests (see paragraph 47 above); the difficult choice with which parents and schoolchildren were faced regarding secondary education (see paragraphs 43-44 above); the restrictions and formalities applied to freedom of movement, including, the Court would add, for the purposes of seeking medical treatment and participation in bi- or inter-communal events; the impossibility of preserving property rights upon departure or on death (see paragraph 40 above).

301. The Court, like the Commission, considers that these restrictions are factors which aggravate the violations which it has found in respect of the right of the enclaved Greek Cypriots to respect for private and family life (see paragraph 296 above). Having regard to that conclusion, the Court is of the view that it is not necessary to examine separately the applicant Government's allegations under Article 8 concerning the implantation of Turkish settlers in northern Cyprus (see paragraph 285 above).

2. Article 3 of the Convention

302. The applicant Government alleged that, as a matter of practice, Greek Cypriots living in the Karpas area of northern Cyprus were subjected to inhuman and degrading treatment, in particular discriminatory treatment amounting to inhuman and degrading treatment.

303. They submitted that the Court should, like the Commission, find that Article 3 had been violated. The applicant Government fully endorsed the Commission's reasoning in this respect.

304. The Commission did not accept the respondent Government's argument that it was prevented from examining whether the totality of the measures impugned by the applicant Government, including those in respect of which it found no breach of the Convention, provided proof of the pursuit of a policy of racial discrimination amounting to a breach of Article 3 of the Convention. The Commission had particular regard in this connection to its report under former Article 31 in the East African Asians v. the United Kingdom case adopted on 14 December 1973 (Decisions and Reports 78-A, p. 62). Having regard to the fact that it found the Convention to be violated in several respects, the Commission noted that all the established interferences concerned exclusively Greek Cypriots living in northern Cyprus and were imposed on them for the very reason that they belonged to this class of persons. In the Commission's conclusion, the treatment complained of was clearly discriminatory against them on the basis of their "ethnic origin, race and religion". Regardless of recent improvements in their situation, the hardships to which the enclaved Greek Cypriots were subjected during the period under consideration still affected their daily

lives and attained a level of severity which constituted an affront to their human dignity.

305. The Court recalls that in its Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment of 28 May 1985 (Series A no. 94), it accepted the applicants' argument that, irrespective of the relevance of Article 14, a complaint of discriminatory treatment could give rise to a separate issue under Article 3. It concluded on the merits that the difference of treatment complained of in that case did not denote any contempt or lack of respect for the personality of the applicants and that it was not designed to, and did not, humiliate or debase them (p. 42, §§ 90-92).

306. The Court further recalls that the Commission, in its decision in the above-mentioned East African Asians case, observed, with respect to an allegation of racial discrimination, that a special importance should be attached to discrimination based on race and that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special affront to human dignity. In the Commission's opinion, differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question (loc. cit., p. 62, § 207).

307. With these considerations in mind the Court cannot but observe that the United Nations Secretary-General, in his progress report of 10 December 1995 on the "Karpas Brief" (see paragraph 36 above), stated that the review carried out by UNFICYP of the living conditions of the Karpas Greek Cypriots confirmed that they were the object of very severe restrictions which curtailed the exercise of basic freedoms and had the effect of ensuring that, inexorably, with the passage of time, the community would cease to exist. He made reference to the facts that the Karpas Greek Cypriots were not permitted by the authorities to bequeath immovable property to a relative, even the next-of-kin, unless the latter also lived in the north; there was no secondary-school facilities in the north and Greek-Cypriot children who opted to attend secondary schools in the south were denied the right to reside in the north once they reached the age of 16 in the case of males and 18 in the case of females.

308. The Court notes that the Humanitarian Review reflected in the "Karpas Brief" covered the years 1994-95, which fall within the period under consideration for the purposes of the complaints contained in the present application. It recalls that the matters raised by the United Nations Secretary-General in his progress report have, from the perspective of the Court's analysis, led it to conclude that there have been violations of the enclaved Greek Cypriots' Convention rights. It further notes that the restrictions on this community's freedom of movement weigh heavily on their enjoyment of private and family life (see paragraphs 292-93 above) and their right to practise their religion (see paragraph 245 above). The

Court has found that Articles 8 and 9 of the Convention have been violated in this respect.

309. For the Court it is an inescapable conclusion that the interferences at issue were directed at the Karpas Greek-Cypriot community for the very reason that they belonged to this class of persons. The treatment to which they were subjected during the period under consideration can only be explained in terms of the features which distinguish them from the Turkish-Cypriot population, namely their ethnic origin, race and religion. The Court would further note that it is the policy of the respondent State to pursue discussions within the framework of the inter-communal talks on the basis of bi-zonal and bi-communal principles (see paragraph 16 above). The respondent State's attachment to these principles must be considered to be reflected in the situation in which the Karpas Greek Cypriots live and are compelled to live: isolated, restricted in their movements, controlled and with no prospect of renewing or developing their community. The conditions under which that population is condemned to live are debasing and violate the very notion of respect for the human dignity of its members.

310. In the Court's opinion, and with reference to the period under consideration, the discriminatory treatment attained a level of severity which amounted to degrading treatment.

311. The Court concludes that there has been a violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment.

3. Article 14 of the Convention taken in conjunction with Article 3

312. The applicant Government stated that, notwithstanding the Commission's conclusion on their complaint under Article 3, a conclusion which they endorsed, the Court should give separate examination to the discriminatory measures imposed on, and exclusively on, Greek Cypriots living in northern Cyprus from the standpoint of compliance with Article 14 of the Convention. The applicant Government submitted that, since the enclaved Greek Cypriots were victims of unreasonable and unjustified differences in treatment based on racial and religious grounds, the fundamental principle underlying Article 14 was violated as a matter of practice. They contended that the elements of discrimination included the pattern of restrictions and pressures which constituted the policy of ethnic cleansing in the Karpas region; the respondent State's policy of demographic homogeneity; the continuing violations of Greek-Cypriots' property rights as a consequence of the systematic implantation of settlers; the restrictions on the movement of displaced Greek Cypriots as a facet of ethnic exclusiveness; the transfer of possession of the property of displaced Greek Cypriots forced to leave the Karpas region to Turkish settlers; and the

continued deprivation of possessions of Greek Cypriots located within the Turkish-occupied area.

313. The Commission, for its part, did not find it necessary, in view of its finding on the applicant Government's Article 3 complaint, to consider the instant complaints also in the context of the respondent State's obligations under Article 14.

314. The Court agrees with the Commission's conclusion. Having regard to the reasoning which underpins its own finding of a violation of Article 3 it considers that there is no need to pronounce separately on what is in reality a restatement of a complaint which is substantially addressed in that finding.

315. The Court concludes therefore that, in view of its finding under Article 3 of the Convention, it is not necessary to examine whether during the period under consideration there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 in respect of Greek Cypriots living in northern Cyprus.

4. Article 14 of the Convention taken in conjunction with other relevant Articles

316. The applicant Government requested the Court to find that the respondent State's policies towards the enclaved Greek Cypriots involved violations of Article 14 of the Convention taken in conjunction with the relevant provisions. They submitted that the population concerned was discriminated against in the enjoyment of the rights guaranteed under these provisions on racial, religious and linguistic grounds.

317. The Court considers that, having regard to the particular circumstances of this case, it is not necessary to examine whether during the period under consideration there has been a violation of Article 14 of the Convention taken in conjunction with the other relevant Articles.

D. Alleged violation of Article 13 of the Convention

318. The applicant Government contended that, both as a matter of law and practice, the respondent State failed to provide an effective remedy before a national authority which complied either with Article 6 or other requirements which would bring the remedy into line with the requirements of Article 13.

319. The applicant Government invoked Article 13 of the Convention in support of their allegations that Greek Cypriots living in northern Cyprus were denied any opportunity to contest interferences with their rights, including by private persons acting with the acquiescence or encouragement of the "TRNC" authorities.

320. The applicant Government did not dispute the Commission's finding of a violation of Article 13 with respect to the interferences by the

"TRNC" authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

321. However, in the applicant Government's view, the Commission had erred in its conclusions that, in respect of interference by private persons with the rights of the enclaved Greek Cypriots to respect for their home (Article 8) and property (Article 1 of Protocol No. 1), Article 13 had not been violated. The applicant Government emphasised that these conclusions overlooked, firstly, the inadequacies of "TRNC" courts from the standpoint of the requirements of Article 6 of the Convention (see paragraphs 83-85 above) and, secondly, the evidentiary test for establishing the existence of an administrative practice of violation of Convention rights (see paragraph 114 above). As to the latter point, the applicant Government maintained that, rather than examining whether there was "substantial evidence" before it which pointed to a pattern or system of non-investigation of criminal acts against the population concerned, and it clearly did, the Commission had wrongly focused on whether there were effective remedies available to aggrieved persons before the "TRNC" courts. The applicant Government contended that the Commission had failed, in particular, to take account of the fact that there was a failure, imputable to the respondent State, to provide effective remedies through tolerance by the authorities of repeated acts of criminality against the homes and property of the Greek-Cypriot population and that failure could not be condoned on the misconceived assumption that the "TRNC" courts existed as a means of redress.

For this reason, the applicant Government requested the Court to declare that Article 13 of the Convention had also been violated in respect of trespass and damage to property by private persons and interferences by them with the right to respect for the home of Greek Cypriots.

322. The Commission recalled its conclusion in respect of the applicant Government's complaint under Article 6 of the Convention (see paragraphs 230-32 above) as well as its decision to consider the issue of whether an effective remedy within the meaning of former Article 26 could be considered to exist in respect of the different allegations advanced by the applicant Government (see paragraphs 86-88 above). With that in mind, the Commission concluded that there had been no violation of Article 13 in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Articles 8 of the Convention and Article 1 of Protocol No. 1, whereas there had been a violation of Article 13 in respect of interferences by the authorities with their rights under Articles 3, 8, 9, and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

323. The Court agrees with the Commission's conclusion. It recalls that it has analysed in respect of the various allegations advanced by the applicant Government whether the persons concerned had available to them

remedies which were sufficiently certain not only in theory but also in practice and whether there were any special circumstances which might be considered to absolve them from the requirement to exhaust them (see paragraph 99 above). In so doing, the Court has had regard to the burden of proof and how it is distributed between the parties in respect of the exhaustion rule (see paragraph 116 above). In the absence of the respondent Government in the proceedings before it, the Court has had especial regard to the oral and written evidence adduced in the case and has taken due account of the applicant Government's submissions raising points and evidence on which they disagree with the Commission's findings, including the existence of domestic remedies.

324. Notwithstanding the applicant Government's objections to certain of the Commission's conclusions, the Court is led to reaffirm on the evidence its earlier conclusions, which, it recalls, reflect those of the Commission. These are summarised below.

Firstly, the Court finds that no violation of Article 13 of the Convention has been established in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 of the Convention and Article 1 of Protocol No. 1. It recalls in this respect that it has not been shown on the evidence that during the period under consideration there was an administrative practice on the part of the "TRNC" authorities of condoning acts of criminality against the homes and property of the enclaved Greek-Cypriot population; nor has it been shown to the same standard of proof that there was an administrative practice of denying aggrieved persons access to a court to assert rights in this connection. In the proceedings before the Commission, the respondent Government produced evidence in support of their contention that court remedies were available and highlighted the successful claims brought by a number of Greek-Cypriot litigants. While observing that neither Article 6 nor Article 13 of the Convention guarantee a successful outcome to an applicant in court proceedings, the Court considers that the applicant Government have failed to rebut the evidence laid before the Commission that aggrieved Greek Cypriots had access to local courts in order to assert civil claims against wrongdoers.

Secondly, it finds that there has been a violation of Article 13 of the Convention in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1. These interferences resulted from an administrative practice of violating the rights at issue; no remedies, or no effective remedies, were available to aggrieved persons.

VI. ALLEGED VIOLATION OF THE RIGHT OF DISPLACED GREEK CYPRIOTS TO HOLD ELECTIONS

325. The applicant Government, in the proceedings before the Commission, claimed that Article 3 of Protocol No. 1 had been violated in that displaced Greek Cypriots were prevented from effectively enjoying the right freely to elect representatives in the Cyprus legislature in respect of the occupied territory. The applicant Government did not pursue this complaint before the Court either in their written or oral submissions.

326. The Court, while noting that the Commission did not find on the merits that the provision in question had been violated, does not consider it necessary to examine the complaint, having regard to the fact that the complaint has not been pursued by the applicant Government.

327. The Court concludes, accordingly, that it is not necessary to examine of its own motion whether the facts disclose a violation of Article 3 of Protocol No. 1.

VII. ALLEGED VIOLATIONS IN RESPECT OF THE RIGHTS OF TURKISH CYPRIOTS, INCLUDING MEMBERS OF THE GYPSY COMMUNITY, LIVING IN NORTHERN CYPRUS

328. The applicant Government pleaded that Turkish Cypriots resident in northern Cyprus who were opponents of the "TRNC" regime, as well as members of the Gypsy community living in the north, were victims of major violations of their Convention rights. These violations, they contended, occurred as a matter of administrative practice. The applicant Government pleaded in addition that there were no effective remedies to secure redress in respect of the violations.

329. The applicant Government relied on Articles 3, 5, 6, 8, 10, 11, 13 and 14 of the Convention and Articles 1 and 2 of Protocol No. 1, distinguishing, as appropriate, between alleged violations of the rights of Turkish Cypriots and those of the Gypsy community.

A. The scope of the complaints before the Court

1. The applicant Government's submissions

330. In the applicant Government's submission, the Commission had incorrectly excluded from the scope of its examination on the merits several major complaints on the ground that they had not been raised in specific form at the admissibility stage of the proceedings and were thus not in substance covered by the admissibility decision. The complaints in question related to, *inter alia*: pervasive discrimination against and the degrading treatment of the Gypsy community, in breach of Article 3; degrading

treatment of Turkish Cypriots, including arrests and detention of political opponents and of those who sought asylum in the United Kingdom because of human-rights violations, in breach of Article 3; the conferment of extensive jurisdiction on military courts to try civilians, in breach of Article 6; and violations of the right to respect for private and family life and the home of indigenous Turkish Cypriots through a policy of mass settlement and colonisation by mainland Turks, in breach of Article 8.

331. The applicant Government disputed the Commission's approach to the interpretation of the admissibility decision and in particular its view that the above-mentioned complaints were only expanded on at the merits stage. They asserted that all of the above-mentioned issues had either explicitly or by necessary implication been raised as complaints at the admissibility stage. The applicant Government argued that the evidence which they had adduced at the merits stage did not raise new issues but was relevant to the issues or grounds of complaint already raised. They sought support for this view in their contention that the respondent Government had replied to these complaints in their observations of November 1997 and were given until 27 August 1998 by the Commission to forward further observations following Cyprus's submissions on 1 June 1998. They added that the Commission had itself laid down the scope of the complaints to be considered in the mandate which it had assigned to the delegates on 15 September 1997. The applicant Government insisted that all of their complaints were within the scope of the mandate as defined by the Commission.

2. The Court's response

332. The Court notes that the Commission declared admissible complaints introduced by the applicant Government under Articles 5, 6, 10, 11 and 13 of the Convention and Article 1 of Protocol No 1. These complaints were made with respect to Turkish Cypriots. The Commission also declared admissible complaints under Articles 3, 5 and 8 of the Convention in relation to the treatment of Turkish-Cypriot Gypsies who had sought asylum in the United Kingdom. The Court observes that in respect of all these complaints the applicant Government relied on specific sets of facts in support of their allegations. At the merits stage the applicant Government advanced further materials which, in their view, were intended to elaborate on the facts initially pleaded in support of the complaints declared admissible. However, in the Commission's opinion the materials had the effect of introducing new complaints which had not been examined at the admissibility stage. For this reason, the Commission could not entertain what it considered to be "additional complaints". The Court notes that the complaints now invoked by the applicant Government fall into this category.

333. The Court finds no reason to depart from the Commission's view of the scope of its admissibility decision. It notes in this respect that the Commission carefully examined the materials submitted by the applicant Government in the post-admissibility phase and was anxious not to exclude any further submissions of fact which could reasonably be considered to be inherently covered by its admissibility decision. It is for this reason that the Commission could properly relate the applicant Government's post-admissibility pleadings on various aspects of the alleged treatment of political opponents to the complaint which it had declared admissible under Article 5 of the Convention relating to violation of the security of their person. In a similar vein, the Court also considers that the Commission was justified in rejecting complaints which it clearly felt were new complaints, for example as regards the effects of the respondent State's policy with respect to settlers on the right of the indigenous Turkish Cypriots to respect for private life.

334. The Court recalls that the Commission's decision declaring an application admissible determines the scope of the case brought before the Court; it is only within the framework so traced that the Court, once a case is duly referred to it, may take cognisance of all questions of fact or of law arising in the course of the proceedings (see the above-mentioned Ireland v. the United Kingdom judgment, p. 63, § 157, and the Philis v. Greece judgment of 27 August 1991, Series A no. 209, p. 19, § 56). Accordingly it is the facts as declared admissible by the Commission which are decisive for its jurisdiction (see, for example, the Guerra and Others v. Italy judgment of 19 February 1998, *Reports* 1998-I, p. 223, § 44). Although the Court is empowered to give a characterisation in law to those facts which is different from that applied in the proceedings before the Commission, its jurisdiction cannot extend to considering the merits of new complaints which have not been pleaded at the admissibility stage of the proceedings with reference to supporting facts (see the Findlay v. the United Kingdom judgment of 25 February 1997, *Reports* 1997-I, pp. 277-78, § 63); nor is the Court persuaded by the applicant Government's argument that the grounds set out in their original application were closely connected with the ones pleaded at the merits stage but rejected by the Commission.

335. For these reasons, and having regard to the facts and grounds of complaint advanced by the applicant Government at the admissibility stage, the Court confirms the Commission's view of the scope of its admissibility decision. On that account it will not examine any complaints adjudged by the Commission to fall outside the scope of that decision.

B. The establishment of the facts

1. The applicant Government's submissions

336. The applicant Government maintained that the Commission had applied the wrong legal test in determining whether there existed an administrative practice of violating the Convention. They referred in this connection to the Commission's findings that it had not been proved "beyond reasonable doubt", firstly, that there was a practice by the "TRNC" authorities and the courts of refusing legal protection to political opponents; secondly, that there was a practice of discriminating against the Gypsy community or denying them legal protection; and, thirdly, that there was a practice of condoning interferences by criminal conduct with the property of Turkish Cypriots or denying the latter legal protection.

337. The applicant Government submitted in the above connection that it was sufficient under the Convention to establish proof of a practice with reference to the existence of "substantial evidence" of such, which, as regards these three allegations, there clearly was.

338. As to the Commission's evaluation of the evidence, the applicant Government claimed that the value of certain of the Commission's findings of no violation was undermined on account of the limits placed by the Commission's delegates on the number of witnesses who could be heard and the conclusions which the Commission drew from the credibility of those witnesses who did in fact testify.

2. The Court's response

339. The Court reiterates at the outset its earlier conclusion that limits placed by the Commission's delegates on the number of witnesses who could be heard in support of the Government's case did not undermine the principle of procedural equality (see paragraph 110 above). It is the applicant Government's contention that the delegates, by refusing to allow additional witness testimony, denied themselves the opportunity to be apprised fully of the weight of the evidence against the respondent State. However, in the Court's view, the delegates' decision could properly be justified with reference to their perception of relevance and sufficiency of evidence at the time of the hearing of witnesses. The Court sees no reason to doubt that the delegates would have admitted further witnesses had they considered that additional oral testimony would have contributed to the substantiation of the facts as alleged by the applicant Government. Moreover, it does not appear to the Court that the applicant Government pressed their wish to have further witnesses heard by the delegates. The main protest to the arrangements made by the delegates for hearing witnesses came from the respondent's side (see paragraphs 109-10 above). This must be seen as a relevant consideration to be weighed in the balance.

340. The Court is of course attentive to the fact that, unlike the investigation conducted into the situation of the Karpas Greek Cypriots, the Commission's establishment of the facts in respect of the instant category of complaints could not draw on United Nations factual reviews. The Commission relied heavily on the evidence of the witnesses heard by the delegates. It does not appear to the Court that the Commission can be faulted for adopting a cautious approach to the evaluation of witness testimony, having regard to the nature of the allegations made by the applicant Government's witnesses, the inevitable element of subjectivity which colours the evidence of individuals who are impugning a regime with which they profoundly disagree and the testimony of supporters of that regime. In the Court's opinion, the Commission was correct in its decision to base its evaluation mostly on the common points which emerged from the various witnesses' testimony as a whole.

It does not see any reason to depart from the facts as found by the Commission (see paragraphs 52-55 above).

341. The Court will ascertain whether the facts as found disclose a violation of the rights invoked by the applicant Government. As to the standard of proof, it rejects the applicant Government's submissions in respect thereof and will apply a standard of proof "beyond reasonable doubt".

C. The merits of the applicant Government's complaints

1. Complaints relating to Turkish-Cypriot political opponents

342. The applicant Government alleged that Turkish Cypriots living in northern Cyprus who were political opponents of the "TRNC" regime were subject to arbitrary arrest and detention, in violation of their rights under Article 5 of the Convention. In addition, they were assaulted, threatened and harassed by third parties, in violation of Article 8 of the Convention. The applicant Government further alleged, with reference to Article 10 of the Convention, that the authorities failed to protect the right to freedom of expression by tolerating third-party constraints on the exercise of this right. These constraints took the form of, for example, denial of employment to political opponents or threats or assaults by private parties against their person. The applicant Government further contended that as a result of the "TRNC"'s general policy in the area of freedom of movement, the right of political opponents to freedom of association was violated on account of the interferences with their right to gather with Greek Cypriots and others in Cyprus. Finally, the applicant Government asserted that, in view of the aforementioned background, it had to be concluded that political opponents of the "TRNC" regime were victims of ill-treatment or degrading treatment in breach of Article 3 of the Convention.

343. The applicant Government averred that there was an administrative practice of violation of the above Convention rights and that this was confirmed by the substantial evidence adduced by the witnesses who were heard by the delegates. They maintained that the oral testimony commonly and consistently established administrative practices of the "TRNC" authorities of refusing to protect the rights of political opponents of the ruling parties, irrespective of whether such interferences were caused by third parties or by the authorities themselves.

344. The applicant Government further stated that the Commission had erred in its conclusion that habeas corpus proceedings ought to have been used by victims of unlawful arrest and detention. That remedy, they submitted, could not be considered effective in cases of brief arrests and detentions followed by release, all the more so since detainees had no access to a lawyer. Nor could the potential to seek a remedy *ipso facto* prevent the finding of an administrative practice of violation of Convention rights. In the applicant Government's submission the Commission's focus should have been on the tolerance by the authorities of repeated abuse of the rights of political opponents under Articles 5, 8 and 10 and 11 of the Convention. For the applicant Government, the practice which they alleged was based on that state of affairs, not on the non-availability of judicial remedies.

345. The Commission concluded that there had been no violation of the rights invoked by the applicant Government by reason of failure to protect these rights. The Commission observed that it could not be excluded that in individual cases there had been interferences by the authorities with the rights of Turkish Cypriots by reason of their political opposition to the ruling parties in northern Cyprus. However, it also noted that the individuals concerned did not attempt to seek redress for their grievances, for example by making use of the remedy of habeas corpus to challenge the lawfulness of their arrest or detention. For the Commission, it had not been shown beyond reasonable doubt that all of the available remedies would have been ineffective.

346. The Court accepts the Commission's conclusion. Its own assessment of the evidence leads it to believe that there may have been individual cases of interferences with the rights of political opponents. However, it cannot conclude on the strength of that evidence that there existed during the period under consideration an administrative practice of suppressing all dissent directed at the "TRNC" ruling parties or an official policy of acquiescing in interferences by pro-"TRNC" supporters with the rights invoked by the applicant Government. The Court must have regard to the fact that the complaints alleged by the applicant Government are shaped in a vulnerable political context bolstered by a strong Turkish military presence and characterised by social rivalry between Turkish settlers and the indigenous population. Such a context has lead to tension and, regrettably, to acts on the part of the agents of the "TRNC" which violate Convention

rights in individual cases. However, the Court considers that neither the evidence adduced by the applicant Government before the Commission nor their criticism of the Commission's evaluation of that evidence can be said to controvert the finding that it has not been shown beyond reasonable doubt that the alleged practice existed during the period under consideration.

347. The Court further notes that the Commission observed that aggrieved individuals did not test the effectiveness of remedies available in the "TRNC" legal system in order to secure redress for their complaints. The Court for its part considers that the respondent Government, in their submissions to the Commission, made out a case for the availability of remedies, including the remedy of habeas corpus. It is not persuaded on the evidence before it that it has been shown that these remedies were inadequate and ineffective in respect of the matters complained of or that there existed special circumstances absolving the individuals in question from the requirement to avail themselves of these remedies. In particular, and as previously noted, the evidence does not show to the Court's satisfaction that the "TRNC" authorities have, as a matter of administrative practice, remained totally passive in the face of serious allegations of misconduct or infliction of harm either by State agents or private parties acting with impunity (see, *mutatis mutandis*, the above-mentioned Akdivar and Others judgment, p. 1211, § 68; and paragraph 115 above, *in fine*).

348. Having regard to the above considerations, the Court concludes that it has not been established that, during the period under consideration, there has been an administrative practice of violation of the rights of Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10 and 11 of the Convention, including by reason of an alleged practice of failing to protect their rights under these provisions.

2. Complaints relating to the Turkish-Cypriot Gypsy community

349. The applicant Government stated that the Gypsy community living in northern Cyprus was subjected, as a matter of practice, to discriminatory and degrading treatment so extensive that many Gypsies were compelled to seek political asylum in the United Kingdom. The applicant Government relied on Articles 3, 5, 8 and 14 of the Convention.

350. The applicant Government submitted that the Commission had erred in finding that members of the Gypsy community who had experienced hardship had not exhausted domestic remedies. They contended that the evidence heard by the delegates confirmed that Gypsies could not afford litigation and that legal aid was not available to them for civil proceedings. In any event, the allegation at issue concerned a continuing administrative practice of discriminatory and degrading treatment of the Gypsy community and substantial evidence of such had been adduced. The Commission had wrongly focused on the availability of remedies with

reference to the "beyond reasonable doubt" test rather than on the key issue of whether there was substantial evidence of an administrative practice of discriminatory and degrading treatment against the Gypsy community.

351. The Commission observed that individual members of the Gypsy community had experienced hardship during the period under consideration. It referred in this connection to the demolition of the shacks of a Gypsy community near Morphou upon the order of the local authority, the refusal of airline companies to transport Gypsies without a visa and humiliation of Gypsy children in school. However, in the Commission's conclusion the aggrieved persons had not exhausted available domestic remedies and it had not been established beyond reasonable doubt that there was a deliberate practice to discriminate against Gypsies or withhold protection against social discrimination. The Commission accordingly found that there had been no violation of Articles 3, 5, 8 and 14 of the Convention.

352. The Court observes that members of the Turkish-Cypriot Gypsy community have suffered hardship at the hands of the "TRNC" authorities. It refers in this respect to the instances identified by the Commission (see paragraph 54 above). However, the Court does not consider that these individual cases bear out the claim that there existed during the period under consideration an administrative practice of violating the rights invoked by the applicant Government. It further observes that it does not appear that any of the members of the Turkish-Cypriot Gypsy community who claim to have suffered at the hands of the "TRNC" authorities sought to invoke remedies before the local courts, for example a claim for damages in respect of the demolition of the Gypsy shacks near Morphou. The Court does not accept the applicant Government's assertion that the unavailability of legal aid in the "TRNC" for the bringing of civil actions exonerated aggrieved individuals from the requirement to use domestic remedies. It notes that there is no Convention obligation as such on a Contracting State to operate a civil legal aid system for the benefit of indigent litigants. What is important for the Court is the fact that it does not appear that any attempt has been made to take any legal proceedings whatsoever in respect of the matters alleged by the applicant Government.

353. The Court concludes that it has not been established that, during the period under consideration, there has been a violation as a matter of administrative practice of the rights of members of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8 and 14 of the Convention, including by reason of an alleged practice of failing to protect their rights under these Articles.

3. Alleged violation of Article 6 of the Convention

354. The applicant Government contended that the "TRNC" authorities, as a matter of law and practice, violated Article 6 of the Convention in that civil rights and obligations and criminal charges against persons could not

be determined by an independent and impartial tribunal established by law within the meaning of that provision. The applicant Government reiterated in this connection their view as to the illegality of the context in which "TRNC" courts operated (see paragraphs 83-85 above).

355. The applicant Government further submitted that the "TRNC" authorities operated a system of military courts which had jurisdiction to try cases against civilians in respect of matters categorised as military offences. In their view it followed from the Court's Incal v. Turkey judgment of 9 June 1998 (*Reports* 1998-IV) that a civilian tried before a military court was denied a fair hearing before an independent and impartial tribunal. The jurisdiction of the military courts in this respect was laid down in "Article 156 of the TRNC Constitution", with the result that their composition could not be challenged. The applicant Government maintained that the Commission should have found a violation of Article 6 on account of the existence of a legislative practice of violation rather than concentrating on the issue as to whether there was evidence of any particular proceedings before military courts involving civilians. They further stressed that, contrary to the Commission's conclusion on this point, the evidence adduced before the Commission provided concrete examples of civilians having been tried and convicted before military courts. This evidence was regrettably overlooked in the Commission's assessment.

356. The Commission did not find it established on the facts that military courts tried any civilians during the period under consideration. On that account it concluded that there had been no violation of Article 6 of the Convention.

357. The Court considers that it does not have to be satisfied on the evidence that there was an administrative practice of trying civilians before military courts in the "TRNC". It observes that the applicant Government complain about the existence of a legislative practice of violating Article 6, having regard to the clear terms of "Article 156 of the TRNC Constitution" and the "Prohibited Military Areas Decree" (see paragraph 355 above). It recalls in this connection that in its Ireland v. the United Kingdom judgment, the Court considered that, unlike individual applicants, a Contracting State was entitled to challenge under the Convention a law *in abstracto* having regard to the fact that former Article 24 (current Article 33) of the Convention enabled any Contracting State to refer to the Commission any alleged breach of the provisions of the Convention and the Protocols thereto by another Contracting State (see the above-mentioned Ireland v. the United Kingdom judgment, p. 91, § 240). In the same judgment the Court found that a "breach" within the meaning of former Article 24 (current Article 33) resulted from the mere existence of a law which introduced, directed or authorised measures incompatible with the rights and freedoms safeguarded. The Court further stated that a breach of this kind might only be found if the law challenged pursuant to former

Article 24 (current Article 33) was couched in terms sufficiently clear and precise to make the breach immediately apparent; otherwise, the decision should be arrived at by reference to the manner in which the respondent State interpreted and applied *in concreto* the impugned text or texts (ibid.).

358. For the Court, examination *in abstracto* of the impugned "constitutional provision" and the "Prohibited Military Areas Decree" leads it to conclude that these texts clearly introduced and authorised the trial of civilians by military courts. It considers that there is no reason to doubt that these courts suffer from the same defects of independence and impartiality which were highlighted in its Incal v. Turkey judgment in respect of the system of National Security Courts established in Turkey by the respondent State (judgment cited above, pp. 1572-73, §§ 70-72), in particular the close structural links between the executive power and the military officers serving on the "TRNC" military courts. In the Court's view, civilians in the "TRNC" accused of acts characterised as military offences before such courts could legitimately fear that they lacked independence and impartiality.

359. For the above reasons the Court finds that there has been a violation of Article 6 of the Convention on account of the legislative practice of authorising the trial of civilians by military courts.

4. Alleged violation of Article 10 of the Convention

360. The applicant Government complained in the proceedings before the Commission that the right of Turkish Cypriots living in northern Cyprus to receive information was violated on account of a prohibition on the circulation of Greek-language newspapers. The applicant Government did not revert to this complaint in their memorial or at the public hearing.

361. The Commission found, with reference to a similar complaint raised in the context of the living conditions of the Karpas Greek Cypriots, that the alleged restrictions on the circulation of Greek-language newspapers in northern Cyprus had not been substantiated.

362. The Court agrees with the Commission's conclusion and notes that it is consistent with the finding reached on the evidence in connection with the alleged interference with Article 10 invoked with respect to the enclaved Greek-Cypriot population (see paragraphs 253-54 above).

363. The Court holds, accordingly, that no violation of Article 10 of the Convention has been established by virtue of alleged restrictions on the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek-language press.

5. Alleged violation of Article 11 of the Convention

364. The applicant Government stated that, as a result of the "TRNC"'s general policy in the area of freedom of movement, there was an

administrative practice of interference, dating from 1974, with the right of Turkish Cypriots living in the north to meet or foregather with Greek Cypriots and others in Cyprus, particularly in the United Nations buffer-zone and in the government-controlled area.

365. The applicant Government highlighted several instances of arbitrary restrictions being imposed on persons wishing to attend bi-communal meetings, including sports and music events. They drew attention to their claim that the respondent Government had themselves in their observations on the admissibility and merits of this complaint submitted evidence to the Commission of the administrative practice of imposing from 1994 through to 1996 continuing restrictions on the right of Turkish Cypriots to travel to the south. This period, they recalled, was the period under consideration.

366. The applicant Government acknowledged that the original complaint formulated to the Commission was framed in terms of an administrative practice of interference with the right of Turkish Cypriots living in the north to freedom of association. They requested the Court to examine also the complaint in the terms described above. As to the restrictions on the right to freedom of association, they contended that the evidence heard by the delegates clearly established a violation of this right. They further observed in support of this allegation that "Articles 12 and 71 of the TRNC Constitution" precluded the formation of associations to promote the interests of minorities. In their view, the existence of such a prohibition should in itself be considered a violation of Article 11 of the Convention.

367. The Commission observed that nothing was brought to its attention to the effect that during the period under consideration there had been attempts by Turkish Cypriots living in northern Cyprus to establish associations with Greek Cypriots in the northern or southern parts of Cyprus which were prevented by the authorities. On that account the Commission found the complaint to be unsubstantiated.

368. As to impediments to participation by Turkish Cypriots in bi-communal events, the Commission noted that, according to relevant United Nations documents, certain restrictions had been placed in the way of inter-communal meetings as from the second half of 1996. In the Commission's opinion, any complaint to that effect related to distinct facts which occurred after the date of the admissibility decision. For that reason a complaint could not be entertained.

369. The Court recalls that it has accepted the facts as established by the Commission (see paragraphs 339-40 above). It does not consider that, on the basis of the evidence before it, there was, during the period under consideration, an administrative practice of impeding all bi-communal contacts between Turkish Cypriots living in the north and Greek Cypriots in the south. The Court notes that the "TRNC" authorities took a much more

rigorous approach to such contacts after the second half of 1996 and indeed prohibited them. However, and as noted by the Commission, alleged violations of Convention rights occurring during that period are outside the scope of the admissibility decision (see paragraph 368 above).

370. As to the alleged interference with the right of Turkish Cypriots living in the north to freedom of association, the Court observes that the Commission found on the evidence that the "TRNC" authorities had not made any attempt to intervene to prevent the creation of bi-communal organisations in the north of Cyprus. In the absence of any concrete evidence to the contrary, and having regard to the requisite standard of proof for establishing the existence of an administrative practice of violating a Convention right, the Court concludes that there has been no violation of Article 11 from this standpoint either.

371. The Court finds therefore that it has not been established that there has been a violation, as a matter of administrative practice, of the right to freedom of association or assembly under Article 11 of the Convention in respect of Turkish Cypriots living in northern Cyprus.

6. Alleged violation of Article 1 of Protocol No. 1

372. The applicant Government maintained in the proceedings before the Commission that there was a continuing violation of Article 1 of Protocol No. 1, firstly, on account of the failure of the "TRNC" authorities to allow Turkish Cypriots living in northern Cyprus to return to their property in the south and, secondly, as a result of the tolerance shown by the same authorities to acts of criminal damage to the property of Turkish Cypriots committed by private parties.

373. The applicant Government stated before the Court that, regarding the second complaint, the Commission wrongly concluded that it had not been established that there existed an administrative practice by the "TRNC" authorities of systematically condoning third-party interferences with the property of Turkish Cypriots. The applicant Government did not revert to the first complaint either in their memorial or at the hearing.

374. The Commission found that no cases were brought to its attention where during the period under consideration Turkish Cypriots living in northern Cyprus made attempts to access their property in the south and were prevented from doing so. The complaint was therefore rejected for want of substantiation. As to the alleged unlawful interference by private persons with the property of Turkish Cypriots living in northern Cyprus, the Commission considered, firstly, that sufficient remedies existed to secure redress against such interferences and, secondly, that it was not established that there existed an administrative practice of condoning the interferences.

375. The Court accepts the Commission's conclusion. It observes in the first place that the applicant Government have not improved the case they sought to make out before the Commission concerning the alleged obstacles

placed by the "TRNC" authorities in the way of Turkish Cypriots who wished to return to their homes in the south. No further evidence has been adduced before the Court of Turkish Cypriots living in the north who, during the period under consideration, have been prevented from having access to their property in the south on account of the functioning of "TRNC" restrictions on the freedom of movement.

376. Secondly, and as to the alleged attacks by private parties on the property of Turkish Cypriots, the Court considers that the evidence relied on by the applicant Government does not bear out their claim that the "TRNC" authorities tolerate, encourage or in any way acquiesce in this form of criminality. The Court accepts on the evidence that it cannot be excluded that such incidents have occurred. However, that evidence does not substantiate the existence of an administrative practice of violation of Article 1 of Protocol No. 1.

377. In view of the above considerations, the Court concludes that it has not been established that there has been a violation of Article 1 of Protocol No. 1 by reason of the alleged administrative practice of violating that Article, including by reason of failure to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus.

7. Alleged violation of Article 13 of the Convention

378. The applicant Government challenged the Commission's finding that there had been no violation of Article 13 of the Convention by reason of failure to secure effective remedies to Turkish Cypriots living in northern Cyprus. The applicant Government reiterated their view (see paragraphs 83-85 above) that the legal remedies which were claimed to be available did not satisfy the basic requirements of Article 6 and, as a consequence, could not be considered to be "effective" within the meaning of Article 13.

379. Furthermore, the applicant Government reasserted their view (see paragraphs 336-37 above) that the Commission had erroneously relied on the "beyond reasonable doubt" standard in ascertaining whether there was an administrative practice of withholding legal remedies from certain groups of persons. Had it applied the correct standard, namely that of "substantial evidence", it would have been compelled to reach a different conclusion.

380. For the above reasons the applicant Government requested the Court to depart from the Commission's finding and to rule that the respondent State, as a matter of law and practice, violated Article 13 by reason of its failure to provide an effective remedy before a national authority to the Gypsy community and political opponents of Turkey's policy in Cyprus.

381. The Commission considered that, generally speaking, the remedies provided by the "TRNC" legal system appeared sufficient to provide redress

against any alleged violation of Convention rights in respect of the groups at issue and that the applicant Government had not substantiated their allegation concerning the existence of a practice of violating Article 13. It thus concluded that there had been no violation of Article 13 during the period under consideration.

382. The Court recalls that, as regards their allegations concerning political opponents (see paragraphs 342-44 above) and the Gypsy community (see paragraphs 349-50 above), it considered that the applicant Government had not succeeded in refuting the respondent Government's submissions in the proceedings before the Commission that remedies were available to aggrieved individuals within the "TRNC" legal system. The Court was not persuaded that any attempt to invoke a remedy was doomed to failure. On that account the Court could not accept the applicant Government's allegation that there was an administrative practice of denying remedies to individuals, in breach of Article 13 of the Convention. The evidence before the Court in this connection cannot be said to prove beyond reasonable doubt the existence of any such practice.

383. The Court concludes accordingly that no violation of Article 13 of the Convention has been established by reason of a failure as a matter of administrative practice to secure effective remedies to Turkish Cypriots living in northern Cyprus.

VIII. ALLEGED VIOLATIONS OF ARTICLES 1, 17, 18 AND FORMER ARTICLE 32 § 4 OF THE CONVENTION

384. The applicant Government requested the Court to find violations of Articles 1, 17, 18 and former Article 32 § 4 of the Convention. Article 1 provides:

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

Former Article 32 § 4 of the Convention provides:

> "The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs."

385. The applicant Government contended that in view of the comprehensive and massive violations of the Convention committed by the respondent State, it would be appropriate in this case for the Court to find a violation of Article 1.

386. The applicant Government further submitted that the facts disclosed that the respondent State in reality controlled Greek-Cypriot property in the north in pursuance of a policy of ethnic cleansing. The respondent State's resettlement programme was also a clear manifestation of this policy. However, the respondent State sought to conceal its real aim with reference

to the limitations on rights permitted under Article 8 § 2 or Article 1 of Protocol No. 1. The applicant Government submitted that the respondent State must be considered in the circumstances to have violated Articles 17 and 18 of the Convention.

387. The applicant Government finally submitted that the respondent State had failed to put an end to the violations of the Convention established in the Commission's 1976 report as requested in the Committee of Ministers' decision of 21 October 1977 (see paragraph 17 above). The applicant Government stated that the Court should note any continuing violations of the Convention which it found had continued after that decision. They also submitted that the Court should consider it to be a further aggravating factor that violations of the Convention had continued for more than twenty years and that the respondent State's official policy had directly resulted in violations after the Committee of Ministers' decision.

388. The Court considers that it is unnecessary in the circumstances to examine separately these complaints. It further recalls that, regarding the applicant Government's complaints under Articles 17 and 18, it reached the same conclusion in the context of similar allegations made with respect to alleged interferences with the rights of Greek-Cypriot displaced persons' property (see paragraph 206 above).

FOR THESE REASONS, THE COURT

I. PRELIMINARY ISSUES

1. *Holds* unanimously that it has jurisdiction to examine the preliminary issues raised in the proceedings before the Commission (paragraphs 56-58);

2. *Holds* unanimously that the applicant Government have *locus standi* to bring the application (paragraph 62);

3. *Holds* unanimously that the applicant Government have a legitimate legal interest in having the merits of the application examined (paragraph 68);

4. *Holds* by sixteen votes to one that the facts complained of in the application fall within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State's responsibility under the Convention (paragraph 80);

5. *Holds* by ten votes to seven that, for the purposes of former Article 26 (current Article 35 § 1) of the Convention, remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of these remedies is to be considered in the specific circumstances where it arises (paragraph 102);

6. *Holds* unanimously that situations which ended more than six months before the date of introduction of the present application (22 May 1994) fall outside the scope of the Court's examination (paragraph 104).

II. ALLEGED VIOLATIONS OF THE RIGHTS OF GREEK-CYPRIOT MISSING PERSONS AND THEIR RELATIVES

1. *Holds* unanimously that there has been no breach of Article 2 of the Convention by reason of an alleged violation of a substantive obligation under that Article in respect of any of the missing persons (paragraph 130).

2. *Holds* by sixteen votes to one that there has been a continuing violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances (paragraph 136);

3. *Holds* unanimously that no breach of Article 4 of the Convention has been established (paragraph 141);

4. *Holds* by sixteen votes to one that there has been a continuing violation of Article 5 of the Convention by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there is an arguable claim that they were in Turkish custody at the time of their disappearance (paragraph 150);

5. *Holds* unanimously that no breach of Article 5 of the Convention has been established by virtue of the alleged actual detention of Greek-Cypriot missing persons (paragraph 151);

6. *Holds* unanimously that it is not necessary to examine the applicant Government's complaints under Articles 3, 6, 8, 13, 14 and 17 of the Convention in respect of the Greek-Cypriot missing persons (paragraph 153);

7. *Holds* by sixteen votes to one that there has been a continuing violation of Article 3 of the Convention in respect of the relatives of the Greek-Cypriot missing persons (paragraph 158);

8. *Holds* unanimously that it is not necessary to examine whether Articles 8 and 10 of the Convention have been violated in respect of the relatives of the Greek-Cypriot missing persons, having regard to the Court's conclusion under Article 3 (paragraph 161).

III. ALLEGED VIOLATIONS OF THE RIGHTS OF DISPLACED PERSONS TO RESPECT FOR THEIR HOME AND PROPERTY

1. *Holds* by sixteen votes to one that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus (paragraph 175);

2. *Holds* unanimously that, having regard to its finding of a continuing violation of Article 8 of the Convention, it is not necessary to examine whether there has been a further violation of that Article by reason of the alleged manipulation of the demographic and cultural environment of the Greek-Cypriot displaced persons' homes in northern Cyprus (paragraph 176);

3. *Holds* unanimously that the applicant Government's complaint under Article 8 of the Convention concerning the interference with the right to respect for family life on account of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus falls to be considered in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots (paragraph 177);

4. *Holds* by sixteen votes to one that there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights (paragraph 189);

5. *Holds* by sixteen votes to one that there has been a violation of Article 13 of the Convention by reason of the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1 (paragraph 194);

6. *Holds* unanimously that it is not necessary to examine whether in this case there has been a violation of Article 14 of the Convention taken in conjunction with Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1, by virtue of the alleged discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for their homes, to the peaceful enjoyment of their possessions and to an effective remedy (paragraph 199);

7. *Holds* unanimously that it is not necessary to examine whether the alleged discriminatory treatment of Greek-Cypriot displaced persons also gives rise to a breach of Article 3 of the Convention, having regard to its conclusions under Articles 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 (paragraph 203);

8. *Holds* unanimously that it is not necessary to examine separately the applicant Government's complaints under Articles 17 and 18 of the Convention, having regard to its findings under Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 (paragraph 206).

IV. ALLEGED VIOLATIONS ARISING OUT OF THE LIVING CONDITIONS OF GREEK CYPRIOTS IN NORTHERN CYPRUS

1. *Holds* by sixteen votes to one that no violation of Article 2 of the Convention has been established by reason of an alleged practice of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus (paragraph 221);

2. *Holds* by sixteen votes to one that there has been no violation of Article 5 of the Convention (paragraph 227);

3. *Holds* by eleven votes to six that no violation of Article 6 of the Convention has been established in respect of Greek Cypriots living in northern Cyprus by reason of an alleged practice of denying them a fair hearing by an independent and impartial tribunal in the determination of their civil rights and obligations (paragraph 240);

4. *Holds* by sixteen votes to one that there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus (paragraph 246);

5. *Holds* unanimously that no violation of Article 9 of the Convention has been established in respect of Maronites living in northern Cyprus (paragraph 247);

6. *Holds* by sixteen votes to one that there has been a violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship (paragraph 254);

7. *Holds* unanimously that no violation of Article 11 of the Convention has been established by reason of an alleged practice of denying Greek Cypriots living in northern Cyprus the right to freedom of association (paragraph 263);

8. *Holds* unanimously that the applicant Government's complaint under Article 8 of the Convention in respect of an alleged practice of restricting the participation of Greek Cypriots living in northern Cyprus in bi-communal or inter-communal events falls to be considered in the context of the global assessment of whether or not there has been a violation of that Article (paragraph 262);

9. *Holds* by sixteen votes to one that there has been a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised (paragraphs 269-70);

10. *Holds* unanimously that no violation of Article 1 of Protocol No. 1 has been established by virtue of an alleged practice of failing to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons (paragraph 272);

11. *Holds* by sixteen votes to one that there has been a violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them (paragraph 280);

12. *Holds* by sixteen votes to one that, from an overall standpoint, there has been a violation of the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention (paragraphs 296 and 301);

13. *Holds* unanimously that no violation of Article 8 of the Convention has been established by reason of an alleged practice of interference with the right of Greek Cypriots living in northern Cyprus to respect for their correspondence (paragraph 298);

14. *Holds* unanimously that it is not necessary to examine separately the applicant Government's complaint under Article 8 of the Convention concerning the effect of the respondent State's alleged colonisation policy on the demographic and cultural environment of the Greek Cypriots' homes, having regard to its overall assessment of the latter population's living conditions under that Article (paragraph 301);

15. *Holds* by sixteen votes to one that there has been a violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment (paragraph 311);

16. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 in respect of Greek Cypriots living in northern Cyprus, having regard to its finding under Article 3 (paragraph 315);

17. *Holds* by fourteen votes to three that, having regard to the particular circumstances of this case, it is not necessary to examine whether there has been a breach of Article 14 of the Convention taken in conjunction with the other relevant Articles (paragraph 317);

18. *Holds* by eleven votes to six that no violation of Article 13 of the Convention has been established by reason of the alleged absence of remedies in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 of the Convention and Article 1 of Protocol No. 1 (paragraph 324);

19. *Holds* by sixteen votes to one that there has been a violation of Article 13 of the Convention by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1 (paragraph 324).

V. ALLEGED VIOLATION OF THE RIGHT OF DISPLACED GREEK CYPRIOTS TO HOLD ELECTIONS

Holds unanimously that it is not necessary to examine whether the facts disclose a violation of the right of displaced Greek Cypriots to hold free elections, as guaranteed by Article 3 of Protocol No. 1 (paragraph 327).

VI. ALLEGED VIOLATIONS IN RESPECT OF THE RIGHTS OF TURKISH CYPRIOTS, INCLUDING MEMBERS OF THE GYPSY COMMUNITY, LIVING IN NORTHERN CYPRUS

1. *Holds* unanimously that it declines jurisdiction to examine those aspects of the applicant Government's complaints under Articles 6, 8, 10 and 11 of the Convention in respect of political opponents of the regime in the "TRNC" as well as their complaints under Articles 1 and 2 of Protocol No. 1 in respect of the Turkish-Cypriot Gypsy community, which were held by the Commission not to be within the scope of the case as declared admissible (paragraph 335);

2. *Holds* unanimously that no violation of the rights of Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10 and 11 of the Convention has been established by reason of an alleged administrative practice, including an alleged practice of failing to protect their rights under these Articles (paragraph 348);

3. *Holds* by sixteen votes to one that no violation of the rights of members of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8 and 14 of the Convention has been established by reason of an alleged administrative practice, including an alleged practice of failing to protect their rights under these Articles (paragraph 353);

4. *Holds* by sixteen votes to one that there has been a violation of Article 6 of the Convention on account of the legislative practice of authorising the trial of civilians by military courts (paragraph 359);

5. *Holds* unanimously that no violation of Article 10 of the Convention has been established by reason of an alleged practice of restricting the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek-language press (paragraph 363);

6. *Holds* unanimously that no violation of Article 11 of the Convention has been established by reason of an alleged practice of interference with the right to freedom of association or assembly of Turkish Cypriots living in northern Cyprus (paragraph 371);

7. *Holds* unanimously that no violation of Article 1 of Protocol No. 1 has been established by reason of an alleged administrative practice, including an alleged practice of failing to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus (paragraph 377);

8. *Holds* by eleven votes to six that no violation of Article 13 of the Convention has been established by reason of an alleged practice of failing to secure effective remedies to Turkish Cypriots living in northern Cyprus (paragraph 383).

VII. ALLEGED VIOLATIONS OF OTHER ARTICLES OF THE CONVENTION

Holds unanimously that it is not necessary to examine separately the applicant Government's complaints under Articles 1, 17, 18 and former Article 32 § 4 of the Convention (paragraph 388).

VIII. THE ISSUE OF ARTICLE 41 OF THE CONVENTION

Holds unanimously that the issue of the possible application of Article 41 of the Convention is not ready for decision and *adjourns* consideration thereof.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 May 2001.

Luzius WILDHABER
President

Michele DE SALVIA
Registrar

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

(a) partly dissenting opinion of Mrs Palm joined by Mr Jungwiert, Mr Levits, Mr Panţîru, Mr Kovler and Mr Marcus-Helmons;

(b) partly dissenting opinion of Mr Costa;

(c) partly dissenting opinion of Mr Fuad;

(d) partly dissenting opinion of Mr Marcus-Helmons.

L.W.
M. de S.

PARTLY DISSENTING OPINION OF JUDGE PALM JOINED BY JUDGES JUNGWIERT, LEVITS, PANŢÎRU, KOVLER AND MARCUS-HELMONS

While sharing most of the Court's conclusions in this complex case, I feel obliged to record my dissent in respect of one major issue: the significance attached by the Court to the existence of a system of remedies within the "TRNC". I consider the Court's approach to this question to be so misguided that it taints the judgment as a whole. For the reasons developed below, this is especially unfortunate since it was open to the Court to carry out its task by avoiding this particular entanglement in a manner perfectly consonant with principle and its case-law.

In its Loizidou v. Turkey judgment of 18 December 1996 (*merits*) (*Reports of Judgments and Decisions* 1996-VI), the Court found that Article 159 of the fundamental law was to be considered as invalid against the background of the refusal of the international community to regard the "TRNC" as a State under international law. It did not "consider it desirable, let alone necessary … to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the 'TRNC'" (p. 2231, §§ 44-45). The Court was obviously concerned to limit its reasoning to what was essential for the decision of the case before it and to avoid straying into areas of particular complexity and delicacy concerning the "legality" of acts of an "outlaw" regime. It is my firm view that the Court should be equally careful in the present case to avoid elaborating a general theory concerning the validity and effectiveness of remedies in the "TRNC", particularly if it is to be built around the minimalist remarks of the International Court of Justice (ICJ) in its Advisory Opinion on Namibia which the Court in Loizidou saw fit not to interpret or to explicate any further than necessary.

Such a policy of judicial restraint in this area is supported by three main considerations. In the first place, any consideration of remedies gives rise to the obvious difficulty that the entire court system in the "TRNC" derives its legal authority from constitutional provisions whose validity the Court cannot recognise – for the same reasons that it could not recognise Article 159 in the Loizidou case – without conferring a degree of legitimacy on an entity from which the international community has withheld recognition. An international court should not consider itself free to disregard either the consistent practice of States in this respect or the repeated calls of the international community not to facilitate the entity's assertion of statehood. Secondly, the Court cannot examine the remedies of the "TRNC" in a vacuum, as if it were a normal Contracting Party, where it can be assumed that courts are "established by law" or that judges are independent and impartial (absent evidence to the contrary). To attribute legal validity to court remedies necessarily involves the Court in taking stand on whether the courts are "established by law" – something the Court

should avoid doing if it is to respect the illegal status of the "TRNC" regime and the declared stance of the international community. It is true that the concept of "established by law" is an autonomous one. However, the Court should avoid putting itself in a position where, for supposedly laudable reasons, it is tempted to fashion a semblance of legality out of a clearly illegal situation. Third, the Court should constantly bear in mind that Turkey herself does not claim that the "remedies" in question are Turkish remedies since the thrust of her arguments throughout this dispute is that the "TRNC" is an independent State responsible for the operation of its own legal system. The Court is thus confronted with the paradox that in its submissions the respondent State is advancing "remedies" that belong supposedly to another legal system. The artificiality of this approach which reflects the reality that the "TRNC" has no standing in the international community or indeed before the Court and is recognised by Turkey alone is, in itself, a reason for the Court to exercise great caution before giving a broad ruling on the status of such "remedies" under the Convention.

Of course, I accept that even in a situation of illegality it is clearly in the interests of the inhabitants that some form of court system is set up to enable basic everyday disputes to be settled by a source of authority. Moreover, it is not to be excluded that the decisions of such courts, particularly in civil matters – divorce, custody arrangements, contracts and the like – could be recognised by the courts of other countries. Such recognition has indeed occurred from time to time, notably after the situation of illegality has ended. However, it is precisely because of the importance of such arrangements for the local population – if the situation permits that recourse be had to them – that an international court should be reluctant to venture into any examination of their legality unless it is strictly necessary to do so. Any other approach may ultimately be harmful to the *de facto* utility of such a system. For example, a finding of "illegality" may discourage the use of such fora to settle disputes. Equally, a finding upholding the lawfulness of such arrangements in the present case could give rise to a call by the legitimate Cypriot government that such tribunals be shunned by the Greek-Cypriot community so as not to compromise the government's internationally asserted claim of illegality. The Court should not assume too readily that it is acting for the benefit of the local population in addressing the legality of such arrangements.

However, I should emphasise from the outset that it does not follow from my acceptance of the utility of a local court system that this Court should require applicants in northern Cyprus complaining of human-rights violations to exhaust these possible avenues of redress – or those avenues which the Court considers to be effective – before it has jurisdiction to examine their complaints. Episodic recognition by foreign courts is one thing. The exhaustion requirement is another. To require those subject to the exigencies of an occupying authority to have recourse to the courts as a

precondition to having their complaints of human-rights violations examined by this Court is surely an unrealistic proposition given the obvious and justifiable lack of confidence in such a system of administration of justice.

In the present judgment the Court unwisely embarks on the elaboration of a general theory of remedies in the "TRNC" constructed around the brief remarks of the ICJ in its Advisory Opinion on Namibia (see paragraphs 89-102) and reaches the general conclusion in paragraph 102 that "for the purposes of former Article 26 …, remedies available in northern Cyprus may be regarded as 'domestic remedies' of the respondent State". This gives rise to two major difficulties. The first is that such a theory in the present case is not at all necessary since the Court does not in fact at any stage reject a complaint under former Article 26 for failure to exhaust domestic remedies! It limits itself to using these considerations only indirectly when considering the effectiveness of remedies from the standpoint of Article 13 and the issue of official tolerance as an element of the concept of administrative practice. The fifth point of the operative provisions on preliminary issues is thus both unnecessary and over-broad.

More importantly, such a general conclusion has, as a direct consequence, that the European Court of Human Rights may recognise as legally valid decisions of the "TRNC" courts and, implicitly, the provisions of the Constitution instituting the court system. Such an acknowledgment, notwithstanding the Court's constant assertions to the contrary, can only serve to undermine the firm position taken by the international community which through the United Nations Security Council has declared the proclamation of the "TRNC"'s statehood "legally invalid" and which has stood firm in withholding recognition from the "TRNC". It also runs counter to the position taken by the Committee of Ministers of the Council of Europe (see paragraph 14 of the judgment and paragraphs 19-23 of the Loizidou judgment) and to the terms of various resolutions calling upon States "not to facilitate or in any way assist the illegal secessionist entity" (see in particular paragraphs 20 and 23 of the Loizidou judgment). It is my view that an international court should be extremely hesitant before adopting a position which goes so firmly against the grain of international practice – particularly when this is not at all necessary for the disposal of the case before it. The cautious position adopted by the Court in paragraph 45 of its Loizidou judgment is a telling example of the wisdom of such an approach.

It remains to explain why it is not necessary for the Court to express any view on the legal significance of the remedies in northern Cyprus in order to decide the present case. I propose to examine in this context the complaints where the Court took into account the existence of remedies in order to reach its conclusion – namely those under Articles 6 and 13 as regards the Greek-Cypriot community in northern Cyprus (paragraphs 233-40 and 324

of the judgment), complaints concerning Turkish-Cypriot political opponents and Gypsies (paragraphs 342-53 of the judgment) and the alleged violation of Article 13 in respect of these complaints (paragraphs 378-83 of the judgment).

1. Articles 6 and 13

The Court reaches the conclusion that no violation of Article 6 has been established "by reason of an alleged practice" as regards the claim that the members of the enclaved Greek-Cypriot population were denied their right to have their civil rights and obligations determined by independent and impartial courts established by law (paragraphs 233-40 of the judgment). In doing so, it endorsed the Commission's conclusion on the facts that there was nothing in the framework of the "TRNC" legal system to cast doubt on the independence and impartiality of the judges and that the courts functioned on the basis of the domestic law of the "TRNC".

Apart from the difficulties inherent in the recognition of the "TRNC" framework which I have alluded to above, the conclusion reached sits ill with the Court's general findings in respect of the enclaved Greek-Cypriot community of multiple grave breaches of the provisions of the Convention (Articles 3, 9, 10 of the Convention and Articles 1 and 2 of Protocol No. 1). The Court accepts that the enclaved Greek Cypriots are "compelled to live in a hostile environment in which it is hardly possible to lead a normal private and family life" (paragraph 300). It also finds that this population is the victim of discriminatory and degrading treatment based on ethnic origin, race and religion and that its members are compelled to live "isolated, restricted in their movements, controlled and with no prospect of renewing or developing their community" (paragraph 309). When one stands away from the legal detail supporting these conclusions, the Court accepts the general picture of a dwindling and aged community that has been subjected to a substantial reduction of the Convention rights of its members under colour of a policy of ethnic separation. The Court, furthermore, agrees with the observations of the UN Secretary-General that the restrictions will have the inevitable effect that the community will cease to exist (paragraph 307).

In such a context, is it realistic to say that the members of this community have access to the courts in respect of their civil claims? Is it a credible proposition that there exists a haven of juridical relief ready and able to defend the rights of this beleaguered population notwithstanding the existence of an official policy of containment and oppression? I would very much like to believe that the courts could and would function in this manner but, in the absence of substantial evidence to the contrary – as opposed to a

few successful court judgments in personal-injury or trespass actions[3] –, experience and common sense teach us that the courts are generally powerless in such a situation. It must also be borne in mind that the inhabitants during the period under consideration were not permitted to travel more than three miles from their homes – a fact which is hardly conducive to a desire to have recourse to the courts to settle disputes. It is thus a perfectly natural and predictable state of affairs that this population makes no real use of the court system.

The Court must have regard to the general legal and political context in which remedies operate as well as the personal circumstances of the complainants (see the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69). It is more in keeping with the Court's usual approach to remedies to conclude that where there is a practice of non-observance of Convention provisions, in pursuance of a particular policy of the State, remedies will, as a consequence, be half-hearted, incomplete or futile (see, *mutatis mutandis*, the Commission's report in the Greek case, Yearbook 12, p. 194). This conclusion would also apply to the complaint under Article 13 concerning alleged interferences by private persons with the rights of Greek Cypriots in northern Cyprus. Finally, it is difficult to comprehend how it can be said to be for the benefit of the local population – in the words of the much-relied upon sentence in the Advisory Opinion in the Namibia case – to require members of these communities to exhaust the domestic remedies offered by the "TRNC" before the Court would examine their complaints of human-rights violations.

In conclusion, the Court ought to have found a violation of this provision as an inevitable consequence of its general appraisal of the plight of this community and left open all issues concerning the legal system of the "TRNC".

2. Complaints concerning Turkish-Cypriot political opponents and Gypsies

The Court rejects the allegations of the existence of an administrative practice of a violation of the rights of both of the above categories. I find it helpful to recall that the concept of administrative practice in the case-law of the Convention institutions involves two distinct and cumulative elements: firstly a repetition of acts or "an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or

3. The Court has been informed of several successful court actions but it has no information at its disposal concerning the question of whether these judgments were actually enforced. The issue of enforcement, according to the applicant Government's submissions, is also linked to alleged intimidation by Turkish settlers (see paragraph 229 of the judgment).

system" (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 64, § 159). It also involves a certain "official tolerance" by State authorities on the basis that "it is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice" (ibid). Furthermore, "under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected" (ibid)[4]. The Court accepts the Commission's conclusions that the facts do not support the claims of such a general and widespread interference with the rights of the members of these groups (paragraphs 342-53). Accordingly, it could not be said that the first limb of one of the constituent elements of administrative practice – namely a repetition of acts – was present. Having reached this conclusion, it is unnecessary to go further and decide that members of these groups did not have recourse to remedies as the Court has done in paragraph 352 of the judgment. Presumably – although it is not stated *expressis verbis* – the Court has made reference to remedies in this context with a view to demonstrating that the other requirement of an administrative practice, namely official tolerance, was lacking. However to reach the conclusion that there was no practice, it is sufficient that one of the requirements – in this case the factual one – was lacking. Here again, the Court is unwisely going further than is strictly necessary to reach its conclusion.

3. Article 13 as regards the complaints of the Turkish-Cypriot community

The Court also accepts the Commission's finding in respect of this peripheral complaint that there exist effective remedies before the courts of the "TRNC" in respect of the grievances of the dissident and Gypsy community (paragraphs 378-83). Here it may be questioned whether, having earlier rejected the allegations of an administrative practice of violation of the rights of these groups, it is at all necessary to then examine the further question of whether there existed a practice of denying them effective remedies. In my view this question need only be looked at if the evidence

4. The Commission has described the notion of official tolerance as follows: "official tolerance means that superiors, though cognisant of such acts of ill-treatment, refuse to take action to punish those responsible or to prevent their repetition; or that a higher authority manifests indifference by refusing any adequate investigation of their truth or falsity; or that in judicial proceedings a fair hearing of such complaints is denied. To this latter element, the Commission would add that any action taken by a higher authority must be on a scale which is sufficient to put and end to the repetition of acts or to interrupt the pattern or system" (France, Norway, Denmark, Sweden and the Netherlands v. Turkey, decision of 6 December 1983, Decisions and Reports 35, pp. 163-64; also the Greek case, Yearbook 12, pp. 195-96).

adduced in support of the practice gives rise to an arguable claim of the existence of a practice. But even if it did, I consider that the burden rests on the respondent Government to demonstrate, with reference to decided cases, that these groups had a realistic possibility of bringing successful court actions. In the political situation obtaining in the "TRNC" I am not at all convinced, for reasons similar to those set forth in the context of Article 6 above, that the court system is capable of affording or would be permitted to afford remedies to political dissidents who call into question the policy of ethnic separation on which the entity is constructed or to impoverished Gypsies living on the margins of civil society.

Accordingly, the problem of remedies could also have been avoided in this context either by finding that it was not necessary to examine Article 13 or, in the alternative, finding that there was also a violation of that provision on the basis of the ineffectiveness of remedies – while leaving open the question of their legality.

Conclusion

The Court was unwise to follow the Commission in elaborating a general theory concerning the validity and effectiveness of remedies in the "TRNC".

It has perhaps lost sight of the disagreement between the Commission and Court in Loizidou as to how to approach issues arising out of Turkey's continuing occupation of northern Cyprus. Surely in such a political area the Court should allow itself to be guided by the firm – and unrelenting – approach followed up to the present day by the international community. As shown above, the approach taken by the Court was unnecessary to decide the issues presented in this case. In an inter-State case where issues arise which have implications for the international community at large in its relations with both parties and indeed with the Court, the principle of judicial restraint should have been given free rein as the Court suggested in its remarks in the Loizidou judgment referred to above. I very much regret that a similar measure of caution was not followed in this case.

PARTLY DISSENTING OPINION OF JUDGE COSTA

(Translation)

1. There are only two points (out of some fifty operative provisions) on which I disagree with the majority (with regard either to the reasoning or to the conclusion). They concern the religious discrimination against the Greek Cypriots living in the Karpas region and the violation of the rights of the Turkish-Cypriot Gypsy community.

2. As regards the first point, I quite understand why, having found a violation of Article 3 of the Convention against the Karpas Greek-Cypriots, the majority does not consider it necessary to examine whether there has also been a violation of Article 14 taken together with other provisions.

3. I am, however, unhappy that that conclusion was held also to apply to Article 14 taken together with Article 9. As a matter of general principle, the prohibition on discrimination contained in Article 14 does not appear to me to be made redundant by a mere finding that a right guaranteed by the Convention has been violated. For example, in the case that ended with the *Chassagnou and Others v. France* judgment ([GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III) (in which I was in the minority, but that is a separate issue), the Court had no hesitation in finding a violation of Article 11 of the Convention and Article 1 of Protocol No. 1, taken both alone and together with Article 14 of the Convention. For an enclaved community living on an island divided among other things along religious lines and having no freedom of movement (see paragraph 245 of the instant judgment), it seems to me that religious freedom is one of the most important freedoms and has, in the present case, been infringed. For my part, I see nothing illogical in those circumstances in finding violations of Article 9 and of Article 9 taken together with Article 14.

4. Admittedly, it could be objected that a finding of discriminatory treatment serious enough to amount to inhuman and degrading treatment prohibited by Article 3 suffices. Perhaps. But I am not sure that that Article necessarily encompasses everything and takes precedence over all other violations. The Convention constitutes a whole, but that does not mean that a finding of one violation of the Convention will release the Court from the obligation to examine whether there have been others, save in exceptional circumstances where all the various complaints arise out of exactly the same set of facts.

5. As regards the Turkish Cypriots of Gypsy origin, the Court finds in paragraph 352 of the judgment that no practice of denying protection of their rights has been established. However, the Commission found numerous violations of those rights and noted particularly serious incidents (see paragraph 54 of the judgment). Without repudiating that finding, the Court merely relies on the fact that the victims did not exercise any

remedies before the local courts. However, surely a distinction should be drawn between the infringement of the victims' rights and freedoms, which is undisputed, and the fact that, rightly or wrongly, the victims did not believe an action in the courts feasible or effective? Further, should their failure to bring an action be equated to a lack of evidence of an administrative practice, something which is in any event very difficult to prove and has been only rarely accepted as substantiated in the Court's decisions?

6. To my mind, it would have been simpler for the Court to accept the Commission's findings and to deem them a violation of the rights guaranteed by the Convention and the Protocols thereto. For that reason, I did not vote in favour of that operative provision.

7. As for the rest, and without deriving any individual or collective self-satisfaction, I readily agree with the grounds and operative provisions of this important judgment.

PARTLY DISSENTING OPINION OF JUDGE FUAD

1. I voted against the finding of the majority of the Court that there had been a continuing violation of Article 1 of Protocol No. 1 by the respondent State by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to, and the right to control and enjoy, their property without compensation for the interference with their property rights. Unless the Court, as presently constituted, was persuaded that the judgment of the majority in the Loizidou case was wrong, this decision was to be expected.

2. With great respect, in my view the majority has not given sufficient weight to the causes and effects of the ugly and catastrophic events which took place in Cyprus between 1963 and 1974 (which literally tore the island apart) or to developments that have occurred since, particularly the involvement of the United Nations. I have found the reasoning in some of the dissenting opinions annexed to the Loizidou v. Turkey judgment of 18 December 1996 (*merits*) (*Reports of Judgments and Decisions* 1996-VI) cogent and compelling. They stress the unique and difficult features of what might be called the Cyprus problem.

3. Judge Bernhardt (joined by Judge Lopes Rocha) made a number of observations about the present situation in Cyprus and the effect that it had on the issues before the Court. He said:

> "1. A unique feature of the present case is that it is impossible to separate the situation of the individual victim from a complex historical development and a no less complex current situation. The Court's judgment concerns in reality not only Mrs Loizidou, but thousands or hundreds of thousands of Greek Cypriots who have (or had) property in northern Cyprus. It might also affect Turkish Cypriots who are prevented from visiting and occupying their property in southern Cyprus. It might even concern citizens of third countries who are prevented from travelling to places where they have property and houses. The factual border between the two parts of Cyprus has the deplorable and inhuman consequence that a great number of individuals are separated from their property and their former homes.
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> I have, with the majority of the judges in the Grand Chamber, no doubt that Turkey bears a considerable responsibility for the present situation. But there are also other actors and factors involved in the drama. The *coup d'état* of 1974 was the starting-point. It was followed by the Turkish invasion, the population transfer from north to south and south to north on the island, and other events. The proclamation of the so-called 'Turkish Republic of Northern Cyprus', not recognised as a State by the international community, is one of those events. The result of the different influences and events is the 'iron wall' which has existed now for more than two decades and which is supervised by United Nations forces. All negotiations or proposals for negotiations aimed at the unification of Cyprus have failed up to now. Who is responsible for this failure? Only one side? Is it possible to give a clear answer to this and several other questions and to draw a clear legal conclusion?

The case of Mrs Loizidou is not the consequence of an individual act of Turkish troops directed against her property or her freedom of movement, but it is the consequence of the establishment of the borderline in 1974 and its closure up to the present day."

4. After explaining why he considered that the preliminary objection raised by the respondent Government was sustainable, Judge Bernhardt went on to say:

"3. Even if I had been able to follow the majority of the Court in this respect, I would still be unable to find a violation of Article 1 of Protocol No. 1. As explained above, the presence of Turkish troops in northern Cyprus is one element in an extremely complex development and situation. As has been explained and decided in the Loizidou judgment on the preliminary objections (23 March 1995, Series A no. 310), Turkey can be held responsible for concrete acts done in northern Cyprus by Turkish troops or officials. But in the present case, we are confronted with a special situation: it is the existence of the factual border, protected by forces under United Nations command, which makes it impossible for Greek Cypriots to visit and to stay in their homes and on their property in the northern part of the island. The presence of Turkish troops and Turkey's support of the 'TRNC' are important factors in the existing situation; but I feel unable to base a judgment of the European Court of Human Rights exclusively on the assumption that the Turkish presence is illegal and that Turkey is therefore responsible for more or less everything that happens in northern Cyprus."

5. I also agree with the dissenting opinion of Judge Pettiti. After stating why he had been in favour of accepting certain preliminary objections raised by Turkey, he observed:

"Since 1974, the United Nations not having designated the intervention of Turkish forces in northern Cyprus as aggression in the international law sense, various negotiations have been conducted with a view to mediation by the United Nations, the Council of Europe and the European Union. Moreover, the Court did not examine the question whether that intervention was lawful (see paragraph 56 of the judgment). The decision to station international forces on the line separating the two communities made the free movement of persons between the two zones impossible, and responsibility for that does not lie with the Turkish Government alone.

The Court's reference to the international community's views about the Republic of Cyprus and the 'TRNC' (see paragraph 42 of the judgment) is not explained. But is it possible in 1996 to represent the views of this 'international community' on the question as uncontested, given that the most recent resolutions of the United Nations General Assembly and Security Council go back several years and the Court had no knowledge of the missions of the international mediators? For the Court it would appear that only Turkey is 'accountable' for the consequences of the 1974 conflict! In my opinion, a diplomatic situation of such complexity required a lengthy and thorough investigation on the spot, conducted by a delegation of the Commission, of the role of the international forces and the administration of justice, before the Court determined how responsibility, in the form of the jurisdiction referred to in Article 1 of the Convention, should be attributed."

6. In conclusion Judge Pettiti said:

> "Whatever the responsibilities assumed in 1974 at the time of the *coup d'état*, or those which arose with the arrival of the Turkish troops in the same year, however hesitant the international community has been in attempting to solve the international problems over Cyprus since 1974, at the time when the 'TRNC' was set up or at the time of Turkey's declaration to the Council of Europe, those responsibilities being of various origins and types, the whole problem of the two communities (which are not national minorities as that term is understood in international law) has more to do with politics and diplomacy than with European judicial scrutiny based on the isolated case of Mrs Loizidou and her rights under Protocol No. 1. It is noteworthy that since 1990 there has been no multiple inter-State application bringing the whole situation in Cyprus before the Court. That is eloquent evidence that the member States of the Council of Europe have sought to exercise diplomatic caution in the face of chaotic historical events which the wisdom of nations may steer in a positive direction."

7. I also agree with Judge Gölcüklü's views in his dissenting opinion. He emphasised the fact that the Court was dealing with a political situation and that he did not find it possible to separate the political aspects of the case from its legal aspects. He agreed with Judge Bernhardt's approach and later remarked:

> "The Cypriot conflict between the Turkish and Greek communities is mainly attributable to the 1974 *coup d'état*, carried out by Greek Cypriots with the manifest intention of achieving union with Greece (*enosis*), which the Cypriot head of state at the time vigorously criticised before the international bodies. After this *coup d'état* Turkey intervened to ensure the protection of the Republic of Cyprus under the terms of a Treaty of Guarantee previously concluded between three interested States (Turkey, the United Kingdom and Greece) which gave these States the right to intervene separately or jointly when the situation so required, and the situation did so require ultimately in July 1974, on account of the *coup d'état*. In all of the above, incidentally, I make no mention of the bloody events and incidents which had been going on continually since 1963.
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> This implementation of a clause in the Treaty of Guarantee changed the previously existing political situation and durably established the separation of the two communities which had been in evidence as early as 1963.
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> …
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> After the establishment of the buffer-zone under the control of United Nations forces, movement from north to south and vice versa was prohibited and there was a population exchange with the common consent of the Turkish and Cypriot authorities under which eighty thousand Turkish Cypriots moved from southern to northern Cyprus."

8. Judges Gölcüklü and Pettiti made other observations about the present situation in Cyprus with which I respectfully agree. I think that they are relevant to the issue before us even though made at the just satisfaction stage (Loizidou v. Turkey judgment of 28 July 1998 (*Article 50*), *Reports* 1998-IV).

Judge Gölcüklü said:

> "3. This Loizidou case is not an isolated case concerning the applicant alone (the intervention of the Greek Cypriot administration is manifest proof of that); it concerns on the contrary all the inhabitants of the island, whether of Turkish or Greek origin, who were displaced following the events of 1974, a fact which should cause no surprise.
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> At the heart of the Loizidou v. Turkey case lies the future political status of a State that has unfortunately disappeared, a question to which all the international political bodies (the United Nations, the European Union, the Council of Europe, etc.) are now seeking an answer. A question of such importance can never be reduced purely and simply to the concept of the right of property and thus settled by application of a Convention provision which was never intended to solve problems on this scale."

Judge Pettiti observed:

> "My votes in the first two judgments were prompted by the political situation in Cyprus and my interpretation of international law. The fact that an international force controls the 'green line' and prohibits the free movement of persons from one zone to the other and access to property in another zone should in my opinion have been taken into account by the Court. Current political developments show that the problem of Cyprus unfortunately goes well beyond the dimensions of a mere lawsuit."

9. In my opinion, everything that was said in the passages from the dissenting opinions I have quoted is apt, *mutatis mutandis*, when the issue before us falls to be considered. Nothing has happened since the Loizidou case was decided that would render those observations untenable or irrelevant.

10. The nettle must be grasped. The Court's majority judgment must mean that unless every Cypriot who wishes to recover possession of his or her property is allowed to do so, crossing the UN-controlled buffer-zone as may be necessary, immediately and before a solution to the Cyprus problem has been found, there will be a violation of Convention rights in respect of the person whose wish is denied. As matters stand today (and sadly, have stood for over a quarter of a century) could anyone, armed with his title deed, go up to a unit of the UN peace-keeping force and demand the right to cross the buffer-zone to resume possession of his or her property? Who would police the operation? What might be the attitude of any present occupier of the property in question? Would not serious breaches of the peace inevitably occur? Who would enforce any eviction which was necessary to allow the registered owner to retake possession?

11. If considerations of this kind are relevant (and I do not see how they can be brushed aside) then, it seems to me, it must be acknowledged that in present-day Cyprus it is simply not realistic to allow every dispossessed property owner to demand the immediate right to resume possession of his or her property wherever it lies. In my opinion, these problems are not overcome by giving such persons the solace of an award of compensation and/or damages because their property rights cannot, for practical reasons,

be restored to them. The full impact of the majority decision must be confronted: it goes far beyond matters of compensation and condemnation.

12. Events over the past thirty years or so have shown that despite the devoted and unremitting efforts of the United Nations (through successive holders of the office of Secretary-General and members of their staff), other organisations and friendly governments, a solution acceptable to both sides has not been found. This is surely an indication of the complexity and difficulty of the Cyprus problem. These efforts continue: talks were in progress in New York as the Court was sitting.

13. Sadly, it may be that when a solution is ultimately found it will be one that fails to satisfy the understandable desire of every Cypriot to return to his or her home and fields, etc. The Secretary-General, looking ahead, has realistically faced this possibility. For example, as long ago as 1992, he included this paragraph in his Set of Ideas:

> "Other areas under Greek-Cypriot and Turkish-Cypriot administration. Each community will establish an agency to deal with all matters related to displaced persons. The ownership of the property of displaced persons, in respect of which those persons seek compensation, will be transferred to the ownership of the community in which the property is located. To this end, all titles of properties will be exchanged on a global communal basis between the two agencies at the 1974 value plus inflation. Displaced persons will be compensated by the agency of their community from funds obtained from the sale of the properties transferred to the agency, or through the exchange of property. The shortfall in funds necessary for compensation will be covered by the federal government from a compensation fund obtained from various possible sources such as windfall taxes on the increased value of transferred properties following the overall agreement, and savings from defence spending. Government and international organisations will also be invited to contribute to the compensation fund. In this connection, the option of long-term leasing and other commercial arrangements may also be considered.
>
> Persons from both communities who in 1974 resided and/or owned property in the federated State administered by the other community or their heirs will be able to file compensation claims. Persons belonging to the Turkish-Cypriot community who were displaced after December 1963 or their heirs may also file claims."

14. More recently, the Secretary-General issued a statement to each side (which was published in the press) at the November 2000 round of proximity talks in Geneva. His statement includes the following paragraph:

> "Concerning property, we must recognise that there are considerations of international law to which we must give weight. The solution must withstand legal challenge. The legal rights which people have to their property must be respected. At the same time, I believe that a solution should carefully regulate the exercise of these rights so as to safeguard the character of the 'component States'. Meeting these principles will require an appropriate combination of reinstatement, exchange and compensation. For a period of time to be established by agreement, there may be limits on the number of Greek Cypriots establishing residence in the north and Turkish Cypriots establishing residence in the south. It is worth mentioning in this context that the criteria, form and nature of regulation of property rights will also have a bearing on the extent of territorial adjustment, and vice versa."

15. I was not satisfied that the applicant Government had established that Turkey was responsible for the alleged violations relied upon in relation to Greek-Cypriot owners of property.

16. I am also not able to agree with the decision of the majority of my colleagues regarding the alleged violations which relate to Greek-Cypriot missing persons and their relatives. Like the Commission, the majority has concluded that the facts did not disclose a substantive violation of Article 2 since the evidence was insufficient to establish Turkey's responsibility for the deaths of any of the missing persons. The majority also accepted the finding of the Commission that nothing in the evidence supported the assumption that any of the missing persons were still in Turkish custody during the relevant period in conditions which offended Article 4: thus a breach of that Article had not been established.

17. However, the majority decided that a continuing violation of Article 5 had been shown because the Turkish authorities had failed to conduct an effective investigation into the fate of missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance. They agreed with the Commission that these obligations had not been discharged through Turkey's contribution to the investigatory work of the Committee on Missing Persons ("CMP").

18. Further, they held that since Turkey had failed to make the necessary investigations and thus had given no information about the fate of the missing persons, their relatives had been subjected to inhuman treatment of the kind proscribed by Article 3.

19. A great deal of material was before the Commission and the Court about the formation, responsibilities and work of the CMP. A full summary of all this is in the Commission's report. The UN General Assembly called for the establishment of an investigatory body to resolve the cases of missing persons from both communities. The General Assembly requested the Secretary-General to support the establishment of such a body with the participation of the International Committee of the Red Cross ("ICRC") "which would be in a position to function impartially, effectively and speedily so as to resolve the problem without undue delay".

20. Eventually it was decided that the CMP should comprise three members: representatives from the Greek and the Turkish side and a representative of the Secretary-General nominated by the ICRC. What seems clear is that the United Nations, for obvious reasons, envisaged a body that would perform its sad and difficult task objectively and without bias. The UN's call was met by the composition of the CMP. Very wisely, if I may say so, the ICRC was to be involved so that its resources and wide experience in the often heartbreaking task involved could be called upon.

21. Once the CMP was set up, I have seen nothing to suggest that the Secretary-General, the ICRC or any other organisation such as the UN Working Group on Enforced and Involuntary Disappearances (Geneva)

contemplated that a unilateral investigation by Turkey, the State against which the most serious allegations about the treatment and fate of the missing persons continue to be made, would satisfy anyone. And, of course, the advantage of the CMP was that it would investigate the disappearances of Turkish-Cypriot missing persons too, as the UN clearly had in mind.

22. Turkey's stand on the whole issue of the missing persons is well known. I have seen no evidence that Turkey has refused to cooperate with the CMP or obstructed its work. If the Terms of Reference, the Rules or the Guidelines that govern the way that the CMP operates are unsatisfactory these can be amended with good will and the help of the Secretary-General. I am not able to agree with my colleagues that the CMP procedures are not of themselves sufficient to meet the standard of an effective investigation required by Article 2. As the applicable Rules and Guidelines, read with the Terms of Reference, have developed, provided both sides give their ungrudging cooperation to the CMP, an effective investigating team has been created. That the CMP was the appropriate body to make the necessary investigations was acknowledged by the UN Working Group on Enforced and Involuntary Disappearances.

23. Apart from the reliance by Turkey on the establishment and responsibilities of the CMP which I consider was justified, in my respectful opinion the majority of the Court has not given effect to the relevant part of the declaration by which Turkey submitted to the compulsory jurisdiction of the Court. Jurisdiction was accepted in relation to "matters raised in respect of facts which have occurred subsequent to [22 July 1990]".

24. The concept of continuing violations is well established and readily understood. In a simple case, for example, where a person has been arrested and detained illegally, it does not matter that his original detention took place before the respondent was subject to the Convention (or even before the Convention prohibiting the violation came into force). The Court will have jurisdiction to examine and adjudicate on the legality of his detention provided he is still under detention at the material time.

25. Here the position is not simple. The events which the majority of the Court held to have given rise to an obligation to conduct effective investigations occurred in July and August 1974. This was some fifteen years before the operative date of Turkey's declaration. Neither the Commission nor the Court found sufficient evidence to hold that the missing persons were still in the custody of the Turkish authorities at the relevant time. In my opinion, it cannot be right to treat the Convention obligation which arises in certain circumstances to conduct a prompt and effective investigation as having persisted for fifteen years after the events which required investigation so that, when Turkey did become bound by the Convention, her alleged failure to date to conduct appropriate investigations can be regarded as a violation of the Convention. In my view, the concept of continuing violations cannot be prayed in aid to reach such a result. It seems

to me that such an approach would be to apply an obligation imposed by the Convention retrospectively and to divest the time limitation in the declaration of its effect.

26. I was not satisfied that the respondent State has been shown to be guilty of any Convention violation in relation to the missing persons or their relatives.

27. I now turn to address the alleged human-rights violations said to arise out of the living conditions of Greek Cypriots who choose to live in the Karpas region. My colleagues, following the reasoning of the majority in the Loizidou case, have held that all the violations found to have been established were imputable to Turkey because Turkey had general responsibility under the Convention for the policies and actions of the "TRNC" authorities since, through her army, she exercised overall control over northern Cyprus. They concluded, as had the Commission, that this was obvious "from the large number of troops engaged in active duties in northern Cyprus".

28. I do not think that this aspect of the case can be approached without a consideration of the events which led to the division of Cyprus. These events were unique. The finely balanced constitutional arrangements, supported by solemn treaty obligations, under which the Republic of Cyprus was established, broke down all too soon. Then there was the 1974 coup, the object of which is common knowledge. What was virtually a war then ensued, followed by a cease-fire and the movement of many members of the community to the north or to the south of a buffer-zone. Starting as long ago as 1963, the Turkish Cypriots began the process of establishing an administration of their own. They did not sit back and rely on institutions of the Turkish Republic, or apply their laws. There was ample evidence to suggest that the "TRNC" might well, after investigation, be found to display all the attributes of a State (although only recognised by Turkey) which exercises independent and effective control over northern Cyprus. It cannot be assumed, without proper inquiry, that the "TRNC" is a puppet regime or subordinate jurisdiction of Turkey.

29. The fact that Turkey alone has recognised the "TRNC" does not affect the realities of the position. Recognition is, after all, a political act. Once the elaborate constitutional arrangements (with all the checks and balances designed to meet the concerns and anxieties of two distrustful communities) irretrievably broke down, difficult questions regarding recognition must have arisen. Governments were, of course, free to accord or withhold recognition as they wished, but the State that was recognised could not be said to be the bi-communal Republic established in 1960 under those arrangements.

30. I respectfully agree with the observations of Judge Gölcüklü in his dissenting opinion annexed to the Loizidou (*merits*) judgment where he said:

> "3. I would also emphasise that not only does northern Cyprus not come under Turkey's jurisdiction, but there is a (politically and socially) sovereign authority there which is independent and democratic. It is of little consequence whether that authority is legally recognised by the international community. When applying the Convention the actual factual circumstances are the decisive element. The Commission and the Court have stated more than once that the concept of 'jurisdiction' within the meaning of Article 1 of the Convention covers both *de facto* and *de jure* jurisdiction. In northern Cyprus there is no 'vacuum', whether *de jure* or *de facto*, but a politically organised society, whatever name and classification one chooses to give it, with its own legal system and its own State authority. Who today would deny the existence of Taiwan? That is why the Commission in its report in the Chrysostomos and Papachrysostomou cases examined the law in force in northern Cyprus *as such, and not Turkish law* in order to determine whether the applicants' detention had been lawful (see paragraphs 148, 149 and 174 of the report)."

31. I do not agree that the facts relied upon by the Court justified a finding that every violation, whatever its nature and whoever perpetrated it, is imputable, without more, to the respondent State. Everything must depend on the factual position as it has developed between 1963 and the present day, and the circumstances which prevailed at the time of each alleged violation. In my judgment, with great respect to those who take a different view, in the light of the events which took place (which have not been paralleled elsewhere) it was essential to examine the role of the troops at the material time as well as their conduct.

32. I mention here that I am not impressed by the submission that unless Turkey is held to be accountable for the alleged violations in the Karpas, no other State would be accountable, with the result that the system of the Convention would be inoperative in the area. I do not think that considerations of this kind should be allowed to influence the Court.

33. I was not satisfied that it had been established to the degree of certainty that is necessary that any of the violations relied upon in relation to Greek Cypriots living in the Karpas region of northern Cyprus are imputable to Turkey.

34. On the subject of military courts, for the reasons I have attempted to give, I am unable to accept that Turkey can be held responsible for any shortcomings there might be (for the purposes of Article 6) in the Prohibited Military Areas Decree promulgated by the "TRNC".

PARTLY DISSENTING OPINION OF JUDGE MARCUS-HELMONS

(Translation)

I share the opinion of the majority of the judges of the Court on most of the decisions in this case. There are, however, aspects of this judgment with which I do not agree and for that reason I wish to make the following remarks.

To my mind, the fundamental problem lies in the interpretation of Article 35 of the Convention (former Article 26) and in the issue whether the "courts" established by the "TRNC" in northern Cyprus may be regarded as domestic remedies that must be exhausted (to the extent that the remedies concerned are effective in each individual case). A majority of the judges said that they could and referred in particular to the Advisory Opinion of the International Court of Justice ("ICJ") on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (1971 ICJ Reports, vol. 16, p. 56, § 125).

I consider that the majority of the judges of the Court has erred in that interpretation and that a serious point of principle is at stake.

Advisory Opinion in the Namibia case

1. Paragraph 125 of the Advisory Opinion, which is cited by the Commission and relied on by the Court, recognises to a limited degree the effects of certain acts performed before the illegal authorities, such as declarations of birth, marriage or death, so as to avoid seriously disrupting the communal life of the local populations. Nevertheless, paragraph 125 must first be put back into context: in paragraphs 117 to 124, the ICJ repeatedly reminded all States that South Africa's presence in Namibia was illegal and warned of the danger of drawing conclusions from that presence. In conclusion, so as clearly to attenuate and limit the effect of its comments in paragraph 125, the ICJ clearly stated in paragraph 126 that "... the declaration of the illegality of South Africa's presence in Namibia [is] opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law: in particular, *no State which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognise the validity or effects of any such relationship or the consequences thereof*." (emphasis added)

Although the ICJ accepted the validity of certain illegal acts by the South African government, such as the registration of births, deaths and marriages, **it did so solely because "[their] effects can be ignored only to**

the detriment of the inhabitants of the territory". The ICJ thus accepted that those acts were valid because it was beneficial to the inhabitants of the territory to do so and so as not to make their position worse. Conversely, it would never have occurred to the ICJ to recognise any validity for acts that were illegal under international law if they necessarily operated to the detriment of the inhabitants of the territory.

The ICJ clearly regarded paragraph 125 as the exception, not the rule!

Accordingly, if the Court were to apply the ICJ's reasoning by analogy to Article 35 of the Convention (former Article 26), it would be guilty of misinterpretation, since requiring the inhabitants of Cyprus to exhaust domestic remedies before the "TNRC" before applying to the European Court of Human Rights when, moreover, those remedies are known to be ineffective obviously constitutes an additional obstacle for the inhabitants to surmount in their legitimate desire to secure an end to the violation of a fundamental right by applying to Strasbourg.

2. Nor is there any justification for relying on the Advisory Opinion in the Namibia case as a guide to the interpretation of former Article 26 of the Convention. The Opinion did not in any way concern the exhaustion of domestic remedies or the validity of courts established by an illegal government. It served merely as a means of preserving the rights of the inhabitants in a situation of total illegality.

3. The situations in Namibia and northern Cyprus are completely different. The authorities exercising power in the territory of South West Africa were initially legal by virtue of a mandate granted to South Africa by the League of Nations, which was later converted into a "trusteeship" by the United Nations. It was only subsequently, with the declaration of independence by Namibia, that they became illegal. In northern Cyprus courts established by law existed before the Turkish invasion of 1974. It was only after that invasion that the – clearly illegal – courts were set up.

4. Moreover, in the Loizidou v. Turkey judgment of 18 December 1996 (*merits*), *Reports of Judgments and Decisions* 1996-VI, the European Court of Human Rights made no reference to the Opinion in the case of Namibia when considering the issue of exhaustion of domestic remedies under former Article 26 of the Convention. It only did so when considering **in general terms the possibility** that operations affecting individuals in a *de facto* regime might be recognised as having some validity.

5. By using it with reference to former Article 26 of the Convention, the Court gives the Opinion in the case of Namibia an unduly wide interpretation for which there is no basis and which the ICJ never intended. The consequence of such a wide interpretation would be that: (a) the European Court of Human Rights could not refuse to recognise the courts

established by the "TRNC", (b) it would be in the interest of all the inhabitants of northern Cyprus, including Greek Cypriots, to seek the protection of those courts, (c) had the "TRNC" not established those courts, it would have violated the European Convention and (d) as a result, the inhabitants of the "TRNC" would have been under an obligation to exhaust the remedies provided by those courts.

6. Paragraphs 95 and 96 of the judgment are to my mind inopportune, as in its Opinion in the case of Namibia the ICJ was clear and deliberately succinct. There appears to be no need to "add to" the text of the majority of the ICJ by referring to individual opinions expressed by some of the judges and to arguments made during the pleadings, especially if the result is to give paragraph 125 of the Opinion greater scope than that intended by the majority in the ICJ.

7. Lastly, in paragraph 97 of the judgment the Court seems to jump to hasty and ill-advised conclusions which it considers to be a widely held opinion on this subject. As evidence of this, one need only examine, among other sources, the case-law of the Supreme Court of the United States on the validity of the confederate acts of the South during the Civil War. It should be noted that the southern authorities were legal until they seceded (the position thus being totally different from one in which courts are illegally established after a military invasion by a neighbouring State). Shortly after the Civil War ended, the Supreme Court recognised in the cases of *Texas v. White*, 74 U.S. 227; 7 Wall.700 (1868) ; *Horn v. Lockhart*, 21 L.ed. 658 ; 17 Wall. 570 (1873) and *Williams v. Bruffy*, 96 U.S. 178 (1878) and within very strict limits that the administrative acts and judgments of the confederate courts had some validity to the extent that their aim and execution did not conflict with the authority of the national Government and did not infringe citizens' constitutional rights. **Those limited effects** given retrospectively were strictly reserved to habitual acts necessary for the proper functioning of life in society. In the more recent case of *Adams v. Adams* ([1970] 3 Weekly Law Reports 934), the **English High Court categorically refused to recognise any effect for the acts of the secessionist government concerned (the former Rhodesian government following the adoption of a unilateral declaration of independence)**.

The European Convention on Human Rights

1. I should like to point out that this is a special situation. The Convention is a *lex specialis* whose special features must be respected and which is amenable to reasoning by analogy only in situations that are on all fours with each other (which is evidently not the case with the Advisory Opinion in the case of Namibia).

2. An analysis of the *travaux préparatoires* on the European Convention (Doc. Council of Europe, secret H (61) 4) reveals that, while domestic remedies were naturally required to be exhausted before applications were

sent to Strasbourg, that condition was rapidly supplemented and qualified by the principle that exhaustion must be effected "according to the generally recognised international law" (ibid., in particular p. 462 and especially p. 497). That wording ultimately became "according to generally recognised rules of international law".

Why were the requirement for the exhaustion of domestic remedies and especially the reference to generally recognised rules of international law made? While it is proper for the domestic courts first to be given the possibility of putting an end to the violation of a fundamental right where that possibility is an effective one, it is equally obvious that the authors of the Convention did not wish to be excessively formal and create additional obstacles for applicants wishing to apply to Strasbourg. The authors of the Convention sought to be rational, but above all effective and to offer a rapid remedy in Strasbourg when no other practical alternative exists. Their concern over effectiveness and fairness was reinforced by the fact that generally recognised rules do exist in this sphere in international law.

3. Indeed, the European Court of Human Rights has interpreted former Article 26 of the Convention on a number of occasions and its interpretation has been consistent with the generally recognised rules of international law (see, among other authorities, the Open Door and Dublin Well Woman v. Ireland judgment of 29 October 1992, Series A no. 246-A, p. 23, §§ 48 and 50, and the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1212, § 72).

Public international law

What are the generally recognised rules of international law in this sphere?

Legal opinion is unanimous on this subject:

The exhaustion of domestic remedies must never pose a theoretical obstacle to an international solution (through diplomatic protection or an international court). It is a clear rule of international law that while domestic remedies will normally require to be exhausted before recourse is had to international solutions, **that requirement will never need to be satisfied if the domestic remedies are futile, ineffective, theoretical, non-existent or the domestic remedy is inoperative under the settled case-law**.

1. Ch. Rousseau, *Droit international public*, Sirey, Paris, 1953, pp. 366-67.

2. D.P. O'Connell, *International Law*, Stevens, London, 1965, vol. II, pp. 1143-44.

3. M. Sorensen ed., *Manual of Public International Law*, Macmillan, London, 1968, pp. 588-90.

4. N. Quoc Dinh, *Droit international public*, LGDJ, Paris, 1975, p. 644.

5. G. Schwarzenberger and E. Brown, *A Manual of International Law*, 6th ed., Professional Books Limited, Oxon, 1976, p. 144: "If a State lacks

effective local remedies, this amounts to a breach of the minimum standard. *This omission itself constitutes an international tort and, in good faith, precludes the tortfeasor from invoking the local remedies rule*." (emphasis added)

6. O. Schachter, *International Law in Theory and Practice*, M. Nijhoff Publishers, Dordrecht, 1991, p. 213: "Of course the requirement [of exhaustion of local remedies] cannot be imposed where domestic remedies are manifestly ineffective or where they do not exist...". "But it is not necessary to resort to local courts 'if the result must be a repetition of a decision already given'. An important exception in today's world is that the necessity to resort to local courts does not apply if the courts are completely subservient to the government."

7. E.J. de Aréchaga and A. Tanzi, "International State Responsibility", in M. Bedjaoui ed., *International Law: Achievements and Prospects*, Unesco, Paris, 1991, p. 375: "But even if there are remedies existing and available, the rule does not apply if theses remedies are 'obviously futile' or 'manifestly ineffective'."

8. J.M. Arbour, *Droit international public*, 2nd ed., Yvon Blaise, Quebec, 1992, pp. 301-02.

9. J. Combacau and S. Sur, *Droit international public*, 4th ed., Montchrestien, 1999, p. 547: "[The exhaustion of domestic remedies] does not come into play either when the remedy is 'manifestly ineffective', that is to say when the competent court does not have effective power to make reparation for the damage sustained; and where judicial practice ... excludes all prospects of success on the merits because the courts consider themselves bound by the 'decisions of the executive' or settled case-law suggests that the remedy will fail."

10. After declaring that remedies before the courts of northern Cyprus constitute domestic remedies for the purposes of former Article 26 of the Convention, the Court states, in paragraph 98 of the judgment, that the question of their effectiveness is to be considered on a case-by-case basis. Then, after analysing each individual case, the Court finds in the judgment that for one reason or another the domestic remedy did not exist or was ineffective.

The result might therefore be considered to be identical to what it would have been if former Article 26 had been strictly construed according to "the generally recognised rules of international law". However, I consider that, although the result is the same, the Court should have avoided reasoning that is potentially perilous, as all the above arguments show. My view is reinforced by the fact that by so acting, the European Court of Human Rights finds itself dangerously caught up in assessing the validity of acts performed by a *de facto* government at a time when several member States of the Council of Europe have autonomist and even secessionist movements.

Paragraph 101 of the judgment

This paragraph, in which the Court notes an apparent contradiction, seems to me particularly inopportune, and even harmful, as it gives the impression that the Court sees no difference between the two violations of which Turkey is accused by Cyprus, as these are two very different cases, despite the fact that a single event is at the origin of both violations.

The criminal law of all democratic countries provides for situations in which a single offence may entail various consequences each of which, taken in isolation, may result in prosecution. By invading Cyprus and setting up illegal courts, Turkey clearly violated Article 6 of the European Convention. It is for that reason that those domestic remedies do not require exhausting before an application is made to Strasbourg. I do not see any contradiction in that.

It is precisely if the situation had been the converse that the applicant Government would have contradicted themselves, namely, on the one hand, by accusing the respondent State of being at the origin of numerous violations of human rights through its illegal occupation of northern Cyprus and, *inter alia*, of having established an illegal regime in that part of the country while, on the other hand, accepting that the courts illegally established by a military force there could provide a legally valid solution to the alleged violations.

Such reasoning is to my mind Cartesian.

Furthermore, the view that there is a "contradiction" is made even more erroneous by the fact that, as will be remembered, Turkey has consistently argued that the "TRNC" is a separate entity and that the courts of the "TRNC" are not part of the Turkish court system. Accordingly, adopting an *ad hominem* approach, how could the courts of the "TRNC" be regarded as being able to provide an effective remedy putting an end to the violations alleged against Turkey?

There is therefore no contradiction on the part of the applicant Government in those circumstances.

It is for that reason that I personally consider, *mutatis mutandis*, that courts established illegally in northern Cyprus do not satisfy the requirements of Article 6 of the Convention, which requires *inter alia*: "…[a] tribunal … established by law…". For exactly the same reason I am of the view that there is no "**effective remedy before a national authority**", as required by Article 13 of the Convention, in northern Cyprus (see, in particular, paragraph 324, point 1, and paragraph 383).

Paragraph 221 of the judgment

In this paragraph the Court holds that there has been no violation of Article 2 of the Convention as a result of the "TRNC" authorities' refusal to

afford Greek Cypriots and Maronites living in northern Cyprus access to medical care in another part of the island.

My view is that, at a time when freedom of movement is regarded as essential, especially when it comes to obtaining optimal medical care, a denial of such freedom by the State amounts to a serious breach of its obligations towards those within its jurisdiction. I consider that is something which may amount to a violation of the State's undertaking under Article 2 of the Convention to protect everyone's right to life by law.

We are living in a period of rapid scientific evolution and there may be substantial differences between institutions offering medical treatment, whether from one country to another or within the same country. For a State to use force to prevent a person from attending the institution which he considers offers him the best chance of recovery is to my mind highly reprehensible.

Furthermore, I regret that the European Court of Human Rights did not seize this opportunity to give Article 2 a teleological interpretation as it has done in the past with other Articles (see, among other authorities, the Golder v. the United Kingdom judgment of 21 February 1975, Series A no. 18, or the Young, James and Webster v. the United Kingdom judgment of 13 August 1981, Series A no. 44).

With the rapid evolution of biomedical techniques, new threats to human dignity may arise. The Convention on Human Rights and Biomedicine, signed at Oviedo in 1997, seeks to cover some of those dangers. However, to date only a limited number of States have signed it. Moreover, this Convention only affords the European Court of Human Rights consultative jurisdiction. In order this "fourth generation of human rights" to be taken into account so that human dignity is protected against possible abuse by scientific progress, the Court could issue a reminder that under Article 2 of the European Convention on Human Rights the States undertook to protect everyone's right to life by law.

The right to life may of course be interpreted in many different ways, but it undoubtedly includes freedom to seek to enjoy the best physically available medical treatment.

Paragraph 231 and paragraphs 235 to 240 of the judgment

For the reasons already set out in detail above, I do not share the opinion expressed in these paragraphs on Articles 6 and 13.

In addition to the arguments already put forward on the illegal nature of those courts, it seems to me that there is a further argument dictated by common sense. It is quite unrealistic to consider that the courts established in the territories occupied by the Turkish forces in northern Cyprus could administer independent and impartial justice, especially to Greek Cypriots, but also to Turkish Cypriots, in matters that are manifestly contrary to the rules established under the Turkish military occupation.

Even though those courts could hear and determine disputes between members of the local population, they would *never* dare take an impartial decision in a case relating to an event resulting from the military occupation.

Paragraph 317 of the judgment

I do not agree with the majority of the Court on this subject. Under a line of authority frequently followed by the Court, a violation of Article 14 of the Convention taken together with another Article will not be found where it covers the same ground as a finding of a violation of the other Article taken alone. Conversely, where taking Article 14 with that other Article results in a finding of an additional violation or a more serious violation of the other Article, the Court has always accepted in its case-law that there was also a violation of that other Article taken together with Article 14.

That is exactly the position here. Not to allow the religion to be practised fully constitutes a violation in itself, but the additional imposition of additional restrictions on account of that religion transforms the measure into a separate violation.

Certain documents produced at the United Nations

The Commission and the Court have treated the evidence adduced by the applicant Government in support of their allegations with great, some might say excessive, caution. For example, the report of the Secretary-General of the United Nations (S/1995/1020 of 10 December 1995) clearly documents infringements of the freedom of association of Turkish Cypriots living in the north wishing to take part in the formation of bi-communal associations in northern Cyprus; and a Security Council document of 23 May 2000 (A/54/878-S/2000/462) refers to a letter from the Permanent Representative of Turkey at the United Nations, an appendix to which indisputably establishes that, for the authorities of the "TRNC", Greek Cypriots and Maronites living in northern Cyprus are aliens.