



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

FOURTH SECTION

CASE OF PROTOPAPA v. TURKEY

(Application no. 16084/90)

JUDGMENT

STRASBOURG

24 February 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Protopapa v. Turkey,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Işıl Karakaş, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 3 February 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 16084/90) 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 Eliade Protopapa (“the applicant”), on 12 January 1990.

2. The applicant was represented by Mr C. Velaris, a lawyer practising in Nicosia. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged, in particular, that she had been subjected to treatment contrary to the Convention during a demonstration.

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 26 September 2002 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (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 FACTS

7. The applicant was born in 1937 and lives in Nicosia.

I. THE DEMONSTRATION OF 19 JULY 1989

8. On 19 July 1989 she joined an anti-Turkish demonstration in the Ayios Kassianos area in Nicosia in which the applicants in the *Chrysostomos and Papachrysostomou v. Turkey* and *Loizidou v. Turkey* cases (see below) also took part.

A. The applicant's version of the events

9. According to an affidavit sworn by the applicant before the Nicosia District Court on 3 January 2000, the demonstration of 19 July 1989 was peaceful and was held on the fifteenth anniversary of the Turkish intervention in Cyprus in support of the missing persons and to protest against human rights violations.

10. The demonstrators gathered at the Ayios Kassianos school in Nicosia. After United Nations (UN) soldiers had shouted a warning to the demonstrators not to advance further, the applicant was seized by the hair, beaten and assaulted by Turkish military personnel and/or other personnel acting under Turkish control. The beating was inflicted with electrical batons by 3 or 4 policemen all over the applicant's body, in particular the head and back. One of the blows caused a painful injury to the applicant's right arm and elbow, with loss of blood. She was then dragged to a small, stiflingly hot room in which other demonstrators were also being held. One of the prisoners had been severely beaten and was unconscious.

11. The applicant and the other detainees were subsequently led through a hostile crowd that spat and swore at them to a bus that was waiting to take them to the so-called "Pavlidis Garage". As she entered the garage her handbag was seized. She was forced to sit on the floor; the toilet facilities were filthy. A crowd that had gathered outside the garage was swearing, shouting abuse and threats and throwing stones, some of which came through the corrugated iron roof. One of the detainees, a doctor, treated the applicant's arm, which was still bleeding, with whatever he had to hand and bandaged it. One of the female prisoners (Mrs Vrahimi – see application no. 16078/90) was then beaten in front of the others, who remained silent, fearing for their own fate. A woman shouted that she was an American citizen and was released shortly afterwards.

12. While in the garage, the applicant was interrogated but refused to sign the statement, which was written in Turkish. The interrogation took place in Greek and touched mainly on political subjects. The next day, 20 July 1989, she and the other detainees were given food and at the same time photographed and filmed by a television crew.

13. Later that day, after being subjected to a body search, the applicant was taken to a court which remanded her in custody for two days. She was transferred with other women who had been arrested at the same time to the

Ortakeuy prison, where she was held in a cell with another woman. The conditions of detention were appalling, the cell was unbearably hot and during the night the applicant and the other detainees were constantly checked and counted by the guards and as a result, were unable to sleep. The applicant went on hunger strike.

14. During the evening of 21 July 1989 the applicant was taken to the Nicosia District Court for trial. The judge asked her and the other accused whether they wanted legal representation; they replied that they would only accept as defence counsel a lawyer registered with the bar association of the Republic of Cyprus. As a result, they were not assisted by a lawyer. The interpretation into Greek was poor and did not cover all the words used by the witnesses and the parties. Each time an accused tried to speak and give an explanation, she was interrupted. Although the applicant had never previously seen some of the exhibits that were produced at the trial (notably a pair of scissors, gloves and a saw), one of the prosecution witnesses said that he had found a penknife in her handbag. The applicant alleged that she had taken it with her to peel an apple and that the blade was not even two inches long. She tried to explain the position to the judge but was not allowed to. She showed her bandaged arm in order to complain about the beating she had suffered, but an officer replied that she could have injured herself by falling down. After the trial the applicant was taken back to prison.

15. On 22 July 1989 the court ordered the applicant to enter into a recognizance of 1,000,000 Turkish liras as a guarantee that she would not commit further breaches of the peace for a period of one year. The trial judge noted that it was the second time the applicant had illegally entered “TRNC” territory. Most of the accused, including the applicant, were also sentenced to 2 days’ imprisonment and a fine of 50 Cypriot pounds (CYP – approximately 85 euros (EUR)), with five additional days in prison in default of payment within 24 hours. After the public delivery of the judgment, they were returned to prison.

16. On 24 July 1989 the applicant was released and taken by bus to southern Cyprus.

17. As a result of the beating described above, three of the applicant’s vertebrae were damaged. The doctors told her that the condition of her central nerve was continuously deteriorating and that no surgery could be carried out.

B. The Government’s version of the events

18. The Government alleged that the applicant had participated in a violent demonstration with the aim of enflaming anti-Turkish sentiment. The demonstrators, supported by the Greek-Cypriot administration, were demanding that the “Green Line” in Nicosia should be dismantled. Some

carried Greek flags, clubs, knives and wire-cutters. They were acting in a provocative manner and shouting abuse. The demonstrators were warned in Greek and English that unless they dispersed they would be arrested in accordance with the laws of the “TRNC”. The applicant was arrested by the Turkish-Cypriot police after crossing the UN buffer zone and entering the area under Turkish-Cypriot control. The Turkish-Cypriot police intervened in the face of the manifest inability of the Greek-Cypriot authorities and the UN Force in Cyprus to contain the incursion and its possible consequences.

19. No force was used against demonstrators who did not intrude into the “TRNC” border area and, in the case of demonstrators who were arrested for violating the border, no more force was used than was reasonably necessary in the circumstances in order to arrest and detain the persons concerned. No one was ill-treated. It was possible that some of the demonstrators had hurt themselves in the confusion or in attempting to scale barbed wire or other fencing. Had the Turkish police, or anyone else, assaulted or beaten any of the demonstrators, the UN Secretary General would no doubt have referred to this in his report to the Security Council.

20. The applicant was charged, tried, found guilty and sentenced to a short term of imprisonment. She pleaded not guilty, but did not give evidence and declined to use the available judicial remedies. She was asked if she required assistance from a lawyer registered in the “TRNC”, but refused and did not ask for legal representation. Interpretation services were provided at the trial by qualified interpreters. All the proceedings were translated into Greek.

C. The UN Secretary General’s report

21. In his report of 7 December 1989 on the UN operations in Cyprus, the UN Secretary General stated, *inter alia*:

“A serious situation, however, arose in July as a result of a demonstration by Greek Cypriots in Nicosia. The details are as follows:

(a) In the evening of 19 July, some 1,000 Greek Cypriot demonstrators, mostly women, forced their way into the UN buffer zone in the Ayios Kassianos area of Nicosia. The demonstrators broke through a wire barrier maintained by UNFICYP and destroyed an UNFICYP observation post. They then broke through the line formed by UNFICYP soldiers and entered a former school complex where UNFICYP reinforcements regrouped to prevent them from proceeding further. A short while later, Turkish-Cypriot police and security forces elements forced their way into the area and apprehended 111 persons, 101 of them women;

(b) The Ayios Kassianos school complex is situated in the UN buffer zone. However, the Turkish forces claim it to be on their side of the cease-fire line. Under working arrangements with UNFICYP, the Turkish-Cypriot security forces have patrolled the school grounds for several years within specific restrictions. This

patrolling ceased altogether as part of the unmanning agreement implemented last May;

(c) In the afternoon of 21 July, some 300 Greek Cypriots gathered at the main entrance to the UN protected area in Nicosia, in which the UN headquarters is located, to protest the continuing detention by the Turkish-Cypriot authorities of those apprehended at Ayios Kassianos. The demonstrators, whose number fluctuated between 200 and 2,000, blocked all UN traffic through this entrance until 30 July, when the Turkish-Cypriot authorities released the last two detainees;

(d) The events described above created considerable tension in the island and intensive efforts were made, both at the UN headquarters and at Nicosia, to contain and resolve the situation. On 21 July, I expressed my concern at the events that have taken place and stressed that it was vital that all parties keep in mind the purpose of the UN buffer zone as well as their responsibility to ensure that that area was not violated. I also urged the Turkish-Cypriot authorities to release without delay all those who had been detained. On 24 July, the President of the Security Council announced that he had conveyed to the representatives of all the parties, on behalf of the members of the Council, the Council's deep concern at the tense situation created by the incidents of 19 July. He also stressed the need strictly to respect the UN buffer zone and appealed for the immediate release of all persons still detained. He asked all concerned to show maximum restraint and to take urgent steps that would bring about a relaxation of tension and contribute to the creation of an atmosphere favourable to the negotiations."

D. Photographs of the demonstration

22. The applicant produced 21 photographs taken at different times during the demonstration on 19 July 1989. Photographs 1 to 7 were intended to show that, notwithstanding the deployment of the Turkish-Cypriot police, the demonstration was peaceful. In photographs 8 to 10 members of the Turkish-Cypriot police are seen breaking up the UNFICYP cordon. The final set of photographs show members of the Turkish-Cypriot police using force to arrest some of the women demonstrators.

E. Documents pertaining to the applicant's trial

23. The English translation of the Nicosia District Court judgment of 22 July 1989 indicates that the applicant, together with 23 other women, was charged with two offences: entering "TRNC" territory without permission (contrary to sections 2, 8 and 9 of Law No. 5/72 – see paragraph 30 below) and entering "TRNC" territory other than through an approved port (contrary to subsections 12(1) and (5) of the Aliens and Immigration Law – see paragraph 31 below).

24. The judgment was given in the presence of the accused and of an interpreter. The trial judge noted the following:

- (i) the accused did not accept the charges against them and stated that they did not wish to use the services of a lawyer registered in the “TRNC”;
- (ii) some of the accused had fainted during the trial and had been taken to hospital and excused from attending the hearing;
- (iii) the public prosecutor called 7 witnesses, whose statements were translated into Greek for the accused’s benefit;
- (iv) the witnesses (mainly police officers on duty at the time of the demonstration) declared that the accused had illegally entered the “TRNC” buffer zone, shouted abuse at the Turkish-Cypriot forces, resisted arrest by pulling and pushing; knives and other cutting objects had been found in the bags of some of the demonstrators who had been arrested; in particular, the witnesses declared that the demonstrators had passed the barriers at the UN observation post, broken the wooden door of a church and moved toward a water reservoir; according to a map shown at trial, the area where the accused had entered was “TRNC” territory;
- (v) the accused did not call any defence witnesses and did not address the court;
- (vi) the accused had been told that they could cross-examine witnesses in turn and, if they so wished, choose one of their number to cross-examine the witnesses on behalf of all the accused; however, they had not done so;
- (vii) relying on the statements of the prosecution witnesses, the District Court came to the conclusion that the accused had crossed the borders of the “TRNC” at an unapproved entry point and without permission and had resisted by various means the UN and Turkish forces which had tried to stop them;
- (viii) the prosecution had proved its case beyond reasonable doubt, so that the accused were guilty on both counts;
- (ix) in deciding on the sentence, the District Court took into account the seriousness of the offence, and the fact that the accused had shown no remorse and continued to deny the validity of the “TRNC”.

II. RELEVANT DOMESTIC LAW

A. The Cypriot Criminal Code

25. Section 70 of the Cypriot Criminal Code reads as follows:

“Where five or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace they are an unlawful assembly.

It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

When an unlawful assembly has begun to execute the purpose, whether of a public or of a private nature, for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.”

26. According to section 71 of the Criminal Code, any person who takes part in an unlawful assembly is guilty of a misdemeanour and liable to imprisonment for one year.

27. Section 80 of the Criminal Code provides:

“Any person who carries in public without lawful occasion any offensive arm or weapon in such a manner as to cause terror to any person is guilty of a misdemeanour, and is liable to imprisonment for two years, and his arm or weapons shall be forfeited.”

28. According to Section 82 of the Criminal Code, it is an offence to carry a knife outside the home.

B. Police officers’ powers of arrest

29. The relevant part of Chapter 155, section 14 of the Criminal Procedure Law states:

"(1) Any officer may, without warrant, arrest any person -

...

(b) who commits in his presence any offence punishable with imprisonment;

(c) who obstructs a police officer, while in the execution of his duty ..."

C. Offence of illegal entry into “TRNC” territory

30. Section 9 of Law No. 5/72 states:

"... Any person who enters a prohibited military area without authorization, or by stealth, or fraudulently, shall be tried by a military court in accordance with the Military Offences Act; those found guilty shall be punished."

31. Subsections 12 (1) and (5) of the Aliens and Immigration Law read as follows:

“1. No person shall enter or leave the Colony except through an approved port.

...

5. Any person who contravenes or fails to observe any of the provisions of subsections (1), (2), (3) or (4) of this section shall be guilty of an offence and shall be

liable to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained about the treatment administered to her during both the demonstration of 19 July 1989 and the proceedings against her in the “TRNC”.

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.”

33. The Government disputed her claim.

A. Arguments of the parties

1. *The Government*

34. Relying on their version of the events (see paragraphs 18-20 above), the Government submitted that this part of the application should be determined on the basis of the Commission’s findings in the case of *Chrysostomos and Papachrysostomou v. Turkey* (applications nos. 15299/89 and 15300/89, Commission’s report of 8 June 1993, Decisions and Reports (DR) 86, p. 4), as the factual and legal bases of the present application were the same as in that pilot case. They argued that the third-party intervener should be considered estopped from challenging the Commission’s findings.

2. *The applicant*

35. The applicant submitted that her complaints were not identical to those raised in the *Chrysostomos and Papachrysostomou* case (cited above) but significantly different, both as regards the factual basis and the legal analysis. She essentially adopted the observations submitted by the Government of Cyprus (see below).

36. The applicant further observed that while engaged in a peaceful demonstration in an area within the UN buffer zone and manned by UNFICYP personnel, she had suffered a severe beating by Turkish police armed with electric batons. This constituted an excessive use of force. She added that she had not been provided with medical care and had been compelled to seek the assistance of a fellow detainee. The conditions of

detention were inhuman and degrading and failed to meet the minimal standards of hygiene to be expected in the civilized world. The trial judge had ignored the complaints of mistreatment at the hands of the police.

B. The third-party intervener's arguments

37. The Government of Cyprus submitted that the findings of the Commission in the case of *Chrysostomos and Papachrysostomou* (cited above) were not applicable to the present case. Whether the treatment suffered by the applicant violated Article 3 had to be examined and determined in light of the facts of the case and on the basis of the evidence provided.

38. The treatment endured by the applicant during her arrest and subsequent imprisonment and trial was of a very severe nature, including *inter alia* physical violence and punishment, exposure to violent and abusive crowds, inhuman and degrading conditions of detention (including solitary confinement and sleep deprivation) and humiliating and frightening treatment in court. Whether such treatment was viewed cumulatively or separately, it had caused severe physical and psychological suffering amounting to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

C. The Court's assessment

1. General principles

39. 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*, 8 January 1978, § 163, Series A no. 25; *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V; *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).

40. 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).

41. 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).

42. Measures depriving a person of his liberty may often involve such an element. Nevertheless, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI, and *Riviere v. France*, no. 33834/03, § 62, 11 July 2006).

43. 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 *Foka v. Turkey*, no. 28940/95, § 54, 24 June 2008, and, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336).

44. 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 un rebutted 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).

45. 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

46. It is undisputed that the applicant was arrested during a demonstration which gave rise to an extremely tense situation. It will be recalled that in the case of *Chrysostomos and Papachrysostomou*, the Commission found that a number of demonstrators had resisted arrest, that the police forces had broken their resistance and that in that context there was a high risk that the demonstrators would be treated roughly, and even suffer injuries, in the course of the arrest operation (see the Commission's report, cited above, §§ 113-115). The Court does not see any reason to depart from these findings and will take due account of the state of heightened tension at the time of the applicant's arrest.

47. It further observes that the applicant submitted that in the course of her arrest she was beaten all over her body (in particular on her head and back) with an electric baton (see paragraph 10 above). However, the Court does not have at its disposal any evidence to corroborate the applicant's version of events. As to the injury allegedly suffered by the applicant, notably permanent damage to three of her vertebrae (see paragraph 17 above), it is to be noted that she has failed to produce medical evidence showing the precise nature of her condition and its probable cause.

48. Under these circumstances, it has not been established that the applicant's injury was deliberately caused by the Turkish or Turkish-Cypriot police. In any event, it cannot be ruled out that the applicant's condition is consistent with a minor physical confrontation between her and the police officers. There is nothing to show that the police used excessive force when, as they allege, they were confronted in the course of their duties with resistance to arrest by the demonstrators, including the applicant.

49. The applicant's remaining allegations, concerning the conditions of her detention at the "Pavlidis garage" and at Ortakeuy Prison, are unsubstantiated. Nor has it been proved that the applicant's injuries required immediate medical assistance. The Court considers, moreover, that the degree of intimidation which the applicant might have felt while being deprived of her liberty did not attain the minimum level of severity required to come within the scope of Article 3.

50. 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 (see, *mutatis mutandis*, *Foka*, cited above, § 62).

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

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

52. The applicant alleged that her deprivation of liberty had been contrary to Article 5 of the Convention which, in so far as relevant, 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;

...

(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;

...

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.

...”

53. The Government disputed this claim.

A. Arguments of the parties

1. The Government

54. The Government submitted that the applicant had been arrested in accordance with the law of the “TRNC”, which protected the status and integrity of the UN buffer zone. The importance of preserving the buffer zone had been repeatedly pointed out by the UN Secretary General.

55. Given its violent character, the demonstration constituted an unlawful assembly. The Government referred, on this point, to sections 70, 71, 80 and 82 of the Cypriot Criminal Code, which was applicable in the “TRNC” (see paragraphs 25-28 above) and noted that under Chapter 155 of the Criminal Procedure Law (see paragraph 29 above), the police had power to arrest persons involved in violent demonstrations.

2. *The applicant*

56. The applicant considered that she had not taken part in a “riot”, but merely in a demonstration against the Turkish occupation of a sovereign territory.

B. The third-party intervener’s arguments

57. The Government of Cyprus observed that during the applicant’s initial arrest, subsequent detention and prison sentence following the court conviction, the applicant was denied her liberty in circumstances which did not follow a procedure prescribed by law and which were not lawful under Article 5 § 1 (a) and (c) of the Convention. Moreover, the authorities’ failure to inform the applicant of all the reasons for her arrest constituted a violation of Article 5 § 2.

C. The Court’s assessment

58. It is not disputed that the applicant, who was arrested and remanded in custody by the Nicosia District Court, was deprived of her liberty within the meaning of Article 5 § 1 of the Convention.

59. As to the question of compliance with the requirements of Article 5 § 1, the Court reiterates 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 *Benham v. the United Kingdom*, 10 June 1996, §§ 40 and 42, *Reports* 1996-III).

60. The Court further notes that in the case of *Foka v. Turkey* (cited above, §§ 82-84) it held that the “TRNC” was exercising a *de facto* authority over northern Cyprus and that the responsibility of Turkey for the acts of the “TRNC” was inconsistent with the applicant’s view that the measures adopted by it should always be regarded as lacking a “lawful” basis in terms of the Convention. The Court therefore concluded that when, as in the *Foka* case, an act of the “TRNC” authorities was in compliance with laws in force within the territory of northern Cyprus, it should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention. It does not see any reason to depart, in the instant case, from that finding, which is not in any way inconsistent with 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* [GC], no. 25781/94, §§ 14, 61, 90, ECHR 2001–IV).

61. In the present case, it is not disputed that the applicant took part in a demonstration which the authorities of the “TRNC” regarded as potentially being an “unlawful assembly” within the meaning of section 70 of the Cyprus Criminal Code (see paragraph 25 above). Taking part in an unlawful assembly is an offence under section 71 of the Cypriot Criminal Code and is punishable by up to one year’s imprisonment (see paragraph 26 above). It is also an offence under the “TRNC” laws to enter “TRNC” territory without permission and/or other than through an approved port (see paragraphs 30–31 above). The Court further notes that according to Chapter 155, section 14 of the Criminal Procedure Law, a police officer may, without warrant, arrest any person who commits in his presence any offence punishable with imprisonment or who obstructs a police officer while in the execution of his duty (see paragraph 29 above – see also *Chrysostomos and Papachrysostomou*, Commission’s report, cited above, § 147).

62. As the police officers who effected the arrest had grounds for believing that the applicant was committing offences punishable by imprisonment, the Court is of the opinion that she was deprived of her liberty in accordance with a procedure prescribed by law “for the purpose of bringing [her] before the competent legal authority on reasonable suspicion of having committed an offence”, within the meaning of Article 5 § 1 (c) of the Convention.

63. Moreover, there is no evidence that the deprivation of liberty served any other illegitimate aim or was arbitrary. Indeed, on 20 July 1989, the day after her arrest, the applicant was brought before the Nicosia District Court and remanded for trial in relation to the offence of illegal entry into “TRNC” territory.

64. After 22 July 1989, the date on which the Nicosia District Court delivered its judgment (see paragraph 15 above), the applicant’s deprivation of liberty should be regarded as the “lawful detention of a person after conviction by a competent court”, within the meaning of Article 5 § 1 (a) of the Convention.

65. Finally, it is to be observed that the applicant was interrogated by an official who spoke Greek on the day of her arrest (see paragraph 12 above). In the Court’s view, it should have been apparent to the applicant that she was being questioned about the trespassing of the UN buffer zone and her allegedly illegal entry into the territory of the “TRNC” (see, *mutatis mutandis*, *Murray v. the United Kingdom*, 28 October 1994, § 77, Series A no. 300-A). The Court therefore finds that the reasons for her arrest were sufficiently brought to her attention during her interview.

66. Accordingly, there has been no violation of Article 5 §§ 1 and 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

67. The applicant complained of a lack of fairness at her trial by the Nicosia District Court.

She invoked Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

68. The Government disputed this claim.

A. Arguments of the parties

1. The Government

69. The Government stated that:

(i) the applicant had been tried by an impartial and independent court;

(ii) all the cases before the court, including the applicant's, were divided into groups so as to ensure a speedy trial and help the accused in their defence;

(iii) the applicant had not asked for more time to prepare her defence, and had declined legal representation;

(iv) the court had advised the applicant and helped her to understand her rights and the procedure;

(v) everything at the trial had been interpreted during the proceedings by qualified translators and interpreters in order to ensure that the defence was

not prejudiced and the accused were fully informed of the charges against them;

(vi) in passing sentence the court had taken all the circumstances of the case into consideration.

70. The Government challenged the third-party intervener's arguments as being of a political nature. They considered that the allegations of a lack of fairness, independence and impartiality of the judiciary in the "TRNC" were without any foundation whatsoever. On the contrary, previous cases decided by the "TRNC" courts showed that they respected human rights and the Convention principles.

2. *The applicant*

71. The applicant submitted that in the light of the Court's judgment in the *Loizidou v. Turkey* case (see judgment of 18 December 1996 (merits), *Reports* 1996-VI), the legal basis upon which certain complaints in the case of *Chrysostomos and Papachrysostomou* had been dismissed by the Commission was no longer sustainable. The jurisprudence of the Court established that Turkey bore responsibility for all the acts of its subordinate local administration in northern Cyprus. Moreover, the objection of incompetence *ratione loci* raised by the Government in the present application had been rejected at the admissibility stage.

72. The applicant further noted that the Government had failed to provide an adequate answer to her complaints relating to the serious deficiencies of her trial. She emphasised that:

- (i) she had not been promptly informed, in a language which she could understand, of the nature and cause of the accusation against her;
- (ii) she had not been given adequate time and facilities for her defence;
- (iii) she had not been permitted to engage a lawyer of her own choosing;
- (iv) the judge had impeded any attempts to seriously cross-examine witnesses;
- (v) the translation of the proceedings had been very poor.

73. In her submission, her interrogation had been a political exercise in intimidation of the detainees, as evidenced by the fact that nothing said during the investigation was subsequently used at the trial.

B. The third-party intervener's arguments

74. The Government of Cyprus submitted that the instant application was an exceptional case in which the applicant had been denied each and all of the basic fair-trial guarantees provided for in Article 6 of the Convention. The violations of her rights included *inter alia* a failure to inform the applicant promptly, in a language that she understood, of the nature and cause of the accusation against her, to provide her with adequate time and facilities to find a lawyer of her own choosing and to prepare her defence, to

allow the cross-examination of witnesses and to provide the applicant with proper interpretation and a transcript of the trial.

75. The applicant had not been permitted to engage a lawyer of her choice, but was asked only at the commencement of the trial if she wished to use a lawyer registered in the ‘TRNC’. No indication had been given to her that such a lawyer would provide legal assistance free of charge. In any case, legal advice should have been offered well in advance of the commencement of the trial. Lastly, there was proof beyond reasonable doubt that the “court” which tried the applicant was neither impartial nor fair.

C. The Court’s assessment

76. The Court first observes that in its decision on the admissibility of the application it rejected the objections of incompatibility *ratione materiae* and *ratione loci* raised by the respondent Government. In particular, it concluded that, in view of the overall control exercised by Turkey over the “border zone” and of the principles laid down in *Loizidou v. Turkey* (cited above), the violations alleged by the applicant were imputable to the respondent Government. It is therefore necessary to examine the applicant’s complaints under Article 6 of the Convention.

1. General Principles

77. As the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the complaint under both provisions taken together (see, among other authorities, *Van Geyseghem v. Belgium*, no. 26103/95, § 27, ECHR 1999-I, and *Poitrimol v. France*, 23 November 1993, § 29, Series A no. 277-A).

78. Under paragraph 3 (a) of Article 6 of the Convention, any person charged with a criminal offence has the right “to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him”. Whilst this provision does not specify that the relevant information should be given in writing or translated in written form for a foreign defendant, it does point to the need for special attention to be paid to the notification of the “accusation” to the defendant. An indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on notice of the factual and legal basis of the charges against him or her. A defendant not familiar with the language used by the court may be at a practical disadvantage if the indictment is not translated into a language which he or she understands (see *Sejdovic v. Italy* [GC], no. 56581/00, § 89, 1 March 2006; *Kamasinski v. Austria*, 19 December 1989, § 79, Series A no. 168; and *Tabaï v. France* (dec.), no. 73805/01, 17 February 2004).

79. In addition, paragraph 3 (e) of Article 6 states that every defendant has the right to the free assistance of an interpreter. That right applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings. This means that an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him or her which it is necessary for him or her to understand or to have rendered into the court's language in order to have the benefit of a fair trial (see *Luedicke, Belkacem and Koç v. Germany*, 28 November 1978, § 48, Series A no. 29).

80. However, paragraph 3 (e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. In that connection, it should be noted that the text of the relevant provisions refers to an "interpreter", not a "translator". This suggests that oral linguistic assistance may satisfy the requirements of the Convention (see *Husain v. Italy* (dec.), no. 18913/03, 24 February 2005). The fact remains, however, that the interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him or her and to defend himself or herself, notably by being able to put before the court his or her version of the events (see *Güngör v. Germany* (dec.), no. 31540/96, 17 May 2001). In view of the need for that right to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided (see *Kamasinski*, cited above, § 74).

81. The Court has held that, in the context of application of paragraph 3 (e), the issue of the defendant's linguistic knowledge is vital and that it must also examine the nature of the offence with which the defendant is charged and any communications addressed to him or her by the domestic authorities, in order to assess whether they are sufficiently complex to require a detailed knowledge of the language used in court (see *Hermi v. Italy* [GC], no. 18114/02, § 71, 10 October 2006).

82. Lastly, it is to be recalled that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his or her own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial (see *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000). However, such a waiver must, if it is to be effective for Convention purposes, be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance (see *Poitrimol*, cited above, § 31). In addition, it must not run counter to any important public interest (see *Hermi*, cited above, § 73, and *Håkansson and Stureson v. Sweden*, 21 February 1990, § 66, Series A no. 171-A).

2. *Application of the above principles to the present case*

83. In the instant case the applicant was remanded for trial before the Nicosia District Court. An interpreter was present at the hearing on 21 July 1989. Even if the Court has no information on which to assess the quality of the interpretation provided, it observes that it is apparent from the applicant's own version of the events that she understood the charges against her and the statements made by the witnesses at the trial (see paragraph 14 above). In any event, it does not appear that she challenged the quality of the interpretation before the trial judge, requested the replacement of the interpreter or asked for clarification concerning the nature and cause of the accusation.

84. The Court furthermore notes that the accused were offered the opportunity of using the services of a member of the local Bar Association, of calling defence witnesses and of cross-examining the prosecution witnesses in turn, appointing, if they so wished, one of their number to act on behalf of the others. However, they chose not to avail themselves of any of these rights.

85. The Court considers that the applicant was undoubtedly capable of realising the consequences of her decision not to make use of any of the procedural rights which were offered to her. Furthermore, it does not appear that the dispute raised any questions of public interest preventing the aforementioned procedural guarantees from being waived (see, *mutatis mutandis*, *Hermi*, cited above, § 79, and *Kwiatkowska*, cited above).

86. The Court also emphasises that the accused did not request an adjournment of the trial or a translation of the written documents pertaining to the procedure in order to acquaint themselves with the case-file and to prepare their defence. There is nothing to suggest that such requests would have been rejected. The same applies to the possibility, which was not taken up by the accused, of lodging an appeal or an appeal on points of law against the Nicosia District Court's judgment.

87. Finally, the Court cannot accept, as such, the allegation that the "TRNC" courts as a whole were not impartial and/or independent or that the applicant's trial and conviction were influenced by political aims (see, *mutatis mutandis*, *Cyprus v. Turkey*, cited above, §§ 231-240).

88. In the light of the above, and taking account in particular of the conduct of the accused, the Court considers that the criminal proceedings against the applicant, considered as a whole, were not unfair or otherwise contrary to the provisions of the Convention.

89. It follows that there has been no violation of Article 6 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

90. The applicant submitted that she had been convicted in respect of acts which did not constitute a criminal offence.

She invoked Article 7 of the Convention, which reads as follows:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

91. The Government disputed this claim. They alleged that the applicant had been charged with violating the borders of the “TRNC” and her conviction was based on the evidence of eye-witnesses. She should have known that by violating the UN buffer zone and the cease-fire line she would provoke a response by the UN or Turkish-Cypriot forces.

92. The Government of Cyprus submitted that the applicant had been wrongly tried for acts which did not amount to offences under national or international law, and which in any event failed to meet the standards of foreseeability and accessibility required by the Convention (see *G. v. France*, 27 September 1995, Series A no. 325-B), in violation of Article 7 of the Convention.

93. The Court reiterates that Article 7 of the Convention embodies, in general terms, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and prohibits in particular the retrospective application of the criminal law where it is to an accused’s disadvantage (see *Kokkinakis v. Greece*, 25 May 1993, § 52, Series A no. 260-A). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused’s detriment, for instance by analogy. It follows that offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts’ interpretation of it, what acts and omissions will make him criminally liable (see, among other authorities, *Achour v. France* [GC], no. 67335/01, § 41, 29 March 2006, and *Cantoni v. France*, 15 November 1996, § 29, *Reports* 1996-V).

94. When speaking of “law” Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law as well as case-law and implies qualitative requirements, including those of accessibility and foreseeability (see, among other authorities, *E.K. v. Turkey*, no. 28496/95, § 51,

7 February 2002, and *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 145, ECHR 2000-VII). In this respect, the Court recalls its finding that when, as in the *Foka* case, an act of the “TRNC” authorities was in compliance with laws in force within the territory of northern Cyprus, it should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention (see paragraph 60 above).

95. The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision (see *Achour*, cited above, § 43).

96. In the present case, the applicant was convicted for having entered the territory of the “TRNC” without permission and other than through an approved port. These offences are defined in Law No. 5/72 and subsections 12(1) and (5) of the Aliens and Immigration Law (see paragraphs 30-31 above).

97. It is not disputed that these texts were in force when the offences were committed and were accessible to the applicant. The Court furthermore finds that they described with sufficient clarity the acts which would have made her criminally liable, thus satisfying the requirement of foreseeability. There is nothing to suggest that they were interpreted extensively or by way of analogy; the penalty imposed (two days imprisonment and a fine of CYP 50 – see paragraph 15 above) was within the maximum provided for by the law in force at the time the offence was committed.

98. It follows that there has been no violation of Article 7 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

99. The applicant complained of a violation of her right to freedom of peaceful assembly.

She invoked Article 11 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

100. The Government disputed this claim.

A. Arguments of the parties

1. The Government

101. The Government considered that given its violent character, the demonstration was clearly outside the scope of Article 11 of the Convention. The “TRNC” police had intervened in the interests of national security and/or public safety and for the prevention of disorder and crime.

2. The applicant

102. The applicant submitted that the demonstration was peaceful and constituted a mere exercise of her rights under Articles 9, 10 and 11 of the Convention.

B. The third-party intervener’s arguments

103. The Government of Cyprus submitted that the applicant’s right to demonstrate under Article 11 of the Convention had been interfered with in an aggravated and serious manner. The acts of the respondent Government were a deliberate and provocative attempt to disrupt a lawful demonstration in an area which was subject to UN patrols and not even within the claimed jurisdiction of the “TRNC”. The interference with the applicant’s rights was not prescribed by law and was an excessive and disproportionate response to a peaceful and lawful demonstration. The respondent Government had not identified any legitimate aim that they were seeking to serve by assaulting the applicant.

C. The Court’s assessment

104. The Court notes that the applicant and other women clashed with Turkish-Cypriot police while demonstrating in or in the vicinity of the Ayios Kassianos school in Nicosia. The demonstration was dispersed and some of the demonstrators, including the applicant, were arrested. Under these circumstances, the Court considers that there has been an interference with the applicant’s right of assembly.

105. This interference had a legal basis, namely sections 70 and 71 of the Cypriot Criminal Code (see paragraphs 25-26 above) and section 14 of the Criminal Procedure Law (see paragraph 29 above), and was thus “prescribed by law” within the meaning of Article 11 § 2 of the Convention. In this respect, the Court recalls its finding that when, as in the *Foka* case, an act of the “TRNC” authorities was in compliance with laws in force

within the territory of northern Cyprus, it should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention (see paragraphs 60 and 94 above). There remain the questions whether the interference pursued a legitimate aim and was necessary in a democratic society.

106. The Government submitted that the interference pursued legitimate aims, including the protection of national security and/or public safety and the prevention of disorder and crime.

107. The Court notes that in the case of *Chrysostomos and Papachrysostomou*, the Commission found that the demonstration on 19 July 1989 was violent, that it had broken through the UN defence lines and constituted a serious threat to peace and public order on the demarcation line in Cyprus (see Commission's report, cited above, §§ 109-110). The Court sees no reason to depart from these findings, which were based on the UN Secretary General's report, on a video film and on photographs submitted by the respondent Government before the Commission. It emphasises that in his report, the UN Secretary General stated that the demonstrators had "forced their way into the UN buffer zone in the Ayios Kassianos area of Nicosia", that they had broken "through a wire barrier maintained by UNFICYP and destroyed an UNFICYP observation post" before breaking "through the line formed by UNFICYP soldiers" and entering "a former school complex" (see paragraph 21 above).

108. The Court refers, firstly, to the fundamental principles underlying its judgments relating to Article 11 (see *Djavit An v. Turkey*, no. 20652/92, §§ 56-57, ECHR 2003-III; *Piermont v. France*, 27 April 1995, §§ 76-77, Series A no. 314; and *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32, Series A no. 139). It is clear from this case-law that the authorities have a duty to take appropriate measures with regard to demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see *Oya Ataman v. Turkey*, no. 74552/01, § 35, 5 December 2006). However, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (see *Plattform "Ärzte für das Leben"*, cited above, § 34).

109. While an unlawful situation does not, in itself, justify an infringement of freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III (extracts)), interferences with the right guaranteed by Article 11 of the Convention are in principle justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others where, as in the instant case, demonstrators engage in acts of violence (see, *a contrario*, *Bukta and Others v. Hungary*, no. 25691/04, § 37, 17 July 2007, and *Oya Ataman*, cited above, §§ 41-42).

110. The Court further observes that, as stated in the UN Secretary General's report of 7 December 1989 (see paragraph 21 above), the demonstrators had forced their way into the UN buffer zone. According to

the “TRNC” authorities, they also entered into “TRNC” territory, thus committing offences punished by the “TRNC” laws (see paragraphs 30-31 and 60 above). In this respect, the Court notes that it does not have at its disposal any element capable of casting doubt upon the statements given by some witnesses at trial according to which the area where the accused had entered was “TRNC” territory (see paragraph 24 (iv) above). In the Court’s view, the intervention of the Turkish and/or Turkish-Cypriot forces was not due to the political nature of the demonstration but was provoked by its violent character and by the violation of the “TRNC” borders by some of the demonstrators.

111. In these conditions and having regard to the wide margin of appreciation left to the States in this sphere (see *Plattform “Ärzte für das Leben”*, cited above, § 34), the Court holds that the interference with the applicant’s right to freedom of assembly was not, in the light of all the circumstances of the case, disproportionate for the purposes of Article 11 § 2.

112. Consequently, there has been no violation of Article 11 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

113. The applicant alleged that she had not had at her disposal a domestic effective remedy to redress the violations of her fundamental rights.

She invoked Article 13 of the Convention, which reads as follows:

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

114. The Government disputed this claim.

A. Arguments of the parties

1. *The Government*

115. In their observations of 10 January 2003, the Government observed that the applicant, who had failed to use the domestic remedies available within the legal system of the “TRNC”, could not complain of a violation of Article 13 of the Convention.

2. *The applicant*

116. The applicant submitted that even if the remedies existing in the “TRNC” had theoretically been available to her, it could not be seriously suggested that after having gone through the mockery of a criminal “trial”

she should be required to exhaust any rights of appeal which might have existed. As she had been put on show before a tribunal which had ignored the most basic concepts of justice, the applicant had to be considered to have been absolved from the obligation to try any domestic remedy. It would be wholly unrealistic to suggest that she should have stayed in northern Cyprus in order to engage in a legal struggle. In any event, as far as the reference made by Turkey to existing domestic remedies in the “TRNC” could be interpreted as an objection of inadmissibility for non-exhaustion, this objection had been raised after the application was declared admissible.

B. The third-party intervener’s arguments

117. The Government of Cyprus submitted that, contrary to Article 13 of the Convention, no effective remedies had at any time been available to the applicant in respect of any of her complaints. Alternatively, the institutions established by the “TRNC” were incapable of constituting effective domestic remedies within the national legal system of Turkey.

C. The Court’s assessment

118. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, among many other authorities, *Kudla*, cited above, § 157).

119. The scope of the Contracting States’ obligations under Article 13 varies depending on the nature of the applicant’s complaint; however, the remedy required by Article 13 must be “effective” in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term “effective” is also considered to mean that the remedy must be adequate and accessible (see *Vidas v. Croatia*, no. 40383/04, § 34, 3 July 2008, and *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII).

120. It is also to be recalled that in its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 14, 16, 90 and 102) the Court held that for the purposes of Article 35 § 1, with which Article 13 has a close affinity (see *Kudla*, cited above, § 152), remedies available in the “TRNC” may be regarded as “domestic remedies” of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises.

121. In the present case, it does not appear that the applicant attempted to make use of the remedies which might have been available to her in the

“TRNC” with regard to the circumstances of her arrest, her subsequent detention and her trial (see, *mutatis mutandis*, *Chrysostomos and Papachrysostomou*, Commission’s report cited above, § 174). In particular, she refused the services of a lawyer practising in the “TRNC”, made little or no use of the procedural safeguards provided by the Nicosia District Court, did not lodge an appeal against her conviction and did not file with the local authorities a formal complaint about the ill-treatment she allegedly suffered at the hands of the Turkish-Cypriot police. The applicant’s allegation that she had shown her bandaged arm to the trial judge (see paragraph 14 above) cannot be considered tantamount to such a formal complaint. In the Court’s view, there is no evidence that, had the applicant made use of all or part of them, these domestic remedies would have been ineffective.

122. Under these circumstances, no breach of Article 13 of the Convention can be found.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

123. The applicant alleged that she had been discriminated against on the grounds of her ethnic origin and religious beliefs in the enjoyment of the rights guaranteed by Articles 5, 6 and 7 of the Convention.

She invoked Article 14 of the Convention, which reads as follows:

“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.”

124. The Government disputed this claim.

125. The Government of Cyprus submitted that the applicant had been arrested, beaten and prosecuted by the authorities solely because of her nationality and ethnic origin. That differential treatment was a clear violation of Article 14 of the Convention.

126. The Court’s case-law establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory (see *Unal Tekeli v. Turkey*, no. 29865/96, § 49, 16 November 2004).

127. In the present case the applicant failed to prove that she had been treated differently from other persons – namely, from Cypriots of Turkish origin – who were in a comparable situation. The Court also refers to its conclusion that the applicant’s fundamental rights under Articles 3, 5, 6, 7, 11 and 13 of the Convention have not been infringed (see, *mutatis mutandis*, *Manitaras v. Turkey* (dec.), no. 54591/00, 3 June 2008).

128. It follows that there has been no violation of Article 14 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 3 of the Convention;
2. *Holds* unanimously that there has been no violation of Article 5 of the Convention;
3. *Holds* unanimously that there has been no violation of Article 6 of the Convention;
4. *Holds* unanimously that there has been no violation of Article 7 of the Convention;
5. *Holds* unanimously that there has been no violation of Article 11 of the Convention;
6. *Holds* by six votes to one that there has been no violation of Article 13 of the Convention;
7. *Holds* unanimously that there has been no violation of Article 14 of the Convention.

Done in English, and notified in writing on 24 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Bratza is annexed to this judgment.

N.B.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE BRATZA

1. I have voted with the majority of the Chamber on all aspects of the case save as to their conclusion under Article 13 of the Convention to the effect that the applicant had at her disposal effective domestic remedies in the “TRNC” to challenge her arrest, detention and trial within the territory and to assert her complaint about the ill-treatment which she allegedly suffered at the hands of the Turkish-Cypriot police.

2. As is noted in the judgment (§ 119), the remedy required by Article 13 to deal with the substance of an “arguable complaint” under the Convention must be “effective” in practice as well as in law. As is further noted (judgment, § 120), the Court held in the case of *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001-IV) that for the purposes of Article 35 § 1, with which Article 13 has a close affinity, remedies available in the “TRNC” may be regarded as “domestic remedies” of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises.

3. The Court in its *Cyprus v. Turkey* judgment did not in fact reject any of the applicant Government’s complaints for failure to exhaust domestic remedies; instead it used the considerations which it had developed under former Article 26 of the Convention (now, Article 35) when considering the effectiveness of remedies from the standpoint of Article 13. The Court held that effective remedies were available within the “TRNC” legal system in respect of three complaints only: the complaint of interferences by private persons with the rights of Greek-Cypriots living in Northern Cyprus under Article 8 of the Convention and Article 1 of Protocol No. 1 (§ 324); the complaint relating to the treatment of Turkish-Cypriots living in Northern Cyprus, who were political opponents of the “TRNC” regime; and the complaint relating to the treatment of the Gypsy community living in Northern Cyprus (§ 383). In the case of the first of these complaints, the respondent Government had produced evidence in support of their contention that court remedies were available and highlighted the successful claims brought by a number of Greek-Cypriot litigants. In the case of the latter two complaints, the Court observed that the applicant Government had not succeeded in refuting the respondent Government’s submissions in the proceedings before the Commission that remedies were available to aggrieved individuals within the “TRNC” legal system.

4. In the present case, I note at the outset that, despite their assertion that the remedies available to the applicant in the courts of the “TRNC” were effective in law and practice, the respondent Government at no stage argued that the application was inadmissible on the grounds that the applicant had failed to exhaust those domestic remedies by, for instance, challenging her arrest or detention, lodging an appeal against her conviction or filing a formal complaint about her alleged ill-treatment at the hands of the Turkish-

Cypriot police. This omission is particularly striking having regard to the Government's reliance on the view of the Commission in its Report in the related case of *Chrysostomos and Papachrysostomos v. Turkey* that the applicants were unable to complain of a violation of Article 13 since they had not availed themselves of the remedies existing within the legal system of the "TRNC".

5. Whatever the reasons for this omission, I consider, contrary to the view of the Commission in the earlier case, that there were no effective remedies, in the sense of remedies which were available to the applicant and practicable in the particular circumstances of the present case. In contrast to the three categories of case where the Court in its *Cyprus v. Turkey* judgment found the remedies to be effective, the present applicant was a Greek-Cypriot who lived in the Government-controlled part of southern Cyprus and who was not ordinarily resident in northern Cyprus at the time of the events in question. On the contrary, she had crossed the UN buffer zone as part of a demonstration to express support for the missing persons in the "TRNC" and to protest against human rights violations by the very authorities of the "TRNC" which were responsible for her arrest and detention and for the alleged acts of ill-treatment. Having been tried for illegally entering "TRNC" territory, sentenced to two days' imprisonment and fined and having served her sentence, the applicant was, immediately on her release, removed by bus to the Government-controlled part of Cyprus.

6. In these specific circumstances, even if it could be said that remedies to complain of her treatment by the authorities in the "TRNC" were theoretically available within the domestic legal system in that territory, I do not consider that they can be regarded as practicable or effective or that there was any realistic prospect that the applicant could successfully have invoked them.