

***Loizidou v. Turkey (preliminary objections) - 15318/89***

Judgment 23.3.1995 [GC]

**Article 1**

**Jurisdiction of states**

Jurisdiction of Turkey in case concerning access to property in northern Cyprus

**Article 35**

**Article 35-3**

**Ratione temporis**

Restrictions *ratione temporis* des déclarations turques relatives à la Convention:  
*preliminary objection joined to the merits*

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**I. STANDING OF THE APPLICANT GOVERNMENT**

The applicant Government have been recognised by the international community as the Government of the Republic of Cyprus.

*Conclusion*: their *locus standi* as the Government of a High Contracting Party not in doubt.

**II. ALLEGED ABUSE OF PROCESS**

Since objection not raised before the Commission the Turkish Government is estopped from raising it before the Court in so far as it applies to the applicant.

In so far as objection is directed to the applicant Government, the Court notes that this Government have referred the case to the Court *inter alia* because of concern for the rights of the applicant and other citizens in the same situation. Such motivation not an abuse of Court's procedures.

*Conclusion*: objection rejected (unanimously).

**III. THE TURKISH GOVERNMENT'S ROLE IN THE PROCEEDINGS**

Not within the discretion of a Contracting Party to characterise its standing in the proceedings before the Court in the manner it sees fit. Case originates in a petition made under Article 25 against Turkey in her capacity as a High Contracting Party and has been referred to the Court under Article 48 (b) by another High Contracting Party.

*Conclusion*: Turkey is the respondent party in this case.

#### **IV. SCOPE OF THE CASE**

The applicant Government have confined themselves to seeking a ruling on the complaints under Article 1 of Protocol No. 1 and Article 8, in so far as they have been declared admissible by the Commission, concerning access to the applicant's property.

Not necessary to give a general ruling on the question whether it is permissible to limit a referral to the Court to some of the issues on which the Commission has stated its opinion.

*Conclusion:* only the above complaints are before the Court.

#### **V. OBJECTIONS *RATIONE LOCI***

##### **A. Whether the facts alleged by the applicant are capable of falling within the jurisdiction of Turkey under Article 1 of the Convention**

Court is not called upon at the preliminary objections stage to examine whether Turkey is actually responsible. This falls to be determined at the merits phase. Its enquiry is limited to determining whether the matters complained of are capable of falling within the "jurisdiction" of Turkey even though they occur outside her national territory.

The concept of "jurisdiction" under Article 1 is not restricted to the national territory of the High Contracting Parties. Responsibility may also arise when as a consequence of military action, whether lawful or unlawful, a Contracting Party exercises effective control of an area outside its national territory.

Not disputed that the applicant was prevented by Turkish troops from gaining access to her property.

*Conclusion:* facts alleged by the applicant are capable of falling within Turkish "jurisdiction" within the meaning of Article 1 (sixteen votes to two).

##### **B. Validity of the territorial restrictions attached to Turkey's Article 25 and 46 declarations**

Court has regard to the special character of the Convention as a treaty for the collective enforcement of human rights; the fact that it is a living instrument to be interpreted in the light of present-day conditions. In addition, its provisions are to be interpreted and applied so as to make its safeguards effective.

Court seeks to ascertain the ordinary meaning given to Articles 25 and 46 in their context and in the light of their object and purpose. Regard also had to subsequent practice in the application of the treaty.

If Articles 25 and 46 were to be interpreted as permitting restrictions (other than of a temporal nature) States would be enabled to qualify their consent under the optional clauses. This would severely weaken the role of the Commission and Court and diminish the effectiveness of the Convention as a constitutional instrument of European public order. The consequences for the enforcement of the Convention would be so far-reaching that a power should have been expressly provided for. No such provision in either Article 25 or 46.

The subsequent practice of Contracting Parties of not attaching restrictions *ratione loci* or *ratione materiae* confirms the view that these are not permitted.

Not contested that Article 46 of the Convention was modelled on Article 36 of the Statute of the International Court of Justice. However, the fundamental difference in the role and purpose of the respective tribunals, coupled with the existence of a practice of unconditional acceptance, provides a compelling basis for distinguishing Convention practice from that of the International Court.

Finally, the application of Article 63 § 4, by analogy, does not provide support for the claim that a territorial restriction is permissible.

### **C. Validity of the Turkish declarations under Articles 25 and 46**

Court does not consider that the issue of the severability of the invalid parts of Turkey's declarations can be decided by reference to the statements of her representatives expressed subsequent to the filing of the declarations. Turkey must have been aware, in view of the consistent practice of Contracting Parties, that the impugned clauses were of questionable validity.

Court finds that the impugned restrictions can be separated from the remainder of the text, leaving intact the acceptance of the optional clauses.

*Conclusion:* the territorial restrictions are invalid but the declarations under Articles 25 and 46 contain valid acceptances of the competence of the Commission and Court (sixteen votes to two).

### **VI. OBJECTION *RATIONE TEMPORIS***

The correct interpretation and application of the restrictions *ratione temporis*, in the Turkish declarations under Articles 25 and 46, and the notion of continuing violations of the Convention, raise difficult legal and factual questions. On the present state of the file, Court does not have sufficient elements enabling it to decide these questions.

*Conclusion:* objection joined to the merits of the case (unanimously).