

EUROPEAN COMMISSION OF HUMAN RIGHTS

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| Application No. 15299/89 | Application No. 15300/89 |
| Metropolitan Chrysostomos, Bishop of Kitium | Archimandrite Georgios Papachrysostomou |
| against Turkey | against Turkey |

REPORT OF THE COMMISSION

(adopted on 8 July 1993)

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I. INTRODUCTION

1. The following is an outline of the case, as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The applications

2. The first applicant, Metropolitan Chrysostomos, Bishop of Kitium, was born in 1938 and resides at Larnaka. The second applicant, Archimandrite Georgios Papachrysostomou, was born in 1949 and resides at Nicosia. Both applicants are Cypriot citizens. They are represented by Dr. K. Chrysostomides, a lawyer practising in Nicosia.

3. The applications are directed against Turkey. The respondent Government were initially represented by their Agent, Prof. S. Bilge, and subsequently by their Acting Agent, Mr. S. Özmen, both of the Ministry of Foreign Affairs. They are now represented by their Agent, Prof. B. Çaglar.

4. The applications concern the applicants' deprivation of liberty and their subsequent conditions of detention and proceedings against them in the northern part of Cyprus in July 1989. The applicants allege violations of Articles 1, 3, 5, 6, 7, 9 and 13 of the Convention. They claim that their detention and all other acts complained of were carried out by Turkish military forces stationed in the northern part of Cyprus or by forces acting under their authority.

B. The proceedings

5. The applications were introduced on 21 July and registered on 25 July 1989.

6. On 9 November 1989 the Commission ordered the joinder of the present applications and of Application No. 15318/89 (Titina Loizidou v. Turkey). It further decided to bring the applications to the notice of the respondent Government and to invite them to submit written observations on the applications. The Government's observations were filed on 28 February 1990. The applicants' observations in reply were filed on 6 May 1990.

7. On 5 October 1990 the Commission decided to invite the parties to a hearing.

8. The applicants filed further written submissions on 18 December 1990.

9. At the hearing on 11 January 1991 the respondent Government were represented by Prof. S. Bilge as Agent, Prof. H. Golsong and Prof. E. Lauterpacht as Counsel and by Mr. M. Özmen and Dr. D. Akçay, both of the Ministry of Foreign Affairs, and Mr. D. Bethlehem,

Barrister, as Experts. The applicants were represented by Dr. K. Chrysostomides and Prof. I. Brownlie, Q.C. and Mrs. C. Pitsilli-Dekatris, Barrister, as Counsel. The first applicant was also present.

10. On 4 March 1991 the Commission declared the applications admissible.

11. The respondent Government were then invited to submit their observations on the merits of the applications. Under cover of a letter of 7 May 1991 they submitted a memorandum requesting the Commission "to re-open the proceedings on the admissibility" of the applications and "to find that each of them is inadmissible". The applicants' comments on this request were filed on 24 May 1991.

12. On 30 May 1991 the Commission found no legal basis for the respondent Government's request. It invited the Government to submit their observations on the merits, including their evidence, no later than 29 July 1991. At the Government's request this time-limit was subsequently extended to 30 September 1991.

13. In a letter transmitted on 25 September 1991, the respondent Government informed the Commission that they would not participate in any further proceedings concerning the present applications.

14. On 16 October 1991 the Commission adopted an Interim Report on the present state of the proceedings in which it requested the Committee of Ministers to urge Turkey, as a High Contracting Party to the Convention, to meet its obligations and accordingly to participate in the Commission's examination of the merits of the present applications, as required by Article 28 para. 1.

15. On 19 December 1991 the Committee of Ministers adopted Resolution DH (91) 41, in which it urged Turkey, as a High Contracting Party to the Convention, to meet its obligations and accordingly to participate in the Commission's examination of the merits of the present applications as required by Article 28, para. 1.

16. On 14 January 1992 the Commission decided to take oral evidence of the applicants, and of the witnesses proposed by them, at a hearing before delegated members of the Commission in the presence of the parties in Strasbourg; and to invite the parties to file, within a time-limit of six weeks, such further observations as they wished to make.

17. On 9 April 1992 the Commission appointed its Delegation for the hearing of witnesses. It decided to include in the list of witnesses to be examined the persons proposed in the respondent Government's submissions of 28 February 1992. Two further witnesses, one proposed by the respondent Government in a letter of 29 April and one proposed by the applicants in a letter of 30 April 1992, were added to the list on 19 May 1992. Further submissions in writing were filed by the respondent Government on 20 May and by the applicants on 5 June 1992.

18. At the hearing on 9 and 10 June 1992 the Delegation (MM. Frowein, Busuttil and Pellonpää) heard the applicants, nine witnesses proposed by the applicants and eleven witnesses proposed by the respondent Government.

19. On 7 July 1992 the Commission decided to hold a hearing on the merits of the applications. Further submissions in writing were filed by the applicants on 21 September and by the respondent Government on 1 October 1992.

20. At the hearing on 4 December 1992 the applicants were represented by Dr. Chrysostomides, Prof. Brownlie and Mrs. Pitsilli-Dekatris. The respondent Government were represented by Prof. B. Çağlar as Agent,

Mr. Özmen, Dr. Akçay, Prof. Golsong and Mr. A. Sait as Counsel, and Mrs. G. Erönen, Mr. O. Örek and Mrs. I. Tokcan as Experts. During the hearing the parties were given the opportunity to make supplementary submissions under Article 8 of the Convention with regard to the applicants' complaint concerning their arrest. A video film submitted by the applicants and a video film submitted by the respondent Government were shown. At the end of the hearing the Commission accepted, as further written submission, a "Note d'Audience" filed by the respondent Government shortly before the hearing and invited the parties to file, before 31 January 1993, such final submissions in writing as they might wish to make.

21. On 7 December 1992 the Commission decided to disjoin the present applications from Application No. 15318/89 (cf. para. 6 above) and to invite the respondent Government to provide further information concerning the alleged legal basis for the applicants' arrest and conviction. The applicants' final submissions were dated 27 January and those of the Government 29 January 1993.

22. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

23. The present Report has been drawn up by the Commission in pursuance of Article 31 para. 1 of the Convention and after deliberations and votes in plenary session, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Sir Basil HALL
MM. C.L. ROZAKIS
M.P. PELLONPÄÄ

24. The text of this Report was adopted on 8 July 1993 and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

25. The purpose of the Report, pursuant to Article 31 of the Convention, is:

- i) to establish the facts, and
- ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

26. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the applications as Appendix II.

27. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular circumstances of the case

1. The demonstration on 19 July 1989

28. The applicants participated as clergymen in a demonstration of some 1.000 Greek Cypriots, mostly women, which took place in the Saint (Ayios) Kassianos area of Nicosia/Cyprus on 19 July 1989. The demonstration, details of which are in dispute between the parties, has been the subject of a report by the Secretary-General, and of a declaration by the President of the Security Council, of the United Nations (see below para. 42).

29. The applicants state that the demonstration was organised by the "Women's Pancyprian Movement 'Epistrophe' ('Return)". It aimed at proclaiming the refugees' right to return to their homes in the northern part of Cyprus. GODEK, the women's organisation of the Democratic Party, organised a memorial service in the Church of Saint Kassianos which lies in the area controlled by the Republic of Cyprus but which is within walking distance from the United Nations buffer-zone. The two applicants held the religious service. The demonstration then proceeded peacefully to conduct prayers in the derelict Church of Saint George which is situated in the buffer-zone, in a former school complex of the Saint Kassianos area.

30. The respondent Government state that the demonstration was designed as an attack against the buffer-zone and the territory of the "Turkish Republic of Northern Cyprus". The demonstrators broke through barbed wire and through the defence line of the United Nations Force in Cyprus (UNFICYP). They entered the territory of the "Turkish Republic of Northern Cyprus" carrying a Greek and a Cypriot flag.

31. The applicants further state that Turkish military personnel in camouflage uniforms and blue berets and policemen wearing riot gear appeared on the scene. The personnel in police uniforms carried anti-riot gear, electrically charged clubs and perspex shields and wore helmets. The personnel in camouflage uniforms carried sub-machine-guns and pistols. Members of the Turkish Security Forces were also on the scene, wearing camouflage uniforms and green berets and carrying bayonets. The Turkish military and other personnel broke through the UN soldiers line that had been formed in front of the women and drove the UN soldiers away. They "cleared" the area in front of the school buildings and moved into the yard and chapel of Saint George, rounding up and cornering the women and the applicants inside the ruins of the chapel. The Turkish forces fell upon the applicants pulling them by their robes, their beards, hitting them, kicking them, spitting on them, swearing at them and dragging them on the ground. The applicants and many women were led by force into the Turkish occupied area of Nicosia through a hostile mob that inflicted further blows and insults upon them.

32. The respondent Government state that the Turkish Cypriot Police intervened in the face of the manifest inability of the Greek Cypriot authorities and of UNFICYP to contain the intrusion and its possible consequences. No Turkish forces were involved. The demonstrators were warned in Greek and English that unless they dispersed they would be arrested. The applicants were lawfully arrested in accordance with the law of the "Turkish Republic of Northern Cyprus", which is in relevant parts based on legislation enacted under British rule. The arrest took place on the territory of the "Turkish Republic of Northern Cyprus", not in the buffer-zone. This status of the area in question was recognised in the Unmanning Agreement of 1989. During the arrest operation only the necessary force was used. No one was ill-treated.

2. The applicants' detention and the proceedings against them

33. The applicants state that they were transported by buses to a hall made of corrugated iron known as "Pavliades Garage". During their journey, they were subjected to further abuse by the persons who had detained them and by the civilian mob that had gathered and threatened to lynch them. They were sworn at and their rank was abused. Whilst detained at the Pavliades Garage, the prisoners were kept waiting for long hours into the night and some of them until the following morning, without any food or water. They were made to sit and sleep on the ground, they were not offered any medical attention and they were prohibited from talking among themselves. The Turkish forces did nothing to protect the detainees from the hostile mob that had gathered outside threatening the detainees, throwing stones on the corrugated iron roof (some of which broke through and fell into the garage on to the persons detained). At one stage the mob even pushed its way forcibly into the garage before being pushed back by the Turkish forces in charge.

34. The respondent Government state that the applicants were taken to a place formerly known as "Pavliades Garage" which has been reconstructed, is used for sports activities and now known as "Basaran Sports Hall". All the arrested people were treated properly. They were not subjected to any force, torture or ill-treatment. Members of UNFICYP were present. Nobody tried to lynch the applicants, cursed or spat at them.

35. The applicants further state that, from Pavliades Garage, they were transported to a Police Station where they spent the rest of the night hours after being subjected to further humiliating treatment from their captors. They were then presented to a "Court", transported to a prison and put into tiny cells that could not accommodate all prisoners. The detainees were locked up in cells together with Turkish prisoners serving long sentences for murder and manslaughter. The prison cells were extremely dirty, the conveniences provided were filthy and no toilet paper was provided. Whilst in prison, the applicants were harassed by their guards who would wake them up in the middle of the night or during their afternoon rest to take their photographs, to count them, to take their fingerprints or to open files for them.

36. The respondent Government state that the applicants were brought before the District Court, remanded in custody and taken to the State prison, accompanied by members of UNFICYP. The State prison was constructed in 1982, with up to date facilities and accommodation. During their stay in the State prison the prisoners were provided with all their requirements and necessities, including toilet papers, sanitary-towels etc. UNFICYP were constantly in touch with them and free to supply them with additional requirements, if needed. The applicants were constantly under medical control of both the United Nations and Local Medical Officers and all their requirements in this connection were met. They were never kept with other criminals and definitely not with those serving long sentences for murder or manslaughter.

37. The applicants further state that they were not allowed to pray in prison. The prison authorities did not allow the objects and wares used in the conduct of mass or the robes that were sent to the first applicant to be handed over to him so that he could conduct holy service and take holy communion. They did not allow the first applicant to conduct service for the benefit of the women detainees. The applicants' private prayers were disrupted by the prison guards who would put on loud music through the loudspeakers or would turn on the T.V. On days of regular fasting under the Greek Orthodox religion the applicants were provided with meat and other food that they could not take. Their religion and rank were ridiculed and affronted by their captors. The applicants went on a hunger strike as from 24 July 1989 until the time of their release. During this period they were provoked

and filmed or photographed with food on their bed side tables which had been placed there by their prison guards.

38. The respondent Government state that, during their detention, the applicants could exercise their religion individually, but under the 1959 Prison Rules they were not entitled to conduct mass. The rules are applied in the same way in Southern Cyprus and to Muslim clerics in Northern Cyprus.

39. The applicants finally state that they were forced to appear before a "Court" where they were charged with "illegal entry" into the Turkish occupied areas of Cyprus. They were "tried" and "sentenced" by a "Court" which had no legitimate existence or jurisdiction over them. The proceedings were held in Turkish with a scanty translation into Greek. The interpreter told the prisoners "I translate whatever I like". The persons who "testified" were replaying a rehearsed scenario in order to prove the detainees' alleged guilt.

40. The respondent Government state that the applicants were tried by the Nicosia District Court on 21 July 1989. At the trial two interpreters were present, who translated all proceedings into Greek. The United Nations observers were also present throughout the trial. The applicants refused the services of a lawyer registered in the "Turkish Republic of Northern Cyprus". They were convicted on the charge of unauthorised entry into the territory of the "Turkish Republic of Northern Cyprus", contrary to section 20 of the Criminal Code, chapter 154 and sections 2, 8 and 9 of Act No. 5/72, as amended by Act No. 14/73 and Regulation No. 119, issued in March 1989 under section 11 of the Act and the Prohibited Military Areas Decree of 1979; and on the charge of entry into the territory of the "Turkish Republic of Northern Cyprus" at an unauthorised crossing point, contrary to section 20 of the Criminal Code, chapter 105 and section 12 (1) (5) of the Aliens and Immigration Act, as amended by Act No. 21/82 and the "Notification" No. 267/49 under sections 3 and 21 of the same Act. The applicants were sentenced to three days imprisonment and to a fine of 100 Cyprus pounds, to be replaced by ten days in prison if the fine were not paid within 24 hours.

41. The applicants were released on 30 July 1989.

B. The evidence before the Commission

1. Evidence concerning the demonstration on 19 July 1989

a) The report of the Secretary-General of the United Nations

42. In his report of 7 December 1989 - Security Council document S/21010 - on the United Nations Operation in Cyprus (for the period 1 June - 4 December 1989) the Secretary-General of the United Nations referred to the demonstration on 19 July 1989 in the following terms (at paras. 10-13):

"10. During the period under review, the number of cease-fire violations remained at a low level. In Nicosia, the unmanning of positions implemented in May 1989 (S/20663, para. 14) had a positive effect and the number of incidents was the lowest since 1974. UNFICYP pursued its efforts to extend the unmanning to other positions.

11. 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 United Nations 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 United Nations 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 United Nations protected area in Nicosia, in which the United Nations 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 United Nations 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 United Nations Headquarters and at Nicosia, to contain and resolve the situation. On 21 July, I expressed my concern at the events that had taken place and stressed that it was vital that all parties keep in mind the purpose of the United Nations 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 United Nations 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.

12. During the period under review, there were three other occasions on which Greek Cypriot demonstrators entered the United Nations buffer zone.

...

13. The problem posed by demonstrators who violate the United Nations buffer zone has been the subject of numerous contacts at all levels between the United Nations and the Government of Cyprus ... In those contacts the United Nations made clear that it was obliged, under the UNFICYP mandate, to oppose activities in the buffer zone that were bound to provoke the other side and that entailed the risk of incidents. The United Nations pointed out that UNFICYP was neither mandated nor organized to assume responsibilities that fell within the competence of the civilian authorities. Accordingly, the United Nations expected the Government to give clear guidance to the population and to ensure that the police took effective measures to prevent demonstrators from entering the United Nations buffer zone."

b) Witnesses

43. The evidence of the persons heard as witnesses by three Delegates of the Commission (cf. para. 18 above) may be summarised as follows:

aa The first applicant

44. The first applicant, when heard as a witness, stated that, when proceeding to the derelict church of Saint George in the neutral zone, he saw that the barbed wire had been removed. He was greeted by two UNFICYP soldiers and entered the church through a breach in the ruins next to the main door which was sealed. The congregation in the church was attacked by armed forces, speaking Turkish and bearing the insignia of the Turkish army, and by Turkish Cypriot police speaking Turkish and Greek. The second applicant was hit with clubs. They pulled at his beard and kicked him on the legs. The first applicant was hit at his head, which fell on the floor. When he bent to pick it up they kicked him with their knees and hit him with their clubs. That left marks on him which disappeared. His spectacles fell off. A policeman twisted his hand, forcing him to advance to the bus. On his way he was insulted and spat at by civilians. One civilian gave him a punch on the right ear, causing an injury later seen by a Turkish doctor in the prison; his spectacles fell off. The wound, which he showed to a doctor in prison, closed after about five days. When interviewed on television while in prison he declared: "They grossly ill-treated us when we were arrested, so we can't complain of our treatment in prison."

bb The second applicant

45. The second applicant, when heard as a witness, stated that the congregation was attacked by police forces followed by soldiers wearing camouflage uniforms which had no distinctive insignia showing whether they came from Turkey. While people were arrested outside the church the first applicant said to the women in the church they should not be afraid, no arrests would be made in the church. The second applicant stood with outstretched arms in front of the women in the church in order to give them a chance to leave. He was beaten with electrified clubs and insulted. They pulled his beard and tore out hairs, threw him to the floor, kicked him and tore his outer robe and trampled on his hat. After about ten minutes they managed to tear him away from the women and to break his resistance. On his way to the bus he was insulted and spat at by civilians. A dark-skinned soldier wearing camouflage uniform punched him in the face and his spectacles fell off. His feet were swollen from the kicks received and he could neither wear shoes nor walk nor lie down in bed. For a long time thereafter he had a lump on his left leg. He complained to the Turkish interrogator and to UNFICYP of the treatment received and asked the doctor for medicine.

cc Witnesses proposed by the applicants

(1) Witness A. Moysesos

46. The witness, referring to photographs he had taken of the incident on 19 July 1989, stated that Turkish soldiers and police intervened. The soldiers were in camouflage uniforms like those worn by UNFICYP. The police wore khaki uniforms like those worn by the Greek Cypriot police.

(2) Witness A. Panayotou

47. The witness, Chief Inspector of the Cypriot Police, identified several persons in camouflage uniforms, appearing on photographs of the incident on 19 July 1989, as members of the Turkish army. He referred to a badge on the side of their berets and to paratroopers' insignia worn by one of these persons. He stated that the control posts on the northern side of the demarcation line in Nicosia were manned by Turkish

Cypriots.

(3) Witness M. Papadopoulou

48. The witness, President of GODEK (cf. para. 29 above), stated that the demonstration on 19 July 1989 was peaceful. The demonstrators were unarmed. Their only weapons were a Cypriot flag symbolising their state and a Greek flag symbolising their identity. The witness could not say whether those arresting her were Turkish Cypriots or Turks from Turkey. She was hit with electrified clubs. They were still hitting the second applicant when they put him on the bus.

(4) Witness P. Constantinou

49. The witness, a journalist, stated that Turkish soldiers, and Turkish Cypriot police intervened on 19 July 1989. They were wearing different uniforms and he could not tell exactly what they were. Inside the derelict church everyone was trying to avoid the blows of the Turks and there was a dense crush. Turks grabbed the second applicant, cursed him, spat at him, pulled him by the beard, tore his robes and dragged him along. The first applicant was treated in the same way. The witness received a blow with an electrically charged club. At the back of the church there was a door which was boarded up. The women who were behind the church managed to break down the door and to make an opening in it through which some women in the church managed to escape.

(5) Witness Dr. A. Constantinides

50. The witness, a surgeon, stated that he was present on 19 July 1989 to provide medical assistance. Soldiers in camouflage uniform and policemen intervened. He was ill-treated. He later saw the applicants in prison. The first applicant had a haematoma and a crushed injury to his right temple region coming down to his right ear. The second applicant had obvious injuries inside his beard caused by two types of violence: one was the haemorrhages in the roots of the hair, small haemorrhages and small reaction of the hair; this could have been caused only by pulling of the beard. The second type of injury was wide bruises, which could have been caused by hitting with blunt instruments. He also had a large haematoma over his left tibia which could have been caused by kicking or hitting with a blunt instrument.

(6) Witness A. Panayi

51. The witness, a worker, stated that Turkish Cypriot police addressing her in Greek and soldiers in camouflage uniform speaking Turkish intervened on 19 July 1989. She was hit with an electrically charged club. The second applicant was hit and spat at. They pulled his beard, threw him to the ground and kicked him.

(7) Witness C. Souglidou

52. The witness stated that, during the peaceful demonstration on 19 July 1989, Turkish soldiers and policemen intervened when the United Nations forces withdrew. They used electrified clubs. The second applicant stretched out his arms to protect the women. The Turks hit him, pulled his beard and threw him to the floor. When the demonstrators were taken to the bus the security forces neither restrained nor encouraged the aggressive crowd.

(8) Witness K. Filaniotou

53. The witness stated that the second applicant was beaten and his robes were torn by the soldiers and police forces who intervened during the peaceful demonstration on 19 July 1989. She later saw the Archimandrite holding a tuft of hair from his beard.

(9) Witness E. Tryphonos

54. The witness stated that no United Nations forces were present when she arrived at the area of the demonstration. The intervening forces used electrified clubs. They hit the witness and the second applicant.

dd Witnesses proposed by the respondent Government

(1) Witness H. Yücelen

55. The witness, a retired police officer, stated that he was on duty on 19 July 1989, wearing a normal police uniform without weapons or clubs. Police forces in riot gear, police forces of the mobile unit and soldiers of the commando unit of the Security Forces of Northern Cyprus in camouflage uniforms as well as infantry of the Security Forces were also present. Turkish Cypriot soldiers are posted in the inhabited areas, Turkish soldiers in the uninhabited areas. Army commandos from Northern Cyprus and from Turkey wear the same camouflage uniform.

56. The witness further stated that he proceeded with his team of 20 unarmed policemen towards the demonstrators, an angry crowd assembled in the courtyard under a big Greek flag and a Cypriot flag. Ten or twelve Canadian UNFICYP soldiers, linking arms and facing the witness, were swaying, trying to hold back that crowd. The witness said to one of the Canadians that the demonstrators should withdraw. The Canadian replied "Give me a minute's chance". The witness warned the demonstrators to leave the area. A United Nations speaker told the UNFICYP soldiers "Let the police do their job". About twenty men of the police mobile unit intervened, followed by other forces. Some of the UNFICYP soldiers could get away, others came into conflict with the advancing police. About 40 demonstrators were then arrested by the police and many fled. The arrest operation was interrupted to give those retreating a chance to leave. Half an hour later the witnesses ordered the arrest of those persons - between 100 and 150 - who were still in the courtyard or the church and who refused to comply with his order to leave. In the tightly packed church no clubs could be used. The applicants were not beaten. The witness was present at the first applicant's arrest and saw the second applicant being taken away. Many of the demonstrators escaped through a hole in the church wall.

(2) Witness E. Çetinsel

57. The witness, a Land Register Official, produced a map of the site of the incident of 19 July 1989.

(3) Witness E. Merttürk

58. The witness, Chief Police Inspector in Northern Cyprus, stated that 98 women and ten men were arrested on 19 July 1989. The following objects were found in bags of the demonstrators: five wire-cutters, four pairs of gloves, two bread knives, two iron saw blades, a screw-driver, a hammer and a chisel. He referred to a photograph showing the cutting of a barbed wire and stated that it had not been possible to determine whether any of the arrested persons had used these instruments in getting through the barbed wire.

(4) Witness R. Cantas

59. The witness, Chief Police Inspector in Northern Cyprus at the relevant time, stated that the Director General of Police is under the authority of the Prime Minister. For certain activities the police force receives instructions from the Commander of the Security Forces who is also under the authority of the Prime Minister. At Basaran Sports Hall (cf. para. 34 above) the handbags of arrested demonstrators were searched in front of UNFICYP. They contained wire-cutters, knives, special gloves, batteries and other objects. He noticed no injuries on the arrested persons.

(5) Witness E. Nasit

60. The witness, a Captain of the Turkish Cypriot Security Forces who graduated from the Military College in Turkey, produced a maquette of the site of the incident of 19 July 1989. He stated that the Turkish Cypriot Security Forces are on duty in all inhabited areas. They are under the command of a General detached from Turkey under contract - the same system is practised in southern Cyprus. Under the unmanning agreement the Turkish Cypriot soldiers were withdrawn but their flags and guard posts were to stay in position. Army commandos from Northern Cyprus and from Turkey wear the same camouflage uniform for intelligence purposes so that their respective locations are not known.

61. The witness further stated that on 19 July 1989 the Turkish Cypriot police dealt with the Greek Cypriot demonstrators, who had entered the buffer-zone and the demilitarised part of the Turkish sector. The demonstrators overturned barbed wire barriers, passed the UNFICYP barricade and attacked the sentry boxes. They broke down gates and cut railings and barbed wire. UNFICYP - altogether about 30 people in the area - were unable to evacuate the Greek Cypriot demonstrators. The Turkish Cypriot soldiers controlled the Turkish crowd that came from the other side and assisted in keeping the area secure. The witness protected the applicants against the Turkish crowd. He saw no injuries on the applicants. There were no Turkish armed forces in the area of the incident; some may have been elsewhere in or near Nicosia. On photographs of soldiers in camouflage uniforms, he could recognise Turkish Cypriots whom he knew.

(6) Witness V. Karabudak

62. The witness, Chief Inspector and Commander of the mobile forces of the Turkish Cypriot police, stated that he is under the authority of the Director General of Police. The Director General comes under the authority of the Prime Minister or, for joint activities, under the authority of the Commander of the Security Forces. The mobile forces of the police and a special unit of the Security Forces do joint training and exercises. Where necessary the mobile forces receive support from the special unit.

63. The witness further stated that on 19 July 1989 he acted under the order of the Director General. He and his team of 20 men were wearing camouflage uniforms. They had infantry rifles, bayonets and sub-machine guns and intervened jointly with Mr. Yücelen's police team (cf. para. 56 above), which made the arrest. The Turkish Cypriot soldiers stood in reserve, no Turkish soldiers were present. Army commandos from Northern Cyprus and from Turkey wear the same camouflage uniform. The witness saw the applicants' arrest in the derelict church. There was a tremendous confusion. People were pushing and shoving, some were injured in the crush. A number of demonstrators resisted their arrest. They sat on the ground and kicked and hit out at police officers. The only force used was what was needed to break this resistance. As far as the witness could see, no clubs were used. The witness ordered members of his team to protect the applicants; no violence was used against them.

(7) Witness A. Sait

64. The witness, Chief Public Prosecutor, stated that he received no complaint of ill-treatment from the applicants. He further stated that an offence committed by a member of the Turkish armed forces in Cyprus against a citizen of the Turkish Republic of Northern Cyprus on its territory would be prosecuted in the courts of this republic.

(8) Witness H. Önen

65. The witness, a Senior Prosecutor at the relevant time and in

charge of the applicants' trial, stated that he saw no injuries on the first applicant, who was wearing his headdress, nor on the second applicant. No complaint was made. The first applicant declared in court: "We have nothing to say to the court of a state we do not recognise."

(9) Witness G. Erönen

66. The witness, President of the District Court, stated that the judicial system in the "Turkish Republic of Northern Cyprus" is based on the English system of procedure and evidence as it stood in 1963. The applicants looked reasonably healthy and did not mention any injury when she saw them in court. They did not invoke the Convention. The courts do not apply the Convention as such, but most of its articles are embodied in the constitution of the "Turkish Republic of Northern Cyprus".

(10) Witness K. Demir

67. The witness, Director of the Central Prison, stated that he did not notice any injuries on the applicants and they did not complain of any. The applicants arrived in the afternoon of 20 July 1989 and were examined by a doctor the following day. No injuries were recorded. The applicants were visited by UNFICYP every day and by the Red Cross. A doctor came to the prison every day. The witness submitted the prison records.

(11) Witness Y. Özkum

68. The witness, an officer of the "Police General Directorate of the Turkish Republic of Northern Cyprus", stated that he saw no signs of any injury when he saw the applicants in court. They were in very good health.

c) Other evidence

69. The parties have submitted video films (cf. para. 20 above) and photographs of the incident on 19 July 1989 (cf. paras. 44, 46, 47, 58 and 61 above and Appendix III to this Report), a maquette (cf. para. 60 above) and maps of the site (cf. para. 57 above) and further documents.

2. Evidence concerning the applicants' detention and the proceedings against them

a) Witnesses

70. The evidence of the persons heard as witnesses (cf. para. 18 above) may be summarised as follows:

aa The first applicant

71. The first applicant, when heard as a witness, confirmed the submissions made in his application (see paras. 33, 35, 37, 39 and 40 above).

bb The second applicant

72. The second applicant, when heard as a witness, confirmed the submissions made in his application (see paras. 33, 35, 37, 39 and 40 above).

cc Witnesses proposed by the applicants

(1) Witness Dr. A. Constantinides

73. The witness (cf. para. 50 above) stated that no medical assistance was provided at Pavlides Garage.

(2) Witness E. Tryphonos

74. The witness (cf. para. 54 above) stated that, during her detention, her request for permission to attend a mass to be held by the first applicant was refused by the prison authorities. She could hear the voice of the first applicant until the guards turned on the radios.

dd Witnesses proposed by the respondent Government

(1) Witness E. Mertürk

75. The witness (cf. para. 58 above) stated that, on 19 July 1989 at "Basaran Sports Hall", he interrogated the arrested demonstrators.

(2) Witness R. Cantas

76. The witness (cf. para. 59 above) stated that members of UNFICYP were present when the interrogations were carried out by the Police at "Basaran Sports Hall".

(3) Witness A. Sait

77. The witness (cf. para. 64 above) stated that he ordered the investigation and the proceedings against the applicants. Most of the time the applicants were under observance by UNFICYP. The courts of the "Turkish Republic of Northern Cyprus" are also competent to try Turkish soldiers who commit crimes in Northern Cyprus.

(4) Witness H. Önen

78. The witness (cf. para. 65 above) stated that he was in charge of the proceedings against the applicants. He applied for their detention on remand for three days, but the judge authorised such detention only for two days.

(5) Witness G. Erönen

79. The witness (cf. para. 66 above) described the system of criminal procedure in the "Turkish Republic of Northern Cyprus" and stated that, at their trial, the applicants were granted the rights of defence.

(6) Witness K. Demir

80. The witness (cf. para. 67 above) gave evidence as to the applicants' detention in prison and submitted a copy of the prison register. He stated that the applicants could exercise their religion individually. However, like all other detainees, they were not entitled to conduct religious services. They were seen by a doctor every day and granted a number of privileges, e.g. concerning visits, prison uniforms and prison discipline.

b) Other evidence

81. The respondent Government have submitted photographs and further documents (cf. para. 80 above).

C. The relevant domestic law

1. Procedural law

82. Criminal Procedure Law, Chapter 155, Section 14 (legislation enacted in Cyprus under British rule and still in force today) 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 ..."

2. Substantive law relied on by the respondent Government

83. Aliens and Immigration Law (1952), Section 12

"(1) No person shall enter or leave the Colony except through an approved port.

(2) A person entering the Colony by sea shall not disembark without the consent of the immigration officer ...

(3) Every person entering the Colony as a passenger by air shall forthwith present himself in person to the nearest immigration officer.

...

(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."

84. Prohibited Military Areas Decree of 1979

(translation)

"Section 3: Definitions

a. Prohibited military areas:

(1) Military area No. 1:

This area is situated between the frontier (contact line) and the line picked out by the markings placed at a distance of 500 metres from the frontier (contact line).
..."

"Section 9

... 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."

D. Agreement on Unmanning of Positions in Sensitive Areas in Nicosia (1989)

85. The origin of this agreement has been described in the following terms (report of the Secretary-General of the United Nations of 31 May 1989 - Security Council document S/20663 - on the United Nations Operation in Cyprus, for the period 1 December 1988 - 31 May 1989, at para. 14):

"14. In Nicosia, where the troops of both sides are in close proximity to each other, UNFICYP continued its efforts to reduce the dangers inherent in this situation. Following the shooting of a Turkish Cypriot soldier on 11 December 1988 ..., UNFICYP proposed to both sides that they unman their forward military positions and cease patrolling in three sensitive areas in Nicosia, with a view to keeping their troops further apart and thereby reducing the risk of incidents. After a series of

discussions between UNFICYP and each of the two sides, the proposal was accepted by both. It was subsequently implemented on 17 May 1989."

86. The text of the agreement is as follows:

"1. The military forces in Nicosia will move further apart in sensitive areas by unmanning the positions and ceasing patrolling in the areas shown on the two attached maps. There will be no change to the current cease-fire lines and the existing positions need not be dismantled.

2. All personnel, military equipment, weapons and ammunition will be removed.

3. Flags will remain in their current positions.

4. Maintenance work and maintenance checks of the unmanned positions by the respective Force will take place using the current access points and routes. Under normal circumstances, maintenance in the vacated areas will be conducted during seven consecutive days within a three month period. Maintenance checks to identify the maintenance requirement may be carried out by two officers once every three weeks. These checks will last no longer than half a day. To ensure proper co-ordination, each Force will provide at local level relevant details to UNFICYP, at least 24 hours in advance, in accordance with the current procedures. Emergency maintenance, including replacing damaged flags, can be conducted as necessary with one hour's notice to UNFICYP.

5. UNFICYP will observe the unmanned areas from the present UN observation posts and patrol routes in the Buffer Zone. UNFICYP will advise both Forces of new observation posts, patrol routes and additional lighting which it may need to ensure adequate observation.

6. UNFICYP will investigate complaints by either Force concerning violations of this agreement. Both Forces will co-operate with UNFICYP in the investigation. Should it be necessary to view the location in question during the course of the investigation, UNFICYP will request access to the area in accordance with established practices. UNFICYP will convey its findings to both Forces. In case a violation persists, the other Force will be free to take proportionate action in the area concerned.

7. The above agreement will be adhered to by both Forces in good faith. The agreement is without prejudice to the positions and claims of the parties concerned regarding the areas in question."

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

87. The Commission has declared admissible the applicants' complaints concerning their arrest on 19 July 1989 and their subsequent detention and the proceedings against them. In its decision on the admissibility (see below p. 84, paras. 61 and 62) the Commission noted the applicants' claim that the acts complained of "were carried out by Turkish military forces stationed in the northern part of Cyprus, or by forces acting under their authority", and the respondent Government's statement "that Turkish forces did not intervene during the events of 19 July 1989 and had nothing to do with those events".

B. Points at issue

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

1. with regard to the applicants' arrest:
 - a) whether there has been a violation of Article 3 (Art. 3) of the Convention in respect of the first applicant;
 - b) whether there has been a violation of Article 3 (Art. 3) of the Convention in respect of the second applicant;
 - c) whether there has been a violation of Article 8 (Art. 8) of the Convention in respect of the first applicant;
 - d) whether there has been a violation of Article 8 (Art. 8) of the Convention in respect of the second applicant;
 - e) whether there has been a violation of Article 5 (Art. 5) of the Convention in respect of the first applicant;
 - f) whether there has been a violation of Article 5 (Art. 5) of the Convention in respect of the second applicant;
2. whether the applicants' detention after their arrest and the proceedings against them were in violation of the Convention;
3. whether there has been a violation of Article 13 (Art. 13) of the Convention.

89. The applicants have also invoked Article 1 (Art. 1) of the Convention, but the Commission considers that a violation of this article cannot be alleged in proceedings under Article 25 (Art. 25) (cf. No. 5493/72, Dec. 4.4.74, Collection 45 p. 23 at pp. 52 f.).

C. The arrest of the applicants

1. Imputability

90. The applicants submit that, given the occupation of northern Cyprus by Turkey, the activities of the authorities in northern Cyprus are imputable to Turkey, irrespective of whether they are Cypriot authorities or a lawful dependency of the Government of Turkey. Turkish involvement is not a necessary but a sufficient condition. The applicants consider that they have submitted evidence of direct Turkish involvement.

91. The respondent Government submit that no involvement of Turkish military forces in the border incident on 19 July 1989 has been established and that any act of jurisdiction exercised by the authorities of the "Turkish Republic of Northern Cyprus" is attributable to that de facto regime.

92. The Commission has examined whether the acts complained of are imputable to Turkey, either on the ground that Turkish armed forces were directly involved in the arrest of the applicants, or on the ground that this operation was controlled by Turkey.

93. As regards direct involvement of Turkish armed forces in the arrest of the applicants, the Commission notes that the Secretary-General of the United Nations, in his report on the incident at para. 11(a), stated that "Turkish Cypriot police and security forces elements forced their way into the area", and that Turkish armed forces

are not mentioned in this context (see para. 42 above). Witnesses proposed by the applicants (see para. 47 above) and by the respondent Government (see para. 55 above) have indicated that Turkish Cypriot soldiers are posted in inhabited border areas such as Nicosia. According to a witness proposed by the respondent Government, Turkish soldiers are stationed in the uninhabited border areas (see para. 55 above).

94. There is conflicting evidence by witnesses as to the presence of Turkish soldiers on the site of the demonstration. Thus the first applicant has stated that he was attacked by armed forces bearing the insignia of the Turkish army and by Turkish Cypriot police (see para. 44 above). The second applicant has stated that he was attacked by police forces followed by soldiers wearing camouflage uniforms which had no distinctive insignia showing whether they came from Turkey (see para. 45 above). A witness, who was not present at the incident, has identified several persons in camouflage uniforms, appearing on photographs taken at the incident, as members of the Turkish army. Three witnesses proposed by the respondent Government have stated that army commandos from Northern Cyprus and from Turkey wear the same camouflage uniforms (see paras. 55, 60 and 63 above). This is done for intelligence purposes (see para. 60). One of these witnesses stated that no Turkish forces were in the area of the incident on 19 July 1989; on photographs of soldiers in camouflage uniforms, taken on that day, he could recognise Turkish Cypriots whom he knew (see para. 61 above).

95. The Commission notes the admitted practice that for intelligence purposes Turkish and Turkish Cypriot soldiers wear the same camouflage uniforms. It considers that this practice constitutes a deliberate tactic of disguise aimed at preventing the public from distinguishing between actions by Turkish and actions by Turkish Cypriot soldiers. The Commission must take this practice into account when determining the responsibility of Turkey for the applicants' arrest in the light of the above conflicting evidence as to the presence of Turkish soldiers on the site of the demonstration, given the uncontested presence of Turkish Cypriot soldiers in that area.

96. As regards overall control of the arrest operation by Turkey, the Commission recalls that, in its decision on the admissibility (see below p. ..., para. 32), it has held that the application of the Convention extends beyond national frontiers of the Contracting States and includes acts of State organs abroad. The term "jurisdiction" in Article 1 (Art. 1) is not equivalent to or limited to the national territory. The High Contracting Parties are bound to secure the rights and freedoms defined in Section 1 to all persons under their actual authority and responsibility, whether that authority is exercised within their territory or abroad. Authorised agents of a State, including armed forces, not only remain under its jurisdiction when abroad but also bring any other persons "within the jurisdiction" of that State to the extent that they exercise authority over such persons.

97. The Commission notes that Turkish armed forces have entered Cyprus and that they operate under the direction of the Turkish Government and under established rules governing the structure and command of these armed forces. It follows that these armed forces are authorised agents of Turkey and that they bring any other persons in Cyprus "within the jurisdiction" of Turkey, in the sense of Article 1 (Art. 1) of the Convention, to the extent that they exercise control over such persons. Therefore, insofar as these armed forces, by their acts or omissions, affect such persons' rights or freedoms under the Convention, the responsibility of Turkey is engaged (cf. *ibid.*).

98. The Commission further recalls that the Government of the Republic of Cyprus have since 1974 been prevented from exercising their jurisdiction in the north of the island. This restriction is due to the

presence of Turkish armed forces in northern Cyprus (cf. para. 33 of the decision on the admissibility in the present case and No. 18270/91, Dec. 8.10.91, An v. Cyprus). The respondent Government submit that the presence of their armed forces in the "Turkish Republic of Northern Cyprus" is justified both under the Treaty of Guarantee of 1960 and by the wish of the "Turkish Republic of Northern Cyprus".

99. The Commission is not called upon to pronounce on the validity of either of these alleged justifications under general international law. It considers that, in fact, the actual control in the border area is exercised by Turkish armed forces. This does not mean that Turkish armed forces are present all along the buffer-zone in Cyprus. It is sufficient for such overall control that they are either stationed there or capable to intervene.

100. The Commission notes in this connection that Turkish armed forces are normally stationed in uninhabited border areas. It appears that, in the inhabited area of Nicosia close to the site of the demonstration, Turkish Cypriot soldiers were on guard on 19 July 1989. Turkish armed forces, if not present in that area, were elsewhere in or near Nicosia (cf. para. 61 above) and could thus intervene.

101. The Commission further notes that the Turkish Cypriot Security Forces are under the command of a General detached from Turkey (cf. para. 60 above).

102. In the light of the above elements the Commission, recalling the tactic of disguise pursued in the use of camouflage uniforms by Turkish and Turkish Cypriot soldiers (cf. para. 96 above) and noting the overall control exercised by Turkey in the border area (cf. para. 100 above), finds that the applicants' arrest in the border area on 19 July 1989 is imputable to Turkey.

2. Articles 3 and 8 (Art. 3,8) of the Convention

103. With regard to their treatment during their arrest the applicants allege breaches of Article 3 (Art. 3) of the Convention which provides as follows:

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

104. The Commission has considered the applicants' complaint concerning their treatment during their arrest also under Article 8 (Art. 8) of the Convention (cf. para. 20 above), which provides as follows:

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

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

105. In the present case the Commission is confronted with different versions as regards both the context and the nature of the treatment to which the applicants were subjected in the course of their arrest.

106. The applicants claim that the demonstration on 19 July 1989 was peaceful one and that their treatment was brutal. They submit that in the course of their arrest Turkish forces fell upon them pulling them by their robes, their beards, hitting them, kicking them, spitting on them, swearing at them and dragging them on the ground. The applicants

were led by force into the Turkish occupied area of Nicosia through a hostile mob that inflicted further blows and insults upon them.

107. The respondent Government state that the demonstration was designed as an attack against the buffer-zone and the territory of the "Turkish Republic of Northern Cyprus". During the arrest operation only the necessary force was used. The applicants were treated properly. There was no ill-treatment.

108. The Commission has considered the following elements:

a) The character of the demonstration

109. As regards the nature and scope of the demonstration, the Commission notes the evidence contained in the report of the Secretary-General of the United Nations, who stated that a "serious situation" arose "as a result" of this demonstration and described its details as follows (cf. para. 42 above):

"In the evening of 19 July, some 1,000 Greek Cypriot demonstrators, mostly women, forced their way into the United Nations 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;"

110. In the light of the above report, of a video film (cf. para. 20 above) and of photographs submitted by the respondent Government (cf. para. 58 above), the Commission accepts as substantially correct the description of the demonstration by witnesses proposed by the respondent Government (cf. paras. 56 and 61 above). The Commission finds that the demonstration on 19 July 1989 was violent, that it broke through United Nations defence lines and that it constituted a serious threat to peace and public order on the demarcation line in Cyprus. This danger was increased by the arrival on the scene of Turkish Cypriot counter-demonstrators coming from the north of Nicosia.

b) The situation at the place of the applicants' arrest

111. The report of the Secretary-General of the United Nations does not describe the applicants' arrest.

112. The video films and the photographs submitted do not show the situation in the derelict church at the time of the applicants' arrest. Insofar as they provide evidence as to the arrest of other demonstrators, the Commission finds no clear indication of ill-treatment.

113. According to a witness proposed by the applicants, there was "a dense crush" in the derelict church at the time of the applicants' arrest (see para. 49 above). Similarly, two witnesses proposed by the respondent Government described the place as "tightly packed" (see para. 56 above) and stated that people were "pushing and shoving" (see para. 63 above).

114. It further appears that a number of demonstrators, including the second applicant (cf. his statement at para. 45 above), resisted their arrest (cf. para. 63 above), and that the mobile police forces, intervening in riot gear, broke their resistance (cf. paras. 45 and 63 above).

115. In this context there was in the Commission's view a high risk

that demonstrators, including the applicants, would be treated roughly, and even suffer injuries, in the course of the arrest operation.

c) The treatment of the applicants during their arrest -
evaluation of the evidence

aa General

116. The Commission notes the conflicting evidence: on the one hand, the applicants' own statements (at paras. 44 and 45 above), the statement of a witness, proposed by the applicants, that he saw marks of their injuries (at para. 50 above) and the statements of other witnesses proposed by the applicants (at paras. 48-50, 52-54 above); on the other hand the statements by witnesses proposed by the respondent Government that no injuries were inflicted (at paras. 56 and 63) and that no marks were noticed or recorded (at paras. 59 and 65-68).

117. The Commission considers that the applicants, like other demonstrators heard as witnesses, must have been so deeply affected by their arrest that their description of the arrest operation may be somewhat exaggerated.

118. The Commission further considers that particular weight should be given to the medical evidence of a witness proposed by the applicants concerning findings he made when he saw the applicants in prison after the arrest operation (see para. 50 above).

bb The first applicant

119. The above medical witness, a Greek Cypriot surgeon, stated that the first applicant, when the witness saw him in prison, had a haematoma and a crushed injury to his right temple region coming down to his right ear (see para. 50 above).

120. The Commission accepts this evidence as correct. It considers, however, that this injury was not inflicted by the police forces who arrested the applicant, but by a Turkish Cypriot demonstrator (cf. paras. 44 and 61 above). It has not been established that the infliction of this injury by the demonstrator was deliberately tolerated by the police forces.

cc The second applicant

121. The Commission notes the statement by the Greek Cypriot surgeon that the second applicant, when the witness saw him in prison, had obvious injuries inside his beard caused by two types of violence: one was the haemorrhages in the roots of the hair, small haemorrhages and small reaction of the hair; this could have been caused only by pulling of the beard. The second type of injury was wide bruises, which could have been caused by hitting with blunt instruments. The second applicant also had a large haematoma over his left tibia which could have been caused by kicking or hitting with a blunt instrument (cf. para. 50 above).

122. The Commission further notes the second applicant's statement (at para. 45 above) that he resisted arrest and that his resistance was broken after about ten minutes, and the statements of several witnesses proposed by the second applicant, that he was pulled by his beard (cf. paras. 49 and 51-53 above).

123. The Commission considers that the second applicant has suffered the injuries described by the Greek Cypriot surgeon (see para. 50 above).

124. In this connection, the Commission notes in particular the medical evidence concerning the injuries suffered by the second

applicant in his beard (see para. 121 above).

125. The Commission considers the above injuries as established, both as regard their nature and their cause.

d) Application of Article 3 (Art. 3) of the Convention to the facts established

aa General

126. The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 39, para. 100, with further references).

bb The first applicant

127. The Commission has found above (at para. 120) that the first applicant was injured, but it has not been established that this particular injury was deliberately caused by the police forces.

128. The Commission further considers that, during his arrest, the first applicant was subjected by the police forces to very rough treatment. However, in view of the character of the demonstration (cf. paras. 108 ff. above) and the commotion that reigned at the place of the arrest (cf. paras. 110 f. above), the Commission does not find that this treatment reached the level prohibited by Article 3 (Art. 3) of the Convention.

Conclusion

129. The Commission concludes by twelve votes to one that there has been no violation of Article 3 (Art. 3) of the Convention as regards the first applicant.

cc The second applicant

130. The Commission considers that, during his arrest the second applicant was subjected by the police forces to very rough treatment. However, in view of the character of the demonstration (cf. paras. 108 ff. above), the commotion that reigned at the place of the arrest (cf. paras. 110 f. above), and the second applicant's resistance as described by himself (at para. 45 above), the Commission does not find that this treatment reached the level prohibited by Article 3 (Art. 3) of the Convention.

Conclusion

131. The Commission concludes, by twelve votes to one, that there has been no violation of Article 3 (Art. 3) of the Convention as regards the second applicant.

e) Application of Article 8 (Art. 8) of the Convention to the facts established

aa The first applicant

132. The Commission recalls that a person's "private life" includes his physical integrity (cf. e.g. Eur. Court H.R., X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, para. 22; No. 8239/78, Dec. 4.12.78, D.R. 16 p. 184 at p. 189; No. 8278/78, Dec. 13.12.79, D.R. 18 p. 154; No. 10435/83,

Dec. 10.12.84, D.R. 40 p. 251).

133. The Commission has therefore examined whether the treatment to which the first applicant was subjected during his arrest constituted an "interference" with his right, under Article 8 (Art. 8), to respect for his private life, which was not justified under para. 2 of that Article (Art. 8-2).

134. The Commission considers that an arrest may affect the physical integrity, and thus the private life, of the arrested person, However, not every act or measure which may be said to affect adversely the physical or moral integrity of a person necessarily gives rise to an interference with the right to respect for private life (cf. Eur. Court H.R., Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, para. 36).

to which the applicant was subjected during his arrest did not attain a level of severity which was sufficient to bring it within the ambit of Article 3 (Art. 3).

136. Assuming, under Article 8 (Art. 8), that the first applicant's arrest interfered with his private life, the Commission does not find it established that this interference exceeded the limits of what in the circumstances could reasonably be considered as "necessary", in the interest of public safety and for the prevention of disorder, within the meaning of second paragraph of this article.

Conclusion

137. The Commission concludes by nine votes to four that there has been no violation of Article 8 (Art. 8) of the Convention as regards the first applicant.

bb The second applicant

138. The Commission has held above (at para. 129) that the treatment to which the second applicant was subjected during his arrest did not reach the level prohibited by Article 3 (Art. 3) of the Convention.

139. The Commission considers that there may be circumstances of an arrest in which Article 8 (Art. 8) can be regarded as affording a protection which goes beyond that given by Article 3 (Art. 3) (cf. the case-law referred to at para. 132 above and para. 36 of the Costello-Roberts judgment loc.cit.).

140. The Commission recalls the special nature of the injury inflicted on the second applicant by the pulling of his beard (cf. para. 124 above). It notes in this connection that the second applicant is a priest of the Greek Orthodox Church and that it is customary for priests of this church to wear a beard.

141. In these circumstances the Commission finds that the treatment to which the second applicant was subjected during his arrest interfered with his private life. The Commission further finds that the violent pulling of the second applicant's beard cannot be accepted as a means for breaking his resistance during his arrest nor as an unavoidable side-effect of the arrest. This treatment can thus not reasonably be considered as "necessary" for any of the purposes set out in para. 2 of Article 8 (Art. 8-2).

Conclusion

142. The Commission concludes by seven votes to six that there has been a violation of Article 8 (Art. 8) of the Convention as regards the second applicant.

3. Article 5 para. 1 (Art. 5-1) of the Convention

143. With regard to their arrest the applicants allege breaches of Article 5 para. 1 (Art. 5-1) of the Convention which provides as follows:

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

...

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

...

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

144. The applicants submit that they were not arrested "in accordance with a procedure prescribed by law" and that none of the grounds of lawful arrest envisaged in para. 1 of Article 5 (Art. 5-1) were present. In particular, there was no reasonable suspicion of an offence in the normal sense having been committed nor any necessity to prevent the commission of such an offence or to prevent subsequent flight. The alleged offences were of an artificial character relating to the "frontiers" of an illegal entity. In any case the Turkish armed forces and their agents had no authority to arrest the applicants in the buffer-zone and the brutality employed contravened the underlying principles of "legal arrest" under Article 5 (Art. 5).

145. The respondent Government submit that Article 5 para. 1 (Art. 5-1) was complied with. When arresting the applicants on the territory of the "Turkish Republic of Northern Cyprus", the Turkish Cypriot Police acted under the Criminal Procedure Law in force in Cyprus (cf. para. 82 above) and used the powers conferred on them in the context of the peace-keeping arrangements made by international bodies. In the respondent Government's view the Commission is not required to examine the validity or legitimacy of the legal system of the "Turkish Republic of Northern Cyprus" but only the question whether an effective legal system exists in that area. The arrest of the applicants was justified both under sub-para. (c) and sub-para. (f) of Article 5 para. 1 (Art. 5-1).

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

146. The Commission has examined whether the applicants were deprived of their liberty "in accordance with a procedure prescribed by law", as required by Article 5 para. 1 (Art. 5-1). It recalls that, on the question whether an arrest is "lawful", including whether it complies with "a procedure prescribed by law", the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. However, it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 (Art. 5), namely to protect individuals from arbitrariness (see Eur. Court H.R., Wassink judgment of 27 September 1990, Series A no. 185-A, p. 11, para. 24, with further references).

147. As regards domestic law in Cyprus, the Commission notes that, under Chapter 155, Section 14, para. 1, sub-paras. b and c of the Criminal Procedure Law (cf. para. 82 above), any police officer may, without warrant, arrest any person who commits in his presence any offence punishable with imprisonment or who obstructs a police officer,

while in the execution of his duty.

148. The Commission further notes that the applicants were committing the offence of unlawful entry (cf. paras. 83 f. above) and were arrested by officers of the Turkish Cypriot Police, i.e. the police force controlling the area of northern Cyprus.

149. Having regard to the above elements, the Commission finds that the arrest of the applicants in Cyprus, by police officers acting under Chapter 155, Section 14 of the Criminal Procedure Law, took place "in accordance with a procedure prescribed by law", as required by Article 5 para. 1 (Art. 5-1) of the Convention.

b) Justification of the arrest under Article 5
para. 1 (c) (Art. 5-1-c) of the Convention

150. Article 5 para. 1 (c) (Art. 5-1-c) of the Convention permits the lawful arrest of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence.

151. As regards the requirement of "reasonable suspicion of having committed an offence", the applicants argue that the alleged offences were of an artificial character relating to the "frontiers" of an illegal entity. The Commission finds that it is not in this connection required to examine the status of the "Turkish Republic of Northern Cyprus". It recalls that the demonstration on 19 July 1989, in the course of which the applicants were arrested, constituted a violation of the arrangements concerning the respect of the buffer-zone in Cyprus (cf. para. 42 above). The criminal provisions under which the applicants were charged (see paras. 40, 83 and 84 above) served to protect this very area. This cannot be considered as arbitrary.

152. The Commission has finally considered the requirement of "lawful" in Article 5 para. 1 (c) (Art. 5-1-c) which, as stated above (at para. 126), refers essentially to national law. In this connection the Commission has also examined whether the police officers arresting the applicants acted *ultra vires* under international law and whether this rendered the arrest operation unlawful under Article 5 para. 1 (c) (Art. 5-1-c). The Commission here refers to its observations in the *Stocké* case (*Stocké v. Germany*, Comm. Report 12.10.89, Eur. Court H.R., Series A no. 199, pp. 23 ff., paras. 161 ff.).

153. In this connection the Commission does not feel called upon to resolve the dispute between the parties as to the status of the area in which the applicants' arrest took place. It refers in this respect to para. 11 sub-para. (b) of the report of the Secretary-General of the United Nations (see para. 42 above) and to para. 6 of the Unmanning Agreement of 1989 (see para. 86 above).

154. The Commission notes, however, that the arrest took place after the demonstrators had broken through the defence line of the United Nations (cf. para. 11 sub-para. (a) of the above Report of the Secretary-General).

155. Given the scope and character of the demonstration on 19 July 1989 and the persistent violation of the buffer-zone by the demonstrators who had broken through a wire barrier and a defence line formed by UNFICYP soldiers, the Commission finds no indication that the agents arresting the applicants acted *ultra vires* as regards the place of the arrest, and that the applicants' arrest was therefore not "lawful", under the domestic law of Cyprus, within the meaning of Article 5 para. 1 sub-para. (c) (Art. 5-1-c).

156. The Commission therefore finds that the applicants' arrest was justified under Article 5 para. 1 (c) (Art. 5-1-c).

c) Other issues under Article 5 para. 1 (Art. 5-1)

157. Having found that the applicants' arrest complied with Article 5 para. 1 (c) (Art. 5-1-c), the Commission does not consider it necessary to examine whether it was also justified under Article 5 para. 1 (f) (Art. 5-1-f), as claimed by the respondent Government.

158. The Commission has examined the treatment of the applicants during their arrest under Articles 3 and 8 (Art. 3,8) of the Convention (see paras. 104 ff. and 119 ff. above).

d) Conclusion

159. The Commission concludes by eight votes to five that there has been no violation of Article 5 para. 1 (Art. 5-1) of the Convention as regards the first applicant.

160. The Commission concludes by seven votes to six that there has been no violation of Article 5 para. 1 (Art. 5-1) of the Convention as regards the second applicant.

D. The applicants' detention and the proceedings against them after their arrest on 19 July 1989

1. Imputability

161. The applicants submit that all activities of the authorities in northern Cyprus are attributable to Turkey (cf. para. 90 above). Prior to 1986 Turkey's mechanism for controlling the administration of the area was its Cyprus Co-ordination Council. In 1986 Prime Minister Özal announced the establishment of a technical committee to periodically assess relations between Turkey and the "Turkish Republic of Northern Cyprus". It appears that the area is administered through a committee consisting of Mr. Denktash and three Turkish nationals, i.e., the Turkish Ambassador and the Commanders of the Turkish and Turkish Cypriot armed forces in Cyprus. Turkey controls the currency of northern Cyprus. Two Turkish nationals were appointed Ministers (of Commerce and Agriculture) in northern Cyprus in 1989. Offices of the administration of the "Turkish Republic of Northern Cyprus" contain departments of the Turkish Republic.

162. The respondent Government submit that the Turkish Cypriot community is internationally recognised as one of the two components of the Republic of Cyprus. United Nations resolutions have endorsed the principle of the equal status of the two communities. The presence of two independent administrations and jurisdictions in Cyprus dates from 1963/64, i.e., before the Turkish intervention in 1974. Since 1964 the decisions governing the administration of the Turkish Cypriots have been taken by the governmental institutions of the Turkish Cypriot community. Proclamation of the "Turkish Republic of Northern Cyprus" on 15 November 1983 merely recognised a de facto situation. Non-recognition of a regime does not exclude that the State represented by that regime satisfies the conditions of statehood. An international tribunal may accept the existence of a state although the other party to the dispute, or third states, do not recognise it. Recognition or non-recognition of a community as a State has no legal effect on the objective situation of that community. Through its democratic institutions the "Turkish Republic of Northern Cyprus" exercises complete sovereignty over the whole of its territory. The exercise of public functions by Turkish nationals in Northern Cyprus is comparable to the exercise of such functions by Greek nationals in Southern Cyprus or to the exercise of judicial functions by French and Spanish judges in Andorra (cf. Eur. Court H.R., Drozd and Janousek v. France and Spain judgment of 26 June 1992, Series A no. 240, p. 31, para. 96).

163. The Commission has stated earlier, with regard to the "Turkish Federated State" promulgated in northern Cyprus on 13 February 1975,

that the recognition by Turkey of that entity "does not ... affect the continuing existence of the Republic of Cyprus as a single State and High Contracting Party to the Convention; and that, consequently, the 'Turkish Federated State of Cyprus' cannot be regarded as an entity which exercises 'jurisdiction', within the meaning of Article 1 (Art. 1) of the Convention, over any part of Cyprus". The Commission then concluded "that Turkey's jurisdiction in the north of the Republic of Cyprus, existing by reason of the presence of her armed forces there which prevents exercise of jurisdiction by the (Cyprus) Government, cannot be excluded on the ground that jurisdiction in that area is allegedly exercised by the 'Turkish Federated State of Cyprus'". The Commission added that this conclusion "does not prejudice the imputability to Turkey of any particular violation of the Convention which may be established in an examination of the merits of this application" (No. 8007/77, *Cyprus v. Turkey*, Dec. 10.7.78, D.R. 13 p. 85 at p. 150).

164. The Commission also recalls the history of Cyprus and the bi-communal character of the Republic of Cyprus as established in 1960 (*Cyprus v. Turkey*, Comm. Report 10.7.76, pp. 4 ff., paras. 6 ff.). In particular, under the Constitution of Cyprus of 1960, executive power was vested in a Greek Cypriot President (in 1960 Archbishop Makarios) and a Turkish Cypriot Vice-President (Mr. Küçük, succeeded by Mr. Denktash). Decisions of the Council of Ministers, composed of seven Greek and three Turkish Cypriots, were binding on the President and Vice-President who could, however, exercise a veto in matters relating to security, defence and foreign affairs. Of the members of the House of Representatives 70% were to be elected from the Greek and 30% from the Turkish Cypriot community, and the civil service was to consist of 70% Greek and 30% Turkish Cypriots (*ibid.* p. 5., para. 9).

165. The Commission further recalls that, in 1963, the administration in Cyprus "ceased to function on a bi-communal basis"; that inter-communal talks between the Greek-Cypriot community and the Turkish-Cypriot community began under the auspices of the United Nations in 1968; that a coup d'état under the leadership of Greek officers took place in Cyprus on 15 July 1974; that Turkish armed forces intervened on 20 July 1974 and that a cease-fire line was agreed on the same day; that the Foreign Ministers of Greece, Turkey and the United Kingdom, at their First Geneva Conference on 30 July 1974, "noted the existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek-Cypriot community and that of the Turkish-Cypriot community"; that, the Second Geneva Conference having been abortive, the Turkish forces on 14 August 1974 resumed their armed action and that on 16 August a new cease-fire line was declared; that on 13 February 1975 a constituent assembly set up by the Turkish Cypriot community declared the area north of this demarcation line to constitute a Turkish Federated State of Cyprus, and that on 8 June a constitution for it was promulgated (see *ibid.* pp. 5-9, paras. 10-17, and Appendix IV); and that the "Turkish Republic of Northern Cyprus", proclaimed on 15 November 1983, has so far only been recognised by Turkey.

166. In the light of the above elements the Commission has examined whether the applicants' detention, and the proceedings against them, in northern Cyprus, following their arrest on 19 July 1989, are imputable to Turkey, either on the ground that Turkish armed forces in Cyprus were directly involved or on the ground that these operations were controlled by Turkey.

167. The Commission finds no indication of direct involvement of Turkish armed forces in the applicants' detention, or the proceedings against them, in northern Cyprus. It has therefore examined whether these operations were controlled by Turkey.

168. The Commission has found above (at paras. 91 ff.) that, given the overall control exercised by Turkish forces in the border area, the

applicants' arrest in that area is imputable to Turkey.

169. The Commission considers that the factual situation is different as regards the subsequent detention of the applicants and the proceedings against them. The Commission has found no indication of control exercised by Turkish authorities over the prison administration or the administration of justice by Turkish Cypriot authorities in the applicants' case. It further notes, as regards the legal basis of the applicants' detention and the proceedings against them, that the Prison Rules applied were enacted in Cyprus under British rule in 1959 (cf. para. 38 above) and that the judicial system in northern Cyprus is based on the English system of procedure and evidence as it stood for the whole of Cyprus in 1963 (cf. para. 66 above).

170. The Commission, having regard to the developments described above and finding no indication of direct involvement of Turkish authorities in the applicants' detention, and the proceedings against them, after their arrest on 19 July 1989, sees no basis under the Convention for imputing these acts to Turkey.

2. Conclusion

171. The Commission concludes by eight votes to five that the applicants' detention after their arrest and the proceedings against them were not in violation of the Convention.

E. Article 13 (Art. 13) of the Convention

172. The applicants allege breaches of Article 13 (Art. 13) of the Convention which provides as follows:

"Everyone whose rights and freedoms as set forth in this 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."

173. The Commission has found above (at para. 171) that the applicants' detention and the proceedings against them are not imputable to Turkey. It follows that no issue arises under Article 13 (Art. 13) with regard to these acts.

174. The Commission further recalls that the applicants' arrest, by the Turkish Cypriot Police (cf. para. 148 above), is in the circumstances of the present case imputable to Turkey (cf. para. 102 above). It observes in this respect that the applicants were subsequently detained, and brought before judicial authorities, in northern Cyprus, which they refused to recognise (cf. paras. 39 and 65 above). The Commission therefore considers that the applicants did not wish to avail themselves of such remedies as might then have been available to them with regard to the circumstances of their arrest by the Turkish Cypriot Police (see also para. 77 above). In these circumstances the Commission cannot find that Article 13 (Art. 13) has been breached.

Conclusion

175. The Commission concludes by ten votes to three that there has been no violation of Article 13 (Art. 13) of the Convention.

F. Recapitulation

176. The Commission concludes by twelve votes to one that there has been no violation of Article 3 (Art. 3) of the Convention as regards the first applicant (para. 129 above).

177. The Commission concludes, by twelve votes to one, that there has been no violation of Article 3 (Art. 3) of the Convention as regards

the second applicant (para. 131 above).

178. The Commission concludes by nine votes to four that there has been no violation of Article 8 (Art. 8) of the Convention as regards the first applicant (para. 137 above).

179. The Commission concludes by seven votes to six that there has been a violation of Article 8 (Art. 8) of the Convention as regards the second applicant (para. 142 above).

180. The Commission concludes by eight votes to five that there has been no violation of Article 5 para. 1 (Art. 5-1) of the Convention as regards the first applicant (para. 159 above).

181. The Commission concludes by seven votes to six that there has been no violation of Article 5 para. 1 (Art. 5-1) of the Convention as regards the second applicant (para. 160 above).

182. The Commission concludes by eight votes to five that the applicants' detention after their arrest and the proceedings against were not in violation of the Convention (para. 171 above).

183. The Commission concludes by ten votes to three that there has been no violation of Article 13 (Art. 13) of the Convention (para. 175 above).

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)

(Or. English)

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF
MM. NØRGAARD, JÖRUNDSSON, GÖZÜBÜYÜK, SOYER AND DANELIUS

In their declaration deposited on 28 January 1987, the Government of Turkey recognised the right of individual petition under Article 25 of the Convention, subject to certain conditions. One of these conditions was that the right of petition should extend only to allegations concerning acts and omissions of public authorities in Turkey performed within the boundaries of the territory to which the Constitution of Turkey is applicable. It is clear that this wording was intended to prevent petitions from being lodged in regard to events occurring in the northern part of Cyprus.

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

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

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

If a State may exclude the application of Article 25 to a territory referred to in Article 63, there would seem to be no specific reason why it should not be allowed to exclude the application of the

right of individual petition to a territory having even looser constitutional ties with the State's main territory. If this was not permitted, the result might in some circumstances be that the State would refrain altogether from recognising the right of individual petition, which would not serve the cause of human rights.

We consider that the territorial limitation in the Turkish declaration, insofar as it excludes the northern part of Cyprus, cannot be considered incompatible with the object and purpose of the Convention and that it should therefore be regarded as having legal effect.

In these circumstances, it is not necessary to examine what the legal consequences would have been if the territorial limitation had been held not to be legally valid.

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

(Or. English)

PARTIALLY DISSENTING OPINION OF
SIR BASIL HALL

1. While in other respects I share the opinion of the majority of the Commission in this case, I do not agree that there was no violation of Article 5 para. 1 as regards the second applicant.

2. Article 5 para. 1 requires that a deprivation of liberty (which includes an arrest) must be in accordance with a procedure prescribed by law. I agree that that requirement essentially refers to national law.

3. Article 5 para. 1 (c) in addition requires that an arrest shall be "lawful". I do not consider that in this context lawfulness is to be determined essentially by reference to national law. The majority of the Commission indeed recognise that, whether it is lawful or not by national law, if an arrest were an arbitrary exercise of power, it would be unlawful for the purposes of Article 5 para. 1 (c).

4. In my view other matters may render an arrest unlawful for the purposes of the Convention, even if it were lawful under national law - for example the use of excessive force in effecting an arrest. This, however, is only one instance of conduct which will take an arrest out of the category of lawful arrest for the purposes of the Convention. The way in which an arrest is effected must be compatible with the presumed innocence of the individual arrested but it must too be effected in a way which is consistent with what is justifiably expected of the authorities in a democratic society.

5. Evidence in regard to what happened to the second applicant on his being arrested will be found in paras. 45, 49, 50, 53, 56 and 63 of the Commission's Report. The treatment he received is also referred to in the Commission's opinion in paras. 121 to 125 of that Report. In my opinion it was established that the second applicant was roughly treated by the police or by others taking advantage of his inadequate protection furnished by the police. That treatment, and in particular the pulling of his beard, has not been justified. It resulted in his arrest being unlawful and consequently there was a violation of Article 5 para. 1 (c).

(Or. English)

PARTIALLY CONCURRING AND PARTIALLY DISSENTING OPINION
OF MR. C.L. ROZAKIS

I regret that I am unable to follow the opinion of the Commission in a number of issues which I consider of primordial importance for the case-law of the European Convention of Human Rights.

1. The question of imputability

My first, and fundamental disagreement concerns the question of the imputability of the acts allegedly violating specific articles of the Convention during the events of July 1989 in Cyprus. The Commission, in its decision on admissibility and in paragraph 96 of its opinion, has correctly found that "the application of the Convention extends beyond national frontiers of the Contracting States and includes acts of State organs abroad. The term 'jurisdiction' in Article 1 [of the Convention] is not equivalent to or limited to the national territory. . . . Authorised agents of a State, including armed forces, not only remain under its jurisdiction when abroad, but also bring any other persons 'within the jurisdiction' of that State to the extent that they exercise authority over such persons".

a. My disagreement begins from the moment that the Commission attempts to make a subtle distinction between imputability which stems from the actual control over the 1989 events by Turks and imputability which stems from the actual control by the other, separate authority in the area, which is the so-called "Turkish Republic of Northern Cyprus" (TRNC). In the first case, where direct involvement of the Turkish authorities in the events of 1989 is found or reasonably presumed, Turkey is responsible, and, hence, liable for the alleged violations of the Convention. In all other instances where proof or presumption exists that the actors of the alleged violations were Turkish-Cypriot authorities, Turkey is exonerated from any incrimination, and the responsibility is transferred to the local Turkish-Cypriot authorities.

With all due respect to the Commission, it seems to me that here it does not properly distinguish between two clearly different issues: the issue of the responsibility of a State for acts or omissions of its armed forces while abroad in the territory of another State, usually under the cover of an international arrangement, and the issue of the responsibility of a State in the event of an invasion, by the use of force, and continuing occupation of a part of the territory of a third State. Examples of the first category can be found in the case of the establishment of a military base in a country (eg. American bases in Europe or Asia), or even the stationing of military forces in a country, after the end of a war, as a result of an international understanding (eg. the case of stationing allied forces in the territory of Germany after the end of the Second World War, while, at the same time, Germany started its life as two separate States, recognised by a great number of States of the international community, and exercising control in their own territory). Examples of the second category - that of an illegal occupation of a foreign territory - are abundant and may be found in cases where a State enters the territory of another State and remains there against the will of the latter - controlling it partially or as a whole, and preventing the legitimate authority of the latter from exercising its power over this territory. As long as the former State remains in the territory, and as long as no change in the status of the territory (and/or of the occupying force) occurs, the alien power remains responsible for all acts or omissions which may be attributable to the authority of its organs, even if the occupying power has transferred a number of competencies to local organs, and even if the occupied territory has been organised in the form of an autonomous or self-governing area. The fact of continuous occupation, by the means of force, creates the irrebuttable presumption that the will of these organs is eventually the will of the occupying power. A presumption incarnates the position of the international community - transformed into rules of international law - that State accountability originates from the very occupation of the

land and its physical control. As the International Court of Justice expounded in the 1971 Namibia case :

"By maintaining the present situation, and occupying the territory without title, South Africa incurs international responsibilities arising from a continuing violation of an international obligation. It also remains accountable for any violations of its international obligations or of the rights of the people of Namibia" (ICJ Reports, 1971, at p. 54).

b. In the circumstances of the Turkish occupation of the northern part of Cyprus, the illegality persists and prevents any possible normalisation of this part of the island. The so-called "TRNC" is not a State; it does not have any international legitimacy in whatever form and, in the eyes of international law, it does not (and cannot) have authority distinguishable from that of the occupying power.

The non-existence of this entity in the international sphere is not, of course, the result of not having been recognized by States other than Turkey. A State may exist even without recognition, since it has been widely accepted that recognition has basically a declaratory nature. The non-existence of this entity is the result of a decision of the international community not to attribute the quality of statehood to the northern part of the island. This attitude of the international community is manifested by two determining factors: by the Resolutions of the United Nations, which consider that the Republic of Cyprus remains the only legitimate international personality representing, in international relations, the totality of the territory of the State, and by the resolution of the same World Organisation calling upon the States of the international community to negate the existence of the northern part of Cyprus as a separate international entity. The Security Council Resolution 541 (1983), adopted immediately after the unilateral declaration of independence of the TRNC states inter alia:

"... Considering that this declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee.

Considering therefore that the attempt to create a 'Turkish Republic of Northern Cyprus' is invalid, and will contribute to a worsening of the situation in Cyprus.

1. Deplores the Declaration ...
2. Considers the Declaration referred to above as legally invalid and calls for its withdrawal;...
6. Calls upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus;
7. Calls upon all States not to recognize any Cypriot State other than the Republic of Cyprus".

The non-recognition, proposed here by the Security Council, amounts virtually to a sanction inflicted by the international community against the primary illegality of the use of force to attain the political purpose of secession of the northern part of Cyprus from the Republic, and the ensuing attempt to take advantage of this military, illegal presence in the island to materialise the secession by the unilateral declaration. In other words, the concept of non-recognition is used here to prevent the emergence of a new State, to prevent the attribution of statehood to an illegal entity; to reiterate the fundamental principle of law, which has also gained support in the international field that "ex injuria jus non oritur"; and to reject the

cynical approach that in all circumstances, regardless of the character and the significance of a violated legal rule, "ex factis jus oritur".

The position, then, taken by the Commission in the present Report ignores the will of the international community to consider that in the northern part of the island an illegality persists, which is due to the occupation of that territory by the Turkish military forces. It therefore failed to share the consequences of the continuing violation of the fundamental jus cogens norms. Its realistic, pragmatic approach undermines the cohesion of the policy of the international community to gradually establish a hierarchy of rules in international relations, where some of them acquire an absolute, normative character; an absolute character which tends to serve the best interests of the community for world order, its current principles and values.

c. The theory of the Commission, that Turkey is responsible only insofar as there is indication of direct involvement of its agents in the July events, not only ignores the consequences of the continuing illegality of occupation, not only ignores the reality that the northern Cypriot authorities, both in the civilian and the military sphere, are headed and directed by Turkish (mainland) officials and officers, but it also legitimises the otherwise non-existent entity of the "TRNC". The argument goes that because the "administration in Cyprus ceased to function on a bi-communal basis", and because of the series of events which have occurred since 1963, the factual situation in the northern part of the island is that of a "de facto" regime (it refers to the Turkish-Cypriot community), which exercises effective control over the territory and its population, and which enacts and applies laws, quite distinctively from the occupying Turkish authorities. In other words it attributes to the community a certain status which has a weight in the sphere of international relations, and hence, in the application of the European Convention on Human Rights, which operates at this level (that of international legal relations).

Again, with all due respect, I think that the Commission fails to make a proper distinction. The fact that the international community has accepted the existence of two communities living in the territory of the Republic of Cyprus does not automatically mean that it accepts their separate international nature. On the contrary, the efforts have always been to find a viable solution for the peaceful co-existence of these two Cypriot communities in a common, multi-ethnic State. The relevance of the notion of the "community", during the whole period of the internationalisation of the Cyprus crisis, is limited to the actors of the intercommunal talks and to negotiators in the United Nations fora for a settlement of the question. The philosophy of the international community, in this respect, is that the longevity of the Republic of Cyprus may only be safeguarded if the two communities, through their representatives, agree on the terms of their co-existence in the Republic. Thus the word "community" is a convenience in diplomatic parlance, and it does not attribute to either people any other international qualification.

The preceding analysis leads me to the conclusion that the only reasonable course to follow is to consider that Turkey remains responsible for all acts or omissions of both the Turkish military, of its authorities, and the authorities of the so-called "TRNC", and that, under these circumstances, the alleged violation of the Convention - which operates in the sphere controlled by international law - must be attributed to Turkey, which, under international law, is the only entity exercising power in the northern part of Cyprus.

2. The question of the lawfulness of the arrest *ratione loci*

A second divergence of approach, which leads me to distinguish myself from the opinion of the Commission, is the lawfulness of the arrest of the Greek Cypriots by the Turkish authorities, from the *ratione loci* point of view.

Indeed, the only objective determination of the events which occurred on 19 July 1989 in Cyprus (assuming that both parties involved have the legitimate interest to support their interpretation of the events) is the Report of the Secretary General of the United Nations (Security Council Documents S/21010 of 7 December 1989) which clearly states that:

"(a) In the evening of 19 July, some 1000 Greek Cypriot demonstrators, mostly women, forced their way into the United Nations buffer zone in the Ayios Kassianos area of Nicosia ... A short while later Turkish Cypriot police and security forces elements forced their way into the area ...

(b) The Ayios Kassianos School complex is situated in the United Nations 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".

The Agreement on Unmanning of Positions in Sensitive Areas in Nicosia (1989), to which the Report refers, provides in its relevant clauses :

- "1. The military forces in Nicosia will move further apart in sensitive areas by unmanning the positions and ceasing patrolling in the areas shown on the two attached maps ...
2. All personnel, military equipment, weapons and ammunition will be removed.
3. ...
4. Maintenance work and maintenance checks ... will take place using the current access points and routes... To ensure proper co-ordination [of maintenance], each Force will provide at local level relevant details to UNFICYP, at least 24 hours in advance ...
5. UNFICYP will observe the unmanned areas from the present UN observation posts ...
6. UNFICYP will investigate complaints by either Force concerning violations of this agreement. Both Forces will co-operate with UNFICYP in the investigation ... In case a violation persists, the other Force will be free to take proportionate action in the area concerned".

The area where the deprivation of liberty took place was, accordingly, an area belonging to the neutral buffer zone, or, in any event, to the zone which was unmanned, as a result of an agreement of the respective parties and the United Nations. The purpose of the unmanning (which is similar to the buffer zone) was to reduce the danger of a direct implication of the two sides in incidents threatening the peace of the island. Hence, neither the Greek Cypriot Forces, nor the Turkish Forces were legally allowed to enter the area or to exercise any kind of activities - including peace-time activities - without the previous authorisation by the UNFICYP. The Unmanning Agreement makes it clear that the control is transferred to UNFICYP concerning the area, and that, only in case of a persistent violation, the two Forces are allowed to take proportionate action. It goes without saying that the exception provided for by the Agreement mainly concerns violations directly provoked by the Forces and, in any event, even if it covers violations coming from private manifestations (which cannot be excluded) there is a further requirement of "persistence".

I do not think that in the circumstances of the case such an exception may apply.

If, consequently, the Turkish authorities acted in violation of an agreement, and proceeded to arrests in an area where their law was not applicable, then the condition of the lawfulness of the arrest provided for by Article 5 para. 1 is not fulfilled. The arrests in the neutral zone (where Turkish law in the form of the law enacted by its agents in the occupied territory does not apply) amounts to an illegal deprivation of liberty, namely, to an abduction of Greek Cypriots and their transfer to the occupied territory of Cyprus under their jurisdiction.

In these circumstances, I also find that the Convention has been violated.

(Or. English)

PARTIALLY CONCURRING, PARTIALLY DISSENTING OPINION OF
MR. M.P. PELLONPÄÄ

I agree that the applicant's arrest on 19 July 1989 is attributable (or imputable) to Turkey. I further agree that Article 8 was violated in that connection with regard to the second applicant. Unlike the majority, however, I consider it established that also the first applicant's physical integrity was interfered with so as to constitute a violation of Article 8.

I disagree with the majority of the Commission in a more profound way in so far as it concerns the question of violation of Article 5 in connection with the arrest, as well as in so far as it concerns the legal evaluation of the subsequent detention and the proceedings brought against the applicants during that detention. The majority of the Commission has concluded that the events following the arrest cannot be imputed to Turkey. I have reached a contrary conclusion for reasons to be explained below.

General principles of state responsibility under international law apply also in the application of the Convention. According to these principles state responsibility presupposes a violation of a duty and attributability of this violation to the State. As a point of departure the State is responsible for all foreseeable consequences of an unlawful act attributable to it. Conversely, there must be an unbroken causal connection between the act attributable to the State and the alleged injuries, in this case injuries caused by alleged violations of human rights.

The arrest, found by the Commission to be attributable to Turkey, was the beginning of a sequence of events leading to the applicants' detention and proceedings brought against them. The arresting authorities delivered the applicants to northern Cypriot authorities who detained them and subjected them to judicial proceedings. In the ordinary meaning there appears to be clear causal connection between the arrest and the subsequent detention and proceedings. There is, moreover, nothing amounting, in a legal sense, to a breach in the chain of causation. Such a breach could exist, for example, if the applicants had been released immediately after the arrest and only thereafter apprehended by the other authorities.

My conclusion therefore is that there is a clear, unbroken, causal link between the arrest on the one hand, and the detention and the subsequent proceedings on the other. The detention and the proceedings being foreseeable consequences of the arrest and the handing over of the applicants to the authorities in question, the whole sequence of events must be considered to be attributable to Turkey on the grounds elaborated in paras. 90-102 of the Report. Under these circumstances, I do not find it necessary to decide whether

Turkey should be regarded generally as responsible for human rights violation in northern Cyprus.

As to the alleged breaches of the various Convention provisions, I consider that Article 5 has been violated. I have grave doubts about the correctness of the majority conclusion according to which the arrest took place "in accordance with a procedure prescribed by law" and fulfilled the other conditions of Article 5 para. 1.

The arrest took place in the area of the Agios Kassianos school complex which, according to a UN report quoted in the Commission's Report, "is situated in the United Nations buffer-zone" (at para. 42 above). It is very questionable whether the legal provisions cited by the Commission guaranteed the foreseeability inherent in the requirement of lawfulness contained in Article 5. Even if some legal basis for the arrest could be inferred from the agreements concerning the border area, it has nevertheless not been shown that it was necessary to hand over the applicants to the detaining northern Cypriot authorities and keep them in detention for more than 10 days. I consider that the applicants' deprivation of liberty was not "consistent with the purpose of Article 5, namely to protect individuals from arbitrariness" (at para. 146 above). I therefore conclude that the applicants' "right to liberty and security of person", guaranteed by para. 1 of Article 5, was violated, without considering it necessary to go into further aspects of that Article.

I also find a violation of Article 6. Even assuming that the court in question could be regarded as "an independent ... tribunal established by law", the applicants did not in the circumstances of the case have "adequate time and facilities for the preparation of [their] defence", as required by para. 3 (b). Furthermore, the applicants had objectively legitimate reasons to suspect the impartiality of the court. Keeping in mind the importance of appearances, I conclude that Article 6 has been violated.

I, furthermore, find a violation of Article 7. The principle of legality was, in the circumstances of the applicants' arrest in the buffer-zone, not fulfilled by the provisions on the basis of which the applicants were convicted of "unauthorised entry into the territory of the Turkish Republic of Northern Cyprus".

Finally, I do not think that the restrictions on the applicants' religious activities went beyond those inherent in deprivation of liberty so as to a separate breach of Article 9. I also concur with the finding that there has been no violation of Article 13.

(Or. English)

DISSENTING OPINION OF Mr. E. BUSUTTIL

I regret that I must dissociate myself from the Commission's opinion that there has been no violation of Article 3 of the Convention, both in regard to the assessment of the facts and in regard to the law.

In my view, the demonstration by some 1000 Greek Cypriot demonstrators, most of them women, which purported symbolically to re-assert Greek Cypriot sovereignty in Northern Cyprus by crossing the buffer zone in Nicosia did not in itself amount to a "serious situation", as is suggested in paras. 109 and 110 of the Commission's Report.

The majority profess to rely on the Report of the Secretary-General of the United Nations dated 7 December 1989, but what the Secretary-General actually states in his Report is that "a serious situation arose as a result of a demonstration by Greek Cypriots in Nicosia" and then proceeds to spell out this statement in sub-para (a)

to (d) of para. 11. From sub-paras (c) and (d) it is apparent that the serious situation arose in the days immediately following the demonstration as a result of the continuing detention of those apprehended by the Turkish Cypriot authorities during the demonstration. Indeed, had the security forces across the buffer zone not over-reacted by arresting and then detaining 111 persons (101 of them women), no serious situation would have been created.

Nevertheless, the "serious" character of the demonstration is relied on in the Commission's Report to justify the "very rough treatment" to which the applicants were subjected but which, in the view of the majority, did not attain the level prohibited by Article 3 in the circumstances of the case.

While I recognize that all demonstrations are potentially serious, I am unable to understand on what evidence the majority reached the conclusion that this particular demonstration was actually serious. Certainly none of the witnesses heard by the Delegates of the Commission adverted specifically to its serious character. The Secretary-General of the United Nations refers to the serious situation arising as a result of the demonstration but, as I have already attempted to demonstrate, it was the continued detention of those arrested during the demonstration, and not the demonstration as such, that created this serious situation. At all events, it should have been well within the capability of the security forces of Northern Cyprus, numbering some tens of thousands, to propel the women and the two applicants across the buffer zone without arresting them. And even assuming it was physically impossible to do so without effecting arrests, a quick relaxation of tension would have been achieved if those arrested had been released that same evening when the commotion had subsided.

The applicants in this case were two clergymen who accompanied the women to conduct a memorial service in the Church of Saint Kassianos which lies in an area controlled by the Republic of Cyprus very near the buffer zone, but later, as it would appear, broke through the barbed wire and the defence line of UNFICYP with the demonstrators and threatened to enter the territory of the "Turkish Republic of Northern Cyprus". They were, however, contained in an area in and around the derelict Chapel of St. George. No evidence was forthcoming from any quarter that they were either armed or carrying any other instruments that could be employed for aggressive purposes.

Initially inside the Chapel and later in the yard outside, the security forces carrying anti-riot gear fell upon the applicants knocking off their ecclesiastical headgear and spectacles, tugging at their robes and their beards, hitting and kicking them, spitting on them, swearing at them and dragging them to the ground. Thereafter they were forcibly led into the Turkish occupied area of Nicosia where they ran the gauntlet of a hostile crowd of counter-demonstrators who subjected them to more of the same treatment. The first applicant was punched on his temple and right ear causing a haematoma and a crushed injury which took five days to heal. The second applicant had haemorrhages in the roots of his beard caused by pulling of the beard, a number of bruises which could have been caused by hitting with blunt instruments, and a large haematoma over his left tibia which could have been caused by kicking.

As is established in the case-law of the Convention organs, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case.

On the other hand, the Convention prohibits in absolute terms inhuman or degrading treatment, irrespective of the victim's conduct. Unlike most of the substantive Articles of the Convention, Article 3 makes no provision for exceptions and, under Article 15 para. 2 there

can be no derogation therefrom even in the event of a public emergency threatening the life of the nation.

For the majority, the treatment of the applicants just described constituted neither "inhuman treatment" nor "degrading treatment" in that it did not reach the level prohibited by Article 3.

For myself, this treatment amounted, at the very least, to "degrading treatment" within the meaning of Article 3 since it aroused feelings of fear, anguish and inferiority in the applicants which was capable of humiliating and debasing them.

At the same time they were being subjected to physical violence, the applicants were vilified and maligned and their ecclesiastical vestments desecrated. To my mind, this combination of violence and denigration constituted not only an assault on their physical integrity but also an affront to their personal dignity. The applicants - a bishop and an archimandrite - were mortified and humiliated not simply in their own eyes, but even more so lowered in the estimation of their own parishioners. Indeed, publicity is a relevant factor in assessing whether a particular treatment is "degrading" within the meaning of Article 3, as the Court had occasion to point out in its Tyrer judgment (Eur. Court H.R., judgment of 25 April 1978, Series A no. 26, p. 16, para. 32). Nor can it be excluded that the treatment may have had adverse psychological effects.

In the light of this, I consider that the applicants were subjected to treatment where the element of humiliation attained the level inherent in the notion of "degrading treatment" within the meaning of Article 3 of the Convention and that, therefore, there has been a violation of this Article in the instant case.

APPENDIX I

HISTORY OF PROCEEDINGS

| Date | Item |
|------------------------------|--|
| 21 July 1989 | Introduction of the applications |
| 25 July 1989 | Registration of the applications |
| Examination of Admissibility | |
| 8 August 1989 | Information from the applicants (concerning their release) |
| 29 August 1989 | Further submissions by the applicants |
| 7 September 1989 | Commission considers state of proceedings |
| 7 October 1989 | Commission considers state of proceedings |
| 9 November 1989 | Commission's decisions: - to join the present applications and Application No. 15318/89 (T. Loizidou v. Turkey); - to invite the Government to submit observations on the admissibility and merits of the applications |
| 28 February 1990 | Government's observations |

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|---------------------------|---|
| 6 May 1990 | Applicants' observations in reply |
| 5 October 1990 | Commission's decision to hold an oral hearing |
| 18 December 1990 | Further written submissions by the applicants |
| 11 January 1991 | Oral hearing on admissibility and merits |
| 11 and 12 January 1991 | Commission's deliberations |
| 4 March 1991 | Commission's further deliberations and decision to declare the applications admissible |
| 7 March 1991 | Commission approves text of decision on admissibility |
| 7 March 1991 | Decision on admissibility communicated to the parties |
| Examination of the merits | |
| 7 March 1991 | Commission invites Government to submit observations on the merits |
| 7 May 1991 | Government's requests to re-open proceedings on admissibility and to declare the applications inadmissible |
| 24 May 1991 | Applicants' comments on the Government's requests |
| 30 May 1991 | Commission finds no legal basis for the requests, invites Government again to submit observations on merits |
| 6 July 1991 | Commission grants Government's request for extension of time-limit |
| 25 September 1991 | Government refuse to participate in further proceedings |
| 8 October 1991 | Commission's deliberations |
| 16 October 1991 | Commission's further deliberations and adoption of Interim Report to the Committee of Ministers |
| 17 October 1991 | Commission's deliberations |
| 19 December 1991 | Committee of Ministers adopts Resolution DH (91) 41 |
| 14 January 1992 | Commission's decisions: - to take oral evidence; - to invite parties to file observations |
| 28 February 1992 | Government's observations |

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| 9 April 1992 | Commission's decisions: - appointment of Delegation for hearing of witnesses; - list of witnesses to be examined |
| 29 April 1992 | Government propose further witness |
| 30 April 1992 | Applicants propose further witness |
| 19 May 1992 | Commission's deliberations |
| 20 May 1992 | Further submissions by Government |
| 5 June 1992 | Further submissions by applicants |
| 9 and 10 June 1992 | Hearing of witnesses by Delegation |
| 7 July 1992 | Commission's decision to hold oral hearing on the merits of the applications |
| 21 September 1992 | Further written submissions by the applicants |
| 1 October 1992 | Further written submissions by the Government |
| 16 October 1992 | Applicants submit video cassettes |
| 20 November 1992 | Government submit documentary material |
| 1 December 1992 | Communication from applicants |
| 2 December 1992 | Communication from Government |
| 3 December 1992 | Commission's deliberations |
| 4 December 1992 | Oral hearing on the merits. Commission's deliberations |
| 7 December 1992 | Commission decides to disjoin the present applications from Application No. 15318/89 (Loizidou v. Turkey) |
| 27 January 1993 | Final submissions by applicants |
| 29 January 1993 | Government's final submissions |
| 3 April 1993 | Commission's consideration of the state of proceedings |
| 29 June 1993 | Commission's deliberations on the merits and final vote |
| 8 July 1993 | Adoption of the Report |