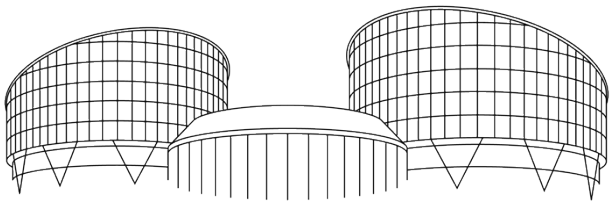

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

DECISION

AS TO THE ADMISSIBILITY OF

Application nos. 46113/99, 3843/02,
13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04
by Takis Demopoulos and Others, Evoulla Chrysostomi, Demetrios Lordos and Ariana Lordou Anastasiadou, Eleni Kanari-Eliadou and Others, Sofia (Pitsa) Thoma Kilara Sotiriou and Nina Thoma Kilara Moushoutta, Yiannis Stylas, Evdokia Charalambou Onoufriou and Others
and Irini (Rena) Chrisostomou
against Turkey

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President,*
Christos Rozakis,
Nicolas Bratza,
Peer Lorenzen,
Françoise Tulkens,
Josep Casadevall,
Giovanni Bonello,
Vladimiro Zagrebelsky,
Lech Garlicki,
Khanlar Hajiyev,
Ljiljana Mijović,
Egbert Myjer,
David Thór Björgvinsson,
Ján Šikuta,
Mark Villiger,
Päivi Hirvelä,
Işıl Karakaş, *judges,*
and Erik Fribergh, *Registrar*,

Having regard to the above applications lodged on 26 January 1999, 17 January 2002, 8 March 2002, 11 April 2003, 5 March 2004, 11 March 2004, 31 March 2004 and 27 February 2004,

Having regard to the decision of 19 May 2009 by which the Chamber of the Fourth Section to which the case had originally been assigned relinquished its jurisdiction in favour of the Grand Chamber (Article 30 of the Convention),

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the comments submitted by the Government of the Republic of Cyprus as intervenor,

Having regard to the parties' oral submissions at the hearing in Strasbourg on 18 November 2009,

Having deliberated on 18 November 2009 and 1 March 2010, decides on the last-mentioned date, as follows:

THE FACTS

1. The applicants are all Cypriot nationals of Greek Cypriot origin.

– Application no. 46113/99: Mr Takis Demopoulos and Mrs Eleni Demopoulos are the parents of Mrs Elpida Apostolides (née Demopoulos). They were born in 1922, 1933 and 1961 respectively and live in Nicosia. They are represented before the Court by Mr A. Demetriades, a lawyer practising in Nicosia.

– Application no. 3843/02: Mrs Evoulla Chrysostomi was born in 1936 and lives in Limassol. She is represented before the Court by Scordis, Papapetrou & Co and Adamos K. Adamides & Co, lawyers practising in Nicosia.

– Application no. 13751/02: Mr Demetrios Lordos was born in 1943 and lives in Limassol. The second applicant, Mrs Ariana Lordou Anastasiadou, was born in 1972 and lives in Nicosia. They are represented before the Court by Mr A. Demetriades, a lawyer practising in Nicosia.

– Application no. 13466/03: Mrs Eleni Kanari-Eliadou, Mr Andreas Papanicolaou, Mrs Chrystofoulla Papanicolaou and Mrs Maroulla Andrea-Hadjinicolaou were born in 1939, 1948, 1949 and 1940 respectively and live in the Nicosia district. They are represented before the Court by Ms E. Vourkidou, a lawyer practising in Nicosia.

– Application no. 10200/04: Mrs Sofia (Pitsa) Thoma Kilara Sotiriou and Mrs Nina Thoma Kilara Moushoutta were born in 1938 and 1936 respectively and live in Nicosia. They are represented before the Court by Mr Ch. Clerides, a lawyer practising in Nicosia.

– Application no. 14163/04: Mr Yiannis Stylas was born in 1935 and lives in Nicosia. He is represented before the Court by Mr C. Triantafyllides, a lawyer practising in Nicosia.

– Application no. 19993/04: Mrs Evdokia Charalambou Onoufriou, Mr Nicolas Charalambou Onoufriou, Mr Dimitris Charalambou Onoufriou and Mr Charalambos Onoufriou were born in 1945, 1972, 1962 and 1938 respectively. The last-named died in 2005 and was succeeded by the other three applicants. The remaining applicants live in Lakatamia. They are represented before the Court by Mr A. Neocleous, a lawyer practising in Nicosia.
– Application no. 21819/04: Ms Irini (Rena) Chrisostomou (née Savvopoulou), was born in 1945 and lives in Larnaca. She is represented before the Court by Mr A. Markides and Mr P. Polyviou, lawyers practising in Nicosia.

2. The applicants were represented at the oral hearing by Mr Anderson QC, Mr Demetriades, Mr Markides, Mr Clerides, Ms Vourkidou Liasides and Mr Neocleous, Counsel, assisted by Ms Loizides, Mr Paraskeva, Mr Polyviou, Mr Arakelian, Mr Angelides, Mr Liasides and Mr Leach, Advisers. The applicants, Mr Demetrios Lordos, Ms Evdokia Charalambou Onoufriou, Mr Dimitris Onoufriou and Mr Nicolas Onoufriou, also attended the hearing.

3. The Turkish Government ("the Government") were represented by their Agent, as were the Cypriot Government ("the intervening Government"). At the oral hearing they were represented as follows: the Government by Mr Necatigil, Agent, assisted by Sir Michael Wood, Counsel, and Mr Talmon, Ms Karabacak, Mr Uras, Mr Esener, Ms Akçay, Ms Akyüzlü Aylanç, Ms Akpak and Mr Furlong, Advisers. The intervening Government were represented by Mr Clerides, Agent, assisted by Lord Lester of Herne Hill QC, Mr Lowe QC, Mr Saini QC, Mr Richards and Mrs Joannides, Counsel.

A. General context

4. The complaints raised in these applications arise out of the Turkish military operations in northern Cyprus in July and August 1974 and the continuing division of the territory of Cyprus. At the time of the Court's consideration of the merits of the *Loizidou v. Turkey* case in 1996, the Turkish military presence at the material time was described in the following terms (see *Loizidou v. Turkey* (merits), 18 December 1996, §§ 16-17, *Reports of Judgments and Decisions* 1996-VI):

> "16. Turkish armed forces of more than 30,000 personnel are stationed throughout the whole of the occupied area of northern Cyprus, which is constantly patrolled and has checkpoints on all main lines of communication. The army's headquarters are in Kyrenia. The 28th Infantry Division is based in Asha (Assia) with its sector covering Famagusta to the Mia Milia suburb of Nicosia and with about 14,500 personnel. The 39th Infantry Division, with about 15,500 personnel, is based at Myrtou village, and its sector ranges from Yerolakkos village to Lefka. TOURDYK (Turkish Forces in Cyprus under the Treaty of Guarantee) is stationed at Orta Keuy village near Nicosia, with a sector running from Nicosia International Airport to the Pedhieos River. A Turkish naval command and outpost are based at Famagusta and Kyrenia respectively.

Turkish airforce personnel are based at Lefkoniko, Krini and other airfields. The Turkish airforce is stationed on the Turkish mainland at Adana.

17. The Turkish forces and all civilians entering military areas are subject to Turkish military courts, as stipulated so far as concerns 'TRNC [Turkish Republic of Northern Cyprus] citizens' by the Prohibited Military Areas Decree of 1979 (section 9) and Article 156 of the Constitution of the 'TRNC'."

5. A major development in the continuing division of Cyprus occurred in November 1983 with the proclamation of the "Turkish Republic of Northern Cyprus" (the "TRNC") and the subsequent enactment of the "TRNC" Constitution on 7 May 1985. This development was condemned by the international community. On 18 November 1983 the United Nations Security Council adopted Resolution 541 (1983) declaring the proclamation of the establishment of the "TRNC" legally invalid and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus. In November 1983 the Committee of Ministers of the Council of Europe decided that it continued to regard the government of the Republic of Cyprus as the sole legitimate government of Cyprus and called for respect of the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus.

6. According to the submissions of the respondent Government in the inter-State case (see *Cyprus v. Turkey* [GC], no. 25781/94, § 15, ECHR 2001-IV), the "TRNC" was a democratic and constitutional State which was politically independent of all other sovereign States including Turkey, and the administration in northern Cyprus had been set up by the Turkish Cypriot people in the exercise of its right to self-determination and not by Turkey. Notwithstanding this view, the Court held that it was only the Cypriot Government which was recognised internationally as the Government of the Republic of Cyprus in the context of diplomatic and treaty relations and the working of international organisations (ibid.).

7. The United Nations Peacekeeping Force in Cyprus ("UNFICYP") has maintained a buffer zone between the two sides. A number of political initiatives have been taken at the level of the United Nations by successive Secretaries-General aimed at settling the Cyprus problem on the basis of institutional arrangements acceptable to both sides. The most notable initiative was Kofi Annan's Comprehensive Settlement of the Cyprus Problem (also known as "the Annan Plan").

8. After four years of revisions and negotiations, the fifth version of the Annan Plan called for the establishment of the United Cyprus Republic ("the UCR"), which would include two constituent States: a predominantly Greek Cypriot one in the south, eventually comprising about 71% of the land area of Cyprus; and a predominantly Turkish Cypriot one in the north, comprising about 29% of the land area. Cypriots would be citizens both of the UCR and of the appropriate constituent State.

9. On 24 April 2004 the final version of the Annan Plan was presented to the Greek and Turkish Cypriots for separate referenda. Under the terms

of the Annan Plan, the UCR would be established if both sides agreed and voted yes in their respective referenda. There were several controversies in the text, however, such as issues of property and freedom of movement, which led to pessimism about the likelihood of the Annan Plan successfully passing. However, it became apparent that the Turkish Cypriots would vote yes on 24 April 2004, making a UCR possible. The Annan Plan failed to pass, however, because even though 65% of Turkish Cypriots accepted the settlement plan, 76% of Greek Cypriots rejected it.

10. The Annan Plan had provided for the property rights of Greek Cypriots to be balanced against the rights of those now living in the homes or using the land, some of them Turkish Cypriot refugees from the south of the island, who had lost homes of their own, but many of them Turkish settlers. The exact numbers of Turkish settlers was disputed; the Cyprus Ministry of Foreign Affairs had claimed it was over 100,000. The Annan Plan capped the number of settlers who could be given citizenship of Cyprus at 45,000.

11. Article 10 of the Annan Plan contained a detailed and complex treatment of property claims. Firstly, in areas subject to territorial adjustment, properties would be restored to their former dispossessed owners. In areas not subject to territorial adjustment, the following regime was envisaged. Dispossessed owners (as well as institutions), who opted for compensation would receive full and effective compensation for their property on the basis of its value at the time of dispossession adjusted to reflect the appreciation of property values in comparable locations. Compensation would be paid in the form of guaranteed bonds and appreciation certificates.

12. All other dispossessed owners had the right to reinstatement of one-third of the value and one-third of the area of their total property ownership, and to receive full and effective compensation for the remaining two-thirds. However, they had the right to reinstatement of a dwelling they had built, or in which they had lived for at least ten years, and up to one *donum*[1] of adjacent land, even if this was worth more than one-third of the total value and area of their properties. Dispossessed owners could choose any of their properties for reinstatement, except for properties that had been exchanged by a current user or bought by a significant improver in accordance with the scheme. A dispossessed owner whose property could not be reinstated or who voluntarily deferred to a current user had the right to another property of equal size and value in the same municipality or village. They could also sell their entitlement to another dispossessed owner from the same place. The latter could in turn aggregate it with their own entitlement.

1. Unit of area used in the Ottoman Empire and still used, in various standardised versions, in many countries which were formerly part of the Ottoman Empire. It was defined as "forty standard paces in length and breadth", but varied considerably from place to place. It is considered to be the equivalent of about a quarter of an acre.

13. Current users (defined as persons who had possession of properties of dispossessed owners as a result of an administrative decision) could apply for and would receive title of the property if they agreed in exchange to renounce their title to a property of similar value in the other constituent State, of which they were dispossessed. Persons who owned significant improvements to properties could apply for and would receive title to such properties provided they paid for the value of the property in its original state. Furthermore, current users who were Cypriot citizens and were required to vacate property to be reinstated would not be required to do so until adequate alternative accommodation had been made available.

14. Property claims would be administered by "an independent, impartial Property Board, governed by an equal number of members from each constituent State, as well as non-Cypriot members".

15. Article 5 § 2 of Annex VII required:

> "United Cyprus Republic ... pursuant to Article 37 of the European Convention on Human Rights ... and invoking the fact that the Foundation Agreement is providing a domestic remedy for the solution of all questions related to affected property, inform the European Court of Human Rights ... that the United Cyprus Republic shall therefore be the sole responsible State Party and request the Court to strike out any proceedings currently before it concerning affected property in order to allow the domestic mechanism agreed to solve these cases to proceed."

16. Under the limits which Article 3 of the Annan Plan would place on the numbers of former residents allowed to return, only over-65s would have been able to go back to their homes between the second and fifth years; returnees could amount to no more than 6% of the population of the village up to the ninth year, 12% up to the fourteenth year and 18% up to the nineteenth year or Turkey's accession to the European Union, whichever came earlier.

B. The particular circumstances of the cases

17. The facts of the cases, as submitted by the parties, may be summarised as follows.

18. All the applicants, Greek Cypriots, claimed to own or partly own immovable and/or movable property in the northern part of Cyprus under the control of the "TRNC". The applicants claimed that since August 1974 they had been deprived of their property rights, all their property being located in the area which is under the occupation and the control of the Turkish military forces. The latter prevented them from having access to and from using and enjoying their homes, property and possessions in northern Cyprus. Details of all properties were contained in the Court's case files.

1. Demopoulos and Others, application no. 46113/99

19. The first applicant stated that he owned seventeen plots of land in Morphou. These plots were surrounded by fences, planted with trees and consisted of a residence, storage rooms and water installations. Moreover, he claimed to own a further nine plots of land situated in Morphou. One of these plots had been separated into nine building sites. The applicant had intended to turn the remainder of the plots into building sites and had to that effect lodged applications with the land authorities. Furthermore, he stated that he owned or partly owned two plots of land situated in Galini, on one of which he had planned to build a hotel.

20. The second applicant claimed to own five plots of land situated in Galini as well as half a share in a plot of land in Derinia. In addition, she owned six plots of land in Kato Zodia that she had intended to turn into building plots.

21. Finally, the third applicant claimed to be the owner of a plot of land in Morphou and a house built thereon, as well as the latter's contents which comprised a collection of antiques and a selection of domestic equipment. Ownership of this property had been transferred to her by her father (the first applicant) in 1997. This house had been the family home of all the applicants.

22. On 28 May 2003 the applicants sought to add nine further properties to their application. On 27 June 2008 they sent a letter identifying eleven more properties.

2. Chrysostomi, application no. 3843/02

23. The applicant claimed to be the owner of six plots of land in the town of Famagusta as well as two plots of land in the village of Dherynia. She was also the owner of, *inter alia*, two houses, one of which was the home where she had lived with her family, an orange grove and four shops, all situated on certain of the above-mentioned plots of land. These properties had been transferred by way of gift to the applicant by her mother on 6 June 1974. She maintained that from then onwards the income from renting out the four shops and from the produce of the orange grove had belonged to her.

3. Lordos and Lordou Anastasiadou, application no. 13751/02

24. The applicants were father and daughter. They were both born and raised in Famagusta. The first applicant claimed to be the owner or part-owner of a substantial amount of immovable property situated in Famagusta and Kyrenia (169 listed items). This included a considerable number of plots of land, buildings, flats, shops, houses and hotels: there were listed approximately 134 plots of land and/or building sites and/or fields, seventeen flats, six shops, three buildings, four houses and two hotels. Some of the property was acquired before 1974; other property was obtained by

transfer or inheritance subsequently. Furthermore, both applicants had had their home in Famagusta in property in an apartment block purchased by the first applicant for himself, his wife and his daughter, the second applicant.

4. Kanari-Eliadou and Others, application no. 13466/03

25. The applicants were all born and raised in the village of Ayios Georgios, Kyrenia. The second and third applicants were husband and wife.

26. The applicants claimed to own the following immovable property in the district of Kyrenia: the first applicant owned a plot with a fully furnished house, which had been acquired in 1962 and had been used as her home. The second applicant owned five plots of land, one of which was cultivated with olive trees, and the title of which had been registered in the applicant's name on 29 August 1989. The third applicant owned a plot with a house, one floor of which had been used partly as the home of the second and third applicants and the other rented out. The fourth applicant owned, in whole or in part, thirty plots of land, including one plot with a fully furnished house and the others consisting of fields or plots with lemon or olive trees. The title of some property had been registered in the applicant's name after 1974.

5. Sotiriou and Moushoutta, application no. 10200/04

27. The applicants claimed to be the owners of immovable property in the districts of Kyrenia and Nicosia (the part under the control of the Turkish armed forces). The first applicant owned, wholly or in part, seven properties: six fields and one plot with a house and garden. The second applicant owned, wholly or in part, three properties: two fields with trees and a building site with trees. Some of these properties were acquired after 1974 by inheritance.

6. Stylas, application no. 14163/04

28. The applicant claimed to be the owner or part-owner of the following immovable property in the district of Nicosia (the part under the control of the Turkish armed forces): five plots with a house and garden, ten plots consisting of a field and a plot of a field containing olive trees (details contained in the file). Some of the properties were owned by the applicant before 1974; other properties were inherited since.

7. Charalambou Onoufriou and Others, application no. 19993/04

29. The applicants were a family. The first and fourth applicants were husband and wife and the second and third applicants their sons. They were all from Morphou.

30. The first, second and third applicants claimed to own, or partly own, the following immovable property in Morphou, in the district of Nicosia: the first applicant owned four properties, a house with a barn, byre and

garden which was the home of the applicants, a plot with orange trees and two fields; the second applicant owned four plots (two orange groves and two fields) acquired by gift from his father in 1996; the third applicant owned five plots (three fields and two gardens) acquired by way of gift from his parents in 1996. The deceased fourth applicant owned a third share in an orange plantation and two rooms, acquired on 18 September 1997 by way of gift from his father. In 2006, the first applicant transferred her properties to the second and third applicants.

8. Chrisostomou, application no. 21819/04

31. Before 20 July 1974 the applicant used to live in the town of Famagusta. She claimed to be the owner, in whole or in part, of eight plots of immovable property in Famagusta and Derynia, including buildings, two apartments (one of which was her home), a shop and fields. Some properties were transferred into her name after 1974. Most of the properties were in a closed area under the direct military control of Turkey.

9. The Government's position

32. The Government submitted that the applicants had not established the basic facts. They had not produced evidence to show that, according to the Land Registry authorities in the south, they were the current owners of the properties in question. Nor had they shown that they had proof of title in 1974. None of the applicants had made an application to the Immovable Property Commission for restitution or compensation in respect of their property claims.

C. Relevant domestic law and practice

1. Constitution of the "Turkish Republic of Northern Cyprus" (the "TRNC") of 7 May 1985

33. Article 159 § 1 (b) and (c), in so far as relevant, provide as follows:

"(b) All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined ... and (c) ... shall be the property of the TRNC notwithstanding the fact that they are not so registered in the books of the Land Registry Office; and the Land Registry Office shall be amended accordingly."

34. Article 159 § 4 reads as follows:

"In the event of any person coming forward and claiming legitimate rights in connection with the immovable properties included in sub-paragraphs (b) and (c) of § 1 above [concerning, *inter alia*, all immovable properties, buildings and installations which were found abandoned on 13 February 1975], the necessary procedure and

conditions to be complied with by such persons for proving their rights and the basis on which compensation shall be paid to them, shall be regulated by law."

2. Law for the compensation, exchange and restitution of immovable properties which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution, as amended by Laws nos. 59/2006 and 85/2007 (hereinafter "Law no. 67/2005")

35. Law no. 67/2005 came into effect on 22 December 2005. This Law provided that all natural and legal persons claiming rights to immovable or movable property might bring a claim before the Immovable Property Commission ("the IPC") until 21 December 2009, subject to a fee of 100 Turkish liras (TRY) for each application (section 4). On 22 October 2009 this deadline was extended by the Parliament of the "TRNC" until 21 December 2011. Under the provisions of the Law, the burden of proof rests upon the applicant who must prove beyond a reasonable doubt that, *inter alia*, the immovable property was registered in his name on 20 July 1974 (or that he is the legal heir to such a person), that he owned the movable property before 13 February 1975 and was forced to abandon it due to conditions beyond his own volition, and that according to the Land Registry records there are no other persons claiming rights to the claimed immovable property (section 6).

36. The IPC has the duties and powers to: examine and reach decisions on applications; determine the amount and method of payment of compensation; collect written or oral testimony or hear witnesses; summon any person residing in the "TRNC" to give testimony or produce any document in his possession; compel a person to give evidence or produce a document in his possession; and award expenses to any persons summoned (section 13). The decisions of the IPC have binding effect and are of an executory nature similar to judgments of the judiciary and such decisions shall be implemented without delay upon service on the authorities concerned (section 14). It is an offence to refuse to produce any document or information required by the IPC or to fail to appear, or give evidence without legal excuse, a fine of TRY 2,000 being imposable on conviction (section 15). The Ministry responsible for financial affairs must make provision under a separate item of the budget law for each year for the payment of compensation awarded by the IPC and other expenses incurred by the application of the Law (section 18).

37. The provisions concerning the redress available are set out below in full:

"Hearing and reaching a decision

8. The Commission, after having heard the arguments of the parties and witnesses, and having examined the documents submitted, shall, within the scope of the purposes of this Law, taking into consideration the below-mentioned matters, decide as to restitution of the immovable property to the person whose right in respect to the property has been established, or to offer exchange of the property to the said person,

or decide as to payment of compensation. In cases where the applicant claims compensation for loss of use and/or non-pecuniary damages in addition to restitution, exchange or compensation in return for immovable property, the Commission shall also decide on these issues.

(1) Immovable properties that are subject to a claim for restitution by the applicant, ownership or use of which has not been transferred to any natural or legal person other than the State, may be restituted by the decision of the Commission within a reasonable time period, provided that the restitution of such property, having regard to the location, and the physical condition of the property, shall not endanger national security and public order and that such property is not allocated for public-interest reasons and that the immovable property is outside the military areas or military installations.

(2) If the restitution of an immovable property, other than property described in paragraph (1) above, is claimed by the applicant, the following rules shall apply, provided that the said immovable property has not been allocated for public interest or social justice purposes.

(A) If the increase in the value of the immovable property due to improvement made on such property between the date it was abandoned and the date of application with the Commission for restitution, is less than the value of the property when it was abandoned; or if there is no increase in the value of property between these dates; or if no project was approved by competent authorities that would cause such an increase; or if this immovable property is not property of equal value in accordance with the legislation in force, which has been acquired by any person in exchange of property left in southern Cyprus, such person having had to leave the south of Cyprus and to move to the north, the decision for restitution of such property may take effect after the settlement of the Cyprus problem, in line with the provisions of the settlement. In such a case, the person who is in possession or holds the ownership of the property in question under the legislation in force but would have to abandon the property after a settlement, shall not have to do so unless such person has been provided with compensation or alternative accommodation under the provisions of the settlement.

As from the date of the announced decision of the Commission no construction shall be permitted on the immovable property that would be restituted after the settlement of the Cyprus problem within the framework of the provisions of the settlement or in any event within a three-year period; such immovable property cannot be improved, purchased or sold. However, the Ministry may permit the improvement of such property in a way that is also beneficial for the applicant. The principles governing the issue of permits under this sub-paragraph shall be regulated by rules.

Natural or legal persons who, under the legislation of the Turkish Republic of Northern Cyprus, are in possession or hold the ownership of property to be reinstated after a settlement, shall have the right to be compensated for the damage caused by such a decision of the Commission or to apply to the authorities, in order to have the property they own or possess purchased by the authorities. If this right is not exercised, the immovable property to be reinstated after a settlement, shall, prior to restitution, be expropriated in accordance with the legislation in force.

(B) If the increase in the value of the immovable property as a result of the improvement made to such property between the date it was abandoned and the date of the application to the Commission for its restitution is more than the value of the property at the time it was abandoned; or if a project that would cause such an

increase in the value of the property has been approved by the competent authorities, the claim of the applicant for restitution shall be subject to the provisions of paragraph (3) below.

(3) If the applicant claims restitution of immovable property and such an immovable property is not immovable property within the provisions of paragraph (1) and sub-paragraph (A) of paragraph (2) of this section, a proposal for exchange may be made, or compensation may be awarded to such person. The compensation shall be determined on the basis of the market value of the immovable property on 20 July 1974, and, if claimed, on the basis of damages for loss of use and non-pecuniary damages due to the loss of the right to respect for home.

(4) If the applicant applies to the Commission with a claim for compensation in return for immovable property and the Commission decides in favour of the applicant; or if the Commission decides to award an applicant compensation in return for the immovable property, the compensation to be paid shall be determined on the basis of the following criteria:

(A) If the immovable property is a building its market value on 20 July 1974, taking into consideration the date of its construction.

(B) Loss of income and increase in value of the immovable property between 1974 and the date of payment.

(C) Whether the applicant is in possession of any immovable property in the south of Cyprus owned by citizens of the Turkish Republic of Northern Cyprus.

(D) Whether the applicant is receiving income from such property; if so, the amount of such income; whether such person is paying rent in respect of immovable property in his possession in the south which is owned by any citizen of the Turkish Republic of Northern Cyprus; if so, the amount and the identity of the beneficiary of rent.

(E) The non-pecuniary damages which the Commission shall decide in favour of the applicant shall be assessed having regard to the manner of the use of the property, as well as the establishment of individual, family and moral links to such immovable [property] of the applicant on the date the property had to be abandoned.

(F) Where compensation is decided to be awarded for movable property, the amount shall be the market value of such property at the time the Commission reaches its decision.

(5) In cases where the applicant claims exchange or where the Commission decides to propose exchange to the applicant, the current market value of the immovable property to be proposed for exchange shall be approximately equal to the current market value of the immovable property on which the applicant has a right. If the property which is proposed to the applicant in exchange is of a value higher than the value of the property on which he claims a right, he shall pay the Commission the difference between the two values. If the property which is proposed to the applicant is of a value lower than the value of the property on which a right is claimed, the difference between the two prices shall be paid by the Commission to the applicant.

If exchange is decided upon, precedence shall be given to the evaluation of the immovable property forming the subject matter of the applicant's application, which the owner or user thereof had to leave in the south.

The rights of the person applying to the Commission for exchange of property shall be reserved in respect of claims for compensation for loss of use and non-pecuniary damage due to loss of the right to respect for home.

(6) Upon the request of the applicant, the Commission may award restitution, exchange, compensation in return for rights over the immovable property and compensation for loss of use if claimed.

Right to apply to court

9. Parties have the right to apply to the High Administrative Court against the decisions of the Commission. If the applicant is not satisfied with the judgment of the High Administrative Court, he may apply to the European Court of Human Rights.

Loss of ownership upon exchange of property or award of compensation

10.(1) Applicants who receive compensation in return for their rights over immovable properties in virtue of the application of the provisions this Law can, under no condition, make a claim of right of ownership over immovable property for which they have received compensation.

(2) Applicants who receive new immovable property by way of exchange in virtue of the application of the provisions of this Law can, under no condition, make a claim to a right of ownership over the immovable property on which their application was based.

Composition of Immovable Property Commission

11.(1) For the implementation of this Law, an Immovable Property Commission composed of a president, a vice-president, and minimum five, maximum seven members, whose qualifications are specified below, shall be established. At least two members of the Commission to be appointed shall not be nationals of the Turkish Republic of Northern Cyprus, [the] United Kingdom, Greece, [the] Greek Cypriot Administration or [the] Republic of Turkey. The decisions regarding the appointment of the members shall be published in the Official Gazette.

(A) The President, Vice-President and the Members of the Commission shall be appointed by the Supreme Council of Judicature from among persons nominated by the President of the Republic. The President of the Republic shall nominate a number of candidates twice the number of members to be appointed.

(B) The President, Vice-President and Members of the Commission may be appointed from among lawyers or from among persons with experience in public administration and evaluation of property.

Any persons directly or indirectly deriving any benefit from immovable properties on which rights are claimed by those who had to move from the north of Cyprus in 1974, abandoning their properties, cannot be appointed as members of the Commission.

(C)(a) The salary of the President of the Commission is equivalent to the salary received by a Supreme Court judge at initial appointment.

...

(c) Upon approval by the Council of Ministers, foreign members of the Commission may also receive an appropriation payment of a certain amount.

(2) The Commission shall convene by minimum two-third majority of the total number of members and shall take decisions by simple majority of the members attending the meeting, including the President.

(3) The term of office of a member not participating in the Commission meetings without a valid reason (illness, official duty abroad, and the like) for three times, may be terminated by the Supreme Council of Judicature upon the request of the President of the Commission. The term of office of the President of the Commission not participating in the Commission meetings without a valid reason (illness, official duty abroad, and the like) for three times may be terminated by the Supreme Council of Judicature upon the request of the President of the Republic. In other cases, the conditions for the termination of the term of office of a member of the Commission shall be the same as those applied to a Supreme Court judge.

(4) A secretariat shall be established in order to carry out the clerical and administrative work of the Commission. A sufficient number of personnel shall be employed in the secretariat upon the proposal of the President of the Commission and in accordance with the authorisation of the Council of Ministers. Employment of personnel under this section may be on a contractual basis. The number of personnel employed in this manner shall be no more than ten.

However, if the President of the Commission reaches a conclusion that the secretariat is not able to carry out its legal obligations within a reasonable period of time, he has the authority to employ an additional number of personnel on contract, subject to the authorisation of the Council of Ministers.

(5) All employees of the Commission, including the President, Vice-President and Members, shall be employed as long as their services are required and subject to conditions determined by the Council of Ministers, notwithstanding any provision to the contrary in any other law relating to employment of service, duration of service, age limit, duration of contract, renewal of contract and conditions of retirement.

(6) The President, Vice-President and Members of the Commission shall not hold any other office during their term of office.

(7) Decisions taken shall be served on those concerned with the signature of the President and at least one Member.

Duration of term of office of the President, Vice-President and Members of the Commission

12. The President, Vice-President and Members of the Commission established in accordance with the provisions of this Law shall be appointed for a period of five years. At the end of this period the President, Vice-President and Members may be reappointed in the same manner. The President, Vice-President and Members of the Commission shall carry out their duties objectively and independently during their

term of office which may only be terminated before the end of term subject to the provisions of section 11 above. No person or authority can give any order or instruction to the President, Vice-President and Members of the Commission."

3. Judgment of the "TRNC" Constitutional Court in case no. 3/2006

38. In this case, the plaintiffs had filed applications claiming that Law no. 67/2005 was unconstitutional as contrary to Article 159 of the "TRNC" Constitution and should be annulled.

39. The "TRNC" Constitutional Court rejected these applications. It had regard to international conventions and treaties concerning human rights and the elimination of discrimination as well as texts and agreements under international law concerning property in occupied areas and decisions and judgments of this Court, in particular what was said about the scope of any effective remedy for property complaints in the decision on admissibility in *Xenides-Arestis v. Turkey* ((dec.), no. 46347/99, 14 March 2005). It considered that it should interpret the Constitution in a manner such as to reconcile it with international law and held that it was not contrary to the Constitution for restitution of possession to be made and compensation to be paid to Greek Cypriot rights owners.

4. Cases before the IPC

40. As of the date of the hearing in November 2009, the number of cases brought before the IPC stood at 433. Of these, 85 had been concluded, the vast majority by means of friendly settlement. Only a handful of decisions not based on a settlement had been issued. In 4 cases, the IPC had ordered restitution and compensation; in 2 cases, exchange of property was agreed; and in 1 case the applicant agreed to restitution on resolution of the Cyprus problem. In more than 70 cases, compensation had been awarded. Some 361,493 square metres of property had been restituted and approximately 47 million euros paid in compensation.

COMPLAINTS

41. The applicants complained under Article 8 of the Convention and Article 1 of Protocol No. 1 that they had been deprived of the use of their property and/or access to their homes in northern Cyprus which was under the control of the "TRNC".

42. All applicants, save for the applicant in *Chrisostomou* (application no. 21819/04), complained under Article 14 of the Convention.

43. The applicants in *Sotiriou and Moushoutta* (no. 10200/04) and *Stylas* (application no. 14163/04) also complained under Article 13 of a lack of an effective remedy in respect of their Convention rights under Article 8 of the Convention and Article 1 of Protocol No. 1.

44. The applicant in *Stylas* (application no. 14163/04) complained of a continuing violation of Article 18 of the Convention in view of the violations of his rights under the above-mentioned provisions.

THE LAW

45. The applicants argued principally that they had been prevented from enjoying their property and homes following the invasion of northern Cyprus by Turkey in 1974, and that they had been victims of discrimination, invoking the following provisions of the Convention.

46. Article 8 of the Convention provides in its relevant parts as follows:

> "1. Everyone has the right to respect for ... his home ...
>
> 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."

Article 1 of Protocol No. 1 provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 14 of the Convention provides:

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

47. Several applicants also invoked Article 13 which requires the provision of an effective remedy for violations of the rights and freedoms set out in the Convention, and in one case, complaint was made under Article 18 which prohibits the restrictions permitted to Convention rights being applied for any other purpose than those for which they have been prescribed.

I. CONCERNING ARTICLE 1 OF PROTOCOL No. 1

48. The Government disputed the applicants' claims. They had raised a number of objections to admissibility in their observations before the

Chamber. They had submitted that the complaints fell outside the temporal jurisdiction of the Court and that the acts which took place within the "TRNC" were not under the responsibility of Turkey. They further submitted in particular that the applicants had failed to exhaust domestic remedies.

49. The Court notes that it has considered the Government's objections of inadmissibility *ratione loci* and *ratione temporis* in previous cases and rejected them (see *Loizidou v. Turkey* (merits), 18 December 1996, § 69-81, *Reports* 1996-VI; *Cyprus v. Turkey* [GC], no. 25781/94, §§ 69-81, ECHR 2001-IV; and *Xenides-Arestis v. Turkey* (dec.), no. 46347/99, 14 March 2005). Nor have the Government submitted further argument on these matters in their submissions before the Grand Chamber. It will therefore proceed to examine the Government's objection concerning domestic remedies alone.

A. Submissions before the Court on exhaustion of domestic remedies

1. The Government

50. The Government pointed out that in the judgment in *Xenides-Arestis v. Turkey* (no. 46347/99, 22 December 2005) the Court set in train a pilot-judgment procedure, adjourning all other cases, to examine the former Law no. 49/2003. After it was found not to provide an effective remedy, the "TRNC" enacted Law no. 67/2005, setting up the new IPC and taking full account of the indications given by the Court in its decision on admissibility. When adopting the judgment on just satisfaction, the Court had welcomed the steps taken by the Government to provide redress in this and the other pending cases and stated:

> "The Court notes that the new compensation and restitution mechanism, in principle, has taken care of the requirements of the decision of the Court on the admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005." (See *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 37, 7 December 2006)

This had, in their view, settled the matter of remedies for the future.

51. The Government submitted that the remedy established at the Court's instigation was effective and accessible. The Law had been published in Greek and in English in a Cyprus newspaper and had received wide media coverage. It was emphasised that while Article 159 of the "TRNC" Constitution had seemed to exclude on its face any restitution or compensation, the "TRNC" Constitutional Court had rejected a challenge to the constitutionality of the Law, holding that Article 159 had to be interpreted in conformity with international law and the European Convention on Human Rights and did not prevent return of property, exchange of property or compensation. It had also relied on the judgment in

Xenides-Arestis (cited above) as setting out the range of redress that must be made available.

52. The Government submitted that immediate restitution was possible if properties had not been transferred to another natural or legal person other than the State, for example displaced Turkish Cypriots, or were not located in military areas. Where properties were currently used for roads, schools or hospitals, restitution could also be excluded for public-interest reasons which were recognised in domestic and international law. Restitution was also provided for in certain circumstances once the Cyprus problem was settled. They noted that restitution would not be feasible in all cases, or immediately, as had been acknowledged in the Annan Plan. There had been considerable land transactions in the northern area over the years and the Convention rights of third parties also had to be protected. The new Law was designed to establish a fair balance between these conflicting rights. Providing for restitution without regard to the present occupants might also endanger public order and peace in both communities on the island.

53. Where restitution was not possible, there could be exchange of property with equivalent Turkish Cypriot property in the south or compensation, determined by the IPC on an equitable basis taking into account the market value in 1974 and increase in value since. Loss of use could be compensated for from 1974, an earlier date than that taken by the Court. Compensation could be paid for movable property (seven applicants had so claimed, of which two cases had been concluded to date). Non-pecuniary damage could be given for home, taking into account personal and family links to the property in question.

54. The Government submitted that the IPC was independent and impartial, the members not subject to removal save as provided for by law nor subject to any instructions. Persons with interests in disputed property were excluded and there were two international members who were jurists of outstanding reputation. Their decisions were binding and to be implemented on service. As regarded procedure, an application form was available in Turkish, in English and in Greek, as was an information leaflet; secretariat staff were available to give information and assistance in English and in Turkish. All materials relating to the applications were translated into English for the international members. Land Registry records in Greek were accepted by the IPC. Where meetings were attended by the international members, the proceedings were conducted in English; in other cases, the hearings were conducted in Turkish but translation into English or Greek was provided upon request. The first hearing on the merits was generally a "mention meeting" at which the possibility of settling the case amicably was broached. If no friendly settlement was reached, a public hearing of the IPC was scheduled. A reasoned decision had to be given within three months, extendable to six months, following which there was appeal to the High Administrative Court. It was to be noted that most applications were concluded with a settlement at the mention stage. Only a few decisions not

based on a settlement had been issued so far and no appeals had been made to the High Administrative Court. In four cases, the IPC had ordered restitution and compensation, and in two cases, exchange of property had been agreed. It was evident that most claimants did not apply for restitution, preferring to obtain financial compensation.

55. The Government asserted that Law no. 67/2005 created a legally valid domestic remedy for the purpose of the Convention: this was not affected by the fact that it was created by "TRNC" legislation, the Court's case-law indicating that the "TRNC" could establish legally valid domestic law. Any other approach would imply that the *Xenides-Arestis* judgment (cited above) had directed Turkey to create an unlawful remedy.

56. The remedies available in the "TRNC" were to be regarded as domestic remedies of the respondent Government as was well-established in the Court's case-law. They were not limited to residents of northern Cyprus as since 23 April 2003 Greek Cypriots had free access to the north. However, the Cypriot Government had been making repeated efforts to mislead, intimidate and discourage Greek Cypriots from making use of the IPC. They considered that the statements by claimants which were critical of the IPC and which had been taken by police officers instructed by the Cypriot Government for the purposes of the hearing should be regarded as unreliable in those circumstances.

57. Finally, the Government stated that it had cooperated fully and in good faith with the Court in bringing the pilot-judgment procedure to a successful conclusion. The applicants should therefore be required to exhaust the available and effective remedy provided under Law no. 67/2005.

2. The applicants

58. The applicants submitted that they should not be expected to exhaust a remedy which only became available several years after the introduction of their complaints. They argued that, as a rule, the assessment as to exhaustion of domestic remedies should be carried out with reference to the date on which the applications were lodged. There were no exceptional circumstances to justify a departure from this rule, in particular since these cases had been pending for some years and it would be particularly unjust given the advanced age of many applicants. The applicants also emphasised that the IPC remedy was operated by the authorities of an entity widely resented and distrusted by Greek Cypriots and universally viewed (save in Turkey) as an unlawful occupier. Many property owners felt unable to submit to, or effectively collaborate with, an occupying power in such a way. It was important to note that Turkey had failed to acknowledge responsibility for any violations in this area, nor had it returned property in the *Loizidou* and *Xenides-Arestis* cases (cited above), or three years later, paid the latter applicant the award of just satisfaction, showing a consistent practice of failing to comply with Court judgments. They also stressed that

the purported remedy was inconsistent with Article 159 of the "TRNC" Constitution, which continued in force with extensive associated legislation and demonstrated the absence of any genuine commitment to remedying the systemic defects. Further, there was a continuing policy and practice to prevent the return of Greek Cypriots, reinforced by the sale and development of their land, and visa provisions impeding permanent return.

59. The applicants submitted that, in cases of interference with property, restitution should be automatic in the absence of material impossibility. Denial of owners' rights could not be justified by the need to rehouse Turkish Cypriots, and any interference with the rights of current users would be justified as necessary to protect the rights of the owners. The applicants were not interested in compensation calculated on the basis of a *de facto* expropriation and could not be required to surrender the property rights repeatedly confirmed by the Court. Return of property was only likely to occur under the Law in very limited circumstances, due to the numerous and widely framed exceptions. The remedy of exchanging property was also highly problematic since neither the IPC nor the "TRNC" authorities had any authority over properties in the south. If few people had applied for restitution, it was because they and their advisers saw that this was not a genuine possibility. In the applicants' view, far from remedying the systemic defect, Law no. 67/2005, which conferred a limitless discretion and lacked legal certainty, clarity, accessibility and transparency, actively reinforced it.

60. As regarded the composition of the IPC, they noted that the two international members were outnumbered by their colleagues and there was doubt as to their ability to participate fully in the proceedings due to language. The independence of the other members was not assured given that they were appointed by the "President" and were reappointed by him after five years. In practice, the remedy was shown to fall short of Article 6 standards, the experience of claimants showing, *inter alia*: no proper mechanism being applied to determine compensation; a practice of radical under-compensation; no compensation being awarded for loss of use; hardly any restitution of land; lack of proper translation or interpretation facilities; discriminatory requirements for Turkish Cypriot property valuations and legal representation; excessive delays; sharp practice and deception; unofficial "negotiations" with an IPC member outside a hearing; the securing of a settlement by payment of a "commission" by the applicant's lawyer to IPC members; and failure to give reasoned judgments. Undue obstacles were imposed by the high criminal standard of proof and the stringent requirements of title. The witness statements put forward by the intervening Government showed that the procedure was completely inadequate and desperately slow and that the IPC seemed to see itself primarily as a forum for negotiation, in which claimants were put off by purported obstacles to their claims, derisory offers, pressure and threats. Nor did the IPC disclose any willingness to identify issues and resolve them in a

principled and reasoned manner. The applicants considered that the statistics showed a small and decreasing number of claimants, indicating that it was not viewed as an effective remedy.

61. The applicants noted that Turkey had appealed to the administrative convenience of the Court, overburdened by cases, but submitted that this was a weak and dangerous argument, as requiring these applicants to resort to an ineffective remedy would give a wrong signal to Contracting States in any future pilot judgments, thus creating more, not less, work for the Court.

62. In the very specific circumstances of their cases, the applicants submitted that they were absolved from the obligation to apply to the IPC. They supported the invitation of the intervening Government that the Court should reconsider its previous finding that the requirement to exhaust "TRNC" remedies was not excluded *in limine* (see *Cyprus v. Turkey*, cited above, § 98).

3. The intervening Government

63. The Government of the Republic of Cyprus submitted that the Turkish Government's admissibility challenge was an abuse of the pilot-judgment procedure since, rather than being designed to provide redress for systemic violations and reinforce the effectiveness of the Court, it was an attempt to legitimise their unlawful mass appropriation of Greek Cypriot properties. It was the precondition of any pilot-judgment procedure that the respondent Government should abide by the Court's judgments; the Turkish Government showed a continuing and deliberate flouting of such judgments as indicated by the *Xenides-Arestis* case (cited above), where no property had been returned or compensation paid. Also, the provision of compensation machinery could only be seen as an adequate remedy where the authorities had taken reasonable steps to comply with their obligations by preventing as far as possible any occurrences or repetition of the acts in question (see *Frederiksen and Others v. Denmark*, no. 12719/87, Commission decision of 3 May 1988, Decisions and Reports (DR) 56, p. 237, at p. 244).

64. They argued that the rule of exhaustion of domestic remedies, as well-established in customary international law, only required the applicants to exhaust Turkish remedies; Turkey insisted that the IPC was a "TRNC" remedy. They respectfully submitted that the Court's conclusion in *Cyprus v. Turkey* (cited above) that remedies available in the "TRNC" might be regarded as "domestic remedies" of Turkey be reconsidered. Nor could the applicants be required to have recourse to any Turkish remedy either as there was no relevant connection between Greek Cypriots and the occupiers who had only assumed *de facto* jurisdiction by the unlawful use of force. An invader could not impose on the people whose land it had occupied by force its own procedures for complaints about its violations of human rights.

65. Further, Law no. 67/2005 was null and void, not only because, under international law, it was the product of an unlawful legislature but because

its purported legal basis was Article 159 of the "TRNC" Constitution which the Court had held must not be recognised and also because its purported basis was discriminatory. The "Namibia exception" was not sufficiently broad to confer recognition on otherwise invalid measures of the "TRNC"; it concerned routine events of everyday private life, not the determination of challenges to the large-scale taking of the property of foreign citizens in violation of the Convention and international law. To adopt any other approach would plainly involve both recognition of and assistance to the "TRNC", contrary to the international legal order.

66. In any event, the applicants could not be required to show that they had exhausted the remedy under Law no. 67/2005 as their complaints concerned a denial to Greek Cypriots of access to homes and property which continued to be a matter of policy and practice by Turkey and it would be oppressive, discriminatory and unfair to require them to do so. The whole basis and origin of Law no. 67/2005 was Article 159, both of which were based on an approach to the principle of bizonality which amounted to ethnic cleansing. The 2005 Law did not put an end to the discrimination which was at the heart of systemic dysfunction. Article 159 had to be repealed and the title of Greek Cypriots had to be recognised and all Greek Cypriots be allowed to return to their homes.

67. Finally, the remedies provided under Law no. 67/2005 were wholly inadequate and ineffective in practice. Restitution was unavailable save in rare instances whereas it should be the primary remedy unless it was impossible; accepting compensation only as a remedy would legitimise the compulsory acquisition of private property by an aggressor State in occupation of another State's territory. Additionally, there were no means of establishing a breach of Convention rights; the calculation of compensation was defective (an analysis showed that only 3 to 6% of actual losses was being awarded); the membership of the IPC violated Article 6 as the members were reliant on presidential indulgence to be appointed or reappointed and had close relatives who have interests in Greek Cypriot property, as did members of the "TRNC" High Administrative Court which sat on appeal. They further criticised the IPC, *inter alia*, for the following defects: it was essentially a "bargaining" process in which vulnerable applicants were at a disadvantage; no reasons were given; there were serious linguistic barriers, delays, and a lack of clarity as to which currency compensation was being paid in (whether in Cypriot pounds or pounds sterling); an unjustifiable burden on applicants to prove that no other persons claimed rights in the property or that there were no mortgage or charging orders on the property; and the inappropriate imposition of a criminal standard of proof beyond reasonable doubt and no provision for the payment of legal costs and expenses.

B. Exhaustion of domestic remedies

1. Article 35 § 1 of the Convention

68. This provides:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

2. General principles of exhaustion

69. It is primordial that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It cannot, and must not, usurp the role of Contracting States whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is therefore an indispensable part of the functioning of this system of protection. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* 1996-IV). The Court cannot emphasise enough that it is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions.

70. The Court would refer to its classic and comprehensive statement set out in the *Akdivar and Others* judgment (ibid., §§ 66-69) concerning the application of the rule of exhaustion of domestic remedies as required by former Article 26 (now Article 35 § 1 of the Convention):

> "66. Under Article 26 normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, the *Vernillo v. France* judgment of 20 February 1991, Series A no. 198, pp. 11-12, para. 27, and the *Johnston and Others v. Ireland* judgment of 18 December 1986, Series A no. 112, p. 22, para. 45).
>
> Article 26 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of

the Convention should have been used (see the *Cardot v. France* judgment of 19 March 1991, Series A no. 200, p. 18, para. 34).

67. However, there is, as indicated above, no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the 'generally recognised rules of international law' there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (see the *Van Oosterwijck v. Belgium* judgment of 6 November 1980, Series A no. 40, pp. 18-19, paras. 36-40). The rule is also inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (see the *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 64, para. 159, and the report of the Commission in the same case, Series B no. 23-I, pp. 394-97).

68. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, *inter alia*, the Commission's decision on the admissibility of application no. 788/60, *Austria v. Italy*, 11 January 1961, Yearbook, vol. 4, pp. 166-168; application no. 5577-5583/72, *Donnelly and Others v. the United Kingdom* (first decision), 5 April 1973, Yearbook, vol. 16, p. 264; also the judgment of 26 June 1987 of the Inter-American Court of Human Rights in the *Velásquez Rodríguez* case, Preliminary Objections, Series C no. 1, para. 88, and that Court's Advisory Opinion of 10 August 1990 on 'Exceptions to the Exhaustion of Domestic Remedies' (Article 46 (1), 46 (2) (a) and 46 (2) (b) of the American Convention on Human Rights), Series A no. 11, p. 32, para. 41). One such reason may be constituted by the national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of.

69. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 26 must be applied with some degree of flexibility and without excessive formalism (see the above-mentioned *Cardot* judgment, p. 18, para. 34). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see the above-mentioned *Van Oosterwijck* judgment, p. 18, para. 35). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants."

3. Remedy issues examined in previous property cases

71. The Court has already been called upon to examine applications arising from the situation in Cyprus concerning the property of Greek Cypriot citizens who fled following events in 1974, most notably in the *Loizidou* case (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, Series A no. 310; *Loizidou*, judgment on the merits, cited above; and *Loizidou v. Turkey* (Article 50), 28 July 1998, *Reports* 1998-IV) and the inter-State case dealt with by the Grand Chamber of the Court (see *Cyprus v. Turkey*, cited above, §§ 162-99), in which violations of Article 1 of Protocol No. 1 were found due to the ongoing deprivation of the use of property and, in the latter, also a violation of Article 8 due to the refusal to allow displaced persons to return to their homes in the north (see also *Demades v. Turkey*, no. 16219/90, 31 July 2003).

72. On the issue of remedies, the Court reiterates its finding in the inter-State case that pursuant to Article 159 of the "TRNC" Constitution the ownership rights of Greek Cypriots to their properties in northern Cyprus were no longer recognised by the "TRNC" authorities and that the legality of any interference was unassailable before the "TRNC" courts. In those circumstances no requirement to exhaust arose; and there was, correspondingly, a breach of Article 13 in that Turkey had failed to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1.

73. Having regard to the large number of individual applications raising property complaints pending before the Court and the introduction of Law no. 49/2003 that purported to provide applicants with redress, the Chamber notified the parties in the *Xenides-Arestis* judgment (cited above) that this was to be a pilot case and put questions as to the compensation commission set up under the Law and the relevance, if any, of the Annan Plan. Meanwhile, it adjourned examination of all other cases. Following a hearing, it ruled in its decision on admissibility that Law no. 49/2003, which provided for compensation for immovable properties, did not satisfy the requirements of Article 35 § 1 of the Convention since compensation was limited to damage for pecuniary loss for immovable property, without provision for movable property or non-pecuniary damage; there was no provision for the restitution of property; the Law did not address the applicant's complaints under Articles 8 or 14 of the Convention; the Law was vague as to its temporal application (namely whether it had retrospective effect concerning applications lodged before it entered into effect); and the composition of the compensation commission gave rise to difficulties, the Government not disputing that the majority of its members lived in houses owned or built on property of Greek Cypriots. It was noted that an international composition would enhance the commission's standing and credibility (see the decision on admissibility in *Xenides-Arestis*, cited above).

74. In its subsequent judgment on the merits, the Court considered that the respondent State should introduce a remedy which secured genuinely effective redress for the Convention violations identified in the judgment, as well as in respect of all similar pending applications, in accordance with the principles for the protection of rights laid down in applicable provisions and in line with the admissibility decision (see §§ 39-40 of the judgment on the merits in *Xenides-Arestis*, cited above):

> "39. Before examining the applicant's individual claims for just satisfaction under Article 41 of the Convention and in view of the circumstances of the instant case, the Court wishes to consider what consequences may be drawn for the respondent State from Article 46 of the Convention. It reiterates that by virtue of Article 46 the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers of the Council of Europe. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).
>
> 40. The Court considers that the respondent State must introduce a remedy which secures genuinely effective redress for the Convention violations identified in the instant judgment in relation to the present applicant as well as in respect of all similar applications pending before it, in accordance with the principles for the protection of the rights laid down in Article 8 of the Convention and Article 1 of Protocol No. 1 and in line with its admissibility decision of 14 March 2005. ..."

75. Following this judgment, the "TRNC" authorities enacted the new compensation Law, Law no. 67/2005 (set out in "Relevant domestic law and practice" above) which entered into force on 22 December 2005. The IPC, which was established under this Law for the purpose of examining applications made in respect of properties within the scope of the above-mentioned Law, was composed of five to seven members, two of whom were foreign members, Mr Hans-Christian Krüger (former Secretary to the European Commission of Human rights and former Deputy Secretary General of the Council of Europe) and Mr Daniel Tarschys (former Secretary General of the Council of Europe), and had the competence to decide on the restitution, exchange of properties or payment of compensation. A right of appeal lay to the "TRNC" High Administrative Court.

76. In its judgment on Article 41 (see *Xenides-Arestis* (just satisfaction), cited above), the Court stated as follows:

> "37. The Court welcomes the steps taken by the Government in an effort to provide redress for the violations of the applicant's Convention rights as well in respect of all

similar applications pending before it. The Court notes that the new compensation and restitution mechanism, in principle, has taken care of the requirements of the decision of the Court on admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005. The Court points out that the parties failed to reach an agreement on the issue of just satisfaction where, like in the case of *Broniowski v. Poland* (friendly settlement and just satisfaction) ([GC], no. 31443/96, ECHR 2005-IX), it would have been possible for the Court to address all the relevant issues of the effectiveness of this remedy in detail. The Court cannot accept the Government's argument that the applicant should now be required at this stage of the proceedings where the Court has already decided on the merits to apply to the new Commission in order to seek reparation for her damages (*Doğan and Others v. Turkey* (just satisfaction), nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 50, 13 July 2006)."

77. The Court proceeded to issue an award of just satisfaction for pecuniary damage taking account of the assessment of compensation made by the IPC in these terms:

"42. Having regard to the above considerations, and in the absence of an agreement between the parties, the Court, making its assessment on an equitable basis and formally in accordance with the Commission's proposal, awards the applicant EUR 800,000 [euros] under this head."

78. Both the Government and the applicant in *Xenides-Arestis* (cited above) applied to have the case referred to the Grand Chamber. On 23 May 2007, the panel of the Grand Chamber refused their requests for referral and the judgment of 7 December 2006 became final.

79. Subsequently, in *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* ((just satisfaction-friendly settlement), no. 16163/90, 22 April 2008), the Court struck out a case, where there had been a finding of a breach of Article 1 of Protocol No. 1 arising out of denial of enjoyment of property in northern Cyprus, on the basis of a settlement in which the applicant accepted the offer of compensation of one million United States dollars and exchange of property put forward by the IPC. It was satisfied that the settlement was based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court) and that it was equitable within the meaning of Rule 75 § 4. The same conclusion was arrived at in respect of a settlement reached in *Alexandrou v. Turkey* ((just satisfaction and friendly settlement), no. 16162/90, 28 July 2009) in which the applicant was to receive one million five hundred thousand pounds sterling and restitution of a plot of land.

4. Application in the present case

(a) Preliminary point

80. The Court observes that the applicants and intervening Government have made submissions concerning the applicability of the pilot-judgment procedure to cases concerning property in northern Cyprus, in particular impugning the good faith of the Turkish Government in its approach to

providing a remedy and asserting that Turkey should not be allowed to benefit from a pilot-judgment procedure since it had been responsible for undue delays in the implementation of previous judgments.

81. It is certainly the case that the settlement of groups of applications, and the speedy resolution of execution issues, is greatly assisted by the proactive investment of the respondent Government in the procedures. However, it should go without saying that Contracting States are bound, in any event, to comply with the Court's judgments, whether or not they have been engaged in a dialogue as to their willingness to find general solutions to a widespread problem. The Court's competence to undertake a pilot-judgment procedure in respect of a series of repetitive or clone cases is not conditional on a Government's conduct.

82. The present eight cases are the first applications not yet declared admissible to be examined following the pilot-judgment procedure in the *Xenides-Arestis* case (cited above). Although the Chamber in the *Xenides-Arestis* case had concluded that the remedy seemed to be adequate (see paragraph 76 above), its judgments did not include a detailed analysis of the points of principle and interpretation of the Convention raised by the parties. The fact that the panel of the Grand Chamber did not accept the request for referral of the *Xenides-Arestis* case (see paragraph 78 above) does not mean that the Grand Chamber is bound in any formal sense by the Chamber's findings. Nor is it so bound by any other precedents (see, for example, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 104, 17 September 2009). The Court will embark on its determination of the issues in these cases, taking full account of the submissions of the parties and the principles laid down in its case-law as to the interpretation of the Convention, in which context it must be remembered above all that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" (see, *inter alia*, *Folgerø and Others v. Norway* [GC], no. 15472/02, § 100, ECHR 2007-III, and *Salduz v. Turkey* [GC], no. 36391/02, § 51, ECHR 2008).

(b) The context of these applications

83. The Court observes that the arguments of all the parties reflect the long-standing and intense political dispute between the Republic of Cyprus and Turkey concerning the future of the island of Cyprus and the resolution of the property question.

84. In the present applications, some thirty-five years have elapsed since the applicants lost possession of their property in northern Cyprus in 1974. Generations have passed. The local population has not remained static. Turkish Cypriots who inhabited the north have migrated elsewhere; Turkish Cypriot refugees from the south have settled in the north; Turkish settlers from Turkey have arrived in large numbers and established their homes. Much Greek Cypriot property has changed hands at least once, whether by sale, donation or inheritance.

85. Thus, the Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level. This reality, as well as the passage of time and the continuing evolution of the broader political dispute must inform the Court's interpretation and application of the Convention which cannot, if it is to be coherent and meaningful, be either static or blind to concrete factual circumstances.

86. The Court will proceed, in the light of all the above considerations, to examine the two main branches of objections by the applicants and the intervening Government to the procedure before the IPC: firstly, whether the requirement to exhaust domestic remedies applies at all to the situation of Greek Cypriot owners of property under the control of the "TRNC"; and then, secondly, whether or not the respondent Government in these cases have furnished a remedy in the IPC capable of providing effective redress.

(c) The application of Article 35 § 1 in the present cases

(i) As to the argument that the applicants were not required to exhaust any remedy which came into being after they lodged the applications

87. The Court observes that indeed the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it. However, as it has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V, and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX). In particular, the Court has previously departed from this general rule in cases, for example, against Italy, Croatia and Slovakia concerning remedies against the excessive length of proceedings (see *Brusco*, cited above; *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; and *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-IX) and in *İçyer v. Turkey* ((dec.) no. 18888/02, ECHR 2006-I) concerning a new compensation remedy for interference with property (see also *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-V, and *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005). As in the present cases, the remedies under consideration were enacted to redress at a domestic level the Convention grievances of persons whose applications pending before the Court concerned similar issues.

88. Giving weight therefore to the subsidiary character of its role, the Court considers that the exception applies here also. In so far as the cases cited above took into account the effectiveness and accessibility of supervening remedies, these matters are examined separately below.

(ii) As to the argument that the "TRNC" compensation law was not part of Turkish domestic law

89. The Court considers this to be an artificial argument. Turkey has been held responsible for the acts and omissions of the authorities within the "TRNC" entity in numerous cases – otherwise the Court would not have had the competence to examine complaints brought by applicants against the respondent State concerning northern Cyprus. To the extent that any domestic remedy is made available by acts of the "TRNC" authorities or institutions, it may be regarded as a "domestic remedy" or "national" remedy *vis-à-vis* Turkey for the purposes of Article 35 § 1 (see *Cyprus v. Turkey*, cited above, §§ 101-02). It should also not be overlooked that Law no. 67/2005 and the IPC came into existence as the consequence of the Court holding in the *Xenides-Arestis* case (cited above) that Turkey had to introduce a remedy which secured the effective protection of the rights laid down in Article 1 of Protocol No. 1 in relation to the applicant as well as in respect of all similar applications pending before the Court. Accepting the functional reality of remedies is not tantamount to holding that Turkey wields internationally recognised sovereignty over northern Cyprus.

(iii) As to the argument that no obligation to exhaust arose since there was an administrative practice of ongoing violations of the applicants' rights

90. It is correct that in the inter-State case the European Commission of Human Rights made an express finding of administrative practices under Article 8 of the Convention and Article 1 of Protocol No. 1 as regarded the acknowledged public policy not to allow the entry of Greek Cypriots into northern Cyprus (Commission's report, §§ 264-65) and the legislation and practice *vis-à-vis* interference with property rights. While agreeing with the Commission, the Court in its judgment put weight on the non-existence of effective remedies due to the applicable legislation and to prevailing official attitudes and policies (judgment cited above, §§ 171 and 184). That situation has changed. There is now legislation which seeks to provide a mechanism of redress and which has been interpreted so as to comply with international law, including the Convention (see "Relevant domestic law and practice", paragraphs 33-37 above). Furthermore, the political climate has ameliorated, with borders to the north no longer closed.

91. It must be open to a Government to take steps to eliminate an administrative practice. To the extent therefore that this objection amounts to the assertion that the remedies offered by the IPC fail to address the violations, this is an issue which will have to be addressed below when assessing whether the IPC provides adequate redress.

(iv) As to the argument that requiring exhaustion lent legitimacy to an illegal occupation

92. This is the argument which underlies most of the objections raised by the applicants and the intervening Government. It is not the first time

that it has been raised before the Court; the intervening Government, joined by the applicants, urged the Court to reconsider the approach adopted by it in earlier cases.

93. In particular, in these proceedings, the parties have differed as to the relevance or applicability of the so-called "Namibia principle": this, in brief, provides that even if the legitimacy of the administration of a territory is not recognised by the international community, "international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, ... the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory" (Advisory Opinion of the International Court of Justice in the *Namibia* case (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *ICJ Reports* 1971, vol. 16, p. 56, § 125).

94. The Court agrees that the issue before the International Court of Justice was different, and that the situation in Namibia differs from that in northern Cyprus, in particular since the applicants in these cases are not living under occupation in a situation in which basic daily reality requires recognition of certain legal relationships but are rather seeking to vindicate, from another jurisdiction, their rights to property under the control of the occupying power. It nonetheless derives support from this source, and others (see *Cyprus v. Turkey*, cited above, §§ 89-102, for the Grand Chamber's previous treatment of this question) for its view that the mere fact that there is an illegal occupation does not deprive all administrative or putative legal or judicial acts therein of any relevance under the Convention. As stated in the inter-State case:

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

95. Further, the overall control exercised by Turkey over the territory of northern Cyprus entails its responsibility for the policies and actions of the "TRNC" and that those affected by such policies or actions come within the "jurisdiction" of Turkey for the purposes of Article 1 of the Convention with the consequence that Turkey is accountable for violations of Convention rights which take place within that territory and is bound to take positive steps to protect those rights. It would not be consistent with such responsibility under the Convention if the adoption by the authorities of the "TRNC" of civil, administrative or criminal law measures, or their application or enforcement within that territory, were then to be denied any validity or regarded as having no "lawful" basis in terms of the Convention (see *Foka v. Turkey*, no. 28940/95, § 83, 24 June 2008, where arrest for obstruction of the applicant Greek Cypriot by a "TRNC" police officer was found to be lawful, and *Protopapa v. Turkey*, no. 16084/90, § 87,

24 February 2009, where a criminal trial before a "TRNC" court was found to be in accordance with Article 6, there being no ground for finding that these courts were not independent or impartial or that they were politically motivated).

96. In the Court's view, the key consideration is to avoid a vacuum which operates to the detriment of those who live under the occupation, or those who, living outside, may claim to have been victims of infringements of their rights. Pending resolution of the international dimensions of the situation, the Court considers it of paramount importance that individuals continue to receive protection of their rights on the ground on a daily basis. The right of individual petition under the Convention is no substitute for a functioning judicial system and framework for the enforcement of criminal and civil law. Even if the applicants are not living as such under the control of the "TRNC", the Court considers that, if there is an effective remedy available for their complaints provided under the auspices of the respondent Government, the rule of exhaustion applies under Article 35 § 1 of the Convention. As has been consistently emphasised, this conclusion does not in any way put in doubt the view adopted by the international community regarding the establishment of the "TRNC" or the fact that the government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see *Foka*, cited above, § 84). The Court maintains its opinion that allowing the respondent State to correct wrongs imputable to it does not amount to an indirect legitimisation of a regime unlawful under international law.

97. The applicants in these cases, joined by the intervening Government, nonetheless argued that the principle of exhaustion of domestic remedies could not be applied to them as it could not be regarded as to their benefit to require them to exhaust remedies, referring, *inter alia*, to the time, effort and humiliation that this would involve after years of continuing and flagrant violations. The Court cannot subscribe to the position that it is somehow better for individuals to bring their cases directly before it than to make use of remedies available locally; this runs counter to the basic principle of exhaustion of domestic remedies. An appropriate domestic body, with access to the properties, registries and records, is clearly the more appropriate forum for deciding on complex matters of property ownership and valuation and assessing financial compensation.

98. The Court is therefore not persuaded that the acknowledgement of the existence of a domestic remedy runs counter to the interests of those claiming to be victims of violations. It acknowledges the strength of feeling expressed by some of the applicants. However, the argument that it would be galling to have recourse to the authorities in northern Cyprus cannot be given decisive weight – against the background of conflict and hostility, similar argument might be raised in respect of any official body or authority on the Turkish mainland, or indeed by any victim of a violation who is faced with the prospect of asking for redress from a State which has been responsible for the injury suffered. The fact that applicants live outside the

occupied area furnishes no reason in principle why they should not be expected to apply to a "TRNC" body where it can be demonstrated that a remedy is both practicable and normally functioning (see, for example, *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, Commission decision of 26 May 1975, DR 2, p. 125, at pp. 137-38, § 14, and *Cyprus v. Turkey*, no. 8007/77, Commission decision of 10 July 1978, DR 13, p. 85, at p. 152, § 34). Borders, factual or legal, are not an obstacle *per se* to the exhaustion of domestic remedies; as a general rule applicants living outside the jurisdiction of a Contracting State are not exempted from exhausting domestic remedies within that State, practical inconveniences or understandable personal reluctance notwithstanding.

(v) As to the argument that domestic remedies do not have to be exhausted where there is no relevant connection between the injured persons and the State responsible

99. The Court notes that the intervening Government relied on a territorial-restriction argument to the effect that Greek Cypriot property owners who had not voluntarily submitted to the jurisdiction of Turkey could not be required to use Turkish remedies in respect of acts which were in violation of their rights outside Turkey's lawful jurisdiction. Otherwise, it was submitted, the aggressor would be treated as if it had the power to abrogate private rights and create new legal procedures; it was thus contrary to principle to insist that victims of an illegal armed invasion must firstly exhaust procedures imposed on them by the invader.

100. This argument seeks to draw its force from the international-law position already examined above that institutions and procedures imposed by force by an occupying power cannot be treated as if they were established by the lawful government of the State. However, there is no direct, or automatic, correlation of the issue of recognition of the "TRNC" and its purported assumption of sovereignty over northern Cyprus on an international plane and the application of Article 35 § 1 of the Convention.

101. The Court notes that applicants have not infrequently been required to exhaust domestic remedies even where they did not choose voluntarily to place themselves under the jurisdiction of the respondent State (see *Pad and Others v. Turkey* (dec.), no. 60167/00, 28 June 2007, concerning Iranian villagers shot in the border area by Turkish security forces, and *Al-Saadoon and Mufdhi v. United Kingdom* (dec.), no. 61498/08, 30 June 2009, concerning Iraqis detained by United Kingdom security forces in Basra). Under the Convention system, the principle of subsidiarity is of paramount importance to ensuring the protection of rights at domestic level; where effective remedies are available, an applicant is required to make use of them before invoking the Court's international supervision. Contracting States are bound by the stringent requirements of the rule of law enshrined in the provisions of the Convention precisely to offer mechanisms of accountability and redress regarding the acts of their own security forces or other authorities, irrespective of the identity or origin of the alleged victim.

102. The Court therefore rejects this argument.

(vi) Conclusion

103. For the purposes of Article 35 § 1 of the Convention, remedies available in the "TRNC", in particular, the IPC procedure, may be regarded as "domestic remedies" of the respondent State. No ground for exemption of the application of Article 35 § 1 of the Convention has been established. The Court will now turn to consider the effectiveness of Law no. 67/2005, and the IPC in particular.

(d) The existence of practical and effective remedies

104. The Court notes, first of all, that the IPC has been functioning since March 2006 and has concluded 85 applications, in which significant sums of money have been paid in compensation, restitution of property has been made to 4 applicants and exchange of property effected in several other cases (see paragraph 40 above). There are currently over 300 other claims pending examination by the IPC.

105. The applicants, supported by the intervening Government, raise strenuous arguments, impugning the lack of effectiveness of the remedy before the IPC on numerous grounds, including the inadequate and flawed nature of the redress, the lack of independence and impartiality of the IPC, the inadequacy of the compensation and the lack of accessibility of the procedure. The Court will deal with each of these points below.

(i) Adequacy of the redress

106. The applicants and intervening Government contested the genuineness of the mechanism and labelled it as a sham or a smokescreen, arguing that rather than seeking to provide property owners with effective redress it aims to legitimise the illegal seizure of their property. This was demonstrated, they submitted, by the absence of any provision in the IPC procedure acknowledging the breach of rights and the fact that the whole mechanism was based on Article 159 of the "TRNC" Constitution which purported, in a flagrantly discriminatory manner reminiscent of a form of ethnic cleansing, to expropriate the property of Greek Cypriots, and which still had not been repealed. Further, they pointed to the low percentage of property which was being restored to its owners and argued that restitution had to be the primary remedy, without allowing the IPC a non-transparent and unfettered discretion in that regard.

107. The Court points out that in *Loizidou* (judgment on the merits, cited above), noting that the international community did not regard the "TRNC" as a State under international law and that the Republic of Cyprus had remained the sole legitimate Government of Cyprus, it held that it could not attribute legal validity for the purposes of the Convention to such provisions as Article 159 which purported to deprive Greek Cypriots of their ownership to property. While it is true that Article 159 has not been

repealed, it is nonetheless the case that the international law position and the findings of this Court have been acknowledged by the internal "TRNC" authorities, in particular the "TRNC" Constitutional Court which insisted on the interpretation of the said legislation as to permit Greek Cypriot owners to have possession restored and compensation paid to them (see paragraphs 38-39 above). It can hardly be expected, for evident practical reasons, that the "TRNC" authorities themselves proceed to pronounce the legal and administrative system in the occupied areas to be null and void in order to satisfy the points of principle raised by the applicants and the intervening Government.

108. Moreover, the Court notes that the Turkish Government no longer contested their responsibility under the Convention for the areas under the control of the "TRNC" and that they have, in substance, acknowledged the rights of Greek Cypriot owners to remedies for breaches of their rights under Article 1 of Protocol No. 1. This acknowledgment underlies the provision of the IPC mechanism which sought to apply the findings of the Court in the earlier cases.

109. In any event, the specific recognition of a breach of rights by the authorities is not generally a requirement under Article 35 § 1 of the Convention which is concerned with the availability of adequate redress; such acknowledgement is rather a requirement for a finding that an applicant has ceased to be a victim of a violation for the purposes of standing to bring an application under Article 34 of the Convention (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51) which is not an issue in these proceedings. In the particular circumstances of these cases the Court does not find any basis to conclude that the adequacy of the remedy is affected by lack of any formal indication of unlawfulness or breach of rights (see, *mutatis mutandis*, the provision of compensation in the Bug River cases in, among others, *Wolkenberg and Others v. Poland* (dec.), no. 50003/99, 4 December 2007, and the provision of compensation for exclusion from homes and villages in *İçyer*, cited above).

110. In so far as criticism is made of an allegedly overly restrictive approach to restitution of possession of property to its Greek Cypriot owners, the Court notes that, in *Loizidou* (judgment on the merits, cited above, § 44), it had rejected the validity of Article 159 of the "TRNC" Constitution in the context of the Turkish Government's reliance on that provision as showing that the property had been expropriated in an instantaneous act prior to the temporal competence of the Court. As the "TRNC" regime was not regarded as being capable of depriving the property owners of title, only of possession, there was accordingly a continuing situation of breach due to the ongoing barring of access to and enjoyment of their property by Greek Cypriot owners which was within the Court's temporal jurisdiction. Thus, in all the cases that followed, it may be noted that Greek Cypriot owners claimed only in respect of pecuniary damage for loss of use of their properties, not compensation for the loss of

the properties themselves of which they continued to be regarded as the legal owners.

111. This has led to the situation that individuals claiming to own property in the north may, in theory, come to the Court periodically and indefinitely to claim loss of rents until a political solution to the Cyprus problem is reached. At the present point, many decades after the loss of possession by the then owners, property has in many cases changed hands, by gift, succession or otherwise; those claiming title may have never seen, or ever used the property in question. The issue arises to what extent the notion of legal title, and the expectation of enjoying the full benefits of that title, is realistic in practice. The losses thus claimed become increasingly speculative and hypothetical. There has, it may be recalled, always been a strong legal and factual link between ownership and possession (see, for example, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, ECHR 2007-III concerning extinction of title in adverse possession cases) and it must be recognised that with the passage of time the holding of a title may be emptied of any practical consequences.

112. This is not to say that the applicants in these cases have lost their ownership in any formal sense; the Court would eschew any notion that military occupation should be regarded as a form of adverse possession by which title can be legally transferred to the invading power. Yet it would be unrealistic to expect that as a result of these cases the Court should, or could, directly order the Turkish Government to ensure that these applicants obtain access to, and full possession of, their properties, irrespective of who is now living there or whether the property is allegedly in a militarily sensitive zone or used for vital public purposes.

113. The Court can only conclude that the attenuation over time of the link between the holding of title and the possession and use of the property in question must have consequences on the nature of the redress that can be regarded as fulfilling the requirements of Article 35 § 1 of the Convention.

114. The Court's case-law indicates that if the nature of the breach allows *restitutio in integrum*, it is for the respondent State to implement it. However, if it is not possible to restore the position, the Court, as a matter of constant practice, has imposed the alternative requirement on the Contracting State to pay compensation for the value of the property. This is because the Contracting Parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under Article 1 of the Convention to secure the rights and freedoms guaranteed under the Convention (see, among many authorities, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B). The Court notes that it has consistently applied the above approach even to cases of manifestly

unlawful and flagrant expropriations of property (see, for example, *Papamichalopoulos and Others*, cited above, and *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, ECHR 2000-XI); it does not perceive that any difference of principle arises where the illegality is on an international level. While it goes without saying that Turkey is regarded by the international community as being in illegal occupation of the northern part of Cyprus, this does not mean that when dealing with individual applications concerning interference with property, the Court must apply the Convention any differently.

115. The applicants argued that this would allow Turkey to benefit from its illegality. The Court would answer that, from a Convention perspective, property is a material commodity which can be valued and compensated for in monetary terms. If compensation is paid in accordance with the Court's case-law, there is in general no unfair balance between the parties. Similarly, it considers that an exchange of property may be regarded as an acceptable form of redress. It is correct, as the applicants and intervening Government asserted, that the Convention should be interpreted as far as possible in harmony with other principles of international law of which it forms part (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 60, ECHR 2001-XI); however, the Court must also have regard to its special character as a human rights treaty (see, among many authorities, *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, § 57, ECHR 2001-XII). The Convention system deals, overwhelmingly, with individual applications. The present applications are cases about interferences with individual property rights, and the availability of redress therefor – they cannot be used as a vehicle for the vindication of sovereign rights or findings of breaches of international law between Contracting States.

116. The Court must also remark that some thirty-five years after the applicants, or their predecessors in title, left their property, it would risk being arbitrary and injudicious for it to attempt to impose an obligation on the respondent State to effect restitution in all cases, or even in all cases save those in which there is material impossibility, a suggested condition put forward by the applicants and intervening Government which discounts all legal and practical difficulties barring the permanent loss or destruction of the property. It cannot agree that the respondent State should be prohibited from taking into account other considerations, in particular the position of third parties. It cannot be within this Court's task in interpreting and applying the provisions of the Convention to impose an unconditional obligation on a Government to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.

117. It is evident from the Court's case-law that while restitution laws implemented to mitigate the consequences of mass infringements of property rights caused, for example, by communist regimes, may have been

found to pursue a legitimate aim, the Court has stated that it is still necessary to ensure that the redress applied to those old injuries does not create disproportionate new wrongs. To that end, the legislation should make it possible to take into account the particular circumstances of each case (see, for example, *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 58, ECHR 2002-VIII). Thus, there is no precedent in the Court's case-law to support the proposition that a Contracting State must pursue a blanket policy of restoring property to owners without taking into account the current use or occupation of the property in question.

118. Thus, the Court maintains its view that it must leave the choice of implementation of redress for breaches of property rights to Contracting States, who are in the best position to assess the practicalities, priorities and conflicting interests on a domestic level even in a situation such as that pertaining in the northern part of Cyprus. No problem therefore arises as regards the impugned discretionary nature of the restitutionary power under Law no. 67/2005.

119. In so far as the applicants protested that only a small proportion of the property under occupation would in practice be eligible for restitution under the new mechanism, the Court does not consider that this, to the extent that it can be considered as an accurate assertion, undermines the effectiveness of the new scheme. In the decision on admissibility in *Xenides-Arestis* (cited above), it had pointed out that the lack of any provision for restitution was a defect. It is satisfied, given that restitution of property has already occurred, that the amended Law has made good this shortcoming.

(ii) Independence and impartiality of the IPC

120. The Court notes that the IPC is made up of five to seven members, two of whom are independent international members and that similar rules apply as to senior members of the judiciary in the "TRNC" *vis-à-vis* appointment and termination, and conditions of employment. Persons who occupy Greek Cypriot property are expressly excluded. While the applicants and intervening Government asserted that no one in the north could claim to be unaffected by the widespread problem, this general allegation is insufficient to cast doubt on the composition. Nor is it persuaded that the illegal nature of the regime under international law and the ongoing presence of Turkish military personnel or the appointment of members of the Commission by the "TRNC" President removes any objective impartiality or independence from the IPC in carrying out the functions imposed upon it under Law no. 67/2005. No specific, and substantiated, grounds concerning any lack of subjective impartiality of members of the IPC have been put forward.

(iii) Adequacy of the compensation

121. The applicants and intervening Government submitted that the amounts awarded by the IPC were unreasonably low compared with previous Court awards of just satisfaction. The Court would, however, note that in its judgment in *Xenides-Arestis* ((just satisfaction), cited above) it awarded 800,000 euros (EUR) for pecuniary damage which was the equivalent of the figure of 466,289 Cypriot pounds (CYP) put forward by the IPC rather than the CYP 716,101 claimed by the applicant. It also notes the settlement in *Eugenia Michaelidou Developments Ltd and Michael Tymvios* (cited above), which was based on the IPC's assessment. If, in the *Demades* case (cited above), the Court awarded the sum claimed by the applicant in preference to that put forward by the Government which had sought assistance from the IPC, this was in a situation where the Government had not provided sufficient materials to substantiate the valuation which they had put forward.

122. The Court notes that the intervening Government have provided reports by their Land and Surveys Department which asserts that only 2 to 6% of true entitlement has been allocated to claimants before the IPC so far. It would appear, however, that these figures are based on calculations including economic loss of use, although it is not evident that the claimants concerned in fact put in claims for economic loss, and also includes high rates of interest, which have not been previously accepted in the Court's just satisfaction awards. Furthermore, the sums put forward, for example, in respect of fields without any residential or other buildings also appear disproportionately high, given the speculative nature of the assumptions being made as to their profitability. Nor is it apparent that any of the claimants who are purportedly dissatisfied with the awards have made appeal to the High Administrative Court as is open to them.

123. The Court is not therefore convinced that it can be said that the sums of compensation awarded under Law no. 67/2005 will automatically fall short of what can be regarded as reasonable compensation, or, applying the standard of comparison in length of proceedings cases, as being "manifestly unreasonable" (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 140, ECHR 2006-V, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 214 and 272, ECHR 2006-V).

(iv) The accessibility and efficiency of the remedy

124. The applicants have referred in this context to the burden of proof which is placed on claimants by Law no. 67/2005. The Court observes that individuals claiming immovable or movable property are required to prove their ownership or title beyond reasonable doubt and to provide documentary proof for movable property. This is the same burden of proof as is often relied on by the Court, particularly in the context of Articles 2 and 3, but it may be noted that the Court applies an autonomous approach not assimilable to that in domestic criminal cases (see *Nachova and Others*

v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII). Similarly, the formulation of evidentiary standards in domestic law cannot be taken in isolation from their application in practice and it is not apparent from the materials before the Court that this element has led to a significant number of claims being rejected. Claims under the Convention must also be substantiated by evidentiary means. Any difficulties faced by the applicants in putting forward their claims before the IPC would equally apply in applications to this Court. Thus, the requirement that claimants provide title deeds or proof of ownership, even if onerous in some cases, would appear a necessary and unavoidable precondition to making an application.

125. Nor does the Court perceive any failing in the Law to make provision for the payment of compensation, an obligation for budgetary inclusion being imposed on the relevant body (see section 18 of Law no. 67/2005 at paragraph 36 above). In so far as the applicants asserted that the mechanism would take an unreasonable length of time, there is no material before the Court which would substantiate this claim. The fact that there are several hundred pending claims at the moment cannot be relied on to prove that any particular claims have not been handled with due expedition. It further notes the guarantees given to claimants and representatives concerning entry and exit to the northern area.

126. In so far as complaint was made that claimants were, on occasion, required to attend numerous sessions of the IPC, the Court does not find that this has been shown to render the procedure unduly onerous or inaccessible. Similarly, while it is asserted that claimants were not always informed by the IPC of the possibility of obtaining legal representation and their own valuations or of what claims they could put forward, there is no general obligation in the civil context for a tribunal to ensure that any party presents his or her case in the most effective way. It is apparent that some claimants did obtain legal representation and their own expert evidence; there was nothing to prevent the others from doing so. As regards the complaint that the IPC worked only in Turkish and in English, the Court would note that the latter is in common usage in Cyprus and that interpreters are made available during the IPC proceedings. It perceives no obstacle in the way of the claimants obtaining translations themselves of any documents or forms nor any requirement that legal aid should be available for the payment of legal fees. As regards the allegation that decisions were unreasoned and lacking in transparency, there are very few examples from which to draw any general conclusions as hardly any claims have in fact reached the stage of a decision on the merits from the IPC, most resulting in a settlement at an earlier stage. The Court can place limited weight on the assertions made of undue pressure, bullying and even corrupt practice, which if true might be cause for worry and threaten to undermine the practical availability of the remedy, but which have not been tested in adversarial conditions. Even if claimants may feel under pressure to settle cases, it is not evident to the Court that claimants are unable, if they are so determined, to take their

claims to a decision by the IPC. In any event, as already noted above, appeal lay to the "TRNC" High Administrative Court if any claimant considered that there had been material unfairness or procedural irregularity; none have chosen so far to exercise this avenue of redress. The scope of the High Administrative Court's review, and its ability to mitigate any errors or failings in the procedures before the IPC have not been put to the test.

(v) Conclusion

127. The Court finds that Law no. 67/2005 provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots. The applicant property owners in the present cases have not made use of this mechanism and their complaints under Article 1 of Protocol No. 1 must therefore be rejected for non-exhaustion of domestic remedies. It is satisfied that Law no. 67/2005 makes realistic provision for redress in the current situation of occupation that is beyond this Court's competence to resolve.

128. Lastly, it would stress that this decision is not to be interpreted as requiring that applicants make use of the IPC. They may choose not to do so and await a political solution. If, however, at this point in time, any applicant wishes to invoke his or her rights under the Convention, the admissibility of those claims will be decided in line with the principles and approach above. The Court's ultimate supervisory jurisdiction remains in respect of any complaints lodged by applicants who, in conformity with the principle of subsidiarity, have exhausted available avenues of redress.

129. The Court concludes that this part of the application must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

II. CONCERNING ARTICLE 8 OF THE CONVENTION

A. The submissions before the Court

130. As concerned the applicants' complaints of an ongoing interference with their right to home, the Government asserted, in addition to their submissions above as to the availability of an effective remedy, that the precise scope of the remedy before the IPC and the "TRNC" High Administrative Court as regarded non-pecuniary damage for loss of home had not been developed as the issue had yet to arise for decision. They would treat the matter with regard to the provisions of the Convention. Also, Article 8 violations could be brought before the district courts which applied the Convention directly.

131. The applicants submitted, in addition to their arguments raised above, that non-owners of property were excluded from applying for compensation to the IPC and thus no remedies were available. Further, they considered that the right to respect for home did not presuppose ownership,

pointing to cases in which applicants had been successful as tenants. There was no doubt that the second applicant in application no. 13751/02, Ms Lordou Anastasiadou, who had lived in the apartment owned by her father until the age of two and which she was entitled to partly inherit on his death, retained continuous and strong links with the apartment which throughout her life has been held out to be the lost and irreplaceable family home of her childhood.

132. The intervening Government agreed that a victim with no ownership rights was excluded from the IPC's jurisdiction and no remedy was available.

B. The Court's assessment

1. Concerning the applicant property owners

133. The Court notes that claimants who own property may make claims to the IPC in respect of non-pecuniary damage, which provision in Law no. 67/2005 is broad enough to encompass aspects of any loss of enjoyment of home (see section 8(4)E set out in paragraph 37 above). It accordingly finds that these applicants' complaints under Article 8 also fail for non-exhaustion of domestic remedies as they have not brought such claims before the IPC.

134. This part of the application must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. Concerning the second applicant in application no. 13751/02

135. The Court is not persuaded that the second applicant in this case, who does not make any property claim, had any realistic prospect of applying either to the IPC or to the "TRNC" courts in respect of her complaint that she has been denied access to her home in the north. On its face, Law no. 67/2005 restricts claims to those who own property and no precedent has been provided indicating on what basis the IPC or the "TRNC" courts could, or would, provide redress. The Court will therefore examine the substance of this applicant's complaint. It notes that the applicant lived in the home owned by her father until the age of two and that she claimed that this property was still regarded strongly as the family home some thirty-five years later.

136. The notion of "home" has been interpreted dynamically by this Court; however, care must be taken to respect the intentions of the authors of the Convention as well as common sense (see *Khamidov v. Russia*, no. 72118/01, § 131, 15 November 2007). Thus, it is not enough for an applicant to claim that a particular place or property is a "home"; he or she must show that they enjoy concrete and persisting links with the property concerned (see, for example, *Gillow v. the United Kingdom*, 24 November 1986, § 46, Series A no. 109). The nature of the ongoing or recent

occupation of a particular property is usually the most significant element in the determination of the existence of a "home" in cases before the Court. However, where "home" is claimed in respect of property in which there has never been any, or hardly any, occupation by the applicant or where there has been no occupation for some considerable time, it may be that the links to that property are so attenuated as to cease to raise any, or any separate, issue under Article 8 (see, for example, *Andreou Papi v. Turkey*, no. 16094/90, § 54, 22 September 2009). Furthermore, while an applicant does not necessarily have to be the owner of the "home" for the purposes of Article 8, it may nonetheless be relevant in such cases of claims to "homes" from the past that he or she can make no claim to any legal rights of occupation or that such time has elapsed that there can be no realistic expectation of taking up, or resuming, occupation in the absence of such rights (see, *mutatis mutandis*, *Vrahimi v. Turkey*, no. 16078/90, § 60, 22 September 2009, where the applicant had never had any "possession" in the property which had been owned by a company). Nor can the term "home" be interpreted as synonymous with the notion of "family roots", which is a vague and emotive concept (see, for example, *Loizidou*, judgment on the merits, cited above, § 66).

137. Turning to the facts of this case, the Court notes that the second applicant was very young at the time she ceased to live in the then family home in 1974, which was some thirteen years before the Court's temporal jurisdiction commenced and some twenty-eight years before the date of introduction of her application. For almost her entire life, the applicant has been living with her family elsewhere. The fact that she might inherit a share in the title of that property in the future is a hypothetical and speculative element, not a concrete tie in existence at this moment in time. The Court accordingly does not find that the facts of the case are such as to disclose any present interference with the applicant's right to respect for her home.

138. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. CONCERNING THE REMAINING COMPLAINTS RAISED BY THE APPLICANTS UNDER ARTICLES 13, 14 AND 18 OF THE CONVENTION

139. The respondent Government submitted that the question of a separate Article 14 remedy did not arise, as in previous judgments the Court had not considered a separate examination of these complaints necessary. As to Article 13, they referred to their submissions as to the effectiveness of the IPC mechanism.

140. The applicants pointed out that Law no. 67/2005 did not address the Article 14 complaints. The general policy to exclude Greek Cypriots from their homes and properties was well-established. They had clearly been

subject to a difference in treatment that was not based on any objective and reasonable justification. As concerned Article 13, they reiterated their submissions as to the lack of effectiveness of the purported IPC remedy.

141. The intervening Government argued that there was blatant discrimination contrary to Article 14 of the Convention, and that there was no effective remedy as required by Article 13 of the Convention.

142. The Court would observe that it has so far not found any separate breach arising under Article 14 of the Convention in previous cases concerning property in northern Cyprus (see, among others, *Cyprus v. Turkey*, cited above, § 199; *Xenides-Arestis*, judgment on the merits, cited above, § 36; and *Ioannou v. Turkey*, no. 18364/91, § 43, 27 January 2009).

143. Further, having regard to the facts of the cases, the submissions of the parties and its findings under Article 1 of Protocol No. 1 and Article 8 of the Convention, the Court considers that no further issue arises for examination concerning the remaining complaints made by the applicants.

For these reasons, the Court

Decides unanimously to join the applications;

Declares by a majority the applications inadmissible.