



COURT (CHAMBER)

**CASE OF LOIZIDOU v. TURKEY (PRELIMINARY OBJECTIONS)**

*(Application no. 15318/89)*

JUDGMENT

STRASBOURG

23 March 1995

**In the case of Loizidou v. Turkey<sup>[1]</sup>,**

The European Court of Human Rights sitting, in pursuance of Rule 51 of Rules of Court A<sup>[2]</sup>,  
as a Grand Chamber composed of the following judges:

Mr R. RYSSDAL, *President*

Mr R. BERNHARDT,

Mr F. GÖLCÜKLÜ,

Mr L.-E. PETTITI,

Mr B. WALSH,

Mr R. MACDONALD,

Mr A. SPIELMANN,

Mr S.K. MARTENS,

Mrs E. PALM,

Mr R. PEKKANEN,

Mr A.N. LOIZOU,

Mr J.M. MORENILLA,

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Mr A.B. BAKA,  
Mr M.A. LOPES ROCHA,  
Mr L. WILDHABER,  
Mr G. MIFSUD BONNICI,  
Mr P. JAMBREK,  
Mr U. LOHMUS,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 23 June 1994, 22 August 1994, 23 September 1994, 24 November 1994 and on 23 February 1995,

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

## PROCEDURE

1. The case was referred to the Court by the Government of the Republic of Cyprus ("the applicant Government") on 9 November 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 15318/89) against the Republic of Turkey (see paragraphs 47-52 below) lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) on 22 July 1989 by a Cypriot national, Mrs Titina Loizidou.

The applicant Government's application referred to Article 48 (b) (art. 48-b) of the Convention. The object of the application of the Government was to obtain a decision as to whether the facts of the case concerning the applicant's property disclosed a breach by Turkey of its obligations under Article 1 of Protocol No. 1 (P1-1) and Article 8 (art. 8) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. The Chamber to be constituted included ex officio Mr F. Gölcüklü and Mr A.N. Loizou, the elected judges of Turkish and Cypriot nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 23 November 1993, in the presence of the Registrar, the President drew by lot the names of the other six members, namely, Mr A. Spielmann, Mr N. Valticos, Mr R. Pekkanen, Mr A.B. Baka, Mr L. Wildhaber and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. In a letter of 26 November 1993 the Agent of the Turkish Government stated that his Government considered that the case fell outside the Court's jurisdiction on the grounds that it related to events which occurred before Turkey's declaration of acceptance of the compulsory jurisdiction of the Court dated 22 January 1990 and did not concern matters arising within the territory covered by this declaration.

5. On 29 November 1993 the President of the Court submitted to the plenary Court for decision, pursuant to Rule 34, the question whether the Government of the Republic of Cyprus had a right under Article 48 (art. 48) to bring the case before the Court.

6. As President of the Chamber (Rule 21 para. 5) Mr Ryssdal, through the Registrar, consulted the Agents of the Governments, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38) in relation to the preliminary objections raised by Turkey. Pursuant to the order made in consequence, the Registrar received on 17 January 1994, 24 February and 28 February the memorials of the Turkish Government, the applicant and the applicant Government respectively. The Delegate's observations on these memorials were submitted on 14 March 1994.

7. On 21 April 1994 the plenary Court considered the issue submitted to it by the President under Rule 34 and decided, without prejudice to the preliminary objections raised by Turkey, and

under Rule 34 and decided, without prejudice to the preliminary objections raised by Turkey and to the merits of the case, that the applicant Government had the right to refer the case to the Court under Article 48 (b) (art. 48-b) of the Convention and that the Chamber should resume consideration of the case.

8. The Chamber subsequently relinquished jurisdiction in favour of a Grand Chamber on 27 May 1994 (Rule 51). By virtue of Rule 51 para. 2 (a) and (b) the President and the Vice-President of the Court (Mr Ryssdal and Mr R. Bernhardt) as well as the other members of the original Chamber are members of the Grand Chamber. On 28 May 1994 the names of the additional judges were drawn by lot by the President, in the presence of the Registrar, namely Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Macdonald, Mr S.K. Martens, Mrs E. Palm, Mr F. Bigi, Mr M.A. Lopes Rocha, Mr G. Mifsud Bonnici and Mr U. Lohmus.

Subsequently, Mr Valticos, being prevented from taking part in the proceedings, was replaced by Mr J.M. Morenilla (Rules 24 para. 1 and 51 para. 6). In addition Mr Bigi, being unable to participate in the Court's deliberations on 22 August and 23 September 1994, took no further part in the proceedings.

9. In accordance with the President's decision, the hearing of the preliminary objections took place in public in the Human Rights Building, Strasbourg, on 22 June 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Turkish Government

Mr B. ÇAGLAR,

Mr H. GOLSONG,

Mr M. ÖZMEN, Ministry of Foreign Affairs,

Mrs D. AKÇAY, Ministry of Foreign Affairs,

*Agent,*

*Counsel,*

*Advisers;*

- for the Cypriot Government

Mr M. TRIANTAFYLIDIS, Attorney-General,

Miss P. POLYCHRONIDOU, Barrister-at-Law,

*Agent,*

*Counsel;*

- for the Commission

Mr S. TRECHSEL,

*Delegate;*

- for the applicant

Mr A. DEMETRIADES, Barrister-at-Law,

Mr I. BROWNLIE, QC,

Ms J. LOIZIDOU, Barrister-at-Law,

*Counsel.*

The Court heard addresses by Mr Trechsel, Mr Çaglar, Mr Golsong, Mr Demetriades, Mr Brownlie and Mr Triantafyllides and also replies to a question put by one of its members individually.

## AS TO THE FACTS

### I. PARTICULAR CIRCUMSTANCES OF THE CASE

10. The applicant, a Cypriot national, grew up in Kyrenia in northern 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 organised by a women's group

("Women Walk Home" movement) 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.

Leading a group of fifty 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 ten hours.

14. In his report of 31 May 1989 (Security Council document S/20663) on the United Nations Operation in Cyprus (for the period 1 December 1988 - 31 May 1989) the Secretary-General of the United Nations described the demonstration of 19 March 1989 as follows (at paragraph 11):

"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."

#### **A. Turkey's declaration of 28 January 1987 under Article 25 (art. 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 (art. 25) of the Convention (see paragraph 65 below):

"The Government of Turkey, acting pursuant to Article 25 (1) (art. 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 (art. 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 (art. 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 (art. 8-2, art. 9-2, art. 10-2, art. 11-2) of the Convention must be understood in conformity with the principles laid down in the Turkish Constitution and in

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 Article 10 and 11 (art. 10, art. 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 para. 3 (art. 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 para. 3 (art. 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 (art. 25) declaration**

18. On 6 April 1987 the Deputy Minister for 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 (art. 64). He added:

"Furthermore, Article 25 (art. 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 (art. 25), such a method of proceeding would undermine Article 64 (art. 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 (art. 64) must be considered as unauthorised 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 for 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 of 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 generalised 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 (art. 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 (art. 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 (art. 25) declarations**

25. Turkey subsequently renewed her declaration under Article 25 (art. 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) (art. 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 (art. 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 (art. 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 (art. 8, art. 9, art. 10, art. 11) of the Convention shall be interpreted by giving special emphasis to 'those legal and factual features which characterize the life of the society' (European Court of Human Rights, Judgment of 23 July 1968, p. 34) in Turkey, as expressed notably by the Turkish Constitution including its Preamble.

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) (art. 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, date of the deposit of the first declaration made by Turkey under Article 25 (art. 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 (art. 46) of the Convention**

27. On 22 January 1990, the Turkish Minister for Foreign Affairs deposited the following declaration with the Secretary General of the Council of Europe pursuant to Article 46 (art. 46) of the Convention (see paragraph 66 below):

"On behalf of the Government of the Republic of Turkey and acting in accordance with Article 46 (art. 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 (art. 46) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, hereby recognises 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 (art. 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 (art. 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 (art. 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 (art. 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 (art. 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 (ART. 25)

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

"On behalf of the Government of the Republic of Cyprus, I declare, in accordance with Article 25 (art. 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 organisation 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 (art. 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 para. 3 (art. 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. DECLARATION OF THE UNITED KINGDOM UNDER ARTICLE 25 (ART. 25)

33. The United Kingdom's Article 25 (art. 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 honour to declare in accordance with the provisions of Article 25 (art. 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 recognise, 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 organisation 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 recognised 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 (no. 15318/89) on 22 July 1989. She complained that her arrest and detention involved violations of Articles 3, 5 and 8 (art. 3, art. 5, art. 8) of the Convention. She further complained that the refusal of access to her property constituted a continuing violation of Article 8 (art. 8) of the Convention and Article 1 of Protocol No. 1 (P1-1).

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 (art. 3, art. 5, art. 8) in respect of her arrest and detention and Article 8 (art. 8) and Article 1 of Protocol No. 1 (P1-1) 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 (Article 31) (art. 31), it expressed the opinion that there had been no violation of Article 3 (art. 3) (unanimously); Article 8 (art. 8) as regards the applicant's private life (eleven votes to two); Article 5 para. 1 (art. 5-1) (nine votes to four); Article 8 (art. 8) as regards the applicant's home (nine votes to four) and Article 1 of Protocol No. 1 (P1-1) (eight votes to five). The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment<sup>[3]</sup>.

## FINAL SUBMISSIONS TO THE COURT

36. At the close of the hearing the Agent of the Turkish Government stated as follows:

"In the light of what has been stated, it is my honour on behalf of the Turkish Government to urge the Court to declare that it has no jurisdiction to examine this case, based on the application lodged by Mrs Loizidou and referred to the Court by the Greek Cypriot administration. The allegations made lie outside the jurisdiction of Turkey within the meaning of Article 1 (art. 1) of the Convention. As a subsidiary argument, we would also like the Court to find that it has no jurisdiction to examine this application filed by Mrs Loizidou on the grounds of the territorial limitation, which is an integral part of the recognition by Turkey of the jurisdiction of the Commission, pursuant to Article 25 (art. 25) of the Convention.

Secondly, on behalf of the Turkish Government, I would ask the Court to declare that it has no jurisdiction to examine the application filed by Mrs Loizidou since the alleged facts occurred prior to the date on which the Turkish declaration, recognising the Court's jurisdiction, entered into force, pursuant to Article 46 (art. 46) of the Convention. Furthermore, the facts occurred prior to the date on which the declaration, recognising the jurisdiction of the Commission, entered into force, pursuant to Article 25 (art. 25)."

37. In their memorial, the applicant Government stated:

"For all the above reasons the Cyprus Government submits that (a) the 'preliminary objections of Turkey' should be rejected, (b) the reference of the case to the Court by the Cyprus Government is well founded and is justified in the interest of the European public order and the protection of the human rights under the Convention and (c) that

the complaints of the applicant in the above case for violations of her rights under the Convention are valid."

38. The applicant, in her memorial, concluded as follows:

"On the basis of the considerations set forth above the Court is requested

(i) to reject all the preliminary objections advanced on behalf of Turkey; and

(ii) to affirm the existence of jurisdiction in respect of the continuing violations of Article 1 of Protocol No. 1 (P1-1) and of Article 8 (art. 8) of the Convention with effect from 28 January 1987 or (in the alternative) with effect from 22 January 1990."

## AS TO THE LAW

### 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 recognised by the international community as the Government of the Republic of Cyprus (see in this connection, applications nos. 6780/74 and 6950/75, *Cyprus v. Turkey*, 26 May 1975, Decisions and Reports (DR) 2, p. 125, at pp. 135-36; no. 8007/77, *Cyprus v. Turkey*, 10 July 1978, DR 13, p. 85, at p. 146). Their *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.

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 (art. 24) of the Convention or the referral of cases to the Court under Article 48 (art. 48) (see application no. 8007/77, *loc. cit.*, pp. 147-48). If it were otherwise, the system of collective enforcement which is a central element in the Convention system could be effectively neutralised by the interplay of recognition between individual Governments and States.

### 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 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

44. The Court observes that the 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) (art. 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 recognised 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 recognised 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 characterise 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 (art. 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) (art. 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 (P1-1) to the Convention as well as a continuing violation of her right to respect for her home contrary to Article 8 (art. 8) of the Convention. She further alleged violations of Articles 3, 5 para. 1 and 8 (art. 3, art. 5-1, art. 8) of the Convention arising out of her arrest and detention (see paragraph 34 above).

54. In the application referring the present case to the Court under Article 48 (b) (art. 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 (P1-1) and Article 8 (art. 8), in so far as they have been declared admissible by the Commission (see paragraph 35 above), 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 para. 1 (art. 32-1) of the Convention.

The Court notes that the issue whether the Convention and the Rules of Court permit a partial referral under Article 48 (art. 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 (art. 25, art. 46) of the Convention (see paragraphs 4, 15 and 27 above), they had not accepted either the competence of the Commission or the Court to examine acts and events outside their metropolitan territory.

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 (art. 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* (applications nos. 6780/74, 6950/75 and 8007/77, *supra cit.*) 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.

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 recognised 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 recognises 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 1939-45 were not regarded as absolved from responsibilities for breaches of international law in these administrations (Whiteman, Digest of International Law, vol. 8, pp. 835-37 (1967)). 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 (Rousseau, Droit international public, vol. V, 1983, p. 31, para. 28; Reuter, Droit international public, 6th ed., 1983, p. 262; Répertoire suisse de droit international public, vol. III, 1975, pp. 1722-23; Verzijl, International Law in Historical Perspective, vol. IV, 1973, 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 fulfil 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 recognised 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 (art. 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 I 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 emphasise 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 enquiry 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 (art. 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 (art. 3), and hence engage the responsibility of that State under the Convention (see the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, pp. 35-36, para. 91; the *Cruz Varas and Others v. Sweden* judgment of 20 March 1991, Series A no. 201, p. 28, paras. 69 and 70, and the *Vilvarajah and Others v. the United Kingdom* judgment of 30 October 1991, Series A no. 215, p. 34, para. 103). 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 (see the *Drozd and Janousek v. France and Spain* judgment of 26 June 1992, Series A no. 240, p. 29, 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.

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 (art. 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. Validity of the territorial restrictions attached to Turkey's Article 25 and 46 (art. 25, art. 46) declarations**

65. The relevant provisions of Article 25 (art. 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 organisation 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 recognises 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 (art. 46) of the Convention states:

"1. Any of the High Contracting Parties may at any time declare that it recognises as compulsory ipso facto and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the ... 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 (art. 25, art. 46) declarations of 28 January 1987 and 22 January 1990 (as renewed on 22 January 1993) respectively, are legally valid and bind the Convention institutions. The system set up under Articles 25 and 46 (art. 25, art. 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 (art. 25, art. 46) declarations they would have included a special provision to this effect as is common in the treaty practice of the Council of Europe.

In fact the Convention system has multiple clauses, such as Articles 63 and 64 (art. 63, art. 64), Article 6 para. 2 of Protocol No. 4 and Article 7 para. 2 of Protocol No. 7, (P4-6-2, P7-7-2), which provide the basis for "à la carte" undertakings by the Contracting Parties. Moreover, other States have attached substantive restrictions to their instruments of acceptance such as the United Kingdom (see paragraph 33 above) - in this case a territorial restriction - and Cyprus (see paragraphs 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 para. 3 of the Statute is, in all material respects, the same as that used in Articles 25 and 46 (art. 25, art. 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 (art. 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 (art. 25, art. 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 that 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 (art. 25, art. 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 (art. 25, art. 46) recognising 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 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 (art. 25) declaration were invalid with the exception of the temporal restriction. It expressed the same view as regards the

infringe that the exception of the temporal restriction. It expressed the same view as regards the territorial restriction contained in the Article 46 (art. 46) declaration.

70. The Court observes that Articles 25 and 46 (art. 25, art. 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" (Article 19) (art. 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 it must have regard to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms.

As was observed in the Court's *Ireland v. the United Kingdom* judgment of 18 January 1978 (Series A no. 25, p. 90, para. 239),

"Unlike international treaties of the classic 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'."

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 (see, *inter alia*, the *Tyrer v. the United Kingdom* judgment of 25 April 1978, Series A no. 26, pp. 15-16, para. 31). 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 (art. 25, art. 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 forty 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 (art. 25, art. 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 requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, *inter alia*, the above-mentioned *Soering* judgment, p. 34, para. 87, and the *Artico v. Italy* judgment of 13 May 1980, Series A no. 37, p. 16, 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 (art. 25, art. 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 (see, *inter alia*, the *Johnston and Others v. Ireland* judgment of 18 December 1986, Series A no. 112, p. 24, para. 51, and Article 31 para. 1 of the Vienna Convention of 23 May 1969 on the Law of Treaties). 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" (see Article 31 para. 3 (b) of the above-mentioned Vienna Convention).

74. Both Article 25 para. 2 and Article 46 para. 2 (art. 25-2, art. 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 (see, *inter alia*, the *Stamoulakatos v. Greece* judgment of 26 October 1993, Series A no. 271, p. 13, para. 32). This point has not been disputed.

75. Article 25 (art. 25) contains no express provision for other forms of restrictions (see paragraph 65 above). In addition, Article 46 para. 2 (art. 46-2) provides that declarations "may be made unconditionally or on condition of reciprocity ..." (see paragraph 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 (art. 25), there is an express stipulation to this effect (see, in this regard, Article 6 para. 2 of Protocol No. 4 and Article 7 para. 2 of Protocol No. 7) (P4-6-2, P7-7-2).

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 (art. 25, art. 46).

76. The Court further notes that Article 64 (art. 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 (art. 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 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 realisation 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 thirty 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 (art. 25) (see paragraphs 30 and 32) which have now been withdrawn (see paragraph 32 above) and - as is claimed by the respondent Government - the United Kingdom Article 25 (art. 25) declaration (see paragraph 33 above).

80. In this respect, the Commission suggested that the restriction was formulated by the United Kingdom, in the light of Article 63 para. 4 (art. 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 (art. 25, art. 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 (art. 25) declaration (see paragraphs 18-24 above) and the Government of Greece which considered the restrictions to Turkey's declarations under Article 25 and 46 (art. 25, art. 46) to be null and void (see paragraph 18 above).

82. The existence of such a uniform and consistent State practice clearly rebuts the

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 (art. 25, art. 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 (art. 46) of the Convention was modelled 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 (art. 25, art. 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 Article 63 para. 4 (art. 63-4), by analogy, provides support for the claim that a territorial restriction is permissible under Articles 25 and 46 (art. 25, art. 46).

According to this argument, Article 25 (art. 25) could not apply beyond national boundaries to territories, other than those envisaged by Article 63 (art. 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 (art. 1) of the Convention, State responsibility may arise in respect of acts and events outside State frontiers (see paragraph 62 above). It follows that there can be no requirement, as under Article 63 para. 4 (art. 63-4) in respect of the overseas territories referred to in that provision, that the Article 25 (art. 25) acceptance be expressly extended before responsibility can be incurred.

88. In addition, regard must be had to the fact that the object and purpose of Article 25 and Article 63 (art. 25, art. 63) are different. Article 63 (art. 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 (art. 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 para. 4 (art. 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 (art. 25, art. 46) declarations.

89. Taking into consideration the character of the Convention, the ordinary meaning of Articles 25 and 46 (art. 25, art. 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 (art. 25, art. 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 (art. 25, art. 46) of the**

## Convention

90. The respondent Government submitted that if the restrictions attached to the Article 25 and 46 (art. 25, art. 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 (art. 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 (art. 46) declaration.

It was further submitted that in accordance with Article 44 para. 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 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 (art. 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 (art. 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 (art. 64), that Switzerland was still bound by the Convention notwithstanding the invalidity of the declaration (Series A no. 132, p. 28, 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 (as regards the declaration under Article 25) (art. 25) before the Committee of Ministers and the Commission or (as regards both Articles 25 and 46) (art. 25, art. 46) 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 (art. 25, art. 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.

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 Linguistic* (Preliminary objection) and *Kjeldsen, Busk Madsen and Pedersen v. Denmark* cases (judgments of 9 February 1967 and 7 December 1976, Series A nos. 5 and 23 respectively) that Article 46 (art. 46) did not permit any restrictions in respect of recognition of the Court's jurisdiction (see respectively, the second memorial of the Commission of 14 July 1966, Series B no. 3, vol. I, p. 432, and the memorial of the Commission (Preliminary objection) of 26 January 1976, Series B no. 21, p. 119).

The subsequent reaction of various Contracting Parties to the Turkish declarations (see

The subsequent reaction of various Contracting Parties to the Turkish declarations (see paragraphs 18-24 above) lends convincing support to the above observation concerning Turkey's awareness of the legal position. That she, against this background, subsequently filed declarations under both Articles 25 and 46 (art. 25, art. 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.

96. It thus falls to the Court, in the exercise of its responsibilities under Article 19 (art. 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 favour 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 (art. 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 (art. 25, art. 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 (art. 25, art. 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 (see paragraph 27 above). 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 (application no. 7379/76, X v. the United Kingdom, 10 December 1976, DR 8, pp. 211-13, and no. 7317/75, Lynas v. Switzerland, 6 October 1976, DR 6, pp. 155-69). 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 (application no. 7379/76, supra cit.). 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.

According to the respondent Government, it follows from the above 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 (P1-1) 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 (P1-1) (Series A no. 260-B, pp. 75-76, paras. 45-46).

The applicant further submitted that the relevant date for the determination of the Court's jurisdiction was 28 January 1987 - the date of the Turkish declaration recognising 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 (art. 46) declaration, which accepted the jurisdiction of the Court only in respect of facts which have occurred subsequent to the deposit of the declaration (see paragraph 27 above), could frustrate the Court's examination of matters which had been properly referred to it under Article 48 (art. 48). Such a result would be incompatible with Articles 45 and 48 (art. 45, art. 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.

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

102. The Court recalls that it is open to Contracting Parties under Article 46 (art. 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 (see paragraph 27 above). 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 (Article 25) (art. 25) and the jurisdiction of the Court (Article 46) (art. 46).

103. The correct interpretation and application of the restrictions *ratione temporis*, in the Turkish declarations under Articles 25 and 46 (art. 25, art. 46) 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 sixteen votes to two that the facts alleged by the applicant are capable of falling within Turkish "jurisdiction" within the meaning of Article 1 (art. 1) of the Convention;
3. Holds by sixteen votes to two that the territorial restrictions attached to Turkey's Article 25 and 46 (art. 25, art. 46) declarations under the Convention are invalid but that the Turkish declarations under Articles 25 and 46 (art. 25, art. 46) contain valid acceptances of the competence of the Commission and Court;
4. Joins unanimously to the merits the preliminary objection *ratione temporis*.

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 March 1995.

Rolv RYSSDAL  
President

Herbert PETZOLD  
Registrar

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

R. R.  
H. P.

## JOINT DISSENTING OPINION OF JUDGES GÖLCÜKLÜ AND PETTITI

*(Translation)*

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 (art. 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 organisation 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 (art. 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 (art. 3), and hence engage the responsibility of that State under the Convention (see the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, pp. 35-36, para. 91; the *Cruz Varas and Others v. Sweden* judgment of 20 March 1991, Series A no. 201, p. 28, paras. 69 and 70; and the *Vilvarajah and Others v. the United Kingdom* judgment of 30 October 1991, Series A no. 215, p. 34, para. 103). 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 (see the *Drozd and Janousek v. France and Spain* judgment of 26 June 1992, Series A no. 240, p. 29, para. 91)."

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 raised 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 issues which might arise concerning the scope of the first Turkish declaration (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, nor accepted any one part as essential or subsidiary. Consequently, it cannot be concluded that there is a uniform and consistent practice (paragraph 82) or practically universal agreement (paragraph 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 (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). 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 (800 international treaties include such reservations), the chart of signatures and ratifications shows that some States have made both declarations and reservations (see appended table). In the Belgian Congo case (decision of 30 May 1961 on the admissibility of application no. 1065/61, *X and Others v. Belgium*, Yearbook of the Convention, 1961, vol. 4, pp. 260-76) 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 (Article 44: "Separability of treaty provisions"), 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.

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" (Article 1) (art. 1) 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 (1989 Declaration consisting in 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).

## APPENDIX

### Declaration by France (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 (art. 63)."

#### Declaration by the United Kingdom (14 January 1966)

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

The declaration under Article 63 (art. 63) of 23 October 1953 listed forty-three relevant territories (including Cyprus, the Isle of Man and Gibraltar). The declaration of 10 June 1964 listed the States which had become independent. The declaration of 14 August 1964 listed the territories omitted.

#### Declaration by the Netherlands (24 December 1985)

"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 (the Kingdom in Europe) and the Netherlands Antilles (situated in the Caribbean region), but will consist of three countries, namely the said two countries and the country Aruba.

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 (without Aruba) and 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."

#### Chart of signatures and ratifications of the Convention (at 31 December 1994) (extracts)

| Member States  | Date of signature or accession | Date of ratification or declarations | Date of entry into force | R: reservations<br>D: declarations<br>T: territorial |
|----------------|--------------------------------|--------------------------------------|--------------------------|--|
| AUSTRIA        | 13/12/57                       | 03/09/58                             | 03/09/58                 | R  |
| CZECH REP.     | 21/02/91                       | 18/03/92                             | 01/01/93                 | R  |
| FINLAND        | 05/05/89                       | 10/05/90                             | 10/05/90                 | R  |
| FRANCE         | 04/11/50                       | 03/05/74                             | 03/05/74                 | R/T  |
| GERMANY        | 04/11/50                       | 05/12/52                             | 03/09/53                 | R  |
| HUNGARY        | 06/11/90                       | 05/11/92                             | 05/11/92                 | R  |
| IRELAND        | 04/11/50                       | 25/02/53                             | 03/09/53                 | R  |
| LIECHTEN-STEIN | 23/11/78                       | 08/09/82                             | 08/09/82                 | R  |
| MALTA          | 12/12/66                       | 23/01/67                             | 23/01/67                 | D  |
| NETHER-LANDS   | 04/11/50                       | 31/08/54                             | 31/08/54                 | T  |
| PORTUGAL       | 22/09/76                       | 09/11/78                             | 09/11/78                 | R  |
| ROMANIA        | 07/10/92                       | 09/08/94                             | 09/08/94                 | D  |



|          |          |          |          |     |
|----------|----------|----------|----------|-----|
| ROMANIA  | 07/10/93 | 20/06/94 | 20/06/94 | R   |
| SAN      |          |          |          |     |
| MARINO   | 16/11/88 | 22/03/89 | 22/03/89 | R/D |
| SLOVAKIA | 21/02/91 | 18/03/92 | 01/01/93 | R   |
| SPAIN    | 24/11/77 | 04/10/79 | 04/10/79 | R/D |
| SWITZER- |          |          |          |     |
| LAND     | 21/12/72 | 28/11/74 | 28/11/74 | R/D |
| UNITED   |          |          |          |     |
| KINGDOM  | 04/11/50 | 08/03/51 | 03/09/53 | T   |

## INDIVIDUAL DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

*(Translation)*

In addition to the matters I raised in my joint dissenting opinion with Mr Pettiti concerning the preliminary objections on the questions of "jurisdiction" (Article 1 (art. 1) of the Convention; paragraphs 62 and 64 of the present judgment) and the "inseparability" of the Turkish declarations under Articles 25 and 46 (art. 25, art. 46) of the Convention (paragraphs 93 et seq.), I cannot agree, to my great regret, with the Court's conclusions on two other aspects of this case.

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 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) (art. 48-b) of the Convention to refer the case to the Court and that the Chamber should resume consideration of the case (paragraph 7). 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 (art. 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 (art. 1) of the Convention. The Court took the view that it was not within the discretion of a Contracting Party to characterise its standing in the proceedings before the Court as it saw fit (paragraph 51). 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.

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 (Mr Nørgaard, the President, and Mr Gaukur Jörundsson, Mr Gözübüyük, Mr Soyer and Mr Danelius) in which they declared (see pp. 55-56 below):

"Moreover, under Article 63 (art. 63) of the Convention, certain territorial limitations are also expressly provided for. However, Article 63 (art. 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 (art. 63) shows that, when making a declaration under Article 25 (art. 25), a Contracting State may, in some circumstances, make a distinction between different territories.

If a State may exclude the application of Article 25 (art. 25) to a territory referred to in Article 63 (art. 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 recognising 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 ... 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 (P7-6) 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 para. 4 (art. 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 para. 4 (art. 63-4) could not be relied upon by Turkey. However, doubts may be raised as to the precise scope of Article 63 para. 4 (art. 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 (art. 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 (art. 25). To date, no objections have been lodged against this practice. It might be argued, therefore, that Article 63 para. 4 (art. 63-4) has evolved into a clause conferring unfettered discretion on States concerning the territorial scope of their declarations under Article 25 (art. 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 (Article 2 para. 1)." ("Turkey's declaration under Article 25 (art. 25) of the European Convention on Human Rights", *Festschrift für Felix Ermacora*, Kehl, Engel, 1988, pp. 128-29).

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 (art. 25, art. 46), applying, at least by analogy, Article 63 (art. 63) of the Convention.

# INDIVIDUAL DISSENTING OPINION OF JUDGE PETTITI

*(Translation)*

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 loci* from interpretation of Article 1 (art. 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 endeavour 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 fulfil 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 cognisance of all the problems, and this circumstance militated even more forcefully in favour of joining all these objections to the merits. To date legal writers have not considered analysis of the Turkish declaration a simple matter (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 ("occupation", "annexation", territorial application of the Geneva Conventions in northern Cyprus, "conduct of international relations") on the basis of which the UN has analysed both the problem whether or not to recognise northern Cyprus as a State and the problem of the application of the UN Charter (see Security Council Resolution 930). The responsibilities of the European Convention institutions, when faced with such 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.

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[1] This case is numbered 40/1993/435/514. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

[3] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment

(volume 310 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.