

# Loizidou v. Turkey (1995) 20 E.H.R.R. 99 ECHR

Series A, No. 310

Application No. 15318/89

(Jurisdiction over Northern Cyprus; invalidity of reservations to Articles 25 and 46  
Declarations)

## Before the European Court of Human Rights ECHR

(The President, Judge Ryssdal; Judges Bernhardt, Gørlkókló, Pettiti, Walsh, Macdonald,  
Spielmann, Martens, Palm, Pekkanen, Loizou, Morenilla, Baka, Lopes Rocha, Wildhaber,  
Mifsud Bonnici, Jambrek, Lohmus)

23 March 1995

The applicant, a Greek Cypriot, claimed that she owned property in northern Cyprus and that Turkish forces prevented her from returning to it. During a march to assert the rights of Greek Cypriot refugees she was detained by members of the Turkish Cypriot police force. She complained that her arrest and detention violated Articles 3, 5 and 8 of the Convention and that the denial of access to her property was a continuing violation of Article 8 of the Convention and Article 1 of Protocol No. 1.

### Held:

- (1) unanimously that the preliminary objection concerning an alleged abuse of process should be dismissed;
- (2) by 16 votes to two that the facts alleged by the applicant were capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention;
- (3) by 16 votes to two that the territorial restrictions attached to Turkey's Article 25 and Article 46 declarations under the Convention were invalid but that the Turkish declarations under Articles 25 and 46 contained valid acceptances of the competence of the Commission and Court;
- (4) unanimously that the preliminary objection *ratione temporis* should be joined to the merits.

### Preliminary objection: standing of applicant Government.

1.

- (a) The applicant Government have been recognized by the international community as the Government of the Republic of Cyprus. Therefore their *locus standi* as the Government of a High Contracting Party to the Convention cannot be in doubt. Moreover it has not been contested that the applicant is a national of the Republic of Cyprus. [40]
- (b) In any event, recognition of an applicant Government by a respondent Government is not a precondition for either the institution of proceedings under Article 24 of the Convention or the referral of cases to the Court under Article 48. If it were otherwise, the system of collective enforcement which is a central element in the Convention system could be effectively neutralized by the interplay of recognition between individual Governments and States. [41]

## Preliminary objection: alleged abuse of process.

2.

- (1) The respondent Government's objection that the overriding aim of the application was political propaganda was not raised in the proceedings before the Commission. Accordingly the **Turkish Government is estopped** from raising it before the Court in so far as it applies to the applicant. In so far as it is directed to the applicant Government, that Government referred the case to the Court out of concern for the rights of the applicant and other citizens in the same situation. Such motivation is not an abuse of judicial procedures. It follows that this objection must be rejected. [44]-[45]
- (b) The Court leaves open the question whether it could refuse jurisdiction in an application by a State under Article 48(b) on the grounds of its allegedly abusive character. [46]

## 3. Preliminary objection: Turkish Government's role in proceedings.

The Turkish Government submitted that the case did not concern the acts and omissions of Turkey but those of the Turkish Republic of Northern Cyprus, an independent State. However, it does not lie within the discretion of a Contracting Party to the Convention to characterize its standing in the proceedings before the Court in the manner it sees fit. The case originates in a petition made under [Article 25](#), brought by the applicant against Turkey in her capacity as a High Contracting Party to the Convention, and has been referred to the Court under [Article 48\(b\)](#) by another High Contracting Party. **The Court therefore considers--without prejudging the remainder of the issues in the proceedings--that Turkey is the respondent Party in this case.** [47]-[52]

## 4. Scope of the case.

In the application referring the case to the Court under [Article 48\(b\)](#) of the Convention, the applicant Government have confined themselves to seeking a ruling on the complaints under [Article 1 of Protocol No. 1 and Article 8](#), in so far as they have been declared admissible by the Commission, **concerning access to the applicant's property**. Accordingly, it is only these complaints which are before the Court. The remaining part of the case concerning the applicant's arrest and detention thus falls within the competence of the Committee of Ministers of the Council of Europe in accordance with [Article 32\(1\) of the Convention](#). Since the issue whether the Convention and the Rules of Court permit a partial referral under [Article 48](#) has not been called into question, the respondent Government having accepted that the scope of the case be confined in this way, it is not necessary to give a general ruling as to whether it is permissible to limit a referral to the Court to some of the issues on which the Commission has stated its opinion. [54]

## Preliminary objections *ratione loci*.

5.

- (i) **Whether the facts alleged by the applicant are capable of falling within the jurisdiction of Turkey under [Article 1 of the Convention](#).**

(a) At the preliminary objections stage of its procedure the Court is not called upon to examine whether Turkey is actually responsible under the Convention for the acts which form the basis of the applicant's complaints. Nor is it called upon to establish the principles that govern State responsibility under the Convention in a situation like that obtaining in northern Cyprus. Such questions belong rather to the merits phase of the procedure. **The Court's inquiry is limited to determining whether the matters complained of by the applicant are capable of falling within the "jurisdiction" of Turkey even though they occur outside her national territory.** [61]

(b) Although [Article 1](#) sets limits on the reach of the Convention, the concept of "jurisdiction" under this provision is not restricted to the national territory of the High Contracting Parties. According to established case law, for example, the extradition or expulsion of a person by a Contracting Party may give rise to an issue under [Article 3](#) and

hence engage the responsibility of that State under the Convention. In addition, the responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory. [62]

(c) Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action--whether lawful or unlawful--it exercises effective control of an area outside its national territory. 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. [62]

(d) The respondent 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 of the "TRNC". Furthermore, it has not been disputed that the applicant was prevented by Turkish troops from gaining access to her property. It follows that such acts are capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention. Whether the matters complained of are imputable to Turkey and give rise to State responsibility are questions which fall to be considered by the Court at the merits phase. [63]-[64]

## (ii) The validity of the territorial restrictions attached to Turkey's Article 25 and 46 declarations.

(a) Articles 25 and 46 of the Convention are essential to the effectiveness of the Convention system since they delineate the responsibility of the Commission and Court "to ensure the observance of the engagements undertaken by the High Contracting Parties" (Article 19), by determining their competence to examine complaints concerning alleged violations of the rights and freedoms set out in the Convention. In interpreting these key provisions regard must be had to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms. [70]

(b) The Convention is a living instrument which must be interpreted in the light of present-day conditions. Such an approach is not confined to the substantive provisions of the Convention but also applies to those provisions, such as Articles 25 and 46, which govern the operation of the Convention's enforcement machinery. It follows that those provisions cannot be interpreted solely in accordance with the intentions of their authors as expressed more than 40 years ago. Accordingly, even if it had been established, which is not the case, that restrictions, other than those *ratione temporis*, were considered permissible under Articles 25 and 46 at a time when a minority of the present Contracting Parties adopted the Convention, such evidence could not be decisive. [71]

(c) In addition, the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as, to make its safeguards practical and effective. [72]

(d) To determine whether Contracting Parties may impose restrictions on their acceptance of the competence of the Commission and Court under Articles 25 and 46, the Court will seek to ascertain the ordinary meaning to be given to the terms of these provisions in their context and in the light of their object and purpose. It shall also take into account, together with the context, "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation". [73]

(e) Both Article 25(2) and Article 46(2) explicitly permit the respective declarations to be made for a specified period. These provisions have been consistently understood as permitting Contracting Parties also to limit the retrospective application of their acceptance of the competence of the Commission and Court. Article 25 contains no express provision for other forms of restrictions. In addition, Article 46(2) provides that declarations "may be made unconditionally or on condition of reciprocity". If substantive or territorial restrictions were permissible under these provisions, Contracting Parties would be free to subscribe to separate regimes of enforcement of Convention obligations depending on the scope of their acceptances. Such a system, which would enable States to qualify their consent under the optional clauses, would not only seriously weaken the role of the Commission and Court in the discharge of their functions but would also diminish the effectiveness of the Convention as a constitutional instrument of European public order. Moreover, where the Convention permits States to limit their acceptance under Article 25, there is an express stipulation to this effect. Having regard to the object and purpose of the

Convention system, the consequences for the enforcement of the Convention and the achievement of its aims would be so far-reaching that a power to this effect should have been expressly provided for. However, no such provision exists in either [Article 25](#) or [Article 46](#). [74]-[75]

(f) [Article 64](#) of the Convention enables States to enter reservations when signing the Convention or when depositing their instruments of ratification. The power to make reservations under [Article 64](#) is, however, a limited one, being confined to particular provisions of the Convention "to the extent that any law then in force in [the] territory [of the relevant Contracting Party] is not in conformity with the provisions". In addition, reservations of a general nature are prohibited. The existence of such a restrictive clause governing reservations suggests that States could not qualify their acceptance of the optional clause thereby effectively excluding areas of their law and practice within their "jurisdiction" from supervision by the Convention institutions. The inequality between Contracting States which the permissibility of such qualified acceptances might create would, moreover, run counter to the aim, as expressed in the Preamble to the Convention, to achieve greater unity in the maintenance and further realization of human rights. [76]-[77]

(g) The above considerations in themselves strongly support the view that such restrictions are not permitted under the Convention system. This is confirmed by the subsequent practice of Contracting Parties under these provisions. Since the entry into force of the Convention until the present day, almost all of the 30 parties to the Convention, apart from the respondent Government, have accepted the competence of the Commission and Court to examine complaints without restrictions *ratione loci or ratione materiae*. The only exceptions appear in the restrictions attached to the Cypriot declaration under [Article 25](#) which have now been withdrawn and the United Kingdom [Article 25](#) declaration. Whatever its meaning, this declaration and that of Cyprus do not disturb the evidence of a practice denoting practically universal agreement amongst Contracting Parties that [Articles 25](#) and [46 of the Convention](#) do not permit territorial or substantive restrictions. The evidence of such a practice is further supported by the reactions of the Governments of Sweden, Luxembourg, Denmark, Norway and Belgium, as well as the Secretary-General of the Council of Europe as depositary, which reserved their positions as regards the legal questions arising as to the scope of Turkey's first [Article 25](#) declaration, and the Government of Greece, which considered the restrictions to Turkey's declarations under [Articles 25](#) and [46](#) to be null and void. [78]-[81]

(h) The existence of such a uniform and consistent State practice clearly rebuts the respondent Government's arguments that restrictions attaching to [Articles 25 and 46](#) declarations must have been envisaged by the drafters of the Convention in the light of the practice under [Article 36](#) of the Statute of the International Court of Justice. In this connection, it is not disputed that States can attach restrictions to their acceptance of the optional jurisdiction of the International Court. Nor has it been contested that [Article 46](#) of the Convention was modeled on [Article 36 of the Statute](#). However, it does not follow that such restrictions to the acceptance of jurisdiction of the Commission and Court must also be permissible under the Convention. In the first place, the context within which the International Court of Justice operates is quite distinct from that of the Convention institutions. The International Court is called on *inter alia* to examine any legal dispute between States that might occur in any part of the globe with reference to principles of international law. The subject-matter of a dispute may relate to any area of international law. In the second place, unlike the Convention institutions, the role of the International Court of Justice is not exclusively limited to direct supervisory functions in respect of a law-making treaty such as the Convention. Such a fundamental difference in the role and purpose of the respective tribunals, coupled with a practice of unconditional acceptance under [Articles 25 and 46](#), provides a compelling basis for distinguishing Convention practice from that of the International Court. [82]-[85]

(i) Finally, the Court does not consider that the application of [Article 63\(4\)](#), an analogy, provides support for the claim that a territorial restriction is permissible under [Articles 25 and 46](#). In accordance with the concept of "jurisdiction" in [Article 1](#) of the Convention, State responsibility may arise in respect of acts and events outside State frontiers. It follows that there can be no requirement, as under [Article 63\(4\)](#) in respect of the overseas territories referred to in that provision, that the [Article 25](#) acceptance be expressly extended before responsibility can be incurred. In addition, regard must be had to the fact that the object and purpose of [Articles 25 and 63](#) are different. [Article 63](#) concerns a decision by a

Contracting Party to assume full responsibility under the Convention for all acts of public authorities in respect of a territory for whose international relations it is responsible. Article 25, on the other hand, concerns an acceptance by a Contracting Party of the competence of the Commission to examine complaints relating to the acts of its own officials acting under its direct authority. Given the fundamentally different nature of these provisions, the fact that a special declaration must be made under Article 63(4) accepting the competence of the Commission to receive petitions in respect of such territories can have no bearing on the validity of restrictions *ratione loci* in Article 25 and 46 declarations. [86]- [88]

(j) Taking into consideration the character of the Convention, the ordinary meaning of Articles 25 and 46 in their context and in the light of their object and purpose and the practice of Contracting Parties, the restrictions *ratione loci* attached to Turkey's Article 25 and 46 declarations are invalid. It remains to be examined whether the validity of the acceptances themselves may be called into question. [89]

### (iii) The validity of the Turkish declarations under Articles 25 and 46.

(a) In addressing this issue the Court must bear in mind the special character of the Convention as an instrument of European public order for the protection of individual human beings and its mission, as set out in Article 19, "to ensure the observance of the engagements undertaken by the High Contracting Parties". It also recalls its judgment in Belilos v. Switzerland (A/132), that Switzerland was bound by the Convention despite the invalidity of the Swiss declaration. [93]-[94]

(b) The issue of the severability of the invalid parts of Turkey's declarations cannot be decided by reference to the statements of her representatives made subsequent to the filing of the declarations. Turkey must have been aware that the restrictive clauses were of questionable validity and took the risk that they would be declared invalid by the Convention institutions without affecting the validity of the declarations themselves. The issue must be decided with reference to the texts of the declarations and the special character of the Convention regime. The latter militates in favor of the severance of the impugned clauses since it is by this technique that the rights and freedoms set out in the Convention may be ensured in all areas falling within Turkey's "jurisdiction" within the meaning of Article 1 of the Convention. [95]-[96]

(c) Having examined the texts of the declarations and the wording of the restrictions with a view to determining whether the impugned restrictions can be severed from the instruments of acceptance or whether they form an integral and inseparable part of them, the Court considers that the restrictions can be separated from the remainder of the text leaving intact the acceptance of the optional clauses. It follows that the declarations of 28 January 1987 and 22 January 1990 under Articles 25 and 46 contain valid acceptances of the competence of the Commission and Court. [97]-[98]

## **Preliminary objection *ratione temporis*.**

6.

(a) It is open to Contracting Parties under Article 46 of the Convention to limit, as Turkey has done in her declaration of 22 January 1990, the acceptance of the jurisdiction of the Court to matters which occur subsequent to the time of deposit. It follows that the Court's jurisdiction extends only to the applicant's allegations of a continuing violation of her property rights subsequent to 22 January 1990. The different temporal competence of the Commission and Court in respect of the same complaint is a direct and foreseeable consequence of separate Convention provisions providing for recognition of the right of individual petition and the jurisdiction of the Court. [102]

(b) The correct interpretation and application of the restrictions *ratione temporis* in the Turkish declarations under Articles 25 and 46 of the Convention and the notion of continuing violations of the Convention raise difficult legal and factual questions which cannot yet be decided. Moreover, they are so closely connected to the merits of the case that they should not be decided at the present phase of the procedure. The Court therefore decides to join this objection to the merits of the case. [103]-[105]

### **Representation**

Mr B. ηaglar (Agent), Mr H. Golsong (Counsel), Mr M. Φzmen, Ministry of Foreign Affairs

(Adviser), Mrs D. Akınay, Ministry of Foreign Affairs (Adviser) for the Turkish Government.  
Mr M. Triantafyllides, Attorney-General (Agent), Miss P. Polychronidou, Barrister-at-Law  
(Counsel) for the Cypriot Government.  
Mr S. Trechsel (Delegate) for the Commission.  
Mr A. Demetriades, Barrister-at-Law, Mr I. Brownlie, Q.C., Ms J. Loizidou, Barrister-at-Law  
(Counsel) for the applicant.

The following cases are referred to in the judgment:

1. Belgian Linguistic Case (No. 1) (A/5): (1979-80) 1 E.H.R.R. 241.
2. Kjeldsen, Busk Madsen and Pedersen v. Denmark (A/23): (1979-80) 1 E.H.R.R. 711.
3. Ireland v. United Kingdom (A/25): (1979-80) 2 E.H.R.R. 25.
4. Tyrer v. United Kingdom (A/26): (1979-80) 2 E.H.R.R. 1.
5. Artico v. Italy (A/37): (1981) 3 E.H.R.R. 1.
6. Johnston v. Ireland (A/112): (1987) 9 E.H.R.R. 203.
7. Belilos v. Switzerland (A/132): (1988) 10 E.H.R.R. 466.
8. Soering v. United Kingdom (A/161): (1989) 11 E.H.R.R. 439.
9. Cruz Varas v. Sweden (A/201): (1992) 14 E.H.R.R. 1.
10. Vilvarajah and Others v. United Kingdom (A/215): (1992) 14 E.H.R.R. 248.
11. Drozd and Janousek v. France and Spain (A/240): (1992) 14 E.H.R.R. 745.
12. Papamichalopoulos v. Greece (A/260-B): (1993) 16 E.H.R.R. 440.
13. Stamoulakatos v. Greece (A/271): (1994) 17 E.H.R.R. 479.
14. Apps. Nos. 6780/74 and 6950/75, Cyprus v. Turkey, Dec. 26.5.75, D.R. 2, p. 125.
15. App. No. 8007/77, Cyprus v. Turkey, Dec. 10.7.78, D.R. 13, p. 85.
16. App. No. 7379/76, X. v. United Kingdom, Dec. 10.12.76, D.R. 8, p. 211.
17. App. No. 7317/75, Lynas v. Switzerland, Dec. 6.10.76, D.R. 6, p. 141.

The following additional case is referred to in the joint dissenting opinion of Judge Gørlcókłó and Judge Pettiti:

18. App. No. 1065/61, X. and Others v. Belgium, Dec. 30.5.61, Yearbook 4, p. 261.

The following additional cases are referred to in the Report of the Commission:

19. X. and Y. v. Netherlands (A/91): (1986) 8 E.H.R.R. 235.
20. App. No. 8239/78, X. v. Netherlands, Dec. 4.12.78, D.R. 16, p. 184.
21. App. No. 8278/78, X. v. Austria, Dec. 13.12.79, D.R. 18, p. 154. \*106
22. App. No. 10435/83, Acmanne v. Belgium, Dec. 10.12.84, D.R. 40, p. 251.
23. Costello-Roberts v. United Kingdom (A/247-C): (1995) 19 E.H.R.R. 112.
24. Wassink v. Netherlands (A/185-A): (1990).
25. Apps. Nos. 7671/76 etc., 15 Foreign Students v. United Kingdom, Dec. 19.5.77, D.R. 9, p. 185.

The following additional case is referred to in the partially concurring, partially dissenting opinion of Mr C.L. Rozakis:

26. Apps. Nos. 15299/89 and 15300/89, Chrysostomos and Papachrysostomou v. Turkey, Dec. 4.3.91, D.R. 68, p. 216.

## The Facts

### I. The particular circumstances of the case

10. The applicant, a Cypriot national, grew up in Kyrenia in northern occupied Cyprus. In 1972 she married and moved with her husband to Nicosia.
11. She claims to be the owner of plots of land Nos. 4609, 4610, 4618, 4619, 4748, 4884, 5002, 5004, 5386 and 5390 in Kyrenia in northern Cyprus and she alleges that prior to the Turkish occupation of northern Cyprus on 20 July 1974, work had commenced on plot No. 5390 for the construction of flats, one of which was intended as a home for her family. She states that she has been prevented in the past, and is still prevented by Turkish forces

from returning to Kyrenia and "peacefully enjoying" her property.

12. On 19 March 1989 the applicant participated in a march organized by a women's group [FN1] in the village of Lymbia near the Turkish village of Akincilar in the occupied area of northern Cyprus. The aim of the march was to assert the right of Greek Cypriot refugees to return to their homes.

**FN1** "Women Walk Home" movement.

Leading a group of 50 marchers she advanced up a hill towards the Church of the Holy Cross in the Turkish-occupied part of Cyprus passing the United Nations' guard post on the way. When they reached the churchyard they were surrounded by Turkish soldiers and prevented from moving any further.

13. She was eventually detained by members of the Turkish Cypriot police force and brought by ambulance to Nicosia. She was released around midnight, having been detained for more than 10 hours.

14. In his report of 31 May 1989 [FN2] on the United Nations Operation in Cyprus [FN3] the Secretary-General of the United Nations described the demonstration of 19 March 1989 as follows [FN4]:

In March 1989, considerable tension occurred over the well-publicized plans of a Greek Cypriot women's group to organize a large demonstration with the announced intention of crossing the Turkish forces cease-fire line. In this connection it is relevant to recall that, following violent demonstrations in the United Nations buffer-zone in November 1988, the Government of Cyprus had given assurances that it would in future do whatever was necessary to ensure respect for the buffer-zone ... Accordingly, UNFICYP asked the Government to take effective action to prevent any demonstrators from entering the buffer-zone, bearing in mind that such entry would lead to a situation that might be difficult to control. The demonstration took place on 19 March 1989. An estimated 2,000 women crossed the buffer-zone at Lymbia and some managed to cross the Turkish forces' line. A smaller group crossed that line at Akhna. At Lymbia, a large number of Turkish Cypriot women arrived shortly after the Greek Cypriots and mounted a counter demonstration, remaining however on their side of the line. Unarmed Turkish soldiers opposed the demonstrators and, thanks largely to the manner in which they and the Turkish Cypriot police dealt with the situation, the demonstration passed without serious incident. Altogether, 54 demonstrators were arrested by Turkish Cypriot police in the two locations; they were released to UNFICYP later the same day.

**FN2** [Security Council document S/20663](#).

**FN3** For the period 1 December 1988--31 May 1989.

**FN4** At para. 11.

#### ***A. Turkey's declaration of 28 January 1987 under Article 25 of the Convention***

15. On 28 January 1987 the Government of Turkey deposited the following declaration with the Secretary General of the Council of Europe pursuant to [Article 25 of the Convention](#): The Government of Turkey, acting pursuant to [Article 25\(1\)](#) of the Convention for the Protection of Human Rights and Fundamental Freedoms hereby declares to accept the competence of the European Commission of Human Rights and to receive petitions according to [Article 25 of the Convention](#) subject to the following:

- (i) the recognition of the right of petition extends only to allegations concerning acts or omissions of public authorities in Turkey performed within the boundaries of the territory to which the Constitution of the Republic of Turkey is applicable;
- (ii) the circumstances and conditions under which Turkey, by virtue of [Article 15 of the Convention](#), derogates from her obligations under the Convention in special circumstances must be interpreted, for the purpose of the competence attributed to the Commission under this declaration, in the light of [Articles 119 to 122 of the Turkish Constitution](#);
- (iii) the competence attributed to the Commission under this declaration shall not comprise matters regarding the legal status of military personnel and in particular, the system of discipline in the armed forces;
- (iv) for the purpose of the competence attributed to the Commission under this

declaration, the notion of a "democratic society" in [paragraphs 2 of Articles 8, 9, 10 and 11 of the Convention](#) must be understood in conformity with the principles laid down in the Turkish Constitution and in particular its Preamble and its [Article 13](#);  
(v) for the purpose of the competence attributed to the Commission under the present declaration, [Articles 33, 52 and 135 of the Constitution](#) must be understood as being in conformity with [Articles 10 and 11 of the Convention](#).

This declaration extends to allegations made in respect of facts, including judgments which are based on such facts which have occurred subsequent to the date of deposit of the present declaration. This declaration is valid for three years from the date of deposit with the Secretary General of the Council of Europe.

#### ***B. Exchange of correspondence between the Secretary General of the Council of Europe and the Permanent Representative of Turkey***

**16.** On [29 January 1987](#) the Secretary General of the Council of Europe transmitted the above declaration to the other High Contracting Parties to the Convention indicating that he had drawn the Turkish authorities' attention to the fact that the notification made pursuant to [Article 25\(3\) of the Convention](#) in no way prejudged the legal questions which might arise concerning the validity of Turkey's declaration.

**17.** In a letter dated 5 February 1987 to the Secretary General, the Permanent Representative of Turkey to the Council of Europe stated that the wording of [Article 25\(3\)](#) of the Convention offered no basis for expressing opinions or adding comments when transmitting copies of the Turkish declaration to the High Contracting Parties. He added: International treaty practice, in particular that followed by the Secretary General of the United Nations as depositary to similar important treaties as the Statute of the International Court of Justice or the covenants and conventions dealing with human rights and fundamental freedoms, also confirms that the depositary has to refrain from any comments on the substance of any declaration made by a Contracting Party.

#### ***C. Reactions of various Contracting Parties to Turkey's [Article 25](#) declaration***

**18.** On 6 April 1987 the Deputy Minister of Foreign Affairs of Greece wrote to the Secretary General stating *inter alia* that reservations to the European Convention on Human Rights may not be formulated on the basis of any provision other than [Article 64](#). He added: Furthermore, [Article 25](#) provides neither directly nor implicitly the possibility of formulating reservations similar to the reservations set out in the Turkish declaration. The position cannot be otherwise, for if reservations could be made on the basis of [Article 25](#), such a method of proceeding would undermine [Article 64](#) and would sooner or later destroy the very foundations of the Convention.

...

It follows that the Turkish reservations, as they are outside the scope of Article 64 must be considered as unauthorized reservations and, accordingly, as illegal reservations.

Consequently, they are null and void and may not give rise to any effect in law.

**19.** In a letter of 21 April 1987 the Permanent Representative of Sweden wrote to the Secretary General stating *inter alia* that "the reservations and declarations ... raise various legal questions as to the scope of the [Turkish] recognition. The Government therefore reserves the right to return to this question in the light of such decisions by the competent bodies of the Council of Europe that may occur in connection with concrete petitions from individuals".

**20.** The Minister of Foreign Affairs of Luxembourg, in a letter of 21 April 1987 to the Secretary General stated *inter alia* that "Luxembourg reserves to itself the right to express ... its position in regard to the Turkish Government's declaration" before the competent bodies of the Council of Europe. He indicated that "the absence of a formal and official reaction on the merits of the problem should not ... be interpreted as a tacit recognition by Luxembourg of the Turkish Government's reservations".

**21.** In a letter of 30 April 1987 to the Secretary General the Permanent Representative of Denmark stated *inter alia* as follows:

In the view of the Danish Government, the reservations and declarations which accompany the said recognition raise various legal questions as to the scope of the recognition. The Government therefore reserves its right to return to these questions in the light of future decisions by the competent bodies of the Council of Europe in connection with concrete

petitions from individuals.

**22.** The Permanent Representative of Norway, in his letter of 4 May 1987 to the Secretary General, stated that the wording of the declaration could give rise to difficult issues of interpretation as to the scope of the recognition of the right to petition. He considered that such issues fell to be resolved by the European Commission on Human Rights in dealing with concrete petitions. He added:

It is therefore desirable to avoid any doubt as to the scope and validity of the recognition by individual States of this right which may be raised by generalized stipulations in respect of the context in which petitions would be accepted as admissible, interpretative statements or other conditionalities.

**23.** In a letter dated 26 June 1987 to the Secretary General, the Permanent Representative of Turkey stated that the points contained in the Turkish declaration were not to be considered as "reservations" in the sense of international treaty law. He pointed out, *inter alia*, that the only competent organ to make a legally binding assessment as to the validity of the conditions attaching to the [Article 25](#) declaration was "the European Commission of Human Rights, when being seized of an individual application, and eventually the Committee of Ministers, when acting pursuant to [Article 32 of the Convention](#)".

**24.** The Permanent Representative of Belgium, in a letter of 22 July 1987 to the Secretary General, stated that the conditions and qualifications set forth in the declaration raised legal questions as to the system of protection set up under the Convention. He added: Belgium therefore reserves the right to express its position in regard to the Turkish Government's declaration, at a later stage and before the competent bodies of the Council of Europe. Meanwhile the absence of a formal reaction on the merits of the problem should by no means be interpreted as a tacit recognition by Belgium of the Turkish Government's conditions and qualifications.

#### ***D. Turkey's subsequent Article 25 declarations***

**25.** Turkey subsequently renewed her declaration under [Article 25 of the Convention](#) for three years as from 28 January 1990. The declaration read as follows:

The Government of Turkey, acting pursuant to [Article 25\(1\) of the Convention](#) for the Protection of Human Rights and Fundamental Freedoms hereby declares to accept the competence of the European Commission of Human Rights to receive petitions according to [Article 25 of the Convention](#) on the basis of the following:

- (i) the recognition of the right of petition extends only to allegations concerning acts or omissions of public authorities in Turkey performed within the boundaries of the national territory of the Republic of Turkey;
- (ii) the circumstances and conditions under which Turkey, by virtue of [Article 15 of the Convention](#), derogates from her obligations under the Convention in special circumstances must be interpreted, for the purpose of the competence attributed to the Commission under this declaration, in the light of [Articles 119 to 122 of the Turkish Constitution](#);
- (iii) the competence attributed to the Commission under this declaration shall not comprise matters regarding the legal status of military personnel and in particular, the system of discipline in the armed forces;
- (iv) for the purpose of the competence attributed to the Commission under this declaration, Articles 8, 9, 10 and 11 of the Convention shall be interpreted by giving special emphasis to "those legal and factual features which characterize the life of the society" **[FN5]** in Turkey, as expressed notably by the Turkish Constitution including its Preamble.

**FN5** Belgian Linguistic Case (No. 2) (A/6): 1 E.H.R.R. 252, (p. 34) para. 10.

This declaration extends to allegations made in respect of facts, including judgments which are based on such facts which have occurred subsequent to 28 January 1987, date of the deposit of the previous declaration by Turkey. This declaration is valid for three years as from January 28, 1990.

**26.** A further renewal for a three-year period as from 28 January 1993 reads as follows: The Government of Turkey, acting pursuant to [Article 25\(1\) of the Convention for the Protection of Human Rights](#) and Fundamental Freedoms, hereby declares to accept the competence of the European Commission of Human Rights, to receive petitions which raise allegations concerning acts or omissions of public authorities in Turkey in as far as they have been performed within the boundaries of the national territory of the Republic of

## Turkey.

This declaration extends to allegations made in respect of facts, including judgments which are based on such facts which have occurred subsequent to 28 January 1987, the date of the deposit of the first declaration made by Turkey under [Article 25 of the Convention](#). This declaration is valid for three years from 28 January 1993.

### *E. Turkish declaration of 22 January 1990 under [Article 46 of the Convention](#)*

**27.** On 22 January 1990, the Turkish Minister of Foreign Affairs deposited the following declaration with the Secretary General of the Council of Europe pursuant to Article 46 of the Convention:

On behalf of the Government of the Republic of Turkey and acting in accordance with Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, I hereby declare as follows:

The Government of the Republic of Turkey acting in accordance with [Article 46 of the European Convention for the protection of Human Rights and Fundamental Freedoms](#), hereby recognizes as compulsory *ipso facto* and without special agreement the jurisdiction of the European Court of Human Rights in all matters concerning the interpretation and application of the Convention which relate to the exercise of jurisdiction within the meaning of [Article 1 of the Convention](#), performed within the boundaries of the national territory of the Republic of Turkey, and provided further that such matters have previously been examined by the Commission within the power conferred upon it by Turkey.

This Declaration is made on condition of reciprocity, including reciprocity of obligations assumed under the Convention. It is valid for a period of 3 years as from the date of its deposit and extends to matters raised in respect of facts, including judgments which are based on such facts which have occurred subsequent to the date of deposit of the present Declaration.

This declaration was renewed for a period of three years as from 22 January 1993 in substantially the same terms.

**28.** The Secretary General of the Council of Europe acknowledged deposit of the Turkish declaration under [Article 46](#) in a letter dated 26 January 1990 and pointed out that her acknowledgement was without prejudice to the legal questions that might arise concerning the validity of the Turkish declaration.

**29.** In a letter of 31 May 1990 to the Secretary General of the Council of Europe, the Permanent Representative of Greece stated *inter alia* as follows:  
[Article 46](#) of the said Convention is clear and to be strictly interpreted and applied. It provides that declarations of recognition of the Court's jurisdiction may be subject to two conditions *only*: a) on condition of reciprocity, if they are not made unconditionally, and b) for a specified period.

Consequently, the above-mentioned declaration of the Turkish Government which, in addition to these two conditions, contains further restrictions or reservations, is, where the latter are concerned, incompatible with Article 46 and with the European Convention on Human Rights in general, as indeed was already pointed out in the Greek Government's letter of 6 April 1987 in connection with the Turkish Government's declaration under [Article 25](#) of the said Convention. It follows that these restrictions or reservations are null and void and may have no legal effect.

### *II. Cypriot declaration under [Article 25](#)*

**30.** By letter of 9 August 1988 the Government of Cyprus deposited the following declaration under [Article 25](#) of the Convention:

On behalf of the Government of the Republic of Cyprus, I declare, in accordance with [Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950](#), that the Government of the Republic of Cyprus recognizes, for the period beginning on 1 January 1989 and ending on 31 December 1991, the competence of the European Commission of Human Rights to receive petitions submitted to the Secretary General of the Council of Europe subsequently to 31 December 1988, by any person, non-governmental organization or group of individuals claiming, in relation to any act or decision occurring or any facts or events arising subsequently to 31 December 1988, to be the victim of a violation of the rights set forth in that Convention.

On behalf of the Government of the Republic of Cyprus, I further declare that the

competence of the Commission by virtue of [Article 25](#) of the Convention is not to extend to petitions concerning acts or omissions alleged to involve breaches of the Convention or its Protocols, in which the [Republic of Cyprus is named as the Respondent](#), if the acts or omissions relate to measures taken by the Government of the [Republic of Cyprus to meet the needs resulting from the situation created by the continuing invasion and military occupation of part of the territory of the Republic of Cyprus by Turkey](#).

**31.** In a letter dated 12 September 1988, the Secretary General recalled that according to the general rules, the notification made pursuant to [Article 25\(3\) in no way prejudged the legal questions that might arise concerning the validity of the Cypriot declaration](#).

**32.** The declaration was renewed in the same terms on 2 January 1992. By letter of 22 December 1994 it was renewed for a further period of three years without the restrictions *ratione materiae* set out above.

### ***III. The declaration of the United Kingdom under [Article 25](#)***

**33.** The United Kingdom's [Article 25](#) declaration of 14 January 1966, which has been renewed successively, reads as follows:

On instructions from Her Majesty's Principal Secretary of State for Foreign Affairs, I have the honor to declare in accordance with the provisions of [Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on the 4th November, 1950](#), that the Government of the United Kingdom of Great Britain and Northern Ireland recognize, in respect of the United Kingdom of Great Britain and Northern Ireland only and not, pending further notification, in respect of any other territory for the international relations of which the Government of the United Kingdom are responsible, for the period beginning on the 14th January 1966, and ending on 13th of January 1969, the competence of the European Commission of Human Rights to receive petitions submitted to the Secretary General of the Council of Europe subsequently to the 13th of January 1966, by any person, non-governmental organization or group of individuals claiming, in relation to any act or decision occurring or any facts or events arising subsequently to the 13th of January 1966, to be the victim of a violation of the rights set forth in that Convention and in the Protocol thereto which was opened for signature at Paris on the 20th March 1952.

This declaration does not extend to petitions in relation to anything done or occurring in any territory in respect of which the competence of the European Commission of Human Rights to receive petitions has not been recognized by the Government of the United Kingdom or to petitions in relation to anything done or occurring in the United Kingdom in respect of such a territory or of matters arising there.

### **PROCEEDINGS BEFORE THE COMMISSION**

**34.** Mrs Loizidou lodged her application [\[FN6\]](#) on 23 July 1989. She complained that her arrest and detention involved violations of [Articles 3, 5 and 8 of the Convention](#). She further complained that the refusal of access to her property constituted a continuing violation of [Article 8 of the Convention and Article 1 of Protocol No. 1](#).

**FN6 App. No. 15318/89.**

**35.** On 4 March 1991 the Commission declared the applicant's complaints admissible in so far as they raised issues under [Articles 3, 5 and 8](#) in respect of her arrest and detention and [Article 8 and Article 1 of Protocol No. 1](#) concerning continuing violations of her right of access to property alleged to have occurred subsequent to 29 January 1987. Her complaint under the latter two provisions of a continuing violation of her property rights before 29 January 1987 was declared inadmissible.

In its report of 8 July 1993, it expressed the opinion that there had been no violation of [Article 3 \[FN7\]](#); [Article 8](#) as regards the applicant's private life [\[FN8\]](#); [Article 5\(1\) \[FN9\]](#); [Article 8](#) as regards the applicant's home [\[FN10\]](#) and [Article 1 of Protocol No. 1. \[FN11\]](#) [The full text of the Commission's opinion and the three separate opinions contained therein follows.](#)

# **Opinion**

## **A. Complaints declared admissible**

46. **[FN12]** The Commission has declared admissible the applicant's complaints concerning her arrest and detention on 19 March 1989 and access to her property. In its decision on the admissibility the Commission noted the applicant's claim that the acts complained of "were carried out by Turkish military forces stationed in the northern part of Cyprus or by forces acting under their authority".

**FN7** Unanimously.

**FN8** Eleven votes to two.

**FN9** Nine votes to four.

**FN10** Nine votes to four.

**FN11** Eight votes to five.

**FN12** The paragraph numbering from here to para. 106 in bold is the original numbering of the Commission's Opinion. Then we revert to the numbering of the Court's judgment.--Ed.

## **B. Points at issue**

47. The Commission considers that the issues now to be determined are:

1. with regard to the applicant's arrest and detention:

- (a) whether there has been a violation of Article 3 of the Convention;
  - (b) whether there has been a violation of Article 8 of the Convention, as regards the applicant's private life;
  - (c) whether there has been a violation of Article 5(1) of the Convention;
2. with regard to access to property:
- (a) whether there has been a violation of Article 8 of the Convention, as regards the applicant's home;
  - (b) whether there has been a violation of Article 1 of Protocol No. 1 to the Convention.

## **C. Arrest and detention**

### **1. Imputability**

48. The applicant claims that her arrest and detention on 19 March 1989 were carried out by Turkish military forces stationed in the northern part of Cyprus or by forces acting under their authority.

49. The respondent Government do not deny that Turkish troops were involved in that incident.

50. The Commission, having regard to the report of the Secretary-General of the United Nations, finds it established that Turkish soldiers were involved in the applicant's arrest and detention.

51. It follows that the applicant's arrest and detention on 19 March 1989 are imputable to Turkey.

### **2. Articles 3 and 8 of the Convention**

52. With regard to her treatment during her arrest and detention the applicant alleges a breach of Article 3 of the Convention which provides as follows: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

53. The Commission has considered the applicant's complaint concerning her treatment during her arrest and detention also under Article 8 of the Convention, which provides as

follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
  2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
54. In the present case the Commission is confronted with different versions as regards the events on 19 March 1989.

### **(a) The character of the demonstration**

55. The Commission notes the descriptions of the events given in the submissions by the applicant and by the respondent Government.
56. The Commission further notes the evidence given by the applicant (see para. 40 above) and the photographs submitted by her.
57. The Commission attaches particular weight to the evidence contained in the report of the Secretary-General of the United Nations. He stated that "considerable tension occurred over the well-publicized plans of a Greek Cypriot women's group to organize a large demonstration with the announced intention of crossing the Turkish forces cease-fire line" and he described the demonstration as follows:
- An estimated 2,000 crossed the buffer-zone at Lymbia and some managed to cross the Turkish forces' line. A smaller group crossed that line at Akhna. At Lymbia, a large number of Turkish Cypriot women arrived shortly after the Greek Cypriots and mounted a counter demonstration, remaining however on their side of the line. Unarmed Turkish soldiers opposed the demonstrators and, thanks largely to the manner in which they and the Turkish Cypriot police dealt with the situation, the demonstration passed without serious incident.
58. In the light of the above evidence the Commission finds that the demonstration constituted a serious threat to peace and public order on the demarcation line in Cyprus.

### **(b) The treatment of the applicant--evaluation of the evidence**

59. The applicant submits that her arrest and detention constituted degrading treatment, in particular because of the way she was seized and brought to Nicosia under escort, a prisoner in her own country. She felt that her life was threatened and she was insulted by the crowd while she was in the ambulance.
60. The respondent Government state that the applicant was treated properly.
61. The Commission notes the applicant's description of the circumstances of her arrest and her detention and the evidence given by a witness proposed by her.
62. The Commission observes that the applicant passed before a United Nations' doctor and did not claim to have suffered any injuries. Moreover, two United Nations officers were present during her arrest and she was accompanied by a United Nations officer when transported in the ambulance.

### **(c) Application of Article 3 of the Convention to the facts established**

63. The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of [Article 3](#). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim.

[FN13]

**FN13** [Soering v. United Kingdom \(A/161\): \(1989\) 11 E.H.R.R. 439, para. 100.](#)

64. The Commission does not find that the treatment to which the applicant was subjected during her arrest and detention attained a level of severity which was sufficient to bring it within the ambit of [Article 3](#).

### Conclusion

65. The Commission concludes unanimously that there has been no violation of [Article 3](#) of the Convention.

#### (d) Application of Article 8 of the Convention to the facts established

66. The Commission observes that, as deprivations of liberty, arrest and detention primarily fall to be considered under [Article 5 of the Convention](#).

67. With regard to Article 8 the Commission recalls that a person's "private life" includes his or her physical integrity. [FN14]

**FN14** CF. E.G. X. and Y. v. Netherlands (A/91): (1986) 8 E.H.R.R. 235, para. 22; App. No. 8239/78, X. v. Netherlands, Dec. 4.12.78, D.R. 16, p. 184 at p. 189; App. No. 8278/78, X. v. Austria, Dec. 13.12.79, D.R. 18, p. 154; App. No. 10435/83, Acmanne v. Belgium, Dec. 10.12.84, D.R. 40, p. 251.

68. The Commission has therefore examined whether the treatment to which the applicant was subjected during her arrest and detention constituted an "interference" with her right, under [Article 8](#), to respect for her private life, which was not justified under [paragraph 2 of that Article](#).

69. The Commission considers that arrest and detention may affect the physical integrity, and thus the private life, of the arrested person. However, not every act or measure which may be said to affect adversely the physical or moral integrity of a person necessarily gives rise to an interference with the right to respect for private life. [FN15]

**FN15** cf. Costello-Roberts v. United Kingdom (A/247-C): (1995) 19 E.H.R.R. 112, para. 36.

70. The Commission has found above [FN16] that the treatment to which the applicant was subjected during her arrest and detention did not attain a level of severity which was sufficient to bring it within the ambit of Article 3.

**FN16** At para. 64.

71. Even assuming, under [Article 8 of the Convention](#), that the applicant's arrest interfered with her private life, the Commission does not find that this interference exceeded the limits of what in the circumstances could reasonably be considered as "necessary", in the interest of public safety and for the prevention of disorder, within the meaning of the second paragraph of this article.

### Conclusion

72. The Commission concludes by 11 votes to two that there has been no violation of [Article 8 of the Convention](#), as regards the applicant's private life.

#### 3. Article 5(1) of the Convention

73. [Article 5\(1\) of the Convention](#) provides as follows:

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

...

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

...

f. the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

**74.** The applicant submits that she was not arrested and detained "in accordance with a procedure prescribed by law" and that none of the grounds of lawful arrest and detention envisaged in [paragraph 1 of Article 5](#) were present. In particular, there was no reasonable suspicion of an offence in the normal sense having been committed, nor any necessity to prevent the commission of such an offence or to prevent subsequent flight. The alleged offence was of an artificial character relating to the "frontiers" of an illegal entity. The Turkish armed forces and their agents had no authority to arrest and detain the applicant.

**75.** The respondent Government submit that [Article 5\(1\)](#) was complied with. When arresting the applicant on the territory of the "Turkish Republic of Northern Cyprus", the police acted under the relevant provisions of domestic law. The authorities used the powers conferred on them in the context of international arrangements concerning the buffer-zone in Cyprus. In the respondent Government's view the Commission is not required to examine the validity or legitimacy of the legal system of the "Turkish Republic of Northern Cyprus" but only the question whether an effective legal system exists in that area. The arrest and detention of the applicant were justified under [Article 5\(1\)](#).

**(a) Deprivation of liberty "in accordance with a procedure prescribed by law"**

**76.** The Commission has examined whether the applicant was deprived of her liberty "in accordance with a procedure prescribed by law", as required by [Article 5\(1\)](#). It recalls that, on the question whether an arrest is "lawful", including whether it complies with "a procedure prescribed by law", the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. However, it requires in addition that any deprivation of liberty should be consistent with the purpose of [Article 5](#), namely to protect individuals from arbitrariness. [FN17]

**FN17** [See Wassink v. Netherlands \(A/185-A\) , para. 24, with further references.](#)

**77.** As regards domestic law in Cyprus, the Commission notes that, under [Chapter 155, section 14,\(1\)\(b\) and \(c\) of the Criminal Procedure Law](#), any police officer may, without warrant, arrest any person who commits in his presence any offence punishable with imprisonment or who obstructs a police officer, while in the execution of his duty.

**78.** The Commission further notes that the applicant, having crossed the buffer-zone, was arrested in northern Cyprus by Turkish Cypriot policemen.

**79.** Having regard to the above elements, the Commission finds that the arrest and detention of the applicant in Cyprus, by police officers acting under [Chapter 155, section 14 of the Criminal Procedure Law](#), took place "in accordance with a procedure prescribed by law", as required by [Article 5\(1\) of the Convention](#).

**(b) Justification of the arrest and detention under Article 5(1)(f) of the Convention**

**80.** [Article 5\(1\)\(f\) of the Convention](#) permits the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

**81.** The applicant argues that she was arrested when crossing the "frontiers" of an illegal entity.

**82.** The Commission finds that it is not in this connection required to examine the status of the "Turkish Republic of Northern Cyprus". It notes that the demonstration on 19 March 1989, in the course of which the applicant was arrested in northern Cyprus, constituted a violation of the arrangements concerning the respect of the buffer-zone in Cyprus. The provisions under which the applicant was arrested and detained served to protect this very area. This cannot be considered as arbitrary.

**83.** The Commission therefore finds that the applicant's arrest and detention were justified under [Article 5\(1\)\(f\)](#), as applied to the regime created in Cyprus by international agreements concerning the buffer-zone.

**(c) Other issues under Article 5(1)**

**84.** In view of its above finding the Commission does not consider it necessary to examine whether the applicant's arrest and detention were also justified under [Article 5\(1\)\(c\)](#).

(d) Conclusion

85. The Commission concludes by nine votes to four that there has been no violation of Article 5(1) of the Convention.

**D. Access to property**

**1. Article 8 of the Convention**

**(a) Interference with home**

86. Article 8(1) of the Convention provides that everyone has the right to respect for his home.

87. The applicant states that she intended to develop the property her father had given her in Kyrenia and return there to live. Construction had begun on plot No. 5390 and one of the flats was intended for her family. She submits that the continuous prevention of her return to this flat which would eventually become a home constitutes a continuous violation of Article 8.

88. The Commission notes that the applicant left Kyrenia in 1972 and moved to Nicosia, her present residence. Since 1972 her home has not been in Kyrenia. The fact that she is prevented from returning to Kyrenia does therefore not affect her right to respect for her home within the meaning of Article 8.

**(b) Conclusion**

89. The Commission concludes by nine votes to four that there has been no violation of Article 8 of the Convention, as regards the applicant's home.

**2. Article 1 of Protocol No. 1**

90. Article 1 of Protocol No. 1 to the Convention provides:

**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.

91. **The applicant submits that Turkey, through the use of its armed forces and by the continued occupation and control of part of Cyprus and by prohibiting the applicant on a number of occasions from gaining access to the said part of Cyprus and consequently to the property in question, has affected the rights of the applicant as property owner and in particular her right to peaceful enjoyment of her possessions, contrary to Article 1 of Protocol No. 1, thus constituting a continuing violation of the said Article.**

92. The **Commission** recalls that it has declared inadmissible the applicant's complaint of a continuing violation of Article 1 of Protocol No. 1 alleged to have occurred before 29 January 1987.

93. The **Commission** notes that the applicant has since that date been prevented from gaining access to the north of Cyprus.

94. The **Commission** finds it established that this is due to the \*120 presence of Turkish forces in Cyprus who exercise an overall control in the border area.

95. The **Commission** therefore finds that the refusal of access to property in the north of Cyprus, of which the applicant complains, is imputable to Turkey.

96. The **Commission** must consequently examine whether this complaint raises an issue under Article 1 of Protocol No. 1.

97. The **Commission** considers that a distinction must be made between claims concerning the peaceful enjoyment of one's possessions and claims of freedom of movement. It notes

that the applicant, who was arrested after having crossed the buffer-zone in Cyprus in the course of a demonstration, claims the right freely to move on the island of Cyprus, irrespective of the buffer-zone and its control, and bases this claim on the statement that she owns property in the north of Cyprus.

98. The Commission acknowledges that limitations of the freedom of movement-- whether resulting from a person's deprivation of liberty or from the status of a particular area--may indirectly affect other matters, such as access to property. But this does not mean that a deprivation of liberty, or restriction of access to a certain area, interferes directly with the right protected by [Article 1 of Protocol No. 1](#). In other words, the right to the peaceful enjoyment of one's possessions does not include, as a corollary, the right to freedom of movement. [FN18]

**FN18** *cf., mutatis mutandis*, Apps. Nos. 7671/76 etc., 15Foreign Students v. United Kingdom, Dec. 19.5.77, D.R. 9, p. 185 at pp. 186 ff.

99. The Commission therefore finds that the applicant's claim of free access to the north of Cyprus, which has been examined above [FN19] under [Article 5 of the Convention](#), cannot be based on her alleged ownership of property in the northern part of the Island.

**FN19** At paras. 81 *et seq.*

100. It follows that it discloses no issue under [Article 1 of Protocol No. 1](#).

### **Conclusion**

101. The Commission concludes by eight votes to five that there has been no violation of [Article 1 of Protocol No. 1](#) to the Convention.

### **E. Recapitulation**

102. The Commission concludes unanimously that there has been no violation of [Article 3 of the Convention](#). [FN20]

**FN20** Para. 65 above.

103. The Commission concludes by 11 votes to two that there has been no violation of [Article 8 of the Convention](#), as regards the applicant's private life. [FN21]

**FN21** Para. 72 above.

\*121 104. The Commission concludes by nine votes to four that there has been no violation of [Article 5\(1\) of the Convention](#). [FN22]

**FN22** Para. 85 above.

105. The Commission concludes by nine votes to four that there has been no violation of [Article 8 of the Convention](#), as regards the applicant's home. [FN23]

**FN23** Para. 89 above.

106. The Commission concludes by eight votes to five that there has been no violation of [Article 1 of Protocol No. 1](#) to the Convention. [FN24]

**FN24** Para. 101 above.

Partly Concurring, Partly Dissenting Opinion of MM. Norgaard, Jøprundsson,  
Gözböyük, Soyler and Danelius

In their declaration deposited on 28 January 1987, the Government of Turkey recognized

the right of individual petition under [Article 25 of the Convention](#), subject to certain conditions. One of these conditions was that the right of petition should extend only to allegations concerning acts and omissions of public authorities in Turkey performed within the boundaries of the territory to which the Constitution of Turkey is applicable. It is clear that this wording was intended to prevent petitions from being lodged in regard to events occurring in the northern part of Cyprus.

The question arises whether this territorial limitation in the Turkish declaration is legally valid. If it should be considered not to be valid, the further question arises as to whether this will affect the validity of the Turkish declaration as a whole.

We first note that, in accordance with a constant practice, a Contracting State is free to make a temporal limitation of its declaration under [Article 25 of the Convention](#), in particular by excluding its application to acts which occurred before the declaration was made.

Moreover, under [Article 63 of the Convention](#), certain territorial limitations are also expressly provided for. However, [Article 63](#) concerns territories for whose international relations a Contracting State is responsible, and the northern part of Cyprus cannot be regarded as such a territory. Nevertheless, [Article 63](#) shows that, when making a declaration under [Article 25](#), a Contracting State may, in some circumstances, make a distinction between different territories.

If a State may exclude the application of [Article 25](#) to a territory referred to in [Article 63](#), there would seem to be no specific reason why it should not be allowed to exclude the application of the right of individual petition to a territory having even looser constitutional ties with the State's main territory. If this was not permitted, the result might in some circumstances be that the State would refrain altogether from recognizing the right of individual petition, which would not serve the cause of human rights.

We consider that the territorial limitation in the Turkish declaration, in so far as it excludes the northern part of Cyprus, cannot be considered incompatible with the object and purpose of the Convention and that it should therefore be regarded as having legal effect. In these circumstances, it is not necessary to examine what the legal consequences would have been if the territorial limitation had been held not to be legally valid.

It follows that in our view the Commission is not competent to deal with the applicant's complaints of violations of the Convention in Cyprus. For these reasons, we have voted against any finding of a violation of the Convention in the present case.

#### Partly Concurring, Partly Dissenting Opinion of Mr C.L. Rozakis

In my partially concurring and partially dissenting opinion to the opinion of the Commission in the cases of [Metropolitan Chrysostomos and Archimandrite Papachrysostomou against Turkey](#), [FN25] I referred to a number of issues on which I disagree with the majority of the Commission. The approaches that I have expressed there remain the same, in so far as they are pertinent to the present case.

**FN25** [Apps. Nos. 15299/89 and 15300/89, Chrysostomos and Papachrysostomou v. Turkey, Dec. 4.3.91](#), D.R. 68, p. 216.

In the case of Titina Loizidou there is, however, one more element on which I disagree with the majority of the Commission: that of the access of the applicant to her property; mainly from the angle of the [first Article of the First Protocol to the Convention](#). The applicant complains that "Turkey through the use of its armed forces and by the continued occupation and control of part of Cyprus and by prohibiting the applicant on a number of occasions from gaining access to the same part of Cyprus and consequently to the property in question, has affected the rights of the applicant as property owner"[peaceful enjoyment of her possessions]. [FN26]

**FN26** Para. 91 of the Commission's Report.

The answer to the complaint of the applicant on the part of the Commission does not satisfy, in my view, her expectation for an overall determination of her case. The Commission contents itself with dealing with only one aspect of her complaints: in paragraphs 97, 98 and 99 it considers that what she asks is not actually a request for the enjoyment of her possessions--which comes under the protection of the First Protocol--but

a request for moving freely in the occupied territory of Cyprus, where her possessions lie. And since the "right to peaceful enjoyment of one's possessions does not include, as a corollary the right to freedom of movement ... the applicant's claim of free access to the north of Cyprus cannot be based on her alleged ownership of property in the northern part of the island."

I think that the Commission interprets in a very narrow way the meaning of the word "access" to the applicant's property. Under the \*123 influence of the previous cases [FN27] and because of the participation of the present applicant in the March manifestations, it considers that the notion of "access", as used by the applicant, is solely referring to a physical contact between the applicant and her possessions.

**FN27** Apps. Nos. 15299/89 and 15300/89, *loc. cit.*

Yet, to my mind, the notion of "access", when referring to the enjoyment of possessions (and when referring to the very wording of the expressed complaint of our applicant) is a wider one than the mere freedom of movement which may allow the establishment of a physical contact. It actually covers all the elements constitutive of the right to enjoyment of possessions; *i.e.* the possibility to repair an immovable good; or the possibility to exploit usefully the possession; or the possibility to exchange a possession through the free acquisition of another one, etc. Under these circumstances, it becomes clear that the occupation by Turkey of the northern part of Cyprus actually prevents, in a continuing manner, the free enjoyment of possessions, the access to their many uses, and attributes, for the applicant.

I must also concede that even a narrow interpretation of the term "access" could not have led me so easily to the conclusion that no issue arises under the First Protocol to the Convention. There are circumstances where the absence of physical contact of a person with his or her possessions may amount to a deprivation of possessions; this is particularly true in cases where the use of a possession is the main constitutive element for the enjoyment of the possession; but also in other cases where the optimal exploitation of a possession requires physical presence of the person who owns it.

I then wonder whether, under the circumstances of the present case, when the applicant has for a long time been unable both to have any physical contact with her possessions and to freely make use of them, she cannot effectively claim to be a victim of continuous violation of her rights, under the Protocol. I conclude, in answering my own dilemma, that in either way I see a violation of Article 1 of the First Protocol .

Partly Dissenting Opinion of Mr M.P. Pellonpö

While I share the opinion of the majority of the Commission in other respects, I disagree in so far as concerns the complaints based on Article 5 of the Convention and Article 1 of Protocol No. 1.

The majority seem to consider that the applicant's right protected by Article 1 of Protocol No. 1 has been interfered with only "indirectly", and that therefore the case discloses no issue under Article 1 of Protocol No. 1. [FN28] This finding appears to be based on the view that the applicant in reality complains only about the lack of free access to her property, *i.e.*, denial of freedom of movement.

**FN28** Paras. 98, 100.

In agreement with what is said by Mr Rozakis in his Dissenting Opinion I consider this to be an unduly narrow construction of the \*124 applicant's complaint made under Article 1 of Protocol No. 1. In her application form the applicant submitted that: Turkey through the use of the T.M.F. and by the continued occupation and or control of the said part of Cyprus and by prohibiting the Applicant access to the said part of Cyprus and consequently to her property in question, has gradually and with the passing of time over the last 15 years, affected the rights of the Applicant as property owner and in particular her right to peaceful enjoyment of her possessions contrary to Article 1 of Protocol 1 of the Convention [FN29] thus constituting a continuing violation of the said Article.

**FN29** See Sporrang and Lönroth v. Sweden (A/52): (1983) 5 E.H.R.R. 35.

In her observations on the merits submitted in December 1992 the applicant specified that: In the particular case of violations of [Article 1 of Protocol 1 of the Convention](#), the object of the Application is for the Applicant to be restored to the peaceful enjoyment of her possessions in the area occupied by Turkey and, in particular, her immovable property situated in Kyrenia. In addition the Applicant seeks compensation for the deprivation of the use and enjoyment of her property for the period between July 20, 1974 up to this day. To me it is clear that the applicant's complaint is not limited to the access aspect but concerns an alleged denial of various aspects of the right guaranteed by [Article 1 of Protocol No. 1](#).

Since 1974 all the essential elements of the applicant's rights as the owner of the property, including access to the property, have been interfered with. This interference was not for the purpose of controlling the use of the property within the meaning of the second paragraph of [Article 1 of Protocol No. 1](#). Nor was the applicant's property formally expropriated before the acceptance by Turkey of the right of individual petition in such a way as to remove the interference from the Commission's competence *ratione temporis*. According to the respondent Government, "the question of Greek properties in the north and Turkish Cypriot properties in the south is a matter of discussion within the framework of the inter-communal talks" (para. 30 of the Commission's report). Thus the unsettled nature of the property issue--and the continuing nature of the interference--is conceded by the Government.

Under these circumstances the denial of access to the property and denial of its enjoyment amount to a continuing violation of [Article 1 of Protocol No. 1](#). [FN30] This violation is attributable to Turkey, as there are no circumstances which would break the chain of causation between the original interference by Turkey and the present situation. I refer to the considerations put forward in my Partly Concurring, Partly Dissenting Opinion in [Chrysostomos and Papachrysostomou v. Turkey](#) . [FN31]

**FN30** See, mutatis mutandis, [Papamichalopoulos v. Greece \(A/260-B\): \(1993\) 16 E.H.R.R. 440 \\*125](#) .

**FN31** *Loc. cit.*

I also consider that [Article 5 of the Convention](#) has been violated. I doubt whether the arrest and detention on the basis of the rules relied on in the main opinion of the Commission fulfilled the requirement of foreseeability and therefore took place "in accordance with a procedure prescribed by law". In all the circumstances of the case, including the length of the deprivation of liberty, I conclude that the applicant's "right to liberty and security of person", guaranteed by paragraph 1 of [Article 5](#), was violated.

## JUDGMENT

### *I. The standing of the Applicant Government*

**39. Throughout the proceedings the Turkish Government systematically referred to the applicant Government as the "Greek Cypriot administration". They indicated, without developing any arguments on this point, that they did not accept the capacity of the applicant Government to represent the people of Cyprus and that their appearance before the Court in the present case should not be understood as amounting to any form of recognition of that Government.**

**40. The Court confines itself to noting, with reference *inter alia* to the consistent practice of the Council of Europe and the decisions of the Commission in the [inter-State cases of Cyprus v. Turkey](#), that the applicant Government have been recognized by the international community as the Government of the Republic of Cyprus. [FN32] Its *locus standi* as the Government of a High Contracting Party to the Convention cannot therefore be in doubt. Moreover it has not been contested that the applicant is a national of the Republic of Cyprus.**

**FN32** See in this connection, Apps. Nos. 6780/74 and 6950/75, *Cyprus v. Turkey*, Dec. 26.5.75, D.R. 2, p. 125 at pp. 135-136; 8007/77, *Cyprus v. Turkey*, Dec. 10.7.78, D.R. 13, p. 85, at p. 146.

**41.** In any event recognition of an applicant Government by a respondent Government is not a precondition for either the institution of proceedings under [Article 24 of the Convention](#) or the referral of cases to the Court under [Article 48](#). **[FN33]** If it were otherwise, the system of collective enforcement which is a central element in the Convention system could be effectively neutralized by the interplay of recognition between individual Governments and States.

**FN33** See App. No. 8007/77, *loc. cit.*, pp. 147-148.

## *II. Alleged abuse of process*

**42.** The Turkish Government submitted that the overriding aim of the application was political propaganda. The decision of the applicant Government to bring the case before the Court was not, in fact, made in order to complain of the alleged violations of the applicant's rights but rather to stimulate a debate before the Court on the status of the "Turkish Republic of Northern Cyprus" (the "TRNC"). Such an approach amounted to an abuse of process. The complaints therefore **\*126** fell outside the Court's competence since they seek to pervert the character of the judicial control procedure.

**43.** The applicant Government and the Commission took issue with this submission. The Government of Cyprus argued *inter alia* that the applicant's case is one of thousands of instances of displaced persons who have been deprived of their property because of the illegal Turkish occupation of northern Cyprus. Moreover, it was only natural that the Government of Cyprus should be interested in the fate of their citizens. The applicant, for her part, considered that the claim lacked the status of a preliminary objection.

**44.** The Court observes that this objection was not raised in the proceedings before the Commission. Accordingly the Turkish Government is estopped from raising it before the Court in so far as it applies to Mrs Loizidou.

**45.** In so far as it is directed to the applicant Government, the Court notes that this Government have referred the case to the Court *inter alia* because of their concern for the rights of the applicant and other citizens in the same situation. The Court does not consider such motivation to be an abuse of its procedures.  
It follows that this objection must be rejected.

**46.** In the light of this conclusion it leaves open the question whether it could refuse jurisdiction in an application by a State under [Article 48\(b\)](#) on the grounds of its allegedly abusive character.

## *III. The Turkish Government's role in the proceedings*

**47.** The Turkish Government submitted that, in essence, the present case did not concern the acts or omissions of Turkey but those of the "TRNC" which they claimed to be an independent State established in the north of Cyprus. As the only Contracting Party to have recognized the "TRNC", with whose authorities it has close and friendly relations, its role before the Court was limited to that of an *amicus curiae* since the "TRNC" was not itself able to be a "party" to the present proceedings.

**48.** For the applicant Government, it was not open to Turkey under the Rules of Court to change its status in this way and to appear on behalf of an illegal regime which had been established in defiance of international law and which has not been recognized by the international community.

**49.** The applicant for her part considered that the Turkish Government's position amounted, in effect, to an objection *ratione loci*.

**50.** The Commission maintained that Turkey appeared not as an *amicus curiae* but as a

**High Contracting Party to the Convention.**

- 51. The Court does not consider that it lies within the discretion of a Contracting Party to the Convention to characterize its standing in the proceedings before the Court in the manner it sees fit. It observes that the case originates in a petition made under Article 25, brought by the applicant against Turkey in her capacity as a High Contracting Party to the Convention and has been referred to the Court under Article 48(b) by another High Contracting Party.**
- 52. The Court therefore considers--without prejudging the remainder of the issues in these proceedings--that Turkey is the respondent Party in this case.**

***IV. Scope of the case***

**53. Before the Commission the applicant complained that her right to the peaceful enjoyment of her possessions had been affected as a result of the continued occupation and control of the northern part of Cyprus by Turkish armed forces which have on several occasions prevented her from gaining access to her home and other properties there. She submitted that this state of affairs constituted a continuing violation of her property rights contrary to Article 1 of Protocol No. 1 to the Convention as well as a continuing violation of her right to respect for her home contrary to Article 8 of the Convention. She further alleged violations of Articles 3, 5(1) and 8 of the Convention arising out of her arrest and detention. [FN34]**

**FN34** See para. 34 above.

**54. In the application referring the present case to the Court under Article 48(b) of the Convention the applicant Government have confined themselves to seeking a ruling on the complaints under Article 1 of Protocol No. 1 and Article 8, in so far as they have been declared admissible by the Commission, [FN35] concerning access to the applicant's property. Accordingly, as is undisputed, it is only these complaints which are before the Court. The remaining part of the case concerning the applicant's arrest and detention thus falls within the competence of the Committee of Ministers of the Council of Europe in accordance with Article 32(1) of the Convention.**

**FN35** See para. 35 above.

The Court notes that the issue whether the Convention and the Rules of Court permit a partial referral under Article 48, as in the present case, has not been called into question by those appearing before the Court. Indeed, Turkey ("the respondent Government") has accepted that the scope of the case be confined in this way. In these circumstances the Court does not find it necessary to give a general ruling on the question whether it is permissible to limit a referral to the Court to some of the issues on which the Commission has stated its opinion.

***V. Objections *ratione loci****

**55. The respondent Government have filed two preliminary objections *ratione loci*. In the first place they claimed that the Court lacks competence to consider the merits of the case on the grounds that the matters complained of did not fall within Turkish jurisdiction but within that of the "TRNC". In the second place they contended that, in accordance with their declarations under Articles 25 and 46 of the Convention, [FN36] they had not accepted either the competence of the Commission or the Court to examine acts and events outside their metropolitan territory.**

**FN36** See paras. 3, 15 and 27 above.

The Court will examine each of these objections in turn.

***A. Whether the facts alleged by the applicant are capable of falling within the jurisdiction of Turkey under Article 1 of the Convention***

***1. Submissions of those appearing before the Court***

**56.** The respondent Government first pointed out that the question of access to property was obviously outside the realm of Turkey's "jurisdiction". This could be seen from the fact that it formed one of the core items in the inter-communal talks between the Greek-Cypriot and Turkish-Cypriot communities.

Furthermore the mere presence of Turkish armed forces in northern Cyprus was not synonymous with "jurisdiction" any more than it is with the armed forces of other countries stationed abroad. In fact Turkish armed forces had never exercised "jurisdiction" over life and property in northern Cyprus. Undoubtedly it was for this reason that the findings of the Commission in the inter-State cases of Cyprus v. Turkey [FN37] had not been endorsed by the Committee of Ministers whose stand was in line with the realities of the situation prevailing in Cyprus following the intervention of Turkey as one of the three guarantor powers of the Republic of Cyprus.

**FN37** Apps. Nos. 6780/74, 6950/75 and 8007/77, *loc. cit.*

Nor did Turkey exercise overall control of the border areas as found by the Commission in its admissibility decision in the present case. She shares control with the authorities of the "TRNC" and when her armed forces act alone they do so on behalf of the "TRNC" which does not dispose of sufficient forces of its own. The fact that the Turkish armed forces operate within the command structure of the Turkish army does not alter this position. According to the respondent Government, far from being a "puppet" State as alleged by the applicant, the "TRNC" is a democratic constitutional State with impeccable democratic features and credentials. Basic rights are effectively guaranteed and there are free elections. It followed that the exercise of public authority in the "TRNC" was not imputable to Turkey. The fact that this State has not been recognized by the international community was not of any relevance in this context.

**57.** The applicant, whose submissions were endorsed by the Government of Cyprus, contended that the question of responsibility in this case for violations of the Convention must be examined with reference to the relevant principles of international law. In this respect the Commission's approach which focused on the direct involvement of Turkish officials in violations of the Convention was not, under international law, the correct one. **A State is, in principle, internationally accountable for violations of rights occurring in territories over which it has physical control.**

**According to the applicant, international law recognizes that a State which is thus accountable with respect to a certain territory remains so even if the territory is administered by a local administration. This is so whether the local administration is illegal, in that it is the consequence of an illegal use of force, or whether it is lawful, as in the case of a protected State or other political dependency. A State cannot avoid legal responsibility for its illegal acts of invasion and military occupation, and for subsequent developments, by setting up or permitting the creation of forms of local administration, however designated. Thus the controlling powers in the "puppet" States that were set up in Manchukuo, Croatia and Slovakia during the period 1939-1945 were not regarded as absolved from responsibilities for breaches of international law in these administrations. [FN38] In the same vein, the international accountability of the protecting or ultimate sovereign remains in place even when a legitimate political dependency is created. This responsibility of the State in respect of protectorates and autonomous regions is affirmed by the writings of authoritative legal publicists. [FN39]**

**FN38** Whiteman, *Digest of International Law*, (1967) Vol. 8, pp. 835-837.

**FN39** Rousseau, *Droit international public*, Vol. V, 1983, p. 31 (para. 28); Reuter, *Droit international public* (6th ed., 1983), p. 262; *Ripertoire suisse de droit international public*, 1975, vol. III, pp. 1722-3; Verzijl, *International Law in Historical Perspective*, 1973, Vol. IV, pp. 710-11.

The applicant further submitted that in the present case to apply a criterion of responsibility which required the direct intervention of Turkish military personnel in respect of each *prima facie* violation of the Convention in northern Cyprus would be wholly at variance with the normal mode of applying the principles of State responsibility set out above. To require applicants to fulfill such a standard at the merits stage would be wholly

unrealistic and would also involve a *de facto* amnesty and a denial of justice. Finally, if Turkey was not to be held responsible for conditions in northern Cyprus, no other legal person can be held responsible. However the principle of the effective protection of Convention rights recognized in the case law of the Court requires that there be no lacuna in the system of responsibility. The principles of the Convention system and the international law of State responsibility thus converge to produce a regime under which Turkey is responsible for controlling events in northern Cyprus.

**58. On this issue the Commission was of the opinion that the applicant had been prevented from gaining access to her property due to the presence of Turkish armed forces in the northern part of Cyprus which exercise an overall control in the border area. This refusal of access was thus imputable to Turkey.**

## *2. The Court's examination of the issue*

**59. Article 1 of the Convention reads as follows:**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of [the] Convention.

**60.** The question before the Court is whether its competence to examine the applicant's complaints is excluded on the grounds that they concern matters which cannot fall within the "jurisdiction" of the respondent Government.

**61.** The Court would emphasize that it is not called upon at the preliminary objections stage of its procedure to examine whether Turkey is actually responsible under the Convention for the acts which form the basis of the applicant's complaints. Nor is it called upon to establish the principles that govern State responsibility under the Convention in a situation like that obtaining in the northern part of Cyprus. Such questions belong rather to the merits phase of the Court's procedure. The Court's inquiry is limited to determining whether the matters complained of by the applicant are capable of falling within the "jurisdiction" of Turkey even though they occur outside her national territory.

**62.** In this respect the Court recalls that, although Article 1 sets limits on the reach of the Convention, the concept of "jurisdiction" under this provision is not restricted to the national territory of the High Contracting Parties. According to its established case law, for example, the Court has held that the extradition or expulsion of a person by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention. **[FN40]** In addition, the responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory. **[FN41]**

**FN40** See *Soering v. United Kingdom (A/161)*, *loc. cit.*, para. 91; *Cruz Varas v. Sweden (A/201)*: (1992) 14 E.H.R.R. 1, paras. 69 and 70; *Vilvarajah v. United Kingdom (A/215)*: (1992) 14 E.H.R.R. 248, para. 103.

**FN41** *Drozd and Janousek v. France and Spain (A/240)*: (1992) 14 E.H.R.R. 745, para. 91.

Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action--whether lawful or unlawful--it exercises effective control of an area outside its national territory. 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.

*\*131*

**63.** In this connection the respondent 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 was prevented by Turkish troops from gaining access to her property.

**64.** It follows that such acts are capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention. Whether the matters complained of are imputable to Turkey and give rise to State responsibility are thus questions which fall to be determined by the Court at the merits phase.

**B. The validity of the territorial restrictions attached to Turkey's Article 25 and 46 declarations**

**65.** The relevant provisions of Article 25 of the Convention read as follows:

- 1.** The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.
- 2.** Such declarations may be made for a specific period.

...

**66.** Article 46 of the Convention states:

- 1.** Any of the High Contracting Parties may at any time declare that it recognizes as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.
  - 2.** The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.
- 3.** These declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

**67.** The respondent Government submitted that the relevant territorial and other restrictions contained in the Article 25 and 46 declarations of 28 January 1987 and 22 January 1990 [FN42] respectively, are legally valid and bind the Convention institutions. The system set up under Articles 25 and 46 is an optional one into which Contracting States may, or may not, "contract-in". There is no indication that the Contracting Parties agreed when the Convention was being drafted that a partial recognition of the competence of the Commission and Court was impermissible. If they had meant to prohibit restrictions in Article 25 and 46 declarations they would have included a special \*132 provision to this effect as is common in the treaty practice of the Council of Europe.

**FN42** As renewed on 22 January 1993.

In fact the Convention system has multiple clauses, such as Articles 63 and 64, Article 6(2) of Protocol No. 4 and Article 7(2) of Protocol No. 7, which provide the basis for "ü la carte" undertakings by the Contracting Parties. Moreover, other States have attached substantive restrictions to their instruments of acceptance such as the United Kingdom [FN43]--in this case a territorial restriction--and Cyprus. [FN44]

**FN43** See para. 33 above.

**FN44** See paras. 30 and 32 above.

The respondent Government also referred to the established practice under Article 36 of the Statute of the International Court of Justice to permit the attachment of substantive, territorial and temporal restrictions to the optional recognition of the Court's jurisdictional competence. The wording in Article 36(3) of the Statute is, in all material respects, the same as that used in Articles 25 and 46 of the Convention. In this connection, the drafting history of the Convention reveals that Article 36 of the Statute served as a model for Article 46 of the Convention. It is a well established principle in international treaty law that an expression used in one treaty will bear the same meaning if used in another. In the respondent Government's further submission, Articles 25 and 46 must be interpreted with reference to their meaning when the Convention was being drafted. This principle of contemporaneous meaning is part of the "good faith" interpretation embodied in Article 31 of the Vienna Convention on the Law of Treaties. At this time, international judicial practice permitted the addition of conditions or restrictions to any optional recognition of the jurisdiction of an international tribunal. The fact that the drafters of the Convention did not choose to use different words indicates that they intended to give States the same freedom to attach restrictions to their declarations as is enjoyed under Article 36 of the Statute of the International Court of Justice.

Finally, with regard to subsequent treaty practice, while there have been statements opposing the Turkish interpretation of [Articles 25 and 46](#), it has not been established that there is a practice reflecting an agreement among all Contracting Parties concerning the attachment of conditions to these instruments of acceptance.

**68.** For the applicant and the Government of Cyprus, when States make declarations under Articles 25 and 46 recognizing the competence of the Commission and Court, the only conditions permitted are those *ratione temporis*. In reality, the territorial restriction in the Turkish declarations is tantamount to a disguised reservation.

Furthermore, the long-established practice of the International Court of Justice in accepting restrictions on the jurisdiction of the Court under [Article 36 of the Statute](#) affords no assistance in the \*133 present case because of the substantial differences between the two systems. The International Court of Justice is a free-standing international tribunal which has no links to a standard-setting treaty such as the Convention.

**69.** The Commission, with reference to its admissibility decision in the present case, also considered that the restrictions attaching to the Turkish Article 25 declaration were invalid with the exception of the temporal restriction. It expressed the same view as regards the territorial restriction contained in the [Article 46](#) declaration.

**70.** The Court observes that [Articles 25 and 46 of the Convention](#) are provisions which are essential to the effectiveness of the Convention system since they delineate the responsibility of the Commission and Court "to ensure the observance of the engagements undertaken by the High Contracting Parties", [FN45] by determining their competence to examine complaints concerning alleged violations of the rights and freedoms set out in the Convention. In interpreting these key provisions it must have regard to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms.

**FN45** Art. 19.

As was observed in the Court's [Ireland v. United Kingdom judgment of 15 January 1978](#) [FN46]

Unlike international treaties of the classical kind, the Convention comprises more than mere reciprocal engagements between Contracting States. It creates over and above a network of mutual bilateral undertakings, objective obligations which in the words of the preamble benefit from a "collective enforcement".

**FN46** (A/25): (1979-80) 2 E.H.R.R. 25, para. 239.

**71.** That the Convention is a living instrument which must be interpreted in the light of present-day conditions is firmly rooted in the Court's case law. [FN47] Such an approach, in the Court's view, is not confined to the substantive provisions of the Convention, but also applies to those provisions, such as [Articles 25 and 46](#), which govern the operation of the Convention's enforcement machinery. It follows that these provisions cannot be interpreted solely in accordance with the intentions of their authors as expressed more than 40 years ago.

**FN47** See, *inter alia*, [Tyrrer v. United Kingdom \(A/26\): \(1979-80\) 2 E.H.R.R. 1](#), para. 31.

Accordingly, even if it had been established, which is not the case, that restrictions, other than those *ratione temporis*, were considered permissible under [Articles 25 and 46](#) at a time when a minority of the present Contracting Parties adopted the Convention, such evidence could not be decisive.

**72.** In addition, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. [FN48]

**FN48** See, *inter alia*, [Soering v. United Kingdom, \\*134 loc. cit.](#), para. 87, and [Artico v. Italy \(A/37\): \(1981\) 3 E.H.R.R. 1](#), para. 33.

**73.** To determine whether Contracting Parties may impose restrictions on their acceptance of the competence of the Commission and Court under [Articles 25 and 46](#), the Court will seek to ascertain the ordinary meaning to be given to the terms of these provisions in their

context and in the light of their object and purpose. [FN49] It shall also take into account, together with the context, "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation". [FN50]

**FN49** See, inter alia, [Johnston v. Ireland \(A/112\) : \(1987\) 9 E.H.R.R. 203](#), para. 51, and Art. 31(1) of the Vienna Convention of 23 May 1969 on the Law of Treaties .

**FN50** See [Article 31\(3\)\(b\)](#) of the Vienna Convention.

**74.** Both [Article 25\(2\)](#) and [Article 46\(2\)](#) of the Convention explicitly permit the respective declarations to be made for a specified period. These provisions have been consistently understood as permitting Contracting Parties also to limit the retrospective application of their acceptance of the competence of the Commission and the Court. [FN51] This point has not been disputed.

**FN51** See, inter alia, [Stamoulakatos v. Greece\(A/271\): \(1994\) 17 E.H.R.R. 479](#), para. 32.

**75.** [Article 25](#) contains no express provision for other forms of restrictions. [FN52] In addition, [Article 46\(2\)](#) provides that declarations "may be made unconditionally or on condition of reciprocity ...". [FN53]

**FN52** See para. 65 above.

**FN53** See para. 66 above.

If, as contended by the respondent Government, substantive or territorial restrictions were permissible under these provisions, Contracting Parties would be free to subscribe to separate regimes of enforcement of Convention obligations depending on the scope of their acceptances. Such a system, which would enable States to qualify their consent under the optional clauses, would not only seriously weaken the role of the Commission and Court in the discharge of their functions but would also diminish the effectiveness of the Convention as a constitutional instrument of European public order ("*ordre public*"). Moreover, where the Convention permits States to limit their acceptance under [Article 25](#), there is an express stipulation to this effect. [FN54]

**FN54** See, in this regard, [Art. 6\(2\) of Protocol No. 4 and Art. 7\(2\) of Protocol No. 7](#).

In the Court's view, having regard to the object and purpose of the Convention system as set out above, the consequences for the enforcement of the Convention and the achievement of its aims would be so far-reaching that a power to this effect should have been expressly provided for. However no such provision exists in either [Article 25](#) or [Article 46](#).

**76.** The Court further notes that [Article 64 of the Convention](#) enables States to enter reservations when signing the Convention or when depositing their instruments of ratification. The power to make reservations under Article 64 is, however, a limited one, being confined to particular provisions of the Convention "to the extent that any law then in force in [the] territory [of the relevant Contracting Party] is not \*135 in conformity with the provision" . In addition reservations of a general nature are prohibited.

**77.** In the Court's view, the existence of such a restrictive clause governing reservations suggests that States could not qualify their acceptance of the optional clauses thereby effectively excluding areas of their law and practice within their "jurisdiction" from supervision by the Convention institutions. The inequality between Contracting States which the permissibility of such qualified acceptances might create would, moreover, run counter to the aim, as expressed in the Preamble to the Convention, to achieve greater unity in the maintenance and further realization of human rights.

**78.** The above considerations in themselves strongly support the view that such restrictions are not permitted under the Convention system.

**79.** This approach is confirmed by the subsequent practice of Contracting Parties under these provisions. Since the entry into force of the Convention until the present day, almost all of the 30 parties to the Convention, apart from the respondent Government, have accepted the competence of the Commission and Court to examine complaints without

restrictions *ratione loci* or *ratione materiae* . The only exceptions to such a consistent practice appear in the restrictions attached to the Cypriot declaration under [Article 25 \[FN55\]](#) which have now been withdrawn [\[FN56\]](#) and--as is claimed by the respondent Government--the United Kingdom [Article 25 declaration. \[FN57\]](#)

**FN55** See paras. 30 and 32 above.

**FN56** See para. 32 above.

**FN57** See para. 33 above.

**80.** In this respect, the Commission suggested that the restriction was formulated by the United Kingdom, in the light of [Article 63\(4\) of the Convention](#), in order to exclude the competence of the Commission to examine petitions concerning its non-metropolitan territories. In the present context the Court is not called upon to interpret the exact scope of this declaration which has been invoked by the respondent Government as an example of a territorial restriction. Whatever its meaning, this declaration and that of Cyprus do not disturb the evidence of a practice denoting practically universal agreement amongst Contracting Parties that [Articles 25 and 46 of the Convention](#) do not permit territorial or substantive restrictions.

**81.** The evidence of such a practice is further supported by the reactions of the Governments of Sweden, Luxembourg, Denmark, Norway and Belgium, as well as the Secretary General of the Council of Europe as depositary, which reserved their positions as regards the legal questions arising as to the scope of Turkey's first [Article 25 declaration \[FN58\]](#) and the Government of Greece which considered the *\*136* restrictions to Turkey's declarations under [Articles 25 and 46](#) to be null and void. [\[FN59\]](#)

**FN58** See paras. 18-24 above.

**FN59** See para. 18 above.

**82.** The existence of such a uniform and consistent State practice clearly rebuts the respondent Government's arguments that restrictions attaching to [Article 25 and Article 46 declarations](#) must have been envisaged by the drafters of the Convention in the light of practice under [Article 36](#) of the Statute of the International Court of Justice.

**83.** In this connection, it is not disputed that States can attach restrictions to their acceptance of the optional jurisdiction of the International Court. Nor has it been contested that [Article 46 of the Convention](#) was modeled on [Article 36](#) of the Statute. However, in the Court's view, it does not follow that such restrictions to the acceptance of jurisdiction of the Commission and Court must also be permissible under the Convention.

**84.** In the first place, the context within which the International Court of Justice operates is quite distinct from that of the Convention institutions. The International Court is called on *inter alia* to examine any legal dispute between States that might occur in any part of the globe with reference to principles of international law. The subject matter of a dispute may relate to any area of international law. In the second place, unlike the Convention institutions, the role of the International Court is not exclusively limited to direct supervisory functions in respect of a law-making treaty such as the Convention.

**85.** Such a fundamental difference in the role and purpose of the respective tribunals, coupled with the existence of a practice of unconditional acceptance under [Articles 25 and 46](#), provides a compelling basis for distinguishing Convention practice from that of the International Court.

**86.** Finally, although the argument has not been elaborated on by the respondent Government, the Court does not consider that the application of [Articles 63\(4\)](#) , by analogy, provides support for the claim that a territorial restriction is permissible under [Articles 25 and 46](#).

According to this argument, [Article 25](#) could not apply beyond national boundaries to territories, other than those envisaged by [Article 63](#), unless the State specifically extended it to such territories. As a corollary, the State can limit acceptance of the right of individual petition to its national territory--as has been done in the instant case.

**87.** The Court first recalls that in accordance with the concept of "jurisdiction" in Article 1 of the Convention, State responsibility may arise in respect of acts and events outside State

frontiers. [FN60] It follows that there can be no requirement, as under [Article 63\(4\)](#) in respect of the overseas territories referred to in that provision, that the Article 25 \*137 acceptance be expressly extended before responsibility can be incurred.

**FN60** See para. 62 above.

**88.** In addition, regard must be had to the fact that the object and purpose of [Article 25 and Article 63](#) are different. [Article 63](#) concerns a decision by a Contracting Party to assume full responsibility under the Convention for all acts of public authorities in respect of a territory for whose international relations it is responsible. [Article 25](#), on the other hand, concerns an acceptance by a Contracting Party of the competence of the Commission to examine complaints relating to the acts of its own officials acting under its direct authority. Given the fundamentally different nature of these provisions, the fact that a special declaration must be made under [Article 63\(4\)](#) accepting the competence of the Commission to receive petitions in respect of such territories, can have no bearing, in the light of the arguments developed above, on the validity of restrictions *ratione loci* in [Article 25 and 46](#) declarations.

**89.** Taking into consideration the character of the Convention, the ordinary meaning of Articles 25 and 46 in their context and in the light of their object and purpose and the practice of Contracting Parties, the Court concludes that the restrictions *ratione loci* attached to Turkey's [Article 25 and Article 46](#) declarations are invalid.

It remains to be examined whether, as a consequence of this finding, the validity of the acceptances themselves may be called into question.

#### *C. Validity of the Turkish declarations under [Articles 25 and 46](#)*

**90.** The respondent Government submitted that if the restrictions attached to the [Article 25 and 46](#) declarations were not recognised to be valid, as a whole, the declarations were to be considered null and void in their entirety. It would then be for the Turkish Government to draw the political conclusions from such a situation.

In this connection, the Turkish Delegate at the session of the Committee of Ministers of the Council of Europe in March 1987 had underlined that the conditions built into Turkey's [Article 25](#) declaration were so essential that disregarding any of them would make the entire declaration void with the consequence that Turkey's acceptance of the right of individual petition would lapse. This position, it was argued, was equally valid for Turkey's [Article 46](#) declaration.

It was further submitted that in accordance with [Article 44\(3\) \(a\) and \(b\) of the Vienna Convention on the Law of Treaties](#) the burden fell on the applicants to show that the restrictions, in particular the territorial restrictions, were not an essential basis for Turkey's willingness to make the declarations.

**91.** For the applicant, with whom the Government of Cyprus agreed, the respondent Government, in drafting the terms of these declarations, had taken the risk that the restrictions would be declared \*138 invalid. It should not now seek to impose the legal consequences of this risk on the Convention institutions.

**92.** The Commission considered that it was Turkey's main intention when she made her [Article 25 declaration](#) on 28 January 1987 to accept the right of individual petition. It was this intention that must prevail. In addition, before the Court the Delegate of the Commission pointed out that the respondent Government had not sought to argue the invalidity of their acceptance of the right of individual petition in cases which had come before the Commission subsequent to the present case.

**93.** In addressing this issue the Court must bear in mind 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, "to ensure the observance of the engagements undertaken by the High Contracting Parties".

**94.** It also recalls the finding in its [Belilos v. Switzerland](#) judgment of 29 April 1988, after having struck down an interpretative declaration on the grounds that it did not conform to Article 64, that Switzerland was still bound by the Convention notwithstanding the invalidity of the declaration. [FN61]

**FN61** (A/132): (1988) 10 E.H.R.R. 466, para. 60.

**95.** The Court does not consider that the issue of the severability of the invalid parts of Turkey's declarations can be decided by reference to the statements of her representatives expressed subsequent to the filing of the declarations either [FN62] before the Committee of Ministers and the Commission or [FN63] in the hearing before the Court. In this connection, it observes that the respondent Government must have been aware, in view of the consistent practice of Contracting Parties under Articles 25 and 46 to accept unconditionally the competence of the Commission and Court, that the impugned restrictive clauses were of questionable validity under the Convention system and might be deemed impermissible by the Convention organs.

**FN62** As regards the declaration under Art. 25.

**FN63** As regards both Arts. 25 and 46.

It is of relevance to note, in this context, that the Commission had already expressed the opinion to the Court in its pleadings in the *Belgian Linguistics* (Preliminary objection) and *Kjeldsen, Busk Madsen and Pedersen v. Denmark* cases [FN64] that Article 46 did not permit any restrictions in respect of recognition of the Court's jurisdiction. [FN65]

**FN64** (A/5): 1 E.H.R.R. 241, and (A/23): 1 E.H.R.R. 711 respectively.

**FN65** See, respectively, the second memorial of the Commission of 14 July 1966, Series B no. 1, p. 432, and the memorial of the Commission (preliminary objections) of 26 January 1976, Series B no. 21, p. 119.

The subsequent reaction of various Contracting Parties to the Turkish declarations [FN66] lends convincing support to the above observation concerning Turkey's awareness of the legal position. That \*139 she, against this background, subsequently filed declarations under both Articles 25 and 46-- the latter subsequent to the statements by the Contracting Parties referred to above--indicates a willingness on her part to run the risk that the limitation clauses at issue would be declared invalid by the Convention institutions without affecting the validity of the declarations themselves. Seen in this light, the *ex post facto* statements by Turkish representatives cannot be relied upon to detract from the respondent Government's basic--albeit qualified-- intention to accept the competence of the Commission and Court.

**FN66** See paras. 18-24 above.

**96.** It thus falls to the Court, in the exercise of its responsibilities under Article 19, to decide this issue with reference to the texts of the respective declarations and the special character of the Convention regime. The latter, it must be said, militates in favor of the severance of the impugned clauses since it is by this technique that the rights and freedoms set out in the Convention may be ensured in all areas falling within Turkey's "jurisdiction" within the meaning of Article 1 of the Convention.

**97.** The Court has examined the text of the declarations and the wording of the restrictions with a view to determining whether the impugned restrictions can be severed from the instruments of acceptance or whether they form an integral and inseparable part of them. Even considering the texts of the Article 25 and 46 declarations taken together, it considers that the impugned restrictions can be separated from the remainder of the text leaving intact the acceptance of the optional clauses.

**98.** It follows that the declarations of 28 January 1987 and 22 January 1990 under Articles 25 and 46 contain valid acceptances of the competence of the Commission and Court.

#### *VI. Objection **ratione temporis***

**99.** The respondent Government recalled that it has only accepted the jurisdiction of the Court in respect of facts or events occurring after 22 January 1990--the date of deposit of the instrument. [FN67] They pointed out that the Commission has made a clear distinction between instantaneous acts, even if they have enduring effects and continuing violations of Convention rights. [FN68] It has also found that the action by which a person is deprived of his property does not result in a continuing situation of absence of property. [FN69]

However, the deprivation of property of which the applicant complains is the direct result of an instantaneous act, pursuant to the Turkish intervention in 1974, which occurred prior to the acceptance of the Court's jurisdiction.

**FN67** See para. 27 above.

**FN68** Apps. Nos. 7379/76, X. v. United Kingdom, Dec. 10.12.76, D.R. 8, pp. 211-213, and 7317/75, Lynas v. Switzerland, Dec. 6.10.76, D.R. 6, pp. 155- 169.

**FN69** App. No. 7379/76, *loc. cit.*

According to the respondent Government, it follows from the above **\*140** that the Court is incompetent *ratione temporis* since the alleged violation results from an instantaneous action which occurred prior to Turkey's acceptance of the optional clauses.

**100.** The applicant, the Government of Cyprus and the Commission maintained that the applicant's complaints concern continuing violations of [Article 1 of Protocol No. 1](#) on the ground that she has been and continues to be prevented by Turkey from using and enjoying her property in the occupied part of Cyprus. She referred in this respect to the Court's [Papamichalopoulos and Others v. Greece judgment of 24 June 1993](#) where it was held that a *de facto* expropriation of land amounted to a continuing violation of [Article 1 of Protocol No. 1](#). **[FN70]**

**FN70** *Loc. cit.*, paras. 45-46.

The applicant further submitted that the relevant date for the determination of the Court's jurisdiction was 27 January 1987--the date of the Turkish declaration recognizing the competence of the Commission--rather than 22 January 1990. She maintained that the case brought before the Court was that based upon the original application. It would be anomalous if the Turkish Article 46 declaration, which accepted the jurisdiction of the Court only in respect of facts which have occurred subsequent to the deposit of the declaration, **[FN71]** could frustrate the Court's examination of matters which had been properly referred to it under [Article 48](#). Such a result would be incompatible with [Articles 45 and 48](#) and would in general conflict with the procedural order created by the Convention. It would also deprive the applicant of a remedy in respect of an additional three years of deprivation of her rights.

**FN71** See para. 27 above.

**101.** The Commission disagreed on this point. It considered the critical date to be 22 January 1990 when Turkey recognized the jurisdiction of the Court.

**102.** The Court recalls that it is open to Contracting Parties under Article 46 of the Convention to limit, as Turkey has done in her declaration of 22 January 1990, the acceptance of the jurisdiction of the Court to matters which occur subsequent to the time of deposit. **[FN72]** It follows that the Court's jurisdiction extends only to the applicant's allegations of a continuing violation of her property rights subsequent to 22 January 1990. The different temporal competence of the Commission and Court in respect of the same complaint is a direct and foreseeable consequence of separate Convention provisions providing for recognition of the right of individual petition **[FN73]** and the jurisdiction of the Court. **[FN74]**

**FN72** *ibid.*

**FN73** Art. 25.

**FN74** Art. 46.

**103.** The correct interpretation and application of the restrictions *ratione temporis*, in the Turkish declarations under [Articles 25 and 46 \\*141 of the Convention](#), and the notion of continuing violations of the Convention, raise difficult legal and factual questions.

**104.** The Court considers that on the present state of the file it has not sufficient elements enabling it to decide these questions. Moreover, they are so closely connected to the

merits of the case that they should not be decided at the present phase of the procedure.

**105.** It therefore decides to join this objection to the merits of the case.

**For these reasons, THE COURT**

- 1. Dismisses unanimously the preliminary objection concerning an alleged abuse of process;**
- 2. Holds by 16 votes to two that the facts alleged by the applicant are capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention;**
- 3. Holds by 16 votes to two that the territorial restrictions attached to Turkey's Article 25 and 46 declarations under the Convention are invalid but that the Turkish declarations under Articles 25 and 46 contain valid acceptances of the competence of the Commission and Court;**
- 4. Joins unanimously to the merits the preliminary objection *ratione temporis*.**

**In accordance with Article 51(2) of the Convention and Rule 53(2) of the Rules of Court A, the joint dissenting opinion of Mr Gøplcòcklò and Mr Pettiti and two separate dissenting opinions by them are annexed to this judgment.**

**Joint Dissenting Opinion of Mr Gøplcòcklò and Mr Pettiti**

We voted with the majority as regards point 1 of the judgment's operative provisions, concerning the rejection of the preliminary objection in which an abuse of process was alleged, and point 4, concerning joinder to the merits of the preliminary objection *ratione temporis*. We were in the minority as regards points 2 and 3, taking the view, essentially, that the Court could not rule on the issue under Article 1 of the Convention raised in the Turkish Government's preliminary objection ("everyone within their jurisdiction") without examining the *de jure* and *de facto* situation in northern Cyprus as to the merits. We consider that the Court was not yet in possession of all the information it needed in order to assess the administration of justice, the nature and organization of the courts and the question who had "jurisdiction" under the rules of international law in northern Cyprus and the Green Zone where the United Nations forces operated.

In the first sub-paragraph of paragraph 62 of the judgment the Court holds: In this respect the Court recalls that, although Article 1 sets limits on the \*142 reach of the Convention, the concept of "jurisdiction" under this provision is not restricted to the national territory of the High Contracting Parties. According to its established case law, for example, the Court has held that the extradition or expulsion of a person by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention. [FN75] In addition, the responsibility of Contracting Parties can be invoked because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory. [FN76]

**FN75** See n. 39 above.

**FN76** See n. 40 above.

Admittedly the concept of jurisdiction is not restricted to the territory of the High Contracting Parties, but it is still necessary to explain exactly why jurisdiction should be ascribed to a Contracting Party and in what form and manner it is exercised. We note that in the [Drozd and Janousek v. France and Spain](#) judgment cited in paragraph 62 the Court eventually found that there had been no violation.

While the responsibility of a Contracting Party may be engaged as a consequence of military action outside its territory, this does not imply exercise of its jurisdiction. The finding in paragraph 64 does not refer to any criterion for deciding the question of

jurisdiction. In our opinion, therefore, there is a contradiction between what the Court says in paragraph 62 and its conclusion in paragraph 64, and this contradiction reappears in the vote on point 2 of the operative provisions. The Court should have looked into the merits of the question who did or did not have jurisdiction before ruling on the objection.

*With regard to the validity of the Turkish Government's declaration*

The Court concludes in paragraph 89, on the basis of the considerations set out in paragraphs 77 to 88, that the restrictions *ratione loci* are invalid, while holding that Turkey is bound by the declaration.

Such an approach raises the question whether the Convention institutions are empowered to sever the terms of a declaration by a High Contracting Party by declaring them invalid in part. We consider that, regard being had to the circumstances in which the Turkish declaration was made, its terms cannot be severed in this way as the case stands at present, since this would mean ignoring the scope of the undertaking entered into by a State.

From the point of view of the State concerned this is a manifestation of its intention, for both public and private law purposes, which fixes the limits of its accession and consent, in a form of words which it considers indivisible. The declaration may be declared invalid, but not split into sections, if it is the State's intention that it should form a whole. It was up to the political organs and the Member States to negotiate and decide matters otherwise. Only five States reserved their positions with regard to the legal \*143 issues which might arise concerning the scope of the first Turkish declaration. [FN77]

**FN77** The Greek Government contending that the restrictions were null and void.

That means that the other Member States and the Committee of Ministers have not formally contested the declaration as a whole, or accepted any one part as essential or subsidiary. Consequently, it cannot be concluded that there is a uniform and consistent practice [FN78] or practically universal agreement. [FN79]

**FN78** Para. 82.

**FN79** Para. 80.

At this stage it is useful to point out that numerous declarations set out in instruments of ratification were couched in complex terms or ran to a number of sections. [FN80] States expressly named "territories for whose international relations [they were] responsible"; Turkey has not done so in respect of northern Cyprus. Apart from the territorial reservations within the strict meaning of the Convention, [FN81] the chart of signatures and ratifications shows that some States have made both declarations and reservations. [FN82] In the Belgian Congo case [FN83] the Commission upheld the international relations argument. By analogy, in order to determine the scope of a declaration, it should be pointed out that, according to the Vienna Convention, [FN84] a ground for invalidating or terminating a treaty may only be invoked with respect to particular clauses where "(a) the said clauses are separable from the remainder of the treaty with regard to their application" and "(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole". Accordingly, in our opinion, it was inappropriate at the stage reached by this case in the proceedings before the Court to sever the terms of the Turkish declaration.

**FN80** See the appended declarations of France, the United Kingdom and the Netherlands; see also those of Malta and Portugal, the Cypriot declaration of 9 August 1988 or the "colonial" clauses.

**FN81** 800 international treaties include such reservations.

**FN82** See appended table.

**FN83** Dec. 30.5.61 on the admissibility of App. No. 1065/61, X. v. Belgium, Yearbook 4, pp. 261-277.

**FN84 Art. 44: "Separability of treaty provisions".**

The only satisfactory solution in our view was to join all the objections to the merits and to hold a public hearing on the merits giving the Parties the possibility of adducing all relevant evidence on the expression "within [the] jurisdiction" [FN85] and on the way the international relations of northern Cyprus are conducted. This debate on the merits would also enable all Parties to make known their views about the international undertakings and possible intervention of a "third party" or the TRNC under the auspices of the United Nations, the European Union and the Council of Europe. [FN86]

**FN85 Art. 1.**

**FN86** 1989 Declaration consisting of two instruments signed by three signatories, including the TRNC; References and Reports of the Secretary- General of the United Nations, from 3 April 1992 to 30 May 1994; Council of Europe report of 15 December 1994, Doc. 7206.

**\*144 APPENDICES**

*Declaration by France*

[FN87]

*Article 15, paragraph 1*

...

**FN87** 3 May 1974.

The government of the Republic further declares that the Convention shall apply to the whole territory of the Republic, having due regard, where the overseas territories are concerned, to local requirements, as mentioned in Article 63.

*Declaration by the United Kingdom*

[FN88]

**FN88** 14 January 1966.

The British declaration under Article 25 of 14 January 1966, periodically renewed since then, is reproduced in paragraph 33 of the judgment.

The declaration under Article 63 of 23 October 1953 listed 43 relevant territories. [FN89]

The declaration of 10 June 1994 listed the States which had become independent. The declaration of 14 August 1964 listed the territories omitted.

**FN89** Including Cyprus, the Isle of Man and Gibraltar.

*Declaration by the Netherlands*

[FN90]

The island of Aruba, which is at present still part of the Netherlands Antilles, will obtain internal autonomy as a country within the Kingdom of the Netherlands as of 1 January 1986. Consequently the Kingdom will from then on no longer consist of two countries, namely the Netherlands [FN91] and the Netherlands Antilles, [FN92] but will consist of three countries, namely the said two countries and the country Aruba.

**FN90** 24 December 1985.

**FN91** The Kingdom in Europe.

**FN92** Situated in the Caribbean region.

As the changes being made on 1 January 1986 concern a shift only in the internal

constitutional relations within the Kingdom of the Netherlands, and as the Kingdom as such will remain the subject under international law with which treaties are concluded, the said changes will have no consequences in international law regarding treaties concluded by the Kingdom which already apply to the Netherlands Antilles, including Aruba. These treaties will remain in force for Aruba in its new capacity of country within the Kingdom. Therefore these treaties will as of 1 January 1986, as concerns the Kingdom of the Netherlands, apply to the Netherlands Antilles **[FN93]** and Aruba.

**FN93** Without Aruba.

Consequently the treaties referred to in the annex, to which the Kingdom of the Netherlands is a Party and which apply to the Netherlands Antilles, will as of 1 January 1986 as concerns the Kingdom of the Netherlands apply to the Netherlands Antilles and Aruba.

*\*145 Chart of signatures and ratifications of the Convention*

**[FN94]**

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

**FN94** At 31 December 1994, extracts.

Individual Dissenting Opinion of Mr Gølcòkló

In addition to the matters I raised in my joint dissenting opinion with Mr Pettiti concerning the preliminary objections on the questions of "jurisdiction" **[FN95]** and the "inseparability" of the Turkish declarations under Articles 25 and 46 of the Convention, **[FN96]** I cannot agree, to my great regret, with the Court's conclusions on two other aspects of this case.

**FN95** Art. 1 of the Convention; paras. 62 and 64 of the present judgment.

**FN96** Paras. 94 *et seq.*

1. I consider that it is not possible in this case to reach a conclusion on the role of the "Turkish Government", or in other words on its status as "respondent", without first looking into the merits of the case. On *\*146* 21 April 1994 the plenary Court *did not* decide whether Turkey had the status of respondent, *but* only considered the question submitted to it by the President, under Rule 34 of Rules A and decided, without prejudice to the preliminary objections raised by the Government of Turkey or the merits of the case, that the applicant Government had standing under Article 48(b) of the Convention to refer the case to the Court and that the Chamber should resume consideration of the case. **[FN97]** And in its final submissions Turkey had asked the Court to hold that the applicant's allegations lay outside the jurisdiction of Turkey within the meaning of Article 1 of the Convention. It goes without saying that this question of "respondent status" is closely bound up with the question of "jurisdiction" within the meaning of Article 1 of the Convention. The Court took the view that it was not within the discretion of a Contracting Party to characterize its standing in the proceedings before the Court as it saw fit. **[FN98]** By the same token, the applicant is not entitled to name any State she sees fit as respondent in a case before the Court, nor is it for the Court to build a whole procedure on top of this unverified allegation. Therefore, instead of delivering a separate judgment on this specific question, as it has done, the Court should have joined the preliminary objection in question lodged by Turkey to the merits of the case.

**FN97** Para. 7.

**FN98** Para. 51.

2. With regard to point 3 of the judgment's operative provisions, I entirely agree with the dissenting opinion expressed in this case by five eminent members of the Commission **[FN99]** in which they declared:

...

**FN99** Mr Norgaard, the President, and Mr Jøprundsson, Mr Gózóboyók, Mr Soyer and Mr Danelius.

Moreover, under Article 63 of the Convention, certain territorial limitations are also expressly provided for. However, Article 63 concerns territories for whose international relations a Contracting State is responsible, and the northern part of Cyprus cannot be regarded as such a territory. Nevertheless, Article 63 shows that, when making a declaration under Article 25, a Contracting State may, in some circumstances, make a distinction between different territories.

If a State may exclude the application of Article 25 to a territory referred to in Article 63, there would seem to be no specific reason why it should not be allowed to exclude the application of the right of individual petition to a territory having even looser constitutional ties with the State's main territory. If this was not permitted, the result might in some circumstances be that the State would refrain altogether from recognizing the right of individual petition, which would not serve the cause of human rights.

We consider that the territorial limitation in the Turkish declaration, in so far as it excludes the northern part of Cyprus, cannot be considered incompatible with the object and purpose of the Convention and that it should therefore be regarded as having legal effect. In these circumstances, it is not necessary to examine what the legal consequences would have been if the territorial limitation had been held not to be legally valid.

**\*147** It follows that ... the Commission is not competent to deal with the applicant's complaints of violations of the Convention in Cyprus. For these reasons, we have voted against any finding of a violation of the Convention in the present case.

I interpret Article 6 of Protocol No. 7 in the same way. I would also like to cite, in this connection, another opinion to the above effect, that of Professor Christian Tomuschat. Turkey's refusal to accept the supervisory authority of the Commission with regard to all other areas than the Turkish national territory itself ... may be justifiable under Article 63(4). This provision admits of a differentiation between metropolitan territories and other territories 'for whose international relations' a State is 'responsible'. Although the text avoids speaking of colonial territories, the intention of the drafters was precisely to leave States Parties some latitude with regard to their extra-European dependencies. If interpreted in this restricted sense, Article 63(4) could not be relied upon by Turkey.

However, doubts may be raised as to the precise scope of Article 63(4). The United Kingdom also invoked it in respect of its European dependencies, namely the Bailiwicks of Guernsey and Jersey and the Isle of Man. Originally, Guernsey and the Isle of Man were mentioned in the first declaration under Article 25 of 12 September 1967 which defined the competence of the Commission in territorial terms. When the declaration was renewed for the first time in 1969, Guernsey and the Isle of Man were excluded. Afterwards, the two territories were again added to the geographical lists accompanying the relevant declarations. As mentioned above, the Isle of Man was dropped from those lists in 1976. Strangely enough, Jersey is mentioned for the first time explicitly in the declaration of 4 December 1981, though in a positive sense, as being placed again ("renew") under the control mechanism of Article 25. To date, no objections have been lodged against this practice. It might be argued, therefore, that Article 63(4) has evolved into a clause conferring unfettered discretion on States concerning the territorial scope of their declarations under Article 25, whenever territories beyond the national boundaries are concerned.

Additionally, it might be contended that valid substantive reasons could be identified to support such a conclusion. The extraterritorial legal effect of human rights standards is particularly difficult to assess. While there can be no doubt that States have to refrain from interfering with human rights irrespective of the place of their actions, to ensure human rights beyond their boundaries is mostly beyond their capabilities. It is noteworthy, in this connection, that the International Covenant on Civil and Political Rights limits the commitments of States to individuals within their territory and subject to their jurisdiction.

**[FN100]**

**FN100** "Turkey's declaration under Article 25 of the European Convention on Human Rights", *Festschrift für Felix Ermacora*, Kehl, Engel, 1988, pp. 128-9.

For other examples supporting this argument, it is sufficient to cast a glance at the long list of reservations and declarations deposited by the Contracting States.

I therefore consider valid the territorial restrictions contained in the Turkish declarations under Articles 25 and 46, applying, at least by analogy, Article 63 of the Convention.

**\*148 Individual Dissenting Opinion of Mr Pettiti**

The solution advocated, *i.e.* joining all the preliminary objections to the merits, had the advantage of permitting an overall view of the situation of Cyprus and Turkey regarding the disputes concerning *northern Cyprus*. It is not appropriate to sever the objection *ratione locifrom* interpretation of Article 1; to my mind these issues are inseparable. Consideration of the merits as a whole would have made it easier to elucidate the question of the TRNC's international or other status, and that of the agreement concluded as a result of the relations and negotiations conducted at the United Nations, under which people do *not* enjoy liberty of movement in both directions.

I consider that this overall examination of the merits, before consideration of the first objection and the declaration, was necessary in order to decide the very scope of the declaration. The European Convention is not an international treaty of the traditional type nor a synallagmatic convention, as legal writers, and particularly Professor Cohen-Jonathan, have pointed out, since it is not based on reciprocity.

It is based on the principle that all individual subjects of law are its beneficiaries, so that fundamental rights can be protected more securely. The Court is the guarantor of the Convention and must endeavor to extend its protection as far as possible; it is therefore empowered to draw the consequences of instruments deposited by the States. Consequently, the Court can better fulfill its protective role by having at its disposal all the information necessary to assess the legal and factual situation. In the search for a peaceful compromise, the northern Cyprus question has been discussed in all international negotiations concerning Greece, Cyprus and Turkey, including those relating to European Union customs agreements or GATT agreements.

At the examination of preliminary objections stage, after the discussion at the public hearing, which was limited to analysis of these objections by the Parties, the European Court was not able to take cognizance of all the problems, and this circumstance militated even more forcefully in favor of joining all these objections to the merits. To date legal writers have not considered analysis of the Turkish declaration a simple matter. [FN101]

**FN101** See Claudio Zanghi, Christian Tomuschat, Walter Kalin, Pierre-Henri Imbert, Christopher Lush, etc.

An overall assessment of the situation, beginning with the concepts of sovereignty and jurisdiction, would make it possible to review the criteria [FN102] on the basis of which the UN has analysed both the problem whether or not to recognize northern Cyprus as a State and the problem of the application of the UN Charter. [FN103] The responsibilities of the European Convention institutions, when faced with such \*149 difficulties, reflect the mutual commitment of the Member States to ensuring the best and widest protection of individuals and fundamental rights in the countries concerned by applying the Convention provisions in a manner consistent with their object and purpose.

**FN102** "Occupation", "annexation", territorial application of the Geneva Conventions in northern Cyprus, "conduct of international relations".

**FN103** See Security Council resolution 930.

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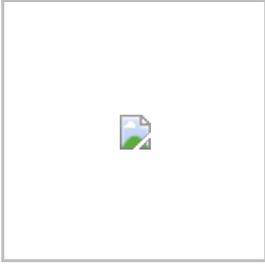
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