



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

FOURTH SECTION

CASE OF FOKA v. TURKEY

(Application no. 28940/95)

JUDGMENT

STRASBOURG

24 June 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Foka v. Turkey,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Işıl Karakaş,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 9 November 2006 and on 3 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 28940/95) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mrs Eleni Foka (“the applicant”), on 7 July 1995.

2. The applicant was represented by Mr C. Triantafyllides, a lawyer practising in Nicosia, and by Mr C. Greenwood, Professor at the Department of Law of the London School of Economics. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged that she had been subjected to ill-treatment and unlawful deprivation of liberty. She also complained of an infringement of her rights under Articles 8, 9 and 10 of the Convention and of having been persecuted because of her ethnic origin and political opinions.

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

5. By a decision of 9 November 2006, the Court declared the application admissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1). In addition, third-party comments were received from the Government of Cyprus, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)). The respondent Government replied to those comments (Rule 44 § 5).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1947 and currently lives in Nicosia.

8. At the material time she was living alone in her family house in the village of Ayia Triada, Yialloussa, in the Karpas region of northern Cyprus. She was a teacher at the Greek-Cypriot elementary school in that village.

9. The parties disagree as to the facts of the case.

A. Applicant's version of the facts

10. In December 1994 the applicant went to spend the Christmas holidays with members of her family in southern Cyprus. On 13 January 1995 she was transported by a Red Cross bus with other "enclaved" Greek-Cypriots to the Ledra Palace crossing point in Nicosia. From there they were due to be taken to Ayia Triada by a bus driven by a Turkish settler.

11. At the barricade, which was guarded by Turkish and/or "Turkish Republic of Northern Cyprus" ("TRNC") police and customs officers, the applicant and the other five or six enclaved Greek-Cypriot women who were on the bus with her were searched. When the customs officers asked to search the applicant again, she refused, claiming that she had already been searched and nothing had been found. She was then taken to a small room near the barricade and was told that she would be searched by police officers. The applicant continued to refuse to submit to another search. The officials then tried to force the applicant into a small private car. She resisted and started shouting. The officials covered her mouth with their hands and started hitting her on her arms and feet in order to force her into the car. They pushed her in the car headfirst and then took hold of her legs. They managed to put her in the car with her legs upwards and feet pointing towards the roof.

12. She was subsequently taken to a building that appeared to be a police station. There her bag was thoroughly searched and whenever she tried to see what the officers were doing she was hit on the head and shoulders by a person whom she was able to identify from the discussions held among the officials present as a member of the Turkish secret service. She was then taken to an adjacent room where she was interrogated and mocked. When the interrogation was over, the bag was returned to her empty. The officers also kept part of her money – 120 Cyprus pounds (CYP) of the CYP 300 she had on her.

13. Afterwards, the officers took her in the same car to the bus that would have taken her to Ayia Triada. As she did not feel well, she asked to be allowed to return to southern Cyprus. However, the officers started to hit

her once again and forced her into the bus. One of the women on the bus told them to “let her go or you will kill her”.

14. Upon her return to Ayia Triada, the applicant asked to be taken to a female Turkish-Cypriot doctor in nearby Yialoussa but her request was refused. The next day a Greek-Cypriot took the applicant to the above-mentioned doctor. The doctor offered her medical treatment but refused to certify the existence of bruises on her body.

15. During the nights that followed stones were thrown at her house.

16. On 18 January 1995 the applicant was visited at the school of Ayia Triada by representatives of Doctors of the World, to whom she showed the bruises she had on her legs, hands and head. In its relevant parts, the report of Doctors of the World reads as follows:

“Although [Eleni Foka] knew we were coming and had agreed to meet us, nevertheless when she first saw us she became very nervous. Her respiration increased, and she seemed to have trouble breathing. We reassured her that we had come from ... Doctors of the World but it still took her about 10 minutes to be able to speak normally. The first thing she did, somewhat frantically, was to show us the bruises up and down her legs which she received, she says, as a result of being beaten by the police. At the time of our visit, she said the beating had occurred over one week ago. She also said the police were from the neighbouring town of Jalousa, only two kilometres away from Sipahi. She claims that the reason she was beaten is that she had tried to bring across the border some textbooks for the children and some religious crosses, after having visited relatives [on] the Greek side of Cyprus over the Christmas holidays. She claims she was detained, beaten, interrogated many times, and released approximately 12-18 hours later. She also claims that she is experiencing a lot of pain in the back of her head, her neck and her lower back as a result of this beating. She says that the police came from the station of Jalousa and systematically harass her; they often arrive in the village, and either follow her or simply walk around in what she interprets as an attempt to intimidate her and others who might have rebellious thoughts or want to help her. She claims the police keep her under constant surveillance.”

17. A week later, a representative of the United Nations Peacekeeping Force in Cyprus (UNFICYP) visited the applicant and reported that she had bruises and blood stains on her shins and thighs. On 20 January 1995 a medical officer of UNFICYP was denied permission to visit the applicant. The officer was eventually granted permission on 30 January 1995. Accordingly, the medical officer visited the applicant and examined her on 31 January 1995. The applicant appended a “note to the file” in this respect by the Humanitarian Branch of the Headquarters of UNFICYP dated 13 February 1995. This note read as follows:

“On 18.1.95 the Humanitarian Branch was informed by the Office of the Presidential Commissioner for Humanitarian Affairs that E.Ph. was ill treated and arrested by TkCyp Police when crossing to the north on 13.1.95 after a week’s stay in the south and that a team of the “Doctors of the World” has visited her in Ay. Trias on 18.1.95 to question her about her mistreatment.

On the same day Hum. O. sector 4 and the interpreter visited E. Ph. in the school as requested by CHO. She stated that she was beaten by hand from TCPE in the office at Ledra ChPt. and another office somewhere in Nicosia on the head, neck and back. She said that on 18.1.95 about 12:00 Hrs a team of 4 persons (2 male doctors, 1 lawyer and one official from a presidential palace not nearer described) has been visiting her. She gave the same statement to them as NWP and showed bruises and blood effusions on shin bones and thighs as she did to NWP. The team of the “doctors of the world” left her after 30 minutes and they used the English language only while speaking to Mrs E. Ph. NWP then proceeded to Yialusha Pol station for further clarification. All TCPE officers however were very reluctant in answering NWP questions and very reserved. On 20 January 1995 afternoon UN Personnel from the LP in Leonarisso has been sent to TCPE Yialusha to inform that SHO accompanied by Medical Officers Sec 4 intends to visit E. Ph. again in order to have her injuries examined. However permission was not granted at that stage. CHO tasked AUSTCIVPOL to investigate and liaise with TKCYP police at NIC HQ in order to get permission for the medical exam. ‘Clearance’ was granted on 30.1.95 and the message relayed to Hum Cell Sector 4 to set up the examination on the following day which was then carried out successfully. See Med. Rep. SMO Sec 4 dated 31.1.95 plus attached note of SHO (4).

Investigation on the confiscated items is still ongoing by AUSTCIVPOL.”

18. The applicant claimed that she had been under constant surveillance by the local police and subjected to further harassment, including threats that she would be forcibly expelled from northern Cyprus or killed.

19. In a letter dated 10 August 2000 the applicant’s lawyer informed the Court that in May 1997 the applicant had needed to seek urgent medical treatment in southern Cyprus. However, the applicant had then not been allowed by the Turkish military and the “TRNC” authorities to return to her home and property in Ayia Triada and had therefore been living in Nicosia ever since.

B. Government’s version of the facts

20. On 16 December 1994 the applicant, along with two other teachers from the Karpas elementary school and nine students, crossed over to southern Cyprus via the Ledra Palace checkpoint. Two days later the group flew to Greece on an excursion organised by the Greek-Cypriot and/or Greek authorities for a few days in order to take part in various anti-Turkish campaigns that received considerable publicity.

21. On 13 January 1995, at about 12.30 p.m., the applicant, who was returning from southern to northern Cyprus, was subjected to routine police and immigration control by Turkish-Cypriot officials at the Ledra Palace checkpoint. When the officers asked the applicant if she had anything to declare she said she did not. When they asked her to give them her handbag for search purposes, she refused to do so, thus preventing the officers from executing their duties and committing an offence under “TRNC” laws (section 177 of the Customs and Excise Law, no. 37 of 1983).

22. When a female police officer arrived, the applicant continued to resist. She was then requested to accompany the officials to the Lefkoşa police headquarters (Saray Önü) for further examination. She once again resisted and started kicking and shouting that she did not recognise any legal authority in northern Cyprus. Subsequently, she was led to a police car. She refused to get into the car and stated that she wanted to return to southern Cyprus. She was then driven to police headquarters. The Turkish Cypriot police used only force that was reasonable and necessary. The applicant may have caused injury to herself in an effort to resist the body search and efforts to take her to the police station. This was not evident, however, as she was wearing thick dark stockings.

23. Once at the police headquarters, the applicant continued to act irrationally, resisting the police officers and pushing them away. Eventually, a female police officer searched her handbag. She found six silver necklaces and four gold crosses, items that were subject to customs duty and that the applicant had refused to declare. The applicant agreed to pay the equivalent of 9,000,000 Turkish liras as customs duty and/or fine. Furthermore, various other items were found in her bag, such as books and brochures. It was considered that these contained anti-Turkish, racist and defamatory material liable to incite racial hatred and aggravate inter-communal relations. The authorities then attempted to carry out a body search, which the applicant resisted. The applicant attacked the female customs officer, who called for police assistance. During the body search, radio-cassettes were found hidden inside the applicant's clothing. The authorities kept all the items for the purposes of further examination. The applicant was detained only for a transitory period to enable completion of the search under more appropriate circumstances and to calm her down. She was not under arrest during this period and was offered refreshments, which she refused to take.

24. Having paid the fine, the applicant returned to her village on the bus with other Greek Cypriots.

25. On 15 January 1995 the applicant visited the health centre of Rizokarpasso (Dipkarpaz) and asked for a medical report to certify that she had been beaten. The doctor on duty, not being a private practitioner, offered to examine the applicant if she were intending to lodge a complaint with the police. The doctor would then have examined the applicant and written up her findings on the form supplied by the police. However, the applicant failed to complain to any Turkish-Cypriot authority and did not visit any doctor before or after 15 January 1995. On 31 January 1995 she was examined by a United Nations doctor in the presence of a Turkish-Cypriot doctor at the health centre in Rizokarpasso. The Government appended a UN medical report of a routine interview and examination of the applicant by a UN medical officer in the presence of a local doctor on 31 January 1995. The report identified "scratches on the applicant's back [and] right calf".

26. The four “Doctors of the World”, one US, one Swedish and two French citizens, had entered the “TRNC” as tourists intending to go to Kyrenia but upon entry, contrary to their declaration to the “TRNC” authorities, they had hired a car and apparently visited the area in question.

27. On 25 January 1995 the books, brochures and photos that had been taken from the applicant on 13 January 1995, were returned to her in the presence of the Greek-Cypriot representative of the village. However, the Turkish-Cypriot authorities kept three cassettes, two paperbacks, a diary and a postcard which they considered as likely to provoke racial hatred and anti-Turkish enmity. The cassettes, which had been recorded in Greece, contained songs and poems dedicated to the so-called Pontus Greeks who allegedly lived in the Black Sea region of Turkey, to the National Organisation of Cypriot Fighters (EOKA) movement and to those killed in terrorist activities carried out against the British. The other articles contained propaganda and a map of Cyprus showing the border area marked in blood.

28. In March 1997, when the applicant retired from her teaching post, arrangements were made between the Greek-Cypriot and Turkish-Cypriot authorities to replace her as teacher. The applicant has been living in southern Cyprus ever since.

29. As from 23 April 2003 new measures had been adopted by the “TRNC” authorities regarding crossings from northern to southern Cyprus and vice versa through specified checkpoints. Greek Cypriots now had free access to the north and Turkish Cypriots to the south upon presentation of an identification document.

C. The documents produced by the Government

30. The Government have produced several documents before the Court. In so far as relevant, their content can be summarised as follows.

31. In his report, police officer Pervin Gürlü stated that the applicant had constantly insulted Turkey and used to bring a Greek flag to school lessons. She was a fanatical nationalist who behaved strangely, pretended to have received death threats and was asocial. She had wanted to enter the territory of “TRNC” without an identification card, passport or other travel document and had tried to avoid the border control. On 29 January 1997 she had been scratched by her cat; the doctors who visited her had diagnosed that she was in good health.

32. In a statement of 3 May 2007, customs officer Sultan Barbaros stated that on 13 January 1995 he was checking bags and luggage of persons crossing at the Ledra Palace border. The applicant had not allowed him to search her bags and had resisted. She had started swearing loudly at the officers and at Turkish people in general. When the custom officers intervened, the applicant had assaulted them. She had then been brought to a

police station where she had been fined for having tried to cross the border without declaring the necklaces and the gold crosses. She had paid cash. Although the police had acted in good faith, the applicant had been constantly aggressive towards them and had used racist expressions.

33. Police Sergeant Halit Kocanoglu stated that at the relevant time, it was the general practice of the “TRNC” custom officers to check the bags of people crossing the Ledra palace border and to confiscate goods that needed to be declared but were not. The applicant had refused to have her bag checked and had caused trouble. She had been brought to a police station where her bags had been searched. In addition to the undeclared necklaces and gold crosses, books and tape recordings insulting the “TRNC” and Turkish people in general had been found in her possession and confiscated. During her stay at the police station, the applicant had not been ill-treated or harassed; on the contrary, she had caused problems to the officers and refused everything that was offered to her including water.

34. Police Sergeant Işin Sevindik stated that on 13 January 1995 the applicant had refused to have her bag searched. She had started shouting and had been taken to a police station. After she had paid the fine, she had been taken back to the Ledra Palace entry point. Sergeant Sevindik had not seen the applicant being forced to do anything or being ill-treated. A similar statement was made by Inspector Adem Hasapoglu.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant complained that she had been subjected to inhuman and degrading treatment.

She invoked Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

36. The Government disputed this claim.

A. Arguments of the parties

1. *The applicant*

37. The applicant considered that her case should be seen against the background of the living conditions of the enclaved Greek Cypriots, highlighted by the Grand Chamber in its judgment in *Cyprus v. Turkey*

(no. 25781/94, ECHR 2001-IV). She noted that the Government had accepted that physical force was used against her person and that she was forced into a police station and compelled to stay there for a period of time. Moreover, it was not disputed that she had been obliged to pay nine million Turkish liras for the possession of four gold crosses and six silver necklaces and that three cassettes, paperbacks, a diary and a postcard had been confiscated.

38. The applicant disputed the Government's arguments that her search and arrest had been justified to enforce "TRNC" customs legislation and pointed out in this regard that she had not been crossing an international border.

39. The manner of the applicant's arrest, detention and treatment had been humiliating and grossly disproportionate to any threat to public order or any other legitimate concerns that might have existed. The Government had not given any convincing explanation to explain why any force had been necessary at all to handle a middle-aged woman surrounded by State agents. It was highly significant that scratches had been found on the applicant's body by a UN doctor two weeks after the incident. The absence of bruises by that date was not a factor contradicting the applicant's version of facts.

40. The Government's accusations concerning the applicant's character were both inaccurate and wholly irrelevant to the issues before the Court. The applicant had not wished to identify the women on the bus with her since they had also been enclaved persons living with her in Ayia Triada and had therefore been too frightened to give witness statements.

41. Lastly, no investigation had been carried out in order to clarify the circumstances of the incident and, as the Court had repeatedly stated, no remedies were available to the applicant in northern Cyprus.

2. The Government

42. The Government submitted that the "TRNC" authorities had not used any force against the applicant other than that which had been proper and necessary in the circumstances. They had acted in accordance with the law and within the powers afforded to them. The applicant had not been subjected to any inhuman or degrading treatment but merely to the usual police and customs control by "TRNC" officials. If she had not objected to the search of her handbag and had not resisted in a violent and provocative manner, no incident would have occurred. The difficulties had arisen because the applicant, not recognising any authority in the north of the island, had refused to obtain or show any identity card. By resisting, she had committed an offence under "TRNC" laws. Furthermore, the alleged "bruises" or "scratches" on the applicant had not been inflicted by the Turkish-Cypriot police and/or customs officers. One possibility was that these had been inflicted unintentionally whilst she had been resisting the

police. This, however, had not been evident at the time since the applicant had been wearing dark stockings. The Government pointed out further that the applicant's statements referred to in the report of Doctors of the World concerning her alleged ill-treatment contradicted the complaints made in her application before the Court.

43. The present application concerned only the incident of 13 January 1995, and the material pertaining to the living conditions of Greek Cypriots residing in the Karpas area was not directly relevant for its examination. The Ledra Palace crossing point, at which the applicant was stopped, has since 1964 been recognised as a *de facto* "delineation line" where police and customs control on both sides have been taking place. This has also been acknowledged by the UN in 1974 and by the "Green Line Regulations" of the EU Council in 2005.

44. Moreover, doubt could be cast on the correctness of the applicant's allegations in the light of the following considerations: a) the applicant refused to make a complaint to the local police as to the persons by whom she had allegedly been beaten; b) Doctors of the World stated in their report that the beating was carried out by police officers who came "from the neighbouring town of Jalusa only two kilometres away from Sipahi", which implied that the facts had occurred in Sipahi and not at the Ledra Palace crossing point; c) the applicant was unwilling to be medically examined when on 31 January 1995 UNFICYP Sector Humanitarian Officer and Sector Medical Officer visited her in her village; d) the applicant later changed her mind and underwent a medical examination; the doctors found superficial scratches on her back and right calf that were not recent and did not require treatment.

45. In the light of the above, the Government submitted that the applicant had sustained certain scratches and marks on parts of her body in some way unknown to the "TRNC" authorities (they could have been inflicted by a cat or sustained while climbing a tree in the garden), but found it convenient to attribute them to the incident of 13 January 1995 in order to be able to direct her complaints against the "TRNC" police and, consequently, against Turkey. The burden of proof, which it was the applicant's duty to discharge, had not been satisfied.

46. In many other instances the applicant had acted in a very unusual way by inventing stories and making unjustified accusations against Turkey as part of an anti-Turkish campaign which had been exploited by the Greek Cypriot authorities and the media for propaganda purposes. According to the Government, such acts could be explained only by the fact that the applicant was a lonely and unsociable person – she had no relatives and no friends – eager to seek media coverage in an effort to attract attention.

B. The third-party intervener

47. The Government of Cyprus submitted that the case concerned the abusive treatment and intimidation of a lone woman by agents of the respondent Government, motivated by the ethnic origin of the applicant, one of the few Greek Cypriots residing in the enclaved area. Turkey had ultimately been successful in its actions, as the applicant had eventually been forced to leave the occupied area.

48. The Government of Cyprus endorsed the applicant's version of the facts and observed that the respondent Government had failed to produce any evidence contradicting it. The Greek Cypriots living in the enclaved area were routinely subject to violations of their Convention rights at the hands of Turkey and the "TRNC", as had been recognised by the Grand Chamber in the Inter-State case. The crossing-point at which the applicant had been stopped was guarded by Turkish or "TRNC" police and so-called "custom officers". It was not an internationally recognised border and the persons guarding it enjoyed no authority in international or Cypriot law. The applicant had made no objection to the search, which had no lawful basis, and fully cooperated. However, the customs officer had asked to search the applicant again. When she objected, the custom officers, instead of explaining why a further search was needed, had taken her to a small room. No reason for her deprivation of liberty had been provided.

49. The applicant had subsequently been forced to get into a car which had no official designation and looked like a private vehicle. Fearing she was being abducted, the applicant had resisted and shouted for help. The officers had covered her mouth with their hands and started beating her on her arms and legs. Obligated to get into the vehicle, yet still unaware of the reasons for her abduction, she had been brought to a building which might have been a "police" station. Her bag had been forcibly taken from her and searched and when she complained she had again been physically abused. She had received repeated blows to her back, head and shoulders by an agent of the Turkish secret service. She had been taken for interrogation to another room, where she had been abused and mocked. After being taken back to the bus, she had asked to return to the unoccupied part of Cyprus. The response to that request had been further physical beating. The next day a female Turkish Cypriot doctor, fearing for her own safety, had refused to certify the existence of bruises on the applicant's body. During the following nights, stones had been thrown at the applicant's house with the purpose of intimidating her. She had been threatened with expulsion from the occupied area or death if she were to make any complaints.

50. There was no doubt that the treatment suffered by the applicant had attained the minimum level of severity to fall within the ambit of Article 3 of the Convention. The recourse to physical force had not been made strictly necessary by the applicant's own behaviour. She was a lone and frail

woman who had been abducted by several men. Moreover, the decision to abduct and interrogate her had amounted to a form of psychological torture aimed at intimidating her and breaking her resistance. It had had no lawful aim such as collection of information necessary for any law-enforcement purpose.

C. The Court's assessment

1. General principles

51. According to the Court's settled case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, 11 July 2006).

52. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV, and *Saadi v. Italy* [GC], no. 37201/07, § 135, 28 February 2008).

53. Article 3 enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15, even in the event of a public emergency threatening the life of the nation (see *Ireland v. the United Kingdom*, judgment of 8 January 1978, Series A no. 25, § 163; *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 79; *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 59, ECHR 2001-XI; and *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 335, ECHR 2005-III). As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victim's conduct (see *Chahal*, cited above, § 79, and *Saadi*, cited above, § 127), the nature of the offence allegedly committed by the applicant is irrelevant for the purposes of Article 3 (see *Indelicato v. Italy*, no. 31143/96, § 30, 18 October 2001, and *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 115-116, 4 July 2006).

54. The Court emphasises that, in respect of a person who is placed under the control of the authorities, any recourse to physical force which has

not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 38).

55. The Court further indicates, as it has held on many occasions, that in assessing evidence it has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, cited above, § 161). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control, strong presumptions of fact will arise in respect of injuries occurring during such control (see, *mutatis mutandis*, *Maslova and Nalbandov v. Russia*, no. 839/02, § 99, 24 January 2008).

56. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch*, cited above, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In particular, when injuries have been sustained by a person who was in the custody of the police, it is up to the respondent Government to furnish convincing or credible arguments which would provide a basis to explain or justify the degree of force used by its agents (see, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, § 76, ECHR 2000-XII).

2. Application of the above principles to the present case

57. In the present case, it is not disputed that, following an attempt to search her bag at the Ledra Palace crossing point in Nicosia, the applicant had some sort of physical confrontation with the “TRNC” agents performing the search. However, the parties disagree as to the extent of this confrontation and the reasons justifying it.

58. According to the applicant, whose version is endorsed by the third-party intervener, when she refused to undergo a second – unjustified – search, the “TRNC” officials had forced her into a car, brought her to a police station and repeatedly hit her on the head and shoulders (see paragraphs 11-13 above). The Government alleged, on the contrary, that the applicant had reacted violently to a legitimate request to search her bag. She had started kicking, shouting and pushing away the officials performing their duties. The force which might have been used by the police would not have exceeded what was reasonable and necessary in the circumstances of the case (see paragraphs 21-23 above).

59. The Court first notes that the applicant was examined by a UN doctor only on 31 January 1995, which was eighteen days after the incident (see paragraphs 17 and 25 above). The latter found “scratches” on her back and right calf. Given the time elapsed between the incident complained of

and the medical examination, it is not possible for the Court to conclude beyond reasonable doubt that the injuries described by the UN doctor were caused by the “TRNC” officials’ actions.

60. In any event, in the Court’s view, the scratches found on the applicant’s body are consistent with a minor physical confrontation which might have occurred between her and the police agents. Nothing shows that the latter had used excessive force when, in the course of their duties, they had been confronted with the alleged violent behaviour of the applicant. The Court also notes that the applicant failed to produce any witness statements supporting her allegation that she protested against the search without using violence against the “TRNC” agents. On the contrary, the Government’s version is corroborated by the statements of the “TRNC” officers involved in the applicant’s search (see paragraphs 30-34 above).

61. The Court considers, moreover, that the degree of intimidation which the applicant might have felt while being forcibly brought to the police station did not attain the minimum level of severity to fall within the scope of Article 3. The allegations about stones being thrown at the applicant’s house (see paragraphs 15 and 49 above) are unsubstantiated and there is nothing to show that this action is to be imputed to the respondent Government.

62. Under these circumstances, the Court cannot consider it established beyond reasonable doubt that the applicant was subjected to treatment contrary to Article 3 or that the authorities had recourse to physical force which had not been rendered strictly necessary by the applicant’s own behaviour.

63. It follows that there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

64. The applicant maintained that she had been deprived of her liberty in breach of Article 5 of the Convention.

In so far as relevant, this provision reads as follows:

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

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

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

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

....”

65. The Government disputed this claim.

A. The parties’ submissions

1. The applicant

66. The applicant observed that it was undisputed that she had been forcibly restrained and compelled to go to a “police station” and confined there against her will. Under these circumstances, Article 5 § 1 of the Convention was clearly applicable.

67. The present case could not be brought within the scope of subparagraph (f) of this provision. The applicant had not been crossing any international border or entering another country, as the “TRNC” was not recognised as a State under international law. Those who had deprived her of her liberty could not be regarded as lawful authorities with the power of arrest under the laws of the Republic of Cyprus. Furthermore, there was no evidence that the applicant’s detention had been necessary in the circumstances of the case. She had asked to return to the unoccupied part of Cyprus but had been compelled to remain in the north.

68. No attempt had been made to comply with the requirements of paragraph 2 of Article 5, a provision which had clearly been violated.

2. The Government

69. The Government alleged that the applicant’s “detention” had been so temporary and transient that it had not amounted to a “deprivation of liberty”. The applicant had not been under arrest during that period but had merely been requested to accompany the police to the police station which was in the vicinity of the checkpoint. As she had resisted, she had had to be

led into a police car and then driven to police headquarters. The applicant had been kept only for the time necessary to complete the search under more appropriate circumstances and to calm her down.

70. In the alternative, the Government submitted that her “detention” had been justified under domestic law in order to secure the “fulfilment of any obligation prescribed by law” and “to prevent her effecting an unauthorised entry” as provided for in Article 5 § 1 (f) of the Convention. In that connection the Government noted that under section 14 (1) (c) of the Criminal Procedure Law, which was applicable to both northern and southern Cyprus, any police officer could, without a warrant, “arrest” any person who obstructed an officer in the execution of his duty. Section 9 of the same Law provided that if the person being arrested forcibly resisted or attempted to escape, the police officer or other persons making the arrest could use all necessary means to effect the arrest. Further, under section 10, whenever a person was “arrested”, the police officer making the arrest could search such a person using such force as might be reasonably necessary for such purpose.

B. The third-party intervener

71. The Government of Cyprus submitted that it could not be argued that the applicant had been detained in order to prevent an unauthorised entry into the country. The applicant was a citizen of the Republic of Cyprus seeking to travel within her own country and not crossing any internationally recognised border. She had the right to travel from her village to Nicosia without restrictions. The Court had repeatedly recognized that the Turkish occupation of northern Cyprus was unlawful under international law and that the “TRNC” was not a valid State. Therefore, the so-called police and customs officers were unlawful military occupants and their acts did not have any legal validity and could not fall within the ambit of Article 5 § 1 of the Convention. In any event, the true purpose of the detention had been to harass and intimidate the applicant.

72. Moreover, there had been a clear violation of Article 5 § 2 as at no point had the applicant been informed why she was being detained and abducted.

C. The Court’s assessment

73. The Court must first examine whether there was in the instant case a deprivation of liberty to which Article 5 applies. Under its established case-law, this provision is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4 (see *H.M. v. Switzerland*, no. 39187/98, § 40, ECHR 2002-II).

74. In order to determine whether there has been a deprivation of liberty, the starting-point must be the concrete situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question. The distinction between a deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance (see *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, § 92; *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, § 41; and *H.L. v. the United Kingdom*, no. 45508/99, § 89, ECHR 2004-IX).

75. Even if it is not excluded that Article 5 § 1 may apply to deprivations of liberty of a very short length (see *X v. Germany*, no. 8819/79, Commission decision of 19 March 1981, Decisions and Reports (DR) 24, pp. 158, 161), the Convention organs' case-law shows that this provision was considered not applicable in cases where the applicants' stay in a police station lasted only few hours and did not go beyond the time strictly necessary to accomplish certain formalities (see, for instance, *Guenat v. Switzerland*, no. 24722/94, Commission decision of 10 April 1995, Decisions and Reports (DR) 81, pp. 130, 134, and *X v. Germany*, decision cited above).

76. In the present case the applicant had been brought to a police station from the Ledra Palace checkpoint. According to the Government's version of the facts, that measure had been necessary in order to search her bag, which she had refused to show to the authorities. Once at the police headquarters, the search of the bag and a body search had taken place. Several items had been confiscated and a fine had been imposed on the applicant.

77. Even if the precise overall duration of the applicant's stay at the police station is not known, it could not have exceeded a few hours. After the searches, she was in fact accompanied by a "TRNC" official to the bus, which eventually brought her to her initial destination. Moreover, it has not been shown that the applicant was forced to stay at the headquarters for a lapse of time exceeding what was strictly necessary to carry out the searches and to comply with the relevant administrative formalities.

78. However, the Government themselves acknowledged that the applicant had resisted being accompanied to the police headquarters and that she had refused to get into the car which eventually brought her there (see paragraph 22 above). As force was used in order to compel the applicant to get into the car, the Court considers that there was an element of coercion, which affected not only the applicant's freedom of movement, but also her liberty.

79. It follows that the applicant was deprived of her liberty within the meaning of Article 5 of the Convention and that this provision is applicable in the present case.

80. As to the question of compliance with the requirements of Article 5 § 1, the Court recalls that this provision requires in the first place that the detention be “lawful”, which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see the *Benham v. the United Kingdom* judgment of 10 June 1996, *Reports* 1996-III, §§ 40 and 42).

81. The applicant and the third-party intervener argued that, as the “TRNC” was not a valid and recognised State under international law, no deprivation of liberty imposed by its agents might be regarded as “lawful” within the meaning of the Convention (see paragraphs 67 and 71 above).

82. The Court recalls that in the case of *Cyprus v. Turkey* (cited above, § 90), it held that the developments which have occurred in northern Cyprus since 1974 could be characterised in terms of the exercise of *de facto* authority by the “TRNC”. It further observed that

“... the obligation to disregard acts of *de facto* entities is far from absolute. Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the *de facto* authorities, including their courts; and in the very interest of the inhabitants, the acts of these authorities related thereto cannot simply be ignored by third States or by international institutions, especially courts, including this one.” (*ibid.*, § 96).

83. The Court recalls that the overall control exercised by Turkey over the territory of northern Cyprus entails her responsibility for the policies and actions of the “TRNC” and that those affected by such policies or actions come within the “jurisdiction” of Turkey for the purposes of Article 1 of the Convention with the consequence that Turkey is accountable for violations of Convention rights which take place within that territory. It would not be consistent with such responsibility under the Convention if the adoption by the authorities of the “TRNC” of civil, administrative or criminal law measures, or their application or enforcement within that territory, were to be denied any validity or regarded as having no “lawful” basis in terms of the Convention.

84. The Court, accordingly, considers that when as in the instant case an act of the “TRNC” authorities is in compliance with laws in force within the territory of northern Cyprus, those acts should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention (see, in this regard, the *Djavit An v. Turkey* judgment (no. 20652/92, 20 February 2003) in which the finding of a violation of the applicant’s rights under Article 11 of the Convention was based on the absence of any laws or measures in the “TRNC” regulating the issuance of permits to Turkish Cypriots living in northern Cyprus to cross the green-line into southern Cyprus; see also, *Adalı v. Turkey*, no. 38187/97, §§ 273-274, 31

March 2005). This conclusion does not in any way put in doubt either the view adopted by the international community regarding the establishment of the “TRNC” or the fact that the government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see *Cyprus v. Turkey*, cited above, §§ 14, 61, 90).

Having regard to the above considerations, the Court will now examine the facts of the case from the standpoint of their compatibility with the requirements of Article 5 of the Convention.

85. In the present case, it is not disputed that the applicant had resisted a search of her bag by “TRNC” officers at the Ledra Palace crossing point in Nicosia. According to the respondent Government, this behaviour allowed the police to arrest her in accordance to section 14 (1) (c) of the Criminal Procedure Law, a provision authorising the arrest without a warrant of any person obstructing an officer in the execution of his duty (see paragraph 70 above). The applicant and the third-party intervener did not present any element to contradict this argument.

86. The Court is therefore of the opinion that the applicant was deprived of her liberty in accordance with a procedure prescribed by law “in order to secure the fulfilment of any obligation prescribed by law” within the meaning of Article 5 § 1 (b) of the Convention.

87. The Court reiterates that in the present case nothing proves that the deprivation of liberty at stake exceeded the time necessary for searching the applicant’s bag, imposing a fine on her and fulfilling the relevant administrative formalities (see paragraph 77 above). It accordingly finds no appearance of arbitrariness. In this respect, it notes that the third-party intervener assertion that the true purpose of the detention had been to harass and intimidate the applicant (see paragraph 71 above) is unsubstantiated.

88. Finally, it is to be observed that both at the Ledra Palace crossing point and at the police headquarters, the applicant was clearly requested to give her bag to the police officers who declared that they wanted to search it. Even assuming that the applicant was not given any other oral or written explanation, under these circumstances, the reasons of her arrest should have been clear to her.

89. Accordingly, there had not been a violation of Article 5 §§ 1 and 2 of the Convention in the present case.

III. ALLEGED VIOLATION OF ARTICLES 9, 10 AND 14 OF THE CONVENTION

90. The applicant complained that she had been persecuted because of her ethnic origin and religious beliefs and her opposition to the Turkish military occupation of the northern part of Cyprus.

91. She alleged a breach of Articles 9, 10 and 14 of the Convention.

These provisions read as follows:

Article 9

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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

Article 14

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

92. The Government disputed this claim.

A. The parties’ submissions

1. The applicant

93. The applicant observed that the Government had not put forward any evidence or argument as to why the materials that had been confiscated from her or the other materials she had been carrying at the time might reasonably have been thought to increase racial hatred. In any case, this material had not been produced before the Court. She disputed the Government’s submissions to this effect in particular in view of the fact that there were only approximately 500 Greek Cypriots left in the Karpas peninsula. Moreover, religious symbols had been taken from her.

94. The applicant considered that the treatment she had received formed part of a more general plan devised by the Turkish Cypriots and the Turks. This plan was aimed at dissuading her from teaching at the Greek-Cypriot Elementary School of Ayia Triada and at evicting all the enclaved Greek Cypriots from the Karpas region.

95. Lastly, the applicant alleged that, following the lodging of the present application, she had been subjected to further harassment by the authorities, including threats that she would not be permitted to continue residing and teaching in northern Cyprus.

2. The Government

96. The Government submitted that the applicant had not been persecuted because of her ethnic origin, religious beliefs or opposition to the Turkish military. The incident complained of had happened because of her provocative and irrational conduct. The applicant was very well known for her anti-Turkish activities that were carried out at the instigation and with the support of the Greek-Cypriot Government and received publicity. She was a protagonist for the “cause of the enclaved”. She was a lonely person who could not socialise even within her own community in her village. According to the Government, the allegations made in the application were imaginary, unsubstantiated and put forward with the aim of acquiring political advantage and humiliating Turkey and the Turkish-Cypriot authorities.

97. Moreover, the Government stated that the applicant had been inventing stories that her life was being threatened and that she would be expelled from northern Cyprus. The applicant had been living in southern Cyprus ever since her retirement in March 1997 following arrangements made between the Greek-Cypriot and Turkish-Cypriot authorities to replace her.

98. The Government noted that the material that had been seized from the applicant had been likely to promote racist and anti-Turkish propaganda and promote ill-will between the two communities on the island. Any limitation of the applicant’s rights had been prescribed by law and was justified under the second paragraph of Articles 9 and 10 as being necessary in a democratic society in the interests of public safety, for the protection of public order and for the safeguarding of national security and/or territorial integrity.

99. The Government pointed out, moreover, that, under Article 47 of the Criminal Code, it was a criminal offence to publish or disseminate any words or document with a seditious intention. “Seditious intention” included the promotion of “feelings of ill-will and hostility between different communities or classes of population”. It was also an offence to have in one’s possession any document “having a seditious intention”. The books, brochures and photos taken from the applicant had been returned to her in the presence of the Greek Cypriot representative of the village. However, three cassettes, two

paperbacks, a diary and a postcard, which were liable to provoke racial hatred and anti-Turkish enmity, had been kept by the “TRNC” authorities. The cassettes contained songs and poems dedicated to the so-called Pontus Greeks, who had allegedly lived in the Black Sea region of Turkey, to the EOKA movement and to those killed during terrorist activities against the British. The Black Sea region of Turkey was presented as the homeland of the Pontus Greek and a map of the region gave Greek geographical names for the towns of the area. The other articles contained propaganda material about Pan-Slavizm, the Balkans and Macedonia, the Pelaghonia region of which was alleged to belong to Greece. The brochure contained a map of Cyprus showing the border area marked in blood.

B. The third-party intervener

100. The Government of Cyprus submitted that the applicant’s abduction, detention and beating had been motivated by her activity of speaking out on behalf of the enclaved population of Greek Cypriots against the Turkish occupation. The respondent Government admitted that the applicant was seen as a protagonist for the “cause of the enclaved”. The material taken from the applicant – and which had not been produced before the Court – had been confiscated as part of a programme of censorship of documents which persons sought to bring into the occupied areas. The Turkish Government had indeed confined themselves to saying that they “believed” that the confiscated material was “anti-Turkish, racist and defamatory”. This amounted to a clear violation of Article 10 of the Convention.

101. The Government of Cyprus further alleged that, in breach of Article 14 of the Convention, the applicant had been targeted on grounds of her racial and national origin and religious beliefs.

C. The Court’s assessment

102. The Court considers that this complaint should be primarily examined under Article 10 of the Convention.

103. The Court considers that the confiscation of the applicant’s cassettes, paperbacks, diary and map constituted an interference by a public authority with her right to freedom of expression, in particular the right to receive and impart information and ideas. Such interference will breach the Convention if it fails to satisfy the criteria set out in the second paragraph of Article 10.

104. In the present case the Court does not consider it necessary to ascertain whether the interference was “prescribed by law”. In fact, even assuming that it was, there would in any case have been a violation of Article 10 for the following reasons.

105. In order to be in compliance with the Convention, an interference should pursue one or more legitimate aims and be “necessary in a democratic society” to achieve that aim or aims. In this connection the Court refers to the following general principles that emerge from its settled case-law (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, §§ 68-70, ECHR 2004-XI, with further references, and *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 57, 14 February 2008):

(a) The necessary-in-a-democratic-society test requires the Court to determine whether the interference complained of corresponded to a pressing social need. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it. The Court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10.

(b) The Court’s task in exercising its supervisory function is not to take the place of the competent domestic authorities but rather to review under Article 10 the decisions they have taken in accordance with their margin of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole.

(c) In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were relevant and sufficient and whether the measure taken was proportionate to the legitimate aims pursued. In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10.

106. In the present case the Government argued that the material confiscated from the applicant was likely to promote racist and anti-Turkish propaganda and promote ill-will between the two communities on the island. They considered that the interference complained of was necessary in a democratic society for the safeguarding of national security, territorial integrity and/or public safety. In this connection the Government alleged that the cassettes contained songs and poems dedicated to the so-called Pontus Greeks, to the EOKA movement and to those killed during terrorist activities against the British, that the paperbacks contained anti-Turkish propaganda and that the brochure contained a map of Cyprus showing the border area marked in blood.

107. However, the Government did not produce this material before the Court. Under these circumstances, the Court considers that they have failed to substantiate their argument that it was likely to promote social and racial hatred. They have also failed to show that its confiscation answered a

pressing social need within the meaning of the Court's case-law. The Court is therefore unable to reach the conclusion that the interference was justified under paragraph 2 of Article 10.

108. It follows that there has been a violation of Article 10 of the Convention.

109. This conclusion dispenses the Court from examining whether the confiscation of the applicants' belongings and the alleged campaign of harassment against her also violated Articles 9 and 14 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

110. The applicant complained that her right to respect for her private life and her home has been violated. She invoked Article 8 of the Convention, which reads as follows:

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

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

111. The Government disputed this claim.

A. The parties' submissions

1. The applicant

112. The applicant alleged that there had been a violation of Article 8 as a result of her detention and public humiliation, the intrusive search and the seizure of her personal belongings. These measures had not been “necessary in a democratic society”.

2. The Government

113. The Government alleged that in view of the temporary and transient nature of the “detention”, there had been no interference with the applicant's right to her private life or home. In any event, any interference by the authorities had been in accordance with the law and necessary in the interests of national security, public safety, and for the prevention of disorder or crime. The authorities had not transgressed the principles of reasonableness and proportionality.

B. The third-party intervener

114. The Government of Cyprus submitted that the detention of the applicant, who had wished to return to her home, had violated her rights under Article 8 of the Convention. That provision had also been violated by the campaign of harassment and surveillance of the applicant and by the throwing of stones at her house.

C. The Court's assessment

115. The Court considers that, in the light of the conclusions reached under Articles 3, 5 and 10 of the Convention (see paragraphs 63, 89 and 108 above), it is not necessary to examine whether there has also been a violation of Article 8 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. Article 41 of the Convention provides:

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

A. Damage

117. The applicant sought the following sums for pecuniary loss: the nine million Turkish liras which were taken from her; 500 Cypriot pounds (CYP – approximately 820 euros (EUR)), representing the value of the items which had been confiscated.

118. With regard to non-pecuniary damage, the applicant sought CYP 50,000 (approximately EUR 82,000).

119. The Government submitted that the finding of violations would be sufficient just satisfaction. In any case, the applicant's claims were “exorbitant, excessive and unjustifiable”.

120. The Court reiterates that it is able to make awards by way of the just satisfaction provided for in Article 41 where the loss or damage on which a claim is based has been caused by the violation found, but that the State is not required to make good damage not attributable to it (see *Perote Pellon v. Spain*, no. 45238/99, § 57, 25 July 2002, and *Saadi*, cited above, § 186).

121. In the present case the Court has found that the confiscation of the applicants' books and cassettes violated Article 10 of the Convention. On the other hand, it has not found any violations of the Convention on account

of the imposition of a fine. As the value of the confiscated material cannot be determined with absolute precision, the Court decides to award EUR 300 in respect of pecuniary damage.

122. With regard to the non-pecuniary damage sustained by the applicant, the Court considers that the finding of a breach of Article 10 of the Convention constitutes sufficient just satisfaction.

B. Costs and expenses

123. On the basis of bills from her representatives, the applicant sought CYP 21,430 (approximately EUR 35,100) and 2,350 pounds sterling (approximately EUR 3,100) for the costs and expenses incurred in the proceedings before the Court.

124. The Government observed that the applicant's lawyers had produced their bill of costs without supporting it by receipts or other documents proving that the amounts claimed had been actually incurred and paid by the applicant. In these circumstances the applicant should not be entitled to any award. Moreover, the Government submitted that the issues addressed in Prof. Greenwood's opinion were a mere duplication of those examined by the Court in the cases of *Loizidou v. Turkey* and *Cyprus v. Turkey*. As a whole, the fees claimed were "unrecoverable, highly exorbitant and out of proportion with the work done".

125. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicant only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see *Belziuk v. Poland*, judgment of 25 March 1998, *Reports* 1998-II, § 49). The Court notes that the case was rather complex, involved perusing a certain quantity of factual and documentary evidence and required a fair amount of research and preparation. However, it considers the amount claimed for the costs and expenses relating to the proceedings before it to be excessive. Referring to its conclusion that there has been no violation of Articles 3, 5 and 8 of the Convention, it decides to award a total sum of EUR 5,000 under this head, exclusive of any value-added tax that may be chargeable.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Held* that there had been no violation of Articles 3 and 5 of the Convention;
2. *Held* that there had been a violation of Article 10 of the Convention;
3. *Held* that it was not necessary to examine whether there has been a violation of Articles 8, 9 and 14 of the Convention;
4. *Held* that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. *Held*
 - (a) that the respondent State was to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 300 (three hundred euros) in respect of pecuniary damage and EUR 5,000 (five thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismissed* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence T. Early
Registrar

Nicolas Bratza
President