

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

FIRST SECTION

CASE OF IOANNIDES v. CYPRUS

(Application no. 32879/18)

JUDGMENT

This version was rectified on 11 February 2025
under Rule 81 of the Rules of Court.

Art 1 P1 • Peaceful enjoyment of possessions • Respondent State lacking effective control over certain sectors of the buffer zone where the applicant's house was located • Limited jurisdiction entailing only positive obligation to take diplomatic, economic, judicial or other measures within the respondent State's power and in accordance with international law • All appropriate measures taken
Art 1 P1 • Peaceful enjoyment of possessions • Domestic courts' failure to assess the proportionality of the interference with the applicant's property rights on account of the occupation of her house by the United Nations Peacekeeping Force in Cyprus (UNFICYP), on the respondent State's authorisation, and the latter's refusal to pay her any rent in that respect

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 January 2025

FINAL

30/06/2025

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.



In the case of Ioannides v. Cyprus,

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

Ivana Jelić*, President*,
Alena Poláčková,
Georgios A. Serghides,
Erik Wennerström,
Raffaele Sabato,
Alain Chablais,
Artūrs Kučs*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 32879/18) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British citizen, Ms Maryanne Ioannides ("the applicant"), on 5 July 2018;

the decision to give notice to the Cypriot Government ("the Government") of the complaint concerning the applicant's inability to enjoy her property and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 3 December 2024,

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

INTRODUCTION

1. This case concerns the inaccessibility of a house situated within a buffer zone, the authorisation to use the house given to a peacekeeping force by the Republic of Cyprus ("the State"), and the State's refusal to pay rent to the owner of the house. It raises issues under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1964 and lives in the United Kingdom. She was represented by Mr A. Demetriades, a lawyer practising in Nicosia.

3. The Government were represented by their Agent, Mr G. Savvides, Attorney-General of the Republic of Cyprus.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE DIVISION OF NICOSIA AND THE APPLICANT'S ACQUISITION OF A HOUSE

5. In August 1960 Cyprus became an independent, sovereign State.

6. In December 1963 fighting broke out between the country's Greek and Turkish communities. Days later, after the fighting had ceased, a neutral zone was created in Nicosia, the capital of the country, between its Greek and Turkish neighbourhoods. The zone was patrolled by forces of the United Kingdom, Greece, Türkiye[1], and Cyprus.

7. In March 1964 the UN Security Council "recommend[ed] the creation, with the consent of the Government of Cyprus, of a United Nations Peacekeeping Force in Cyprus" (UNFICYP) whose function would be "to prevent a recurrence of [the] fighting and ... to contribute to the maintenance and restoration of law and order and a return to normal conditions." "[A]ll costs pertaining to [UNFICYP] [were to be] met ... by the Governments providing the contingents and by the Government of Cyprus" (Resolution 186, sections 5 and 6).

8. Later the same year Cyprus ratified an agreement on the creation of UNFICYP and pledged to "provide [that force] without any charge ... with offices, camps, or other accommodation ... for the accomplishment of its mission" (Law 29/64, section 19). Under the same agreement, the premises provided "remain[ed] in the territorial jurisdiction of Cyprus ... subject to the exclusive control and exclusive power of the Commander, who is the sole who can consent to the entry of officers for the exercise of their duties within such housing".

9. In November 1964 the applicant was born in Bromley, in the United Kingdom.

10. At some time in the 1960s, a two-storey stone house was built in a residential area of Nicosia on the corner of today's Savva Rotsidi and Nicolaou Politi streets and opposite the building of the British High Commission (embassy). The house measured 400 m^2.

11. The property was owned by the applicant's father, a Greek-Cypriot doctor. He let it to the British Council (a cultural and educational office), which used it as lodgings for its representative.

12. In 1970 the applicant left Cyprus for the United Kingdom.

13. The applicant's father transferred the house to her and in October 1973 he had it registered in her name. He told the applicant that the rent income from the house would support her financially when she grew up.

II. CREATION OF A BUFFER ZONE

14. In July 1974 Türkiye[2] invaded Cyprus. After a ceasefire and negotiations, foreign ministers of Greece, Türkiye[3], and the United Kingdom concluded that there should be established "a security zone of sizes to be

[1] Rectified on 11 February 2025: "Turkey" was replaced with "Türkiye".
[2] Rectified on 11 February 2025: "Turkey" was replaced with "Türkiye".
[3] Rectified on 11 February 2025: "Turkey" was replaced with "Türkiye".

determined by representatives of [the three states] in consultation with ... UNFICYP ... at the limit of the areas occupied by the Turkish armed forces .... This zone [was to] be entered by no forces other than those of UNFICYP, which [were to] supervise the prohibition of entry. Pending the determination of the size and character of the security zone, the existing area between the two forces [was to] be entered by no forces" (Geneva Declaration on Cyprus, 30 July 1974, section 3 (a)) (see, for further details, *Stephens v. Cyprus, Turkey and the United Nations* (dec.), no. 45267/06, 11 December 2008).

15. In August 1974 the renewed fighting reached the vicinity of the applicant's house, which came into the line of fire and sustained damage to its roof.

16. By the time of the next ceasefire, the security zone had grown. It was defined by the warring parties' forward positions and stretched about 180 km across the island, covering over 3% of its territory and including the applicant's property. The enforcement of the ceasefire and the preservation of the military status quo in the zone were entrusted to UNFICYP.

17. Later the same year, the representative of the British Council moved out of the applicant's house because remaining there was dangerous. Rent had been paid to the end of the year.

18. In December 1974 the UN Security Council said that UNFICYP's continued presence in the country was "needed ... if the ceasefire [was] to be maintained ... and the search for a peaceful settlement facilitated" (Resolution 364, preamble).

19. In 1976 the UN Secretary-General introduced the term "buffer zone", which became current.

20. In November 1978 the applicant's father died.

21. The house lay vacant and gradually deteriorated until it was uninhabitable.

22. The applicant made occasional trips, every three or four years, to Cyprus, and would approach her house to look at it, although she could not walk up to it. To enter that sector of the buffer zone, one had to obtain a permit from UNFICYP and show it to National Guardsmen at a nearby post.

23. In May 1998, the Attorney-General of the Republic of Cyprus authorised the payment of compensation to the owners of a different property located in the buffer zone and used by UNFICYP. He observed that such properties, although inaccessible to the public, could still be rented out to foreigners or other authorised persons. In his opinion, if the State covered maintenance costs, compensation could reach 30% of the rent for comparable properties located outside the buffer zone.

III. THE OCCUPATION OF THE HOUSE BY UNFICYP

24. On an unspecified date, probably in late 2000 or early 2001, a UNFICYP representative met with an executive engineer from the Ministry

of Transport and Works ("Ministry") and told her that the peacekeeping force wanted to take up occupation of the applicant's house. The force's plan was to accommodate British Contingent troops, who were currently lodged in two separate troop houses, under one roof.

25. In February 2001 the engineer asked for the Ministry of Defence's opinion on the UNFICYP project. The Ministry of Defence replied that it did not mind UNFICYP consolidating its troops as long as an adequate peacekeeping presence remained in one particular spot where the buffer zone was narrow and therefore vulnerable to incursions.

26. Several days later the engineer asked the Land Registry for the name and address of the owner of the house. The Land Registry passed the applicant's name and an address in Nicosia that it had on its files on to the engineer. That address was where the applicant's father had previously lived. The engineer wrote to that address:

> "I have instructions to inform you that UNFICYP intends to use [your] house. The house will be occupied by soldiers of the British contingent."

27. The letter was received by the applicant's half-sister who then lived there. She did not pass the letter on to the applicant because the two of them were not on close terms.

28. In March 2001 the engineer wrote to UNFICYP on behalf of her Ministry:

> "We hereby give our consent to you to use the [applicant's house]."

29. She also arranged for the house to be linked to the municipal water and electricity grids.

30. In September 2001 UNFICYP started using the house.

31. In November 2001 a woman who worked at the British High Commission and happened to be a friend of the applicant's mother noticed the UNFICYP activity at the house. She reported it to the applicant's mother and passed the applicant's correct address in the UK to the engineer in charge of the project.

32. Later that month, the engineer wrote to the applicant in the UK to tell her that her house "[would] be put under UNFICYP control." She also told her that the years of neglect had left the house in a hazardous state and that the State would renovate it at its own cost.

33. A private contractor reinforced the foundations of the house, installed windows, shutters, and doors, and repaired the roof and window sills. These works cost about 68,000 euros (EUR) (the Government's estimate) or about EUR 76,000 (the applicant's estimate).

34. On her mother's advice, the applicant decided to respond to the engineer's letter. She viewed the situation as an opportunity to ease the financial strain on her caused by health problems, unemployment, and having to repay a mortgage loan. In June 2002 the applicant wrote to UNFICYP:

> "I was absolutely delighted that you chose to use my property for UN purposes, as I have had no income from it since the representatives of the British Council were forced to move out.
>
> As you are at present in occupation of the [house] may I request that remuneration is paid to me at the present market value."

35. UNFICYP passed that request to the Ministry.

36. The Ministry's engineer asked the District Rent Determination Committee what rent was due to the applicant.

37. In September 2002, the Committee decided that the house had no rental value because it was located in the buffer zone. It also decided that the State had sufficiently compensated the applicant by repairing the house.

38. The engineer informed the applicant of the Committee's decision by registered letter. In June 2003 the applicant's mother visited the engineer and received a copy of that letter.

39. The applicant instructed a lawyer and in June 2004 the lawyer invited the Ministry to explore the possibility of paying rent. The Ministry repeated to the lawyer what it had said earlier to the applicant.

40. According to the Government, in January 2005 UNFICYP moved out of the house. According to the applicant, they did not.

41. After a family tragedy in 2005, the applicant left managing the situation with the house to her mother. The mother contacted the British High Commission, the United Nations, and the Cypriot authorities about the rent. The High Commission replied that the matter was outside its jurisdiction. The United Nations forwarded the request to the Ministry. The Ministry repeated what it had said before.

IV. PROCEEDINGS BEFORE THE DOMESTIC COURTS

A. The applicant's civil action against the State

42. In May 2007 the applicant commenced proceedings against the State in the Nicosia District Court (civil action 4645/07). She claimed the return of the property, damages for trespass and human rights breaches, and about EUR 360,000 in rent arrears going back to 1975. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant complained that the State had ceded control of the neighbourhood to UNFICYP, blocking her access to the house and allowed UNFICYP to use it and impeding her enjoyment of her property. Relying on Article 14 of the Convention taken together with Article 1 of Protocol No. 1, the applicant also claimed that the State had discriminated against her based on the location of the house because, had the house been located one street further south, it would have been outside the buffer zone.

43. In response, the State admitted that it had implicitly ceded control over the buffer zone to UNFICYP. It claimed, however, that that had been the only

way to restore peace in the country and preserve the very existence of the Republic of Cyprus.

B. The judgment of the Nicosia District Court

44. On 15 March 2012 the Nicosia District Court dismissed the applicant's action.

45. The court took judicial notice of the existence of the buffer zone and observed that the State had committed itself to accommodating UNFICYP troops.

46. As to the applicant's civil-law claims, the court found that, as a British citizen, she was unable to sue the State because the Civil Wrongs Law allowed standing for those purposes only to Cypriots.

47. As to her human rights claims, the court referred to the case-law of the Court (*Stephens*, cited above; *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99; and *The Holy Monasteries v. Greece,* nos. 13092/87 and 13984/88) and found that the State could not be held accountable for the applicant's alleged losses: it did need the buffer zone, it had no control over the zone or the house, and it had done no more than cater to the wishes of UNFICYP in compliance with national and international law.

48. The court observed that the applicant had not disputed the lawfulness or public benefit of UNFICYP's presence in the country. Nor had she suggested what the State could have done in the specific historical situation to prevent the creation of the buffer zone under UNFICYP's control.

49. The court found that the State had not caused the applicant any distress, as she had never lived in the house, had left Cyprus before the hostilities started and had only shown interest in the house in 2002, limited to collecting rent. Furthermore, the applicant had herself said that UNFICYP's choosing of her property had "absolutely delighted" her.

50. The court said that if the National Guard had barred the applicant from entering the buffer zone, that had been for her own safety and that, if she obtained a permit from UNFICYP, the National Guard would let her through. The court then proceeded, despite rejecting the civil action, to assess the alleged damages, in the event the applicant appealed to the Supreme Court. The court did not accept the testimony of the applicant or her mother that before the Turkish invasion the house had been rented to the British Council for 1,100 Cypriot pounds per year. It considered that the applicant and her mother had not been reliable witnesses. They either did not know or did not remember the facts and were improvising to help their case. They did not present to the court a rental agreement with the British Council, nor did they invite the British Council to testify to that effect. Having rejected the rent of 1,100 Cypriot pounds yearly, the court also rejected the valuer's calculations given that they had been based on the same narrative.

51. The court found neither an indication of discrimination nor reliable evidence in support of the applicant's claim for damages.

C. The judgment of the Supreme Court

52. The applicant appealed against that judgment on multiple grounds (civil appeal 163/2012).

53. On 11 January 2018 the Supreme Court rejected that appeal.

54. The court decided to hear only one ground of appeal, which it considered to be pivotal for all issues: the existence of State's effective control over the buffer zone. Relying on judicial knowledge and certain case-law of this Court (*Stephens*, cited above, and, by contrast, *Loizidou v. Turkey*, no. 15318/89, *Xenides-Arestis v. Turkey*, no. 46347/99, and *Demades v. Turkey*, no. 16219/90), the court found that the State had no such control over the zone, and therefore also no control over the applicant's house. The court considered that the permission to use the house given by the State to UNFICYP had been no more than an act of necessity created by the ceasefire. There had been nothing the State could have done to help the applicant assert her rights as a property owner.

V. THE DECISION OF THE EUROPEAN COURT OF HUMAN RIGHTS

55. In December 2008 the European Court of Human Rights found an application against Cyprus made by the applicant's neighbour to be manifestly ill-founded and declared it inadmissible. The applicant's neighbour, whose house was also inside the buffer zone, had complained about being unable to access her house "due to UN occupation". The Court determined that the State lacked effective control over the location in question and that the neighbour had failed to specify any wrongful action or inaction by the State (see *Stephens*, cited above).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

56. The applicant complained that by consenting to the creation of the restricted zone around her property, by letting UNFICYP occupy that property, and by refusing to pay her for the occupation of her house, the State had prevented her from peacefully enjoying her property. She relied on Article 1 of Protocol No. 1, which reads as follows:

> "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."

A. Admissibility

1. The Government

57. In reply to the Court's question, the Government submitted that the applicant's house was located in its territory and therefore fell within its jurisdiction for the purposes of Article 1 of the Convention.

58. They pointed out that "jurisdiction" under Article 1 of the Convention was a threshold criterion. The exercise of jurisdiction was a necessary condition for holding a Contracting State responsible for acts or omissions imputable to it which had given rise to an allegation that rights and freedoms set forth in the Convention had been violated.

59. The Government contended that Cyprus was a territorial state and had territorial jurisdiction in the buffer zone and indeed exercised effective control there. In some restricted instances it might be determined that in certain limited areas within the buffer zone and for temporary periods, Cyprus did not exercise effective practical control in that zone, given the mandate of UNFICYP and its operational practices. This was a consequence of the unlawful presence of Turkish troops on the island and the threat posed by Turkish military forces and their personnel.

60. The Government emphasised that the applicant's house was situated in an area of the buffer zone where Cyprus had been unable to exercise effective control. Specifically, it was situated in the Arab Ahmet district of Nicosia, between the Turkish and Cypriot National Guard outposts and near commanding Turkish military positions. The domestic courts had established that the applicant's house was situated in an inaccessible area of the buffer zone where access was possible only with permission from UNFICYP and where Cyprus was unable to exercise effective control. In that particular area, UNFICYP had assumed effective control in order to carry out its mandate from the UN Security Council, given its duty to maintain the ceasefire and to prevent a recurrence of fighting.

61. The Government observed that in its judgment of the Supreme Court in its judgment of 11 January 2018 (see paragraphs 53-54 above) had also determined that the applicant's house was situated not in the "civilian use areas" of the buffer zone, but in an area of the buffer zone where access was only allowed with UNFICYP's permission.

62. The Government emphasised that the State's consent to UNFICYP's use of the house could not be taken to mean that Cyprus had effective control or possession of the house or the area where the house was located. This suggestion ignored the reality on the ground. That consent did not, in their opinion, affect the sovereignty and *de jure* jurisdiction of Cyprus over the whole of buffer zone.

63. The Government asserted that the above situation did not create "vacuum" or a "black hole" in the protection of human rights.

64. The State's obligations toward the applicant under the Convention were however limited to "positive" ones, namely to ensure, as far as possible, that she continued to enjoy her rights (the Government referred to *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, ECHR 2004-VII; *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16, 43800/14 and 28525/20, 30 November 2022; and *Stephens v. Cyprus, Turkey and the United Nations* (dec.), no. 45267/06, 11 December 2008). The Government reproached the applicant for not specifying what the State could have done for her, other than paying her an unrealistic rent. Despite that, the State had done all it could to ensure her rights: it had informed her of the "UNFICYP proposal", maintained and repaired the house at its own expense, and remained open to the idea of paying rent.

65. They argued, further, that the application was inadmissible because it was manifestly ill-founded and because the applicant had failed to exhaust domestic remedies.

66. As to domestic remedies, in the Government's opinion the applicant should have obtained access to the house by asking for a permit from UNFICYP. She should also have claimed compensation from UNFICYP, as was possible under the agreement on the creation of UNFICYP. And to contest the State's approval of UNFICYP's use of her house, the applicant should have asked the courts to rule that clause 19 of the agreement on the creation of UNFICYP was unconstitutional (see paragraph 8 above) because it said that the State was to provide UNFICYP with areas for offices, military camps and other lodgings free of charge and by agreement with UNFICYP's commander so that it could fulfill its mission. The Government clarified, however, that the provisions of section 19 constituted not the grounds for not paying rent to the applicant (as might be inferred from the Court's question to the parties) but the grounds for the consent given by the Government to UNFICYP to use the house for military purposes. The grounds for the non-payment of rent to the applicant had been that the house had no rental value given its location (an inaccessible area in the buffer zone) and because of the expenses incurred in repairing the house, which had been borne by the State.

2. The applicant

67. The applicant agreed that the State had retained jurisdiction over the area in which the property in question was located.

68. She argued that the Government had admitted that it exercised effective control in the buffer zone. She drew attention to the confusion created by the fact that on the one hand Greek Cypriots argued that the Republic of Cyprus had legal sovereignty and effective control over the buffer zone, and on the other hand Turkish Cypriots described the area as being effectively empty, marking the border between the internationally recognised Republic of Cyprus and the internationally unrecognised "Turkish Republic of Northern Cyprus". Further confusing the situation was the fact that, on both sides, there was some discrepancy between verbal declarations and practices on the ground. Lastly, the UN had neither clearly nor publicly expressed its position on the legal status of the buffer zone; nevertheless, its practices in relation to the area suggested that its position differed from those of both the Greek Cypriot and the Turkish Cypriot authorities. She argued that the Republic of Cyprus had always had jurisdiction in the buffer zone but, depending on the circumstances, jurisdiction might concurrently also be held by Türkiye.

69. The applicant pointed out that in the domestic courts the State had denied that it had jurisdiction over events in the UN buffer zone, whereas before the Court it had reversed that position and had admitted that it had both jurisdiction and effective control.

70. She considered that there had been confusion on the Government's part between jurisdiction and liability under the Convention, which had been the applicable law in the proceedings concerned. Given that the UN and, consequently, UNFICYP were not party to the Convention, they could not possibly have had any obligation under Article 1 of the Convention. An assertion that UNFICYP had effective control (which would create extraterritorial jurisdiction for member States) equally could not be correct, and nor could it assist the Government in claiming that the presence of UNFICYP somehow affected their jurisdiction. "Effective control" was not equivalent to jurisdiction and, even if it had been, the UN was not a party to the Convention.

71. The applicant argued that the State should be found to have jurisdiction over her house because it was located in the buffer zone, and to have a corresponding obligation to secure her Convention rights, including those under Article 1 of Protocol No 1. She believed that to hold otherwise would reduce the legal sphere within which the Convention applied and create a "black hole" for the protection of human rights, given the immunity UNFICYP enjoyed under the agreement on its creation.

72. The applicant argued that her application was well-founded and that she had exhausted domestic remedies.

73. She stressed that her complaint was about a breach by the State of its "negative obligations" and argued that by reframing the issue in terms of "positive obligations" the Government were attempting to avoid responsibility. In her opinion, the decision in *Stephens* (cited above) did not establish a precedent for her case, as it differed significantly in terms of factual circumstances and relied on grounds unrelated to her application.

74. As to domestic remedies, the applicant argued that the agreement on the creation of UNFICYP did not allow her to make a claim, not least because she was a foreigner. There had been no reason for her to challenge the constitutionality of clause 19 of that agreement since she did not mind UNFICYP using her house as long as rent was paid.

3. The Court

(a) Jurisdiction

75. The Court notes that the parties agree that the applicant's property was within the State's jurisdiction. It has no reason to hold otherwise. Nevertheless, the Government raised the objection that it lacked effective control over that territory, something with which the applicant disagreed.

76. General principles relating to the concept of jurisdiction under Article 1 of the Convention and to the exception of "effective control", in particular, have been summarised by the Court recently in *Georgia v. Russia (II)* [GC], no. 38263/08, § 81, 21 January 2021, and *Mamasakhlisi and Others v. Georgia and Russia*, nos. 29999/04 and 41424/04, §§ 310-11, 7 March 2023.

77. As regards the Government's contention that their obligations towards the applicant under the Convention were reduced to "positive" ones because they lacked effective control over the buffer zone, the Court observes as follows.

78. The exception to the obligation to secure Convention rights within its territory pleaded by the Government applies when the State is prevented from exercising its authority over the whole of its territory by a constraining *de facto* situation, such as obtains when a separatist regime is set up (see *Ilaşcu and Others*, cited above, § 333). If this occurs, the State's obligation under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms in the Convention would be limited to a positive obligation to take the diplomatic, economic, judicial or other measures that were both within its power and in accordance with international law (ibid., § 331 and 333).

79. The situation in the present case is however exceptional and the Court needs to adapt its analysis accordingly. For example, a distinction can be made between situations where the absence of effective control by a State over certain parts of its territory has resulted in that State having only positive obligations in those parts of the territory (see *Stephens*, cited above, with

further references) and situations where the existence of full control over the persons concerned implies its direct responsibility (see, with necessary adjustments, *Pocasovschi and Mihaila v. The Republic of Moldova and Russia*, no. 1089/09, §§ 44-46, 29 August 2018). The Court will examine the limits of a State's jurisdiction and the practical implications for each of the aspects of the alleged interference with the applicant's property rights below when it assesses whether the acts or omissions complained about by the applicant were justified (compare *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 150, ECHR 2015).

80. With that in mind, the Court is satisfied that the applicant's property was within the State's jurisdiction within the meaning of Article 1 of the Convention, and will examine the limits to that jurisdiction and the corresponding obligations of the State below under specific issues complained about under Article 1 of Protocol No. 1.

(b) Exhaustion of domestic remedies

81. The Court also finds that the applicant has exhausted all domestic remedies that should have been pursued.

82. A claim against UNFICYP would be irrelevant to the complaint under the Convention, which is directed against the State, not against UNFICYP (compare *Stephens*, cited above).

83. As the Government has also pointed out, a constitutional challenge to the State's statutory commitment to accommodate the peacekeepers at no cost would also be irrelevant. This is because the applicant is not disputing the commitment itself: rather, she is objecting to the State passing the cost of its commitment on to her.

84. The Court therefore dismisses the Government's argument that the applicant had not exhausted domestic remedies.

(c) Conclusion

85. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. The applicant

86. The applicant maintained that the State had violated her rights.

87. She claimed that UNFICYP were still using the house, as was evidenced by their keeping the keys to it, conducting daily patrols nearby, and having their emblem painted on a wall.

88. The applicant submitted that the State had interfered with her property. Since at least September 2001 the State had been depriving her of the use of the house and of the income from it. That interference had been unnecessary. The State had consented to UNFICYP's use of her house without her knowledge.

89. The State had paid no money to her, although in the past it had said that properties in the buffer zone could be rented out (see paragraph 23 above).

90. The repairs to the house had benefited UNFICYP and the State, but not her. The Government had contradicted themselves by saying that the house had no rental value while affirming that the cost of the repairs had adequately compensated the applicant. At any rate, those repairs could not compensate for UNFICYP's continuing use of the house.

2. The Government

91. The Government disagreed with the assertion that they had violated the applicant's rights.

92. They claimed that UNFICYP had left the house in January 2005, as had been established by the national courts and confirmed by UNFICYP in 2023.

93. The Government said that hostilities might resume because the northern part of the country had been occupied by Türkiye. The country needed a neutral force to be present to prevent this by keeping the adversaries apart. The peacekeepers had occupied the zone that separated the adversaries and ensured that the adversaries' troops did not advance. They had chosen to restrict public access to the zone because of their operational needs (ease of surveillance and patrolling) and in the interests of public safety: shots were sometimes fired into the zone and thousands of land mines had been laid there.

94. The State had fully discharged its "positive obligations" to the applicant. In the absence of effective control, those positive obligations were limited to the taking of appropriate feasible measures that it was within the State's powers to take. In particular, as a territorial state, Cyprus remained under a residual duty to take all appropriate measures it was still able to take, including re-establishing control over the territory in question and ensuring respect for the applicant's individual rights. The Government of Cyprus, in conformity with its duty under the UN Charter and UN resolutions, cooperates with UNFICYP, whose role is to carry out its tasks and return Cyprus to normal conditions, to maintain and restore law and order and to respect rights of ownership. The applicant had failed to identify any measure that Cyprus had failed to take which was feasible and within its powers in the

circumstances. The domestic courts had also found that the State was discharging its obligations. Those obligations were limited to positive ones as concerns access to the property and its use by the UNFICYP and also the payment of rent.

95. Cyprus had consented to UNFICYP's use of the applicant's house because the applicant had not reacted to the notification sent to the only address the authorities had for her. Had the applicant objected, the State would have tried to find another solution for UNFICYP. The applicant had never objected to the use of her house by UNFICYP; when informed that her house had been used as an observation post, the applicant had been "absolutely delighted". She had never requested access to it. Her only interest was in receiving an unrealistically high rent. The Government also rejected the argument that Cyprus had not compensated the applicant for the occupation of her house: although it had not been paid for it by UNFICYP, the Government had spent 40,000 Cypriot pounds (CYP) (equivalent to over EUR 68,000) on repairs to the house that it had used for four years, while even using the applicant's calculations the rent should not have exceeded CYP 15,000 a year. Moreover, the State would have paid some further rent if it had been possible to rent the house out. However, the District Rent Determination Committee decided that since the house was located in an inaccessible part of the buffer zone, it had no rental value (see paragraphs 34-39 above). The applicant's claim that in the past the State had considered that houses like hers had some rental value was unrelated to the circumstances of the present case.

96. Besides, the money spent by the State on the repairs and upkeep of the house had adequately compensated the applicant. Without those repairs, the house would have decayed into ruins.

97. As to the interference with the applicant's property, the responsibility for that lay with Türkiye, whose invasion had led to the creation of the buffer zone.

98. That interference was temporary and limited. The applicant could still sell her property, leave it by will or give it away.

3. The Court

99. The Court notes, first of all, that the applicant's "possession" of the house in question is not subject to dispute (compare with *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 192, ECHR 2015, and *Xenides-Arestis v. Turkey*, no. 46347/99, § 28, 22 December 2005). The parties argue over the levels of interference and the State responsibility for them; the Court will examine the case under the general principle laid down in the first sentence of Article 1 of Protocol No. 1 (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 99, ECHR 2014).

100. The Court reiterates in that connection that, in addition to possession of the property (*usus*), ownership also implies the right to dispose of the property and receive income from it (*abusus* and *fructus*) (see *Hirschhorn v. Romania*, no. 29294/02, § 57, 26 July 2007). The applicant's complaint also contains three parts: it concerns a restriction on public access to the buffer zone (*usus*), UNFICYP's occupation of her house (*usus*), and the State's refusal to pay rent (*fructus*). The Court will examine those issues below.

(a) Restriction on public access to the buffer zone

101. In a complaint concerning lack of access to property located in the buffer zone, the Court has already found that neither Cyprus nor Türkiye has effective control over certain sectors of the buffer zone (see *Stephens*, cited above). Accordingly, the State's obligation in this exceptional situation was to take all the appropriate measures with regard to the applicant's rights to access the house which were still within their power to take (ibid.).

102. In view of the limited jurisdiction enjoyed by the State in the present case, which entailed the existence of only positive obligations of the State (see paragraph 78 above), the Court accepts that Cyprus has taken all the appropriate measures to ensure that the applicant, as well as any other person in a similar situation, have access to her property. In the circumstances, the State had consented to the establishment and operation of UNFICYP in 1964, as recommended by Security Council Resolution 186, and had ratified an agreement on the creation of UNFICYP under Article 105 of the UN Charter (see paragraphs 6-8, 14-18 above). Since the events of 1974, UNFICYP's mandate has been extended a number of times in view of the continuing situation in the country, to prevent tensions in and around the buffer zone; to prevent the recurrence of fighting and to maintain the current military position; to manage civilian activity; and to maintain law and order. The Secretary General's periodic reports provide detail on UNFICYP's activities, including the regulation of civilian access to different areas of the buffer zone based on security concerns. The Government of Cyprus, acting in accordance with its obligations under the UN Charter and relevant Security Council resolutions, cooperate with UNFICYP in its efforts to restore normal conditions, uphold law and order, and protect property rights. It is noted that the applicant's property is situated in an inaccessible part of the buffer zone, a fact which has not been disputed by the applicant. The Supreme Court agreed that the applicant had not challenged any particular action or inaction or otherwise substantiated any breach by the State of its duty to take all appropriate measures to secure the applicant's rights which it was within its power to take. The applicant has equally failed to identify before the Court any measure that could potentially be implemented by the State to secure her rights other than payment of the rent claimed by her (to be examined below).

103. The parties suggested that a State having no effective control over parts of its territory could result in the appearance of a "human-rights vacuum". The Court refers to its case-law concerning its jurisdiction in respect of complaints made against actions of the United Nations (see, for example, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway* [GC] (dec.), nos. 71412/01 and 78166/01, § 151 et seq., 2 May 2007), where the Court pointed out that disputed actions of UN bodies could not be attributed to States, especially if they had not taken place on the territory of those States or by virtue of a specific decision of their authorities.

104. There has therefore been no violation of Cyprus's positive obligations under Article 1 of Protocol No. 1 on account of the denial to the applicant of access to her house in the buffer zone.

(b) UNFICYP's occupation of the house and the State's refusal to pay rent

105. In the circumstances, and taking into account the arguments of the parties and the findings of the domestic courts (see, in particular, paragraphs 49 and 88-90 above), the Court considers that the questions about UNFICYP's occupation of the applicant's house (*usus*) and the State's refusal to pay rent (*fructus*) are closely linked.

106. Unlike the situation in the *Stephens* case, cited above, as discussed in paragraphs 101-105 above, the Government agreed that UNFICYP could use the applicant's house for several years and determined that no rent would be due to her for that use. There is no dispute that the Government were free to take decisions about the amount and type of compensation to be due to the owner for the use of property by UNFICYP, even if UNFICYP itself was not charged for that use (see paragraph 8 above). As such, the Court finds that the jurisdiction of Cyprus has not been restricted by lack of effective control over certain parts of the buffer zone and Cyprus could still set how and on what conditions UNFICYP could occupy the applicant's house. These considerations lead the Court to conclude that the Government was directly responsible for the alleged violations (see, *Radanović v. Croatia*, no. 9056/02, §§ 42 and 49-50, 21 December 2006, *Dabić v. Croatia*, no. 49001/14, §§ 48-57, 18 March 2021, *Wiegandová v. The Czech Republic*, no. 51391/19, § 52 and 60, 11 January 2024 and *mutatis mutandis, Pocasovschi and Mihaila*, cited above, § 46).

107. In the same vein, the Court notes that by giving its consent to UNFICYP's occupation of the applicant's house (see paragraph 28 above), the State has effectively disposed of the property concerned, and thus directly interfered with the applicant's ability to enjoy her property (see, *mutatis mutandis*, *Vira Dovzhenko v. Ukraine*, no. 26646/07, §§ 15 and 36, 15 January 2019 and *Moculescu v. Romania,* no. 15636/04, §§ 34-35, 2 June 2010). Although the applicant eventually confirmed her lack of objection to that arrangement, she claims that not receiving rent deprived her of the

potential benefits of ownership of the property. In the circumstances, the Court will examine whether the interference was justifiable by looking at the principles of lawfulness, legitimate aim and "fair balance" (see *Ališić and Others*, cited above, § 102).

108. There is no claim that that interference was not subject to the conditions provided for by law or by the general principles of international law.

109. As to the principle of a "fair balance" inherent in Article 1 of Protocol No. 1, under that provision a State is allowed a wide margin of appreciation in the determination of the steps to be taken to ensure compliance with the Convention, having regard to the fair balance to be struck between the competing interests of the individual and of the community as a whole (see *Sargsyan*, cited above, § 220, with further references). In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights by ensuring they are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 164-168, ECHR 2006-VIII).

110. Furthermore, the importance of the procedural obligations under Article 1 of Protocol No. 1 must not be overlooked. Although it contains no explicit procedural requirements, individuals must have a reasonable opportunity of putting their cases to the appropriate authorities in judicial proceedings in order to bring effective challenges to any measures that interfere with the rights to the peaceful enjoyment of possessions guaranteed by that provision. An interference with those rights therefore cannot have any legitimacy if individuals cannot vindicate it by bringing adversarial proceedings that comply with the principle of equality of arms and allow discussion of the elements of a case that are important to its outcome. In order to ensure that this condition is satisfied, the applicable procedures should be considered from a general standpoint (see, among other authorities, *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 302, 28 June 2018, with further references).

111. In the present case, it is undeniable that the accommodation of UNFICYP served the public interest of maintaining peace and security. As to the proportionality of the interference, the applicant brought a claim in the domestic courts, arguing principally that her property rights had been breached by a denial of access to the area, unlawful use of her house and a refusal to pay any rent over a number of years. However, the domestic courts limited their examination to the first aspect of the claim, namely the denial of access to her house, and found essentially that the situation was outside

Cyprus's effective control because of the restrictions on access to the security zone (see paragraphs 47-50 and 54 above). The Supreme Court did not consider the specific way that the owner's "consent" to the use of the house by UNFICYP had been obtained, the conditions set by her on that occupation, or what rent would be paid. The Supreme Court particularly, considered that the absence of effective government control over the buffer zone precluded its examination of those issues. There was therefore a lack of proper consideration of some of the major arguments raised by the applicant and a failure to carry out an effective balancing exercise between the public interest at stake and the individual burden borne by the applicant (compare with *Megadat.com SRL v. Moldova*, no. 21151/04, § 74, ECHR 2008).

112. The Court notes, furthermore, that only two years earlier the State had recognised that it could pay rent to property owners in the same situation as the applicant (see paragraph 23 above). The Government dismissed the applicant's reliance on that precedent saying it was "unrelated", without further explanation. At the same time, given that precedent, it appears that although the house was inaccessible to the public and therefore might not have been able to attract ordinary tenants, it could still have generated income for its owner where there was an organisation interested in occupying it.

113. As to the argument that the State has repaired the applicant's house, the Court reiterates that the correlation between the potential increase in the value of the property and the amount of compensation to be given for its use - a key aspect of the applicant's complaint - has not been subjected to a proper judicial evaluation precisely for the reasons outlined above.

114. The Court acknowledges the extremely complex legal and factual situation on the ground following the occupation of part of Cyprus and the need to prevent a resumption of fighting and therefore to ensure the continued presence of a peace-keeping force. The need for the cooperation of the Cypriot Government with UNFICYP and for the restrictions on access to certain defined areas are parts of this complex picture. Nevertheless, the Court cannot accept that the interference with the applicant's property right has been in accordance with the requirements of Article 1 of Protocol No. 1 in the present case. In particular, the applicant's claim that there has been a breach of her property rights on account of the State allowing UNFICYP to occupy her house and on account of the State's refusal to pay her rent for that occupation has not been properly examined by the domestic authorities. The proportionality of the interference has therefore not been properly assessed by the domestic courts.

115. There has, accordingly, been a violation of Article 1 of Protocol No. 1 on that account.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. Article 41 of the Convention provides:

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

A. Damage

117. For pecuniary damage, the applicant claimed multiple alternative intricately calculated sums ranging from EUR 405,273.11 to EUR 1,013,829.77. For non-pecuniary damage, the applicant claimed EUR 110,000.

118. The Government rejected the pecuniary claim as misguided and speculative. They reiterated that the house had no rental value. They submitted that during UNFICYP's occupation similar properties located outside the buffer zone could be rented for, on average, EUR 2.13 per square metre per month. They further considered the non-pecuniary claim excessive in the light of the Court's case-law.

119. The Court finds that in the circumstances of the case the pecuniary damage sustained is difficult to calculate, and also that it is closely connected to non-pecuniary damage. Taking into account the nature of the violation found and all relevant circumstances of the case including the renovation costs incurred by the State, and making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 to cover all types of damages (compare *Sargsyan v. Azerbaijan* (just satisfaction) [GC], no. 40167/06, §§ 56-57, 12 December 2017, and *Chiragov and Others v. Armenia* (just satisfaction) [GC], no. 13216/05, §§ 79-80, 12 December 2017).

B. Costs and expenses

120. The applicant claimed EUR 23,705.38 for costs and expenses incurred in the domestic courts and before the Court.

121. The Government considered this claim excessive.

122. An applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 12,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention on account of the restriction on public access to the sector of the buffer zone where the applicant's house is located;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the failure by the domestic courts to evaluate the proportionality of the interference as concerns the occupation of the applicant's house and lack of payment to the applicant;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President