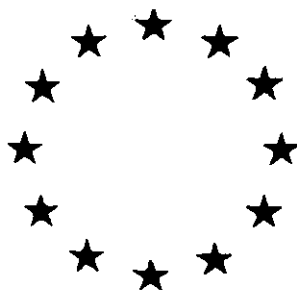

COUNCIL
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EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 8007/77

CYPRUS

against

TURKEY

Report of the Commission

(Adopted on 4 October 1983)

STRASBOURG

Or Eng

Application N° 8007/77

CYPRUS v TURKEY

REPORT OF THE COMMISSION

(Adopted on 4 October 1983)

TABLE OF CONTENTS

	<u>Pages</u>
INTRODUCTION	1 - 10
A. Background	1
B. Substance of the application	2
C. Proceedings before the Commission	3 - 9
1. Admissibility	3 - 4
2. Merits	4 - 9
a) 1978 - 1979	4 - 6
b) Interim Report and Decision of the Committee of Ministers	7
c) 1980 - 1983	8 - 9
D. The present Report	10
PART I - GENERAL	11 - 17
Chapter 1 - Application of Arts. 28 and 31 of the Convention in the circumstances of the present case	11 - 13
Chapter 2 - Legal interest	13 - 15
Chapter 3 - Responsibility of Turkey	16
Chapter 4 - Art. 15 of the Convention	17
PART II - MISSING PERSONS	18 - 33
Chapter 1 - Submissions of the Parties	18 - 22
a) Applicant Government	18 - 21
b) Respondent Government	21 - 22
Chapter 2 - Investigation by the Commission	22 - 26
a) Preliminary observations	22 - 23
b) Proceedings in the present case	23 - 26

	<u>Pages</u>
Chapter 3 - Evaluation of the evidence obtained	26 - 31
a) Cases investigated by the Delegation . . .	26 - 30
aa) File N° 23 (Nicos Alexandrou)	26 - 27
bb) File N° 1209 (Panayiotis Christoforou)	27 - 28
cc) File N° 127 (Andreas Germanos). . . .	28 - 29
dd) File N° 153 (Costakis Georghiou). . .	29
ee) File N° 328 (Minas Ioannou)	30
b) Further cases submitted to the Commission	31
Chapter 4 - Opinion of the Commission	32 - 33
PART III - REMAINING COMPLAINTS	34 - 46
Chapter 1 - Displacement of persons and separation of families	34 - 38
a) Submissions	34 - 36
aa) Applicant Government	34 - 35
bb) Respondent Government	35 - 36
b) Opinion of the Commission	36 - 38
Chapter 2 - Deprivation of possessions	38 - 43
a) Submissions	38 - 42
aa) Applicant Government	38 - 40
bb) Respondent Government	40 - 42
b) Opinion of the Commission	42 - 43
Chapter 3 - No remedy	44
a) Submissions	44
b) Opinion of the Commission	44
Chapter 4 - Discrimination	45
a) Submissions	45
b) Opinion of the Commission	45
Chapter 5 - Oppression of Turkish Cypriots	46
PART IV - CONCLUSIONS	47 - 48

	<u>Pages</u>
Separate opinion of Mr M.A. TRIANTAFYLLIDES	49 - 50
Professor Dr Bülent DAVER's dissenting opinion	51 - 53
Separate opinion of Mr G. TENEKIDES	54 - 61
Separate opinion of Mr H.G. SCHERMERS	62
Appendix I - HISTORY OF PROCEEDINGS	63 - 78
Appendix II - DECISION ON ADMISSIBILITY	79 - 160

INTRODUCTION

A. Background

1. This Report deals with the third application (N° 8007/77) by Cyprus against Turkey.
2. The basic events which gave rise to the present situation in Cyprus, to which this Report relates, are set out at Part I, Chapter 1, of the Commission's Report of 10 July 1976 concerning the two previous applications (N°s 6780/74 and 6950/75) by Cyprus against Turkey.
3. The Commission recalls that, in their first application (N° 6780/74), the applicant Government stated that Turkey had on 20 July 1974 invaded Cyprus, until 30 July occupied a sizeable area in the north of the island and on 14 August 1974 extended its occupation to about 40% of the territory of the Republic. The applicant Government alleged violations of Arts 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Art 1 of Protocol N° 1 and of Art 14 of the Convention in conjunction with the aforementioned Articles. In their second application (N° 6950/75) the applicant Government contended that, by acts unconnected with any military operation, Turkey had, since the introduction of the first application, committed, and continued to commit, further violations of the above Articles in the occupied territory.
4. In its Report of 10 July 1976 concerning Applications N°s 6780/74 and 6950/75 the Commission concluded in particular (at pages 165 to 167) that Turkey had violated Arts 2, 3, 5, 8, 13 and 14 of the Convention and Art 1 of Protocol N° 1.
5. The Committee of Ministers of the Council of Europe, on 20 January 1979, adopted Resolution DH (79) 1 concerning the above-mentioned two previous applications.
6. The following is an outline of the third application, as submitted by the Republic of Cyprus to the European Commission of Human Rights under Art 24 of the European Convention on Human Rights, and of the procedure before the Commission concerning this application. In the course of the procedure the Commission has transmitted an Interim Report to the Committee of Ministers on 3 September 1980.

B. The substance of the present application

7. The applicant Government contend that, since 18 May 1976 when the Commission terminated its investigation in the first two applications (N°s 6780/74 and 6950/75) by Cyprus against Turkey, Turkey continues to commit breaches of Arts 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and of Arts 1 and 2 of Protocol N° 1 and Art 14 of the Convention in conjunction with the aforementioned Articles.

8. The applicant Government state that Turkey "continues to occupy 40% of the territory of the Republic of Cyprus seized in consequence of the invasion of Cyprus by Turkish troops on 20 July 1974".

9. The violations complained of in the application are described as:

- detention or murder of about 2,000 missing Greek Cypriots;
- displacement of persons from their homes and land (refusal to allow the return of over 170,000 refugees and eviction of Greek Cypriots from the occupied areas through inhuman methods);
- separation of families;
- looting and robbery of movables belonging to Greek Cypriots;
- seizure, appropriation, exploitation, occupation, distribution and destruction of movable and immovable properties of Greek Cypriots.

10. Details of these complaints are reproduced in the Commission's decision on the admissibility of the application, which is annexed to this Report.

11. The applicant Government also complain of the "oppression of Turkish Cypriots in the occupied areas" (1).

(1) For details see the "Particulars of the Application" (reproduced below at pp 85 - 97).

C. Proceedings before the Commission

12. The Agents of the Parties in the proceedings before the Commission were:

- Mr Loukis G. Loucaides, Deputy Attorney-General, for the applicant Government, and
- Professor Dr Ilhan Unat for the respondent Government.

1) Admissibility

13. The application was introduced on 6 September 1977. Particulars of the application were filed on 4 November 1977.

14. The respondent Government, in their observations of 11 January 1978 on the admissibility of the application, requested the Commission to declare the application inadmissible on the following grounds (1):

- that the applicants were not entitled to represent the State of Cyprus and accordingly had no standing before the Commission as applicants under Art 24 of the Convention;
- that Turkey had no jurisdiction over the territory of the Turkish Federated State of Cyprus - the area where the alleged acts were claimed to have been committed;
- that domestic remedies had not been exhausted, as required by Art 26 of the Convention, and that the time-limit of six months, laid down in Art 26, for bringing a case before the Commission had not been observed;
- that the application was substantially the same as the two previous applications (N°s 6780/74 and 6950/75 - cf para 2 above); and
- that the application was abusive.

15. At the oral hearing before the Commission on 5 and 6 July 1978, the respondent Government also maintained that the Commission was precluded from dealing with the present application by the decision of the Committee of Ministers of 21 October 1977 concerning the two previous applications (2).

16. The applicant Government contested all these grounds (3).

17. In its decision of 10 July 1978 on the admissibility of the application (annexed to this Report), the Commission found (4) :

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- (1) For details see below pp 97 - 112.
 - (2) Cf below pp 137 - 144.
 - (3) See below pp 112 - 137 and 144 - 146.
 - (4) See below pp 147 - 159.

- that the application had been validly introduced on behalf of the Republic of Cyprus;
- that Turkey's jurisdiction in the north of the Republic of Cyprus, existing by reason of the presence of her armed forces there, which prevents exercise of jurisdiction by the applicant Government, could not be excluded on the ground that jurisdiction in that area was allegedly exercised by the "Turkish Federated State of Cyprus";
- that the application could not be rejected for non-exhaustion of domestic remedies or for non-observance of the six months rule;
- that the application could not be declared inadmissible as being the same as the previous Applications N°s 6780/74 and 6950/75;
- that the Commission was not precluded from dealing with the present application by the Committee of Ministers' decision of 21 October 1977 concerning the two previous applications; and
- that the Commission could not accept the objection that the application was abusive.

2) Merits (1)

(a) 1978 - 1979

18. The applicant Government's observations on the merits of the application were filed under cover of the Government's letter of 17 January 1979.

19. The respondent Government, in their letter of 9 May 1979, stated (2):

-
- (1) A fuller account of the Parties' procedural submissions in 1979 and 1980 is given in the "Interim Report of the Commission on the Present State of the Proceedings" of 12 July 1980.
 - (2) Original French. English translation by the Council of Europe.

"There has been no change in the Turkish Government's view that the application in question was not lodged by a competent authority of the Republic of Cyprus. The Turkish Government therefore continue to consider that the Greek-Cypriot Administration does not have the quality of an applicant and that at all events its purported capacity to represent the State of Cyprus is not binding on Turkey.

For these reasons my Government much regret that they are unable to take part in the proceedings on the merits of the application in question.

...."

In the same communication the respondent Government submitted that the Committee of Ministers of the Council of Europe, in Resolution DH (79) 1 concerning Applications N°s 6780/74 and 6950/75, had "agreed that this Resolution should be considered as a decision putting an end to the examination of the case of Cyprus v Turkey."

20. The applicant Government, in a communication of 2 August 1979, stated the expectation "that the Commission will adopt the normal procedure for the examination of the merits of the above application as in the case of Applications N°s 6780/74 and 6950/75."

21. The Commission decided on 5 October 1979 that the Committee of Ministers' Resolution DH (79) 1 concerning Applications N°s 6780/74 and 6950/75 does not in any way prevent it from continuing its examination of the present application. It further recalled that, by its decision of 10 July 1978, the present application was declared admissible; that such a decision is conclusive for the Parties; and that, in the Convention, the High Contracting Parties have accepted obligations under Art 28 (a) in relation to proceedings before the Commission.

The Commission called on the Parties accordingly to assist it in the performance of its task under the Convention and to submit such suggestions as they wished to make concerning its further examination of this case. In this connection, the Parties should indicate "whether they accept that their memoranda, submitted to the Committee of Ministers in the previous applications, may be considered, in so far as they are relevant, as forming part of the present case and, further, whether they consider that any of the particulars of the present application requires a Commission visit to Cyprus."

22. The applicant Government, in their communication of 21 November 1979, referred to the suggestions made in paras 88 - 90 of their observations on the merits, requesting the Commission, in an investigation, to hear witnesses, inspect localities in Cyprus and Turkey, and to take other relevant evidence.

The applicant Government added that, during the investigation, they "may ask the Commission to take into consideration in relation to some matters in issue (eg the responsibility of the respondent Government for certain continuing violations) the 'Memorial' presented by the respondent Government before the Committee of Ministers in respect of Applications N°s 6780/74 and 6950/75." However, in a further communication of 28 December 1979 the applicant Government argued that the above document "submitted to the Committee of Ministers in the previous applications cannot, under the terms of the Convention, become the subject of consideration by the Commission in the present proceedings".

The Commission, noting that the said Memorial, submitted to the Committee of Ministers, had not been communicated to it, did not, in the absence of any indication by the respondent Government that they wished to rely on this document in the present proceedings, find it appropriate to take it into consideration.

23.. The respondent Government, in a letter of 24 December 1979 (1), reiterated their view "that Application N° 8007/77 was not lodged with the Commission by a competent authority of the Republic of Cyprus; that, in other words, the Greek Cypriot Administration does not have the quality of an applicant and that its purported capacity alone to represent the State of Cyprus is at all events not effective as against Turkey, given that no jurisdiction can be competent to oblige the Turkish Government to recognise against their will the legitimacy of a 'Government' which has usurped the State powers in violation of the Constitution of which Turkey is a guarantor. For these reasons (the) Government much regret that they are unable to take part in the proceedings on the merits before the Commission."

24. The applicant Government, in a communication of 12 February 1980, submitted "that the stand taken by the respondent Government does not offer any ground for not proceeding with the examination of the merits of the case."

The applicant Government's "Supplementary material regarding facts set out in the Particulars and the Observations on the merits of the application" arrived on 5 May 1980.

(1) Original French. English translation by the Council of Europe.

(b) Interim Report and Decision of the
Committee of Ministers

25. On 13 May 1980 the Commission decided to inform the Parties that it considered sending an interim report to the Committee of Ministers containing an account of the state of proceedings, an expression of the opinion of the Commission that Turkey has failed to respect its obligations under Art 28, and a request that the Committee of Ministers urge Turkey to meet those obligations.

The Parties were invited to submit their observations on this course of action.

26. The applicant Government submitted observations in their communication of 25 June 1980.

27. The respondent Government, in a letter of 25 June 1980, stated that their "views on the Application N° 8007/77 are already set out in (the) letter of 24 December 1979."

28. The "Interim Report of the Commission on the Present State of the Proceedings" was adopted on 12 July 1980 by seventeen votes against one.

In the Report the Commission expressed the opinion "that, by its refusal to participate in the Commission's examination of the merits of the present application, Turkey has so far failed to respect its obligations under Art 28 of the Convention" (1).

The Commission requested the Committee of Ministers "to urge Turkey, as a High Contracting Party to the European Convention on Human Rights, to meet its obligations under this Convention and accordingly to participate in the Commission's examination of the merits of the present application, as required by Art 28" (2).

The Interim Report was transmitted to the Committee of Ministers on 3 September 1980.

29. By letter of 4 December 1980 the Chairman of the Committee of Ministers informed the President of the Commission of the Decision adopted by the Committee during the 326th meeting of the Ministers' Deputies (24 November to 4 December 1980). In that decision the Committee, having taken cognizance of the Commission's Interim Report, "Recalls the obligations imposed on all the Contracting Parties by Article 28 of the European Convention for the Protection of Human Rights and Fundamental Freedoms."

(1) Para 45 of the Interim Report.

(2) Para 48 of the Interim Report.

(c) 1980 - 1983

30. On 12 December 1980 the Commission, basing itself on the above decision of the Committee of Ministers, decided that the respondent Government should again be invited to submit their observations on the merits of the application. A new time-limit, expiring on 2 March 1981, was fixed for that purpose.

31. The respondent Government replied on 27 February 1981 that, for the reasons given in previous letters, they continued "to find it impossible to participate in the procedure as to the merits before the Commission". (1)

32. The Commission, pursuing its examination of the case notwithstanding the respondent Government's refusal to participate, decided on 16 March 1981 to bring its above correspondence with the respondent Government to the attention of the Committee of Ministers and to inform the Committee that it would continue its proceedings.

The Commission further decided that the applicant Government should be invited to submit:

- certain particulars of their complaint concerning missing persons (2), and
- observations on the question in what way the Government have a valid legal interest in a determination of their remaining complaints in the present application in view of the fact that these complaints relate substantially to a situation in Cyprus which has already been the subject of the Commission's Report in two previous applications.

33. The applicant Government's particulars and observations arrived on 28 July 1981. Further particulars and observations were filed under cover of the Government's letters of 22 January and 8 February, and on 5 March 1982, respectively.

34. On 8 March 1982 the Commission decided that an investigation should be undertaken, into the complaint concerning missing persons, by obtaining oral evidence in some of the cases submitted by the applicant Government.

It also decided that the respondent Government should be invited to submit such observations as they might wish to make in reply to the applicant Government's above submissions.

(1) Original French. English translation by the Council of Europe.

(2) A more detailed account of the proceedings relating to this complaint is given below (paras 87 - 95).

35. The respondent Government replied on 22 April 1982 (1) that they continued "to find it impossible to participate in the procedure as to the merits before the Commission." They did not therefore propose "to submit any observations in reply to those of the applicant."

36. The applicant Government's further submissions of 17 September, concerning measures taken in respect of possessions of Greek Cypriots in the North of Cyprus, arrived on 20 September 1982.

37. On the same day four delegated members of the Commission heard 13 witnesses in five cases of missing persons. The hearing was held in Strasbourg, in the absence of the parties.

38. On 6 October 1982 the Commission decided that the Parties should be invited:

- to submit comprehensive memoranda setting out their final conclusions, and
- to state their oral conclusions at a hearing before the Commission.

39. The respondent Government, in a letter of 28 January 1983, stated that they still found it impossible to participate in the procedure as to the merits before the Commission; it was excluded that they would file observations or be represented at the hearing;

40. The applicant Government's final written submissions arrived on 14 February 1983.

41. At the hearing on 7 March 1983 the applicant Government stated their oral conclusions on the merits of the application. The respondent Government were not represented.

42. Following its decision on the admissibility the Commission, acting in accordance with Art 28 (b) of the Convention, placed itself at the Parties' disposal with a view to securing a friendly settlement of the matter. In view, however, of the respondent Government's refusal to participate in the proceedings under Art 28 the Commission finds no basis on which it could usefully pursue its efforts to reach such a settlement.

(1) Original French. English translation by the Council of Europe.

D. The present Report

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

MM. C.A. Nørgaard, President
G. Sperduti
J.A. Frowein
F. Ermacora
J.E.S. Fawcett
M.A. Triantafyllides
E. Busuttil
L. Kellberg
B. Daver
G. Jörundsson
G. Tenekides
S. Trechsel
B. Kiernan
J. Sampaio
A. Weitzel
J.C. Soyer
H.G. Schermers

44. The text of the Report was adopted by the Commission on 4 October 1983 and is now transmitted to the Committee of Ministers in accordance with Art 31 (2) of the Convention.

45. A friendly settlement of the case not having been reached, the purpose of the present Report, pursuant to Art 31 of the Convention, is accordingly:

- (1) to establish the facts; and
- (2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

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

47. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

PART I - GENERAL

Chapter 1 - Application of Arts 28 and 31 of the Convention
in the circumstances of the present case

48. The Commission, noting the respondent Government's refusal to participate in the proceedings provided for by Art 28 of the Convention (1), confirms the following observations made at paras 38 to 44 of its Interim Report (cf para 28 above).

"38. The respondent Government, after having taken part, together with the applicant Government, in the Commission's proceedings on the admissibility of the application, refuse to participate in the present proceedings on the merits, particularly on the ground already advanced at the stage of admissibility that the application was not lodged with the Commission by a competent authority of the Republic of Cyprus.

39. The Commission recalls that, as stated in the Preamble, the High Contracting Parties have in the Convention taken 'the first steps for the collective enforcement' of the rights defined in Section I of the Convention and that, under Art 19, they have set up the Commission and the Court for this purpose. A system of collective protection of human rights, as established by the Convention, requires, in order to be effective, the co-operation with the Commission of all High Contracting States concerned in a case. This is reflected in Art 28 para (a) of the Convention, which expressly obliges the parties to an admitted application to 'furnish all necessary facilities' for the Commission's investigation.

40. The Commission cannot accept the respondent Government's statement, that they do not recognise the applicant Government as the Government of Cyprus, as a ground which could absolve Turkey from its obligation to co-operate with the Commission in the present proceedings. The Commission has already stated in its decision on the admissibility that the Convention establishes a system of collective enforcement and that an application brought under Art 24 does not of itself envisage any direct rights or obligations between the High Contracting Parties concerned.

(1) See above paras 19, 23, 27, 31, 35, 39 and 41 in fine.

41. The respondent Government maintain that Turkey cannot be obliged to recognise the applicant Government as representing the Republic of Cyprus. They have also submitted that Art 28 of the Convention, which governs the procedure on the merits of an admitted application, requires direct contacts between the parties concerned.

42. The Commission observes, firstly, that its decision admitting the present application is conclusive on the Parties and, secondly, that the question of the recognition of the applicant Government by the respondent Government does not arise at the proceedings on the merits. Commission proceedings under Art 28 do not necessitate direct contacts between the parties concerned.

43. The Commission considers further that to accept that a Government may void 'collective enforcement' of the Convention under Art 24, by asserting that they do not recognise the Government of the applicant State, would defeat the purpose of the Convention.

44. The Commission finally notes that the respondent Government, while not recognising the applicant Government as Government of Cyprus, nevertheless participated as a Party concerned, under Art 32, and submitted a memorandum, in the Committee of Ministers' examination of the merits of the two previous applications (N°s 6780/74 and 6950/75) by Cyprus against Turkey. Those proceedings were, like the present one, governed by the Convention."

49. The Commission also confirms its opinion, stated at para 45 of the Interim Report "that, by its refusal to participate in the Commission's examination of the merits of the present application, Turkey has so far failed to respect its obligations under Art 28 of the Convention" and it recalls that it requested the Committee of Ministers "to urge Turkey, as a High Contracting Party to the European Convention on Human Rights, to meet its obligations under this Convention and accordingly to participate in the Commission's examination of the merits of the present application, as required by Art 28" (para 48 of the Interim Report).

50. The Commission notes the Decision adopted by the Committee of Ministers during the 326th meeting of the Ministers' Deputies (24 November to 4 December 1980) in which the Committee, having taken cognizance of the Commission's Interim Report, "Recalls the obligations imposed on all the Contracting Parties by Article 28 of the European Convention for the Protection of Human Rights and Fundamental Freedoms." (cf para 29 above).

51. The respondent Government nevertheless did not comply with the Commission's subsequent invitations to file observations and to appear at a hearing (1).

52. The Commission has already stated in the two previous applications by Cyprus against Turkey that a respondent party's failure to co-operate in proceedings under Art 28 does not prevent it from completing, as far as possible, its examination of the application and from making a Report to the Committee of Ministers under Art 31 of the Convention (2). In those applications the Commission, in the absence of any submissions by the respondent Government on the merits of the complaints, accordingly "proceeded with its establishment of the facts on the basis of the material before it" (3).

53. In the present case the Commission, adopting the same procedure, has again based its Report on the material before it, including the submissions made by the Parties on the admissibility of the application. In this connection it has also considered Annex I to the respondent Government's observations on the admissibility, a document entitled "Observations by Mr R.R. Denktash, President of the Turkish Federated State of Cyprus". The Commission's notice of this document does not imply any view on the position of Mr Denktash, other than that his observations, as reproduced therein, are considered as forming part of those of the respondent Government (4).

Chapter 2 - Legal interest

54. The respondent Government, in their observations on the admissibility, objected that the present application "deals with the same alleged acts and events as those already covered in Applications N°s 6780/74 and 6950/75", which alleged "the detention or death of about 2,000 missing persons, the displacement of persons, the separation of families and various infringements of Greek Cypriots' property rights". According to the Government the same alleged acts and events were covered by the Commission's Report in the previous applications (5).

(1) Cf above paras 30, 31, 34, 35, 38, 39 and 41 in fine.

(2) Report of 10 July 1976, para 55.

(3) Ibidem para 79.

(4) Cf also para 63 below.

(5) Cf below p 109.

55. The Commission did not accept this objection as a ground for inadmissibility: in its decision admitting the present application, it found that it was not "authorised under the Convention to declare inadmissible an application filed under Art 24 by a High Contracting Party on the ground that it is substantially the same as a previous inter-State application. For so doing would, in the Commission's view, imply an examination, though preliminary, of the merits of the application - an examination which, as already stated, must in inter-State cases be entirely reserved for the post-admissibility stage. In any event, the present application is not identical with the previous cases" (1).

56. It follows from the above terms of its decision on the admissibility that the Commission, having reached the stage of the merits, was still confronted with the question whether and to what extent the present application is substantially the same as the two previous applications. In the Commission's view it cannot be its task again to investigate complaints already examined in a previous case. Art 27 (1)(b) of the Convention, while by its terms limited to applications under Art 25 and therefore not authorising the Commission to examine at the admissibility stage whether an inter-State application is substantially the same as a previous one, reflects a basic legal principle of procedure which in inter-State cases arises during the examination of the merits. A State cannot, except in specific circumstances such as set out hereafter in paras 58 and 62, claim an interest to have new findings made where the Commission has already adopted a Report under Art 31 of the Convention concerning the same matter.

57. In its consideration of this issue in the present case the Commission has distinguished between the complaint concerning missing persons and the remaining complaints.

58. The Commission noted that the issue of missing persons in the present case is substantially the same as in the previous applications, in that it concerns the fate of some 2,000 persons, both military personnel and civilians, who according to the applicant Government "were brought under the actual authority and responsibility of the Turkish army in the course of the ... military action (of 1974) or during the military occupation of the north of Cyprus (and) are still missing" (2). The Commission

(1) See below p 157.

(2) Particulars of the application, reproduced in the decision on the admissibility, below p 87.

recalled, however, that the evidence before it in the previous case did not allow "a definitive finding with regard to the fate of Greek Cypriots declared to be missing" (1) and, in view of new relevant information indicated in the present application (2), it decided to reconsider this issue (3).

59. In respect of the remaining complaints the Commission invited the applicant Government to indicate in what way they have a valid legal interest in a determination in the present proceedings in view of the fact that these complaints relate substantially to a situation in Cyprus which has already been the subject of the Commission's Report in the two previous applications (4).

60. The applicant Government stated that the public order of Europe had been disturbed by the flagrant violations of the Convention found by the Commission, in its Report on the two previous applications, to have been committed by Turkey. The Committee of Ministers had not in that case performed its duty under Art 32 of the Convention and Turkey continued her policy of systematic violation of the Convention. Cyprus' legal interest could therefore not be disputed in the present application (5).

61. The respondent Government, in their letter of 22 April 1982, referred to their observations on the admissibility of the application which in their view established the lack of any legal interest.

62. The Commission, considering the specific nature of the complaints and noting the terms of Resolution DH (79) 1 of the Committee of Ministers, found that the applicant Government, in the particular circumstances described by them, had a legal interest in the determination of their remaining complaints. It has accordingly considered these complaints at Part III of this Report.

(1) Report of 10 July 1976, para 347.

(2) See below para 72.

(3) See below para 82.

(4) Decision of 16 March 1981.

(5) Verbatim record of the hearing of 7 March 1983, pp 1 - 2.

Chapter 3 - Responsibility of Turkey under the Convention

63. In its decision on the admissibility of the present application, the Commission, confirming its finding in the previous case, stated that the Turkish armed forces in Cyprus brought any persons or property there "within the jurisdiction" of Turkey, in the sense of Art 1 of the Convention, to the extent that they exercised control over such persons or property. The Commission further observed that Cyprus had since 1974 been prevented from exercising its jurisdiction in the northern part of its territory by the presence there of armed forces of Turkey; that the recognition by Turkey of the Turkish Cypriot administration in that area as "Turkish Federated State of Cyprus" did not, according to the respondent Government's own submissions, affect the continuing existence of the Republic of Cyprus as a single State; and that, consequently, the "Turkish Federated State of Cyprus" could not be regarded as an entity which exercised "jurisdiction", within the meaning of Art 1 of the Convention, over any part of Cyprus. The Commission concluded that Turkey's jurisdiction in the north of the Republic of Cyprus, existing by reason of the presence of her armed forces there which prevented exercise of jurisdiction by the applicant Government, could not be excluded on the ground that jurisdiction in that area was allegedly exercised by the "Turkish Federated State of Cyprus".

64. The Commission does not find it necessary to add anything to its above observations as regards the imputability to Turkey of any particular violation of the Convention by her own armed forces which may be established in Parts II and III of this Report. As to violations of the Convention by acts of the Turkish Cypriot administration the Commission considers that, as submitted by the applicant Government (1), the existence of some kind of civil administration in northern Cyprus does not exclude Turkish responsibility given the degree of control which Turkey has in northern Cyprus. In particular, the Commission is satisfied that fundamental changes of the conditions in northern Cyprus cannot be decided without the express or tacit approval of the Turkish authorities.

65. As in the previous case (2), the Commission finally observes in this connection that the substance of the present application required it to confine its investigation essentially to acts and incidents for which Turkey, as a High Contracting Party, might be held responsible. Alleged violations of the Convention by Cyprus could be taken into account as such only if Turkey or another High Contracting Party had raised them in an application to the Commission under Art 24 of the Convention.

(1) Verbatim record of the hearing of 7 March 1983, p 32.

(2) Report of 10 July 1976, para 85.

Chapter 4 - Art 15 of the Convention

66. The Commission has in the previous case (1) considered whether there was a basis for applying Art 15 of the Convention:

- with regard to the northern area of Cyprus, and/or
- with regard to provinces of Turkey where Greek Cypriots were detained.

67. The Commission then:

- concluded that it could not, in the absence of some formal and public act of derogation by Turkey, apply Art 15 of the Convention to measures taken by Turkey with regard to persons or property in the north of Cyprus (2);
- considered that certain communications made by Turkey under Art 15 (3) with regard to certain provinces including the Adana region, in which martial law was declared, could not, within the conditions prescribed in Art 15, be extended to cover the treatment of persons brought into Turkey from the northern area of Cyprus. The Commission concluded that it could not apply Art 15 to the treatment by Turkey of Greek Cypriot prisoners brought to and detained in Turkey (3).

68. The Commission confirms these conclusions in the present case.

(1) Report of 10 July 1976, para 524.

(2) Ibidem para 528.

(3) Ibidem paras 529 - 531.

PART II MISSING PERSONS

Chapter 1.- Submissions of the Parties

(a) Applicant Government

69. In their "Particulars of the Application" the applicant Government submitted that about "2,000 Greek Cypriots (a considerable number of them being civilians) who were last seen alive in the occupied areas of Cyprus after the invasion and who were brought under the actual authority and responsibility of the Turkish army in the course of the aforesaid military action or during the military occupation of the north of Cyprus are still missing. Turkey continues to prevent through its forces the carrying out of investigations in the said areas and in Turkey by the international humanitarian organisations such as the International Committee of the Red Cross concerning the fate of these persons. This continuing negative attitude of Turkey on a purely humanitarian problem coupled with indisputable evidence that many missing persons were arrested, after the fighting was over, by the Turkish army or armed Turks acting under the directions of the Turkish army, and detained in prisons in Turkey or in Cyprus, is only compatible with the responsibility of Turkey for violations of Arts 2 or 4 and in any case Art 5 of the Convention in respect of all the missing persons in question."

70. For further particulars the applicant Government referred to a document entitled "the Case of the Missing Cypriots" (Appendix B) which was published by the "Pancyprian Committee of Parents and Relatives of Undeclared POWs and Missing Persons" in 1977. They added that "Turkey in various international fora, eg Third Committee of UN General Assembly (meeting of 24 November 1976), continued to decline proposals of the Cyprus Government for investigations by an independent body for the tracing of the missing persons in question." The applicant Government referred in this connection to various reports of the UN Secretary General. They observed that the establishment of the joint committee proposed to be formed with the help of the UN Special Representative in Cyprus "is delayed because of the lack of co-operation on the part of the Turkish side". Turkey's responsibility on this subject was of a continuing nature.

71. In their observations on the merits of the application, the applicant Government stated that Turkey voted against the Resolution adopted by the Third Committee of the UN Assembly on 12 December, and endorsed by the General Assembly in its Resolution No 32/128 of 20 December 1978, which urged the "establishment of an Investigatory Body under the chairmanship of a Representative of the Secretary General with the co-operation of the International Committee of the Red Cross,

which will be in a position to function impartially, effectively and speedily so as to resolve the problem (of the missing persons) without undue delay; the Representative of the Secretary General shall be empowered, in case of disagreement, to reach a binding independent opinion which shall be implemented." Turkey objected on the ground that the Resolution established a compulsory arbitration against the explicit dissent of one of the parties and contrary to international practice. She maintained her negative attitude in respect of the implementation of the above Resolution of the Third Committee and the General Assembly (the applicant Government here referred to para 42 of the Report of the UN Secretary General of 1 December 1978 - S/12946).

72. The applicant Government further stated that they had received information from various sources, such as Turkish Cypriots, Turks from Turkey and other foreigners "that a number of missing Greek Cypriots exceeding 200 have been seen alive in detention in Turkey. This information relates to the period covered by the present application and the persons in question were seen kept in detention in small groups in various areas of Turkey at different times". Thus it was alleged that, e.g., 19 detainees had been seen at Sinop in May 1977.

73... Under cover of their letter of 24 July 1981 the applicant Government submitted certain further particulars concerning the issue of missing persons, observing that they had more material, and - as Appendix B - "supplementary material" concerning persons who, according to the Government, had been seen alive in detention in Turkey after 18 May 1976 (the date on which the Commission had closed its investigation in the previous applications).

74. Under cover of their letter of 22 January 1982 the applicant Government submitted:

- a "List of Missing Persons as a Result of the Turkish Invasion in Cyprus" containing the names and other particulars of 1,619 persons;
- 50 statements of "illustrative cases of missing persons containing new facts/evidence".

Complaints

75. In support of their allegation that Turkey continues to violate Art 5 of the Convention the applicant Government submitted in their observations on the merits of the application:

"(a) The Commission has already found in respect of the question of the missing persons that 'there is a presumption of Turkish responsibility for the fate of persons shown to have been in Turkish custody'. (It) refrained at the time from making any finding regarding

the question of imputability to Turkey of any particular violation of the Convention. (See para 351 of the Report of the Commission in Applications Nos 6780/74 and 6950/75.) The applicant Government invites now the Commission to draw conclusions as to the particular violations imputable to the respondent Government bearing in mind the findings of the Commission as to the Turkish custody of those missing and the additional relevant information presented by the present application.

(b) It is submitted that Turkey should in any case be found responsible for continuing detention of the missing persons in question in view of the uncontradicted evidence that these persons have been in Turkish custody at some stage after the invasion. In the absence of proof to the effect that these persons were killed or died in the meantime the respondent Government should be found, at least, responsible for their detention contrary to Art 5 of the Convention. In this respect it is respectfully submitted that so long as there is evidence of the fact that the missing persons have been in Turkish custody it would be unreasonable to absolve Turkey from responsibility under the Convention simply because she declines to provide any information as to their fate.

(c) It is further submitted that the evidence in question raises a presumption of detention of the missing persons by the respondent Government which, if unrebutted, is legally sufficient to establish responsibility on the part of the respondent Government for 'continuing violations' of Art 5 in respect of all these persons within the meaning of the Commission's case-law (De Becker case, Yearbook 2, pp 214, 244; First Greek Case, 2nd Decision on admissibility, Collection of Decisions 26, pp 80, 110, Yearbook 11, pp 730, 778)."

76. At the hearing before the Commission on 7 March 1983 (1) the applicant Government stated:

"In the final analysis our case now is a case of continuing deprivation of liberty under Art 5 of the Convention."

77. In their observations on the merits of the application the applicant Government also invoked Art 2 of the Convention, arguing "that there will be a question of responsibility of Turkey for violations of (this Article) if during the investigation of the case it appears that any missing persons were in fact killed. The violations in question are imputable to Turkey on the ground that they were the direct result of the military activities of the Turkish forces in the occupied area".

(1) Verbatim record p 90.

78. At the hearing before the Commission on 7 March 1983 (1) the applicant Government stated: "In the observations on the merits we gave, alternatively, two Articles, Art 5 and Art 2. That was because the case was pending and the investigations on this subject had not been completed. There was always the eventuality that during the investigations we might find out that some of the missing persons were actually killed by the respondent Government. But at the latest stage ... it was clear that, in the absence of any evidence or any allegation on the part of the respondent Government to the effect that any of these missing persons had in fact been killed, the only remaining violation was the one of continuing detention".

(b) Respondent Government

79. The respondent Government, in their observations on the admissibility, stated that "the allegation concerning missing persons has several times been the subject of negotiations between officials of the Turkish Federated State of Cyprus and those of the Greek Cypriot Administration - President Rauf R. Denktash and the late Archbishop Makarios also discussed this matter together on two occasions - in the presence, moreover, of Dr Kurt Waldheim, the Secretary General of the United Nations, or his Special Representative. Furthermore, the Secretary General of the United Nations mentions this in his report of 25 February 1977 in the following terms:

"The missing persons issue was discussed during a meeting which I held in Nicosia on 12 February 1977 with His Beatitude Archbishop Makarios and His Excellency Mr Denktash. Agreement was reached to set up a new investigatory machinery covering missing persons of both communities. The special representative of the Secretary General is currently discussing the relevant details with both communities."

80. At Annex I to their observations on the admissibility (cf para 53 above) the respondent Government stated in particular that, on several occasions during the inter-communal negotiations, the discussions were interrupted for unannounced visits to places where, according to Mr Clerides (the Greek Cypriot Interlocuter at the inter-communal talks at the time), Greek Cypriot prisoners were to be found, but during those visits no such prisoners were found; that, according to a press communiqué of the International Committee of

(1) Verbatim record p 89.

the Red Cross (ICRC) of 27 February 1976, "the Greek Cypriot prisoners and Greeks detained in Turkey were repatriated under the supervision of the ICRC delegates and released in the zone controlled by the Greek Cypriots"; and that a representative of the ICRC confirmed on 5 March 1976 that all prisoners-of-war transferred to Turkey had been returned to the Greek Cypriots during the exchanges of prisoners.

81. The respondent Government did not participate in the proceedings on the merits.

However, in their letter of 22 April 1982 they submitted that "(I)t is appropriate to mention that in accordance with the Committee of Ministers' Resolution DH (79) 1 the question of missing persons is dealt with in the intercommunal talks which provide an adequate framework for resolving the dispute. A tripartite missing persons' committee has been set up to this end by an agreement reached between the representatives of the two Cypriot communities on 22 April 1981 as the sole and exclusive forum in which to examine the question of everyone who has disappeared in Cyprus. This committee is currently working independently, with the participation of the Committee of the International Red Cross."

Chapter 2. - Investigation by the Commission

(a) Preliminary observations

82. The Commission recalls that the issue of missing persons was briefly referred to in Part II, Chapter 2, of its Report on Applications Nos 6780/74 and 6950/75 under the heading "Deprivation of liberty" and dealt with in more detail in Part III, Chapter 3, under the heading "Deprivation of life".

83. In the chapter "Deprivation of liberty" the Commission, examining the issue under Art 5 of the Convention, stated (at para 306) that it had "not been able to find out whether undeclared Greek Cypriot prisoners are still in Turkish custody, as alleged by the applicant Government".

84. In its examination of the issue of missing persons under Art 2 of the Convention, in the chapter "Deprivation of life", the Commission found (at para 347) that the evidence then before it did not allow "a definite finding with regard to the fate of Greek Cypriots declared to be missing. This is partly due to the fact that the Commission's Delegation was refused access to the northern part of Cyprus and to places in Turkey where Greek Cypriot prisoners were or had been detained." It appeared, however, from the evidence:

- that it was widely accepted that "a considerable number of Cypriots" were still "missing as a result of armed conflict in Cyprus"; i.e. between Turkey and Cyprus; and
- that a number of persons declared to be missing had been identified as Greek Cypriots taken prisoner by the Turkish army (para 349 of the Report).

The Commission then considered (at para 351) that there was "a presumption of Turkish responsibility for the fate of persons shown to have been in Turkish custody". However, on the basis of the material before it, the Commission was "unable to ascertain whether, and under what circumstances, Greek Cypriot prisoners declared to be missing have been deprived of their life".

85. The Commission notes that the Committee of Ministers' Resolution DH (79) 1 of 20 January 1979 concerning the two previous applications contains no specific finding with regard to the issue of missing persons.

86. The Commission further recalls its statements (at paras 54 to 58 above) concerning the respondent Government's submission that the applicant Government's complaint relating to missing persons in the present case merely repeats a complaint already covered by the Commission's Report in the first case.

(b) Proceedings in the present case

87. On 16 March 1981 the Commission, noting the applicant Government's statement (1) that they had received new information concerning missing persons, decided that the Government should be invited to submit:

- particulars, including evidence, concerning missing persons who had been seen alive in detention in Turkey after 18 May 1976; and
- any other relevant particulars, including evidence, concerning the issue of missing persons and constituting either new facts which had arisen after 18 May 1976 or evidence or indications concerning earlier facts which had become available after that date.

(1) Reproduced at para 72 above.

88. The applicant Government, when submitting some material under cover of their letter of 24 July 1981 (1), stated that "the necessity of protecting the missing persons which may still be alive as well as the informants and in order to maintain our confidential sources of valuable information (on humanitarian and security matters) in the occupied area prevent the disclosure of other material at this stage. Due to the same considerations no mention is made of the names and other particulars of the informants of the matters set out in Appendix A." If it were considered necessary by the Commission the applicant Government could "explain in more detail and support with evidence the actual dangers and difficulties encountered at present in relation to the disclosure of additional information on the subject of missing persons" at a meeting of representatives of the Government with the Commission. The Government "will then discuss with the Commission ways and means for the solution of the problem to the extent that is necessary to facilitate the effective investigation of the merits of the application". In any case "the applicant Government will provide the Commission with all the confidential information and evidence in their hands on the subject of missing persons if and when the Commission starts an effective investigation in detention places in the occupied area of Cyprus and in Turkey and according to the needs and progress of such investigation and any relevant directions of the Commission."

89. On 7 October 1981 the Commission decided:

- that the applicant Government should be invited to submit full particulars on the issue of missing persons; and
- that a meeting should be held in Strasbourg at which the President and a further member of the Commission should be informed by representatives of the applicant Government of the nature and contents of the further particulars and evidence which the Government would wish to submit, and at which such practical arrangements as might appear necessary in the light of their observations could be considered.

90. At the meeting between the President and Mr Frowein and representatives of the applicant Government (MM Loucaides, Papademas, Ioakim and Varoshiotis) on 14 December 1981 the President stated that the Commission could only base its findings on such submissions of a Party which had been duly communicated to the other Party and in respect of which the other Party had had an opportunity to make submissions in reply; and that any evidence submitted to the Commission should be of such a nature as to assist it in its task,

(1) Cf para 73 above.

under Art 28 (a) of the Convention, of ascertaining the facts of the case. At the same time the President noted the Government's wish to avoid, in the interests of those concerned, the identification of certain persons.

In these circumstances the applicant Government were invited to file material concerning about fifty illustrative cases of missing persons and containing facts which had arisen after the adoption of the Commission's Report in the two previous applications. They were also invited to file a complete list containing the names and other details of all Greek Cypriots still declared to be missing.

91. On 8 March 1982 the Commission decided that an investigation should be undertaken, into the complaint concerning missing persons, by obtaining oral evidence in some of the cases submitted by the applicant Government under cover of their letter of 22 January 1982 (1). This investigation should be carried out by a Delegation who should, in consultation with the applicant Government, select the cases to be examined.

92. By a telex communication of 17 March 1982 the applicant Government were informed that the Delegation intended to hear witnesses in relation to the cases of such persons who had allegedly been seen:

- in the course of their transportation to Turkey (as described in the reports in files Nos 302 and 1209); or
- in detention at the prisons of Adana or Amasia (files Nos 23, 101, 153, 295, 1127 and 567); or
- when returning from Turkey (files Nos 127, 175, 328 and 966).

The Government were invited to suggest five cases considered to be representative and two further cases which they would wish to suggest in the alternative.

93. The applicant Government replied on 30 March 1982 suggesting cases Nos 23, 127, 153, 328 and 1209 and, in the alternative, cases Nos 175 and 295.

94. On 13 May 1982 the Delegation decided to hear witnesses in the five cases suggested by the applicant Government. On 8 July it decided that 12 of the 26 witnesses proposed by the Government in these cases should be examined. The Principal Delegate (Mr Frowein) decided on 18 August that a further witness suggested by the Government on 9 August should also be heard.

(1) Cf para 74 above.

95. The Delegation (MM Frowein, Ermacora, Melchior and Carrillo) heard the witnesses in the absence of the Parties in Strasbourg on 20 September 1982. The hearing was conducted and recorded in English, with interpretation from and into Greek; eleven witnesses gave evidence in Greek; two (in case No 127) in English (1). Some of the witnesses are referred to by keys in the verbatim record for security reasons (2). The record was communicated to the Parties.

Chapter 3. - Evaluation of the evidence obtained

(a) Cases investigated by the Delegation

96. As stated above (paras 86-90) the Commission, through delegated members, obtained oral evidence concerning five cases of missing persons. The verbatim record of the hearing of witnesses and the report of the Delegation were before the Commission.

On the basis of the above the Commission has reached the following conclusions.

(aa) File No 23 (Nicos ALEXANDROU)

97. The applicant Government state that this missing person, born in 1944, married and father of three children, was a barber at Ormidhia. On 14 August 1974, serving as a reservist with the 226 Infantry Battalion, he was with other soldiers on a lorry (Reg No GG 931) which was fired on by Turkish tanks near Tymbou. He was later seen in Turkey, at the prison of Adana, working as a barber.

98. The Delegation heard two witnesses. (3)

The first witness, G.E. Hapeshis, stated that he was together with this missing person on the lorry when they were attacked by Turkish tanks on 14 August 1974. They got off the lorry and into a ditch. The missing person later left the witness who has not seen him since.

(1) See pp 45 and 54 of the verbatim record.

(2) Cf paras 88 - 90 above

(3) See pages 3 - 6 and 6(a) - 12 of the verbatim record.

The second witness, W 23/5, stated that he met this missing person, working as a barber, at Adana prison. The evidence given by this witness was not in all respects quite consistent. He first declared that he had been taken together with this missing person to the room where he had his hair cut and later denied having made such a statement. He further spoke of seven people who had escaped and then disputed having said this. He also mentioned a window with bars in the barber's room and later said that he did not look out of the window because it was in another corner. The Commission finally observes that the witness, according to his own statement, did not mention his encounter with the barber to any of his Cypriot co-detainees. The explanation given for this silence is not at all convincing.

99. The Commission therefore does not find it established that this missing person was detained at Adana prison.

(bb) File N° 1209 (Panayiotis CHRISTOFOROU)

100. The applicant Government state that this missing person, born in 1949, married and father of three children, was a builder at Kiti. On 14 August 1974, serving as a reservist with the 226 Infantry Battalion, he was with other soldiers on a lorry (Reg No GG 931) which was fired on by Turkish tanks near Tymbou. He was later seen on three occasions: at Pavlides Garage, Nicosia; when taken as a prisoner of war to Turkey on a landing ship (L 402); and at Adana prison in Turkey.

101. The Delegation heard three witnesses (1)

The first witness, S. Charalambous, stated that he was together with this missing person on a lorry when they were attacked by Turkish tanks on 14 August 1974 (2). They got off the lorry and into a ditch. The missing person was wounded in his left arm. He stayed behind when the witness, who has not seen him since, left the place to fetch help.

The second witness, W 1209/6, stated that he met this missing person in September 1974 in Turkish detention at Pavlides Garage in Nicosia and on board of a ship taking prisoners to Turkey. The third witness, P. Lahanides, stated that he met this missing person at Pavlides Garage, on the boat to Turkey and at Adana prison.

(1) See pages 12 - 36 of the verbatim record.

(2) The same lorry as in case N° 23.

102. The Commission notes that the witnesses differ in their description of the missing person's facial hair. This can in the Commission's view be explained by the fact that this missing person did not shave for some time after 14 August 1974.

The Commission finds it established, by the concordant evidence of the witnesses W 1209/6 and P. Lahanides, that this missing person was after 14 August 1974 in Turkish detention at Pavlides Garage in Nicosia and at Adana prison in Turkey.

(cc) File N° 127: Andreas GERMANOS

103. The applicant Government state that this missing person, born in 1958 and single, was a mason in Kyrenia. On 2 August 1974 he was arrested by a group of Turkish soldiers, accompanied by a Turkish Cypriot civilian of Pano Kyrenia and a Turkish Cypriot "army officer" of Kyrenia. He was subsequently seen in detention at the police station of Kyrenia and later on the main Kyrenia-Nicosia road on a bus transporting Greek Cypriot prisoners who had come back from Turkey and were to be released in Nicosia.

104. The Delegation heard three witnesses (1).

The first witness, Georghios Germanos, stated that his son, the missing person, was arrested by a Turkish officer in 1974. The second witness, W 127/3, and the third witness, W 127/4, stated that they met this missing person in Turkish detention at the police station of Kyrenia.

The first witness also stated that he saw his son in a bus transporting Greek Cypriot prisoners who had come back from Turkey and were to be released in Nicosia.

105. The Commission finds it established, by the evidence of the above witnesses, that, in 1974, this missing person was arrested by a Turkish officer and subsequently detained under Turkish control at the police station of Kyrenia.

The Commission also accepts that the first witness is convinced to have seen his son on the bus, but it does not find it established that what he believed to see was the reality. The witness's

(1) Verbatim record pp 37 - 58.

description of the position from which he caught sight of three people - his two sons and his son-in-law - sitting on the far side of the crowded bus leaves room for reasonable doubt as to whether the witness really saw what he must very much have hoped to see.

(dd) File N° 153: Costakis GEORGHIOU

106. The applicant Government state that this missing person, born in 1951 and engaged, was living at Lakatamia and an engineer at a Pallouriotissa factory. On 14 August 1974 he was serving in the 361 Infantry Battalion which was attacked by Turkish forces in the area of Pachyammos near Kyrenia. He was later seen at Adana prison in Turkey and identified on a photo of Greek Cypriot prisoners of war, published in the Turkish magazine "HAYIAT" on 19 September 1974 (1).

107. The Delegation heard three witnesses (2).

The first witness, Anna K. Vasiliou, stated that she recognised her brother, the missing person, on a photo of Greek Cypriot prisoners published in a Turkish magazine. The second witness, C. Manousakis, stated that this missing person was in his unit on 14 August 1974. The third witness, W 153/4, stated that he met this missing person, whom he knew well, at Adana prison in 1974.

108. The Commission finds it established, by the evidence of witness W 153/4, that this witness met this missing person at Adana prison in 1974. It finds, as stated by this witness, that it is difficult to identify the person shown, at the left of the circle marked "3", on the lower photo of Greek Cypriot prisoners reproduced at Appendix I to the verbatim record; it therefore does not find it established that that the person shown on the photo is indeed this missing person.

(1) Appendix 1 (below) of the verbatim record of the hearing of witnesses. The photo had already been reproduced at Appendix IV of the file on "Undeclared Greek Cypriot Prisoners of War and Missing Persons", prepared by the "Pancyprian Committee of Parents and Relatives of Undeclared Prisoners and Missing Persons" and filed by the applicant Government in the proceedings concerning the two previous applications. The Government have submitted a further copy of the photo in the present proceedings.

(2) Verbatim record pp 59 - 73.

(ee) File N° 328: Minas IOANNOU

109. The applicant Government state that this missing person, born in 1943, married and father of two children, was living with his family at Kokkinotrimithia and working as a builder in Nicosia. He served as a reservist in the 306 Infantry Battalion and was engaged in combat in July 1974. He was later seen at the prison of Adana and mentioned as detained at the prison of Amasia in Turkey; he was also seen on board a ship returning from Cyprus to Turkey and subsequently at Pavlides Garage in Nicosia.

110. The Delegation heard two witnesses (1)

The first witness, W 328/2, stated that he met this missing person at Adana prison and when returning to Cyprus. The second witness, W 328/3, stated that, when at Amasia prison, he heard from other Greek detainees that this missing person was also there.

110. The Commission notes that the statements of witness W 328/2 were inconsistent on several points. Firstly, as regards his alleged encounters with this missing person, he first declared that, having met the missing person at Adana prison and having lost contact when he himself was brought to Amasia prison, he met the missing person again "when we were put in the lorries to go back to Cyprus." He then spoke (as earlier before the police) of a meeting on the boat and finally stated that it was only at Pavlides Garage that he met the missing person again. Secondly, the witness's affirmation that the prisoners were blindfolded on the boat when returning from Turkey to Cyprus is contradicted by the other witnesses who gave evidence on this subject. He himself stated that there "were possibly two or three thousand detainees" and "various boats". This, he explained, he could see because "we could just about pull down our blindfolds and peep out". Thirdly, the witness's evidence was inconsistent as regards the time when he learned that the missing person had not been released (cf pp 76, 89 and 92 of the verbatim record).

The Commission therefore does not find it established, on the basis of the above evidence, that this missing person was in fact in Turkish detention.

(1) Verbatim record pp 74 - 93.

(b) Other cases submitted to the Commission

112. As stated above (para 74) the applicant Government have in 1982 submitted a list of persons declared to be missing which contains the names and other particulars (identity card number, year of birth) of altogether 1.619 persons ; the list indicates in each case whether the person concerned is military, reservist or civilian, when and where he or she disappeared and where he or she has last been seen. The applicant Government have also submitted statements and evidence concerning altogether fifty of those 1.619 cases chosen as illustrative.

113. The Commission has examined five of these cases, which were selected as representative (as described at paras 92 and 93 above) and in which relevant evidence was offered by the Government, and has found in three of these cases that the missing persons concerned were in Turkish custody in 1974.

114. The Commission notes that the remaining 1.614 missing persons are either military personnel (including reservists) or civilians. They are said to have disappeared during the last ten days of July, in August, September or October 1974 or - in one case (N° 1410) - on 5 February 1975. The dates given often coincide with periods of armed conflict (20 to 30 July and 14 to 16 August 1974). In a number of these cases, evidence is offered that the missing person concerned was subsequently seen in detention (1). The Commission observes that, at para 354 of its Report in the previous case, it found "that killings happened on a larger scale than in Elia", during and immediately after the periods of armed conflict in 1974. It therefore cannot exclude that persons declared to have been missing have in fact met their death during these periods although it has no evidence before it concerning specific missing persons.

115. In conclusion the Commission, recalling its finding concerning the five cases which it examined that three missing persons were in Turkish custody in 1974, noting the evidence offered that further missing persons were then seen in Turkish custody, in the absence of any information to the contrary from the respondent Government finds sufficient indications, on the basis of its investigation of five cases and of the further material submitted, that, of the remaining 1.614 missing persons, an indefinite number have been in Turkish custody in 1974 after the cessation of hostilities.

(1) In about 20 of the 50 cases referred to above at para 74 in fine. Cf also indications in other cases, e.g. Nos. 8, 9, 10, 12, 55, 57.

Chapter 4. - Opinion of the Commission

116. The Commission observes that it has in the present case re-examined the issue of missing persons on the basis of fresh evidence offered by the applicant Government; the verbatim record of the Delegates' hearing of witnesses was communicated to the respondent Government who were, like the applicant Government, given the opportunity of submitting observations on this new evidence (cf paras 38, 39, 95 above). The Commission considers that the factual information now before it concerning the issue of missing persons is more detailed and direct than in the previous applications and thus offers a better basis for the examination of this question.

117. In its evaluation of this evidence the Commission has found it established in three of five cases investigated, and has found sufficient indications in an indefinite number of cases (para 115 above), that Greek Cypriots, who are still missing, were in Turkish custody in 1974. It considers that this creates a presumption of Turkish responsibility for the fate of these persons and notes with concern that no relevant information has been provided by the Turkish authorities.

118. The Commission notes that the families of these missing persons have been without news from them for nearly nine years and that this is due to the respondent Government's failure to account for the fate of these persons in their custody. It finds that the resulting uncertainty has caused severe suffering to these families who are entitled under the Convention to be informed of the situation of their close relatives (1).

119. The wording of Art 5, in particular para (1), second sentence, para (3) first sentence, and para (4), shows in the Commission's view that any deprivation of liberty must be subject to control and that any unaccounted disappearance of a detained person must be considered as a particularly serious violation of this Article, which can also be understood as a guarantee against such disappearances.

(1) The Commission here refers to Resolution DH (82) 1, adopted by the Committee of Ministers in Applications Nos 8022/77, 8025/77 and 8027/77 - McVeigh and others v. the United Kingdom - on 27 March 1982, in which it was held (at the penultimate paragraph) that there had been a breach of Art 8 of the Convention "insofar as the applicants McVeigh and Evans were prevented from contacting their wives during detention".

120. The evidence before the Commission is limited in time to the situation of missing Greek Cypriots in the second half of 1974, i.e. nine years ago (1). The applicant Government submit (para 72) that a considerable number were seen alive in detention in Turkey more recently, but no evidence has been adduced in support of this allegation.

121. The Commission cannot exclude that missing persons found to have been in Turkish detention in 1974 have died in the meanwhile but, on the material before it, it cannot make any finding as to the circumstances in which such deaths may have occurred.

122. The Commission finds no justification, in the circumstances of the present case, for detaining any of these missing persons. It observes that its statement concerning prisoners of war, at para 313 of its Report in the previous case, related only to initial detention during or immediately following the hostilities, which were terminated on 16 August 1974.

Conclusion

123. The Commission, having found it established in three cases, and having found sufficient indications in an indefinite number of cases, that Greek Cypriots who are still missing were unlawfully deprived of their liberty, in Turkish custody in 1974, noting that Turkey has failed to account for the fate of these persons, concludes by 16 votes against one that Turkey has violated Art 5 of the Convention.

(1) With the exception of case N° 1410, referred to at para 109 above.

PART III - REMAINING COMPLAINTS

Chapter 1 - Displacement of Persons and Separation of Families

(a) Submissions

(aa) Applicant Government

124. The applicant Government allege(1) that Turkey:

- prevents about 200,000 Greek Cypriots from returning to their homes in the North; and

- forces the remaining Greek Cypriots in the North to leave their homes and to take refuge in the south: between 18 May 1976 and 10 February 1983 "about 7,000 Greek Cypriots were forced to sign applications to leave the occupied area". The Government speak of "inhuman methods used to force the remaining Greek Cypriot inhabitants of the occupied area to leave that area (e.g. restrictions on movement, education and work threats, violence etc.)" and state that, according to the U.N. Secretary-General's Report of 1 December 1982 (S/15502, para 26), the Greek Cypriot population in the occupied area amounted, at that time, to 952 persons; on 10 February 1983 it amounted to 940.

The applicant Government submit that the above facts constitute "continuous violations of Art 8 of the Convention. Furthermore, the methods used to force the remaining Greek Cypriot inhabitants of the occupied area of Cyprus amount to violations of" Arts 3 to 5, 8, 11 and 14 of the Convention and Arts 1 and 2 of Protocol N°1.

125. The applicant Government further allege (2) that systematic colonisation of the occupied area of Cyprus has been effected by the settlement of Turks from mainland Turkey who acquire the status of "Turkish Cypriot citizens". These settlers seized and occupied the houses and lands of the Greek Cypriots, exploited their fields and stole their agricultural produce, and harassed, by various inhuman methods and activities, the remaining Greek Cypriot population in the North, thus forcing them to leave and move to the Government controlled area. The colonisation was carried out in furtherance of the Turkish policy of altering the racial balance of the island and

(1) Final submissions of 10 February 1983, para 47.

(2) Final submissions paras 57-60.

changing the demographic pattern of Cyprus by converting the occupied area into an exclusively Turkish populated area on a permanent basis. Since the Turkish invasion about 63,000 Turks from the mainland have settled in the occupied area.

The applicant Government submit that this colonisation constitutes continuing violations of Arts 3, 5, 8, 13, 14 and of Art 1 of Protocol N° 1 to the Convention.

126. The applicant Government, quoting reports of the UN Secretary General of 1976-82, finally allege (1) that the above measures of displacement of Greek Cypriots (para 124 above) caused separation of families in a substantial number of cases.

They invoke Art 8 of the Convention and refer to para 211 of the Commission's Report on the two previous applications.

(bb) Respondent Government

127. The respondent Government, at Annex I (paras 56, 58) to their observations on the admissibility (2), submitted that the return of Greek Cypriots to the North, "other than those envisaged in the exchange of population agreement ..., would not only endanger the security of life of the Turkish Cypriots but would also undermine the bi-zonal solution which constitutes the only basis for the peaceful co-existence of the two communities in the future ... Those who are moving to the south are doing so of their own free will and within the framework of the agreement reached between UNFICYP and the Turkish Federated State of Cyprus, whereby people wishing to move south submit their application through UNFICYP and are allowed to do so only after UNFICYP confirms that they have not submitted their application under pressure of any sort and that their wish to move south is genuine."

128. The respondent Government, at Annex I (paras 60-62) to their observations on the admissibility (2), further submitted that the exodus of Turkish Cypriots from Cyprus over the years and subsequently under EOKA's terroristic activity, enhanced by administrative and economic discrimination and later by the inhuman treatment of the Turkish Cypriots during the 11 years preceding 1974, had been immense. 40,000 Turkish Cypriots lived in London alone, thousands in Australia, Canada and other places; each Turkish

(1) Final submissions para 66.

(2) Cf para 53 above.

Cypriot home in Cyprus had one or more sons and daughters living in Turkey without severing relations and property interests in Cyprus. Seasonal workers had gone and come from Turkey; the Turkish Community, deprived for years of the opportunities of economic and social development as a result of the policy of the Greek Cypriots, needed to import seasonal labourers in order to reactivate the economic resources today available to it. Cyprus had been the home of Turks and Greeks for 400 years. The population ratio had varied. The fact that Turkish Cypriots were methodically squeezed out of Cyprus by the Greeks in the past gave the latter no right to maintain their unfair, unjust and artificially created position of advantage. Turkish Cypriots were entitled to return to their native land if they so wished; this was also recognised by the 1960 Constitution.

129. The respondent Government finally, at Annex I (para 63) to their observations on the admissibility (1), stated that, of the 1,800 Greek Cypriots who chose to stay in the North, there might be some who were separated from their families who moved to the South. This, however, did not concern Turkey.

(b) Opinion of the Commission

130. The Commission recalls that the issue of displacement of persons was examined under Art 8 of the Convention in Part II, Chapter 1, of its Report on Applications N^os. 6780/74 and 6950/75. The Commission then also noted (at paras 92 et seq), when examining the question of displacement of persons, the applicant Government's allegations concerning a compulsory exchange of population and information as to the settlement of Turkish Cypriots and Turkish settlers in the North (para 94).

131. The Commission considered in the previous case (at para 208) "that the prevention of the physical possibility of the return of Greek Cypriot refugees to their homes in the north of Cyprus amounts to an infringement, imputable to Turkey, of their right to respect of their homes" which could not be justified on any ground under para (2) of Art 8. It concluded that, "by the refusal to allow the return of more than 170,000 Greek Cypriot refugees to their homes in the north of Cyprus, Turkey did not act, and was continuing not to act, in conformity with Art 8 of the Convention in all these cases."

(1) Cf para 53 above.

The Commission further considered (at para 210), with regard to Greek Cypriots transferred to the south under various intercommunal agreements, that the prevention of the physical possibility of the return of these Greek cypriots to their homes in the north of Cyprus generally amounted to an infringement, imputable to Turkey and not justified under para (2), of their right to respect for their homes under para (1) of Art 8. It concluded that, "by the refusal to allow the return to their homes in the north of Cyprus to several thousand Greek Cypriots who had been transferred to the South under intercommunal agreements, Turkey did not act, and was continuing not to act, in conformity with Art 8 of the Convention in all these cases."

132. The Commission finally recalls that it examined the issue of separation of families under the heading "Displacement of persons" in its Report on Applications N°s 6780/74 and 6950/75. It then found:

- that the separation of Greek Cypriot families resulting from measures of displacement imputable to Turkey under the Convention must also be imputed to Turkey. The continued separation of families resulting from Turkey's refusal to allow the return of Greek Cypriot refugees to their family members in the North, the separation of families brought about by expulsions of family members across the demarcation line, or by transfers of members of the same family to different places of detention, must therefore be imputed to Turkey (para 205); and
- that the separation of families brought about by measures of displacement imputable to Turkey were interferences, with the right of the persons concerned to respect for their family life as guaranteed by para (1), which could not be justified on any ground under para (2) of Art 8 (para 211).

The Commission then concluded (at para 211) that, by the separation of Greek Cypriot families brought about by measures of displacement in a substantial number of cases, Turkey had not acted in conformity with her obligations under Art 8 of the Convention.

133. In the present case the Commission, again examining the issue of displaced persons under Art 8 of the Convention, confirms the finding made, at para 168 of its Report on the previous applications, that displaced Greek Cypriots in the South are physically prevented from returning to the northern area as a result of the fact that the demarcation line across Cyprus ("green line" in Nicosia) is sealed off by the Turkish army. This fact of common knowledge is not disputed by the respondent Government (cf para 127 above).

134. The Commission finds that the continuation of this situation, since the adoption of its Report on the first two applications on 10 July 1976, must in the circumstances of the present case be considered as an aggravating factor.

135. The Commission concludes, by 13 votes against two with two abstentions that, by her continued refusal to allow over 170,000 Greek Cypriots the return to their homes in the North of Cyprus, Turkey continues to violate Art 8 in all these cases.

136. The Commission further finds that the continued separation of families resulting from Turkey's refusal to allow the return of Greek Cypriots to their family members in the North must in the circumstances of the present case be considered as an aggravating factor.

It concludes, by 14 votes against two and with one abstention, that, in the cases of continued separations of families resulting from Turkey's refusal to allow the return of Greek Cypriots to their family members in the North, Turkey continues to violate Art 8 of the Convention.

Chapter 2. - Deprivation of Possessions

(a) Submissions

(aa) Applicant Government

137. The applicant Government submit (1) that Greek Cypriots in the North of Cyprus have since 18 May 1976 been deprived of their possessions by the occupation by Turkish forces of that area, where thousands of houses and acres of land, enterprises and industries belonging to Greek Cypriots exist; by the eviction of the remaining Greek Cypriot population from those possessions; by seizure, appropriation etc of lands and houses belonging to Greek Cypriots in the occupied area; by robbery of the agricultural produce etc and looting of properties belonging to the Greek Cypriots in that area; and by wanton destruction of Greek Cypriot properties in that area.

(1) Final submissions paras 72 - 86.

138. As regards immovable property, the applicant Government state that, during the above period, all privately owned land and houses of Greek Cypriots in the North have been under the full control of the Turkish Army, which prevents the owners of such properties from returning thereto and enjoying them. Practically all such property was distributed to Turkish Cypriots, or to Turks brought from Turkey in order to settle in that area, and measures were taken to institutionalise such distribution by the "Law to Provide for the Housing and Distribution of Land and Property of Equal Value", of the "Legislative Assembly" of the so-called "Turkish Federated State of Cyprus" ("TFSC"), of 16 August 1977. Under this "law" properties of Greek Cypriots were allocated to Turks. An amendment of 10 August 1982 extended, aggravated and solidified the violations of property rights of Greek Cypriots (issue of new certificates of "definite" possession, acceptance of members of the Turkish Army as persons "entitled" to such property, provision for "compulsory acquisition" of such property, without compensation, by the "TFSC", and substitution of the legal Land Registry of Cyprus by a Registry kept by the "TFSC". In January 1983 this "law" was implemented by co-operation by Turkish controlled institutions which gave mortgages to persons who had received "definite possession" certificates. The same "law" by Sect 59 A extinguished the rights of Greek Cypriots to reclaim loans and mortgages formerly held by them. The respondent Government approved and assisted in the implementation of that law. The first "definitive possession certificates" were given to Turks in the occupied area on 20 December 1982; it is expected that, by the end of 1983, all Turkish Cypriots who moved from the South to the North will get their certificates.

139. The applicant Government further state that, in July 1982, 32 houses owned by Maronites (who according to the Cyprus Constitution opted to belong to the Greek Cypriot community) were seized by the Turkish Army in the villages of Asomatos, Karpasia and Kormakitis, in order to house army officers' families. This incident, having subsequently been cloaked by "regularising" actions of the Turkish Cypriot "authorities", was referred to in the UN Secretary General's Report of 1 December 1982.

Operational hotel units in the occupied area which belonged to Greek Cypriots have been operated by Turks without any authority from their owners (who were prevented from repossessing them). The "Cyprus Turkish Tourism Enterprises Co Ltd", the major shareholders therein being Turkish organisations, and the Turkish Tourism and Information offices in European countries, continued to promote tourism in relation to the hotels in question. Some hotels continued to operate as clubs for Turkish army officers or to be occupied by their families. Turkish officials, visiting the occupied area, assisted in the operation and exploitation of the hotels in question.

Agricultural, commercial and industrial enterprises belonging to Greek Cypriots in the occupied area, which were originally seized by the Turks following the invasion, continued to be occupied, operated and exploited by the latter on a permanent basis without any authority from their owners (who were prevented from repossessing them). A substantial number of Greek Cypriot factories were put into operation for the first time after 1977.

140. As regards movable property, the applicant Government state that looting, by or with the support of Turkish troops, of houses and business premises belonging to Greek Cypriots in the occupied area, especially in the Famagusta area, and robbery of the agricultural produce, stock in commercial and industrial enterprises, and other movables belonging to Greek Cypriots in the occupied area have continued. A substantial part of the citrus fruit belonging to the Greek Cypriots in the Morphou area has since 1981 been stolen and exported to the United Kingdom through a UK public company under the name of Wearwell Ltd operating in the occupied area and run by two Turkish Cypriots. This operation has been encouraged and facilitated by the respondent Government, which has recently authorised the said company to carry out associated activities on the mainland.

141. The applicant Government finally complain of various incidents, during the relevant period, of wanton destruction of properties belonging to Greek Cypriots in the occupied area by Turkish troops or Turks acting with the authority or support of the Turkish Army.

142. The applicant Government submit that the above facts constitute continuing violations of Art 1 of Protocol N° 1 to the Convention.

(bb) Respondent Government

143. The respondent Government, at Annex I (paras 64 - 72) to their observations on the admissibility (1), stated that agricultural land abandoned by Greek Cypriots in North Cyprus was allocated to Turkish Cypriot displaced persons by the Government of the Turkish Federated State of Cyprus, acting as custodian of alien properties, by virtue of the Immovable Alien Property Allocation and Utilization Law, 1975. The produce of such land went to the allottees who cultivated it. The same procedure was applied by the Greek Cypriot Administration regarding agricultural land and other

(1) Cf para 53 above.

properties abandoned by Turkish Cypriot displaced persons in South Cyprus which was approximately equal in extent to those left by Greek Cypriots in the North. The Greek Cypriot displaced persons to whom Turkish-owned land was allocated cultivated those lands and utilized their produce for the maintenance and rehabilitation of their families.

144. The complaint regarding the distribution of Greek Cypriot owned houses, land and places of business to Turkish Cypriots was also groundless because the Greek Cypriot Administration similarly allocated the houses, lands and places of business belonging to 90,000 Turkish Cypriots, who moved North, to the displaced Greek Cypriots who now occupied and utilized them. Everything left by the Turkish Cypriots in the way of immovable property was similarly distributed by the Greek Cypriot Administration.

145. The complaint of "looting of appreciable quantities of commercial and other movable properties from Greek Cypriot owned business, houses and other premises especially in the Famagusta Area" was entirely groundless. When the Greek Cypriots fled, there were no longer any local councils in the villages and this created a gap in the administration. A great deal of theft and looting was committed by Greek Cypriots and members of the Greek Cypriot National Guard. The fact that isolated instances of theft and looting should have been committed by members of the Turkish Cypriot Community was a matter of personal responsibility dealt with by the Courts of Law of that Community.

If reference was made to items of furniture and other household goods taken from Greek Cypriot houses and other premises for the rehabilitation of the 90,000 displaced Turkish Cypriots, these were not stolen but taken on lawful authority of the Government of the Turkish Federated State of Cyprus on the same criteria as the properties left behind by the Turkish Cypriots in South Cyprus were taken and utilized by the Greek Cypriot Administration. A record of everything taken was kept and would be produced when the question of mutual compensation would come up for consideration.

146. The complaint of robbery of agricultural produce, livestock, stocks in commercial and industrial enterprises and other movables belonging to Greek Cypriots was equally misleading and malicious as anything taken from the Greek Cypriot commercial and industrial enterprises or other premises was not stolen but taken on the lawful authority of the Turkish Federated State of Cyprus for the rehabilitation of the 90,000 displaced Turkish Cypriots; a record of the items taken was kept.

147. The respondent Government finally stated that the complaint of wanton destruction of properties belonging to Greek Cypriots was entirely false. There had not been any wanton destruction of houses and groves belonging to Greek Cypriots or to churches. On the contrary most of the Greek Cypriot houses or other premises damaged during the fighting had been repaired and a number of half constructed houses had been completed by the Turkish Federated State of Cyprus. One or two houses might have been pulled down by the Municipalities, because they were in a state of collapse and constituted a danger to the lives of the passers-by, and some orange groves might have deteriorated as the result of lack of water due to the wanton destruction by Greek Cypriots of water pumps and installations before they left for the South during the armed conflict in 1974. Depletion of the water resources of the Morphou area and the dangers of salinization due to overpumping were well known facts. It might well be that those groves which had unavoidably dried had been replanted with vines or other crops not requiring the same quantity of water as citrus. There had certainly been no case of wanton destruction of groves for planting vines.

(b) Opinion of the Commission

148. As regards the displacement of the overwhelming majority of the Greek Cypriot population from the northern area, where it left behind movable and immovable possessions, and the established fact that these displaced persons are not allowed to return to their homes in the North, and thus to property left there, the Commission refers to its above findings under the heading "Displacement of Persons" (paras 132 et seq).

149. As to immovable property, the Commission further recalls that, in its Report on Applications N°s 6780/74 and 6950/75, it found (at para 472) elements of proof of taking and occupation of houses and land by Turkish Cypriots and Turks from the mainland, both military personnel and civilians. The Commission then observed (at para 473) that about 40,000 Turkish Cypriots originally residing in the South had, from 1974 onwards, moved gradually to the North of the Island, where accommodation had to be found for them. That supported allegations concerning the occupation on a considerable scale of houses and land in the North belonging to Greek Cypriots, and the establishment of an office for housing to regulate the distribution. The Commission therefore accepted the evidence obtained as establishing the taking and occupation of houses and land belonging to Greek Cypriots (para 474). The Commission also found strong indications that Turks from the mainland had settled in the North in houses belonging to Greek Cypriots (para 476) and it found it established that agricultural, commercial and industrial enterprises were taken out of the hands of Greek Cypriots (para 477) and that hotels were put into operation in the northern area (para 478).

150. As to movable property, the Commission recalls its finding, at para 481 of its Report on Applications N°s 6780/74 and 6950/75, that looting and robbery on an extensive scale, by Turkish troops and Turkish Cypriots have taken place.

151. The Commission finally recalls its finding in Applications N°s 6780/74 and 6950/75 (at para 48 of its Report) that destruction of property had taken place in many cases.

152. The Commission concluded in Applications N°s 6780/74 and 6950/75 (at para 486 of its Report) that there had been deprivation of possessions of Greek Cypriots on a large scale, imputable to Turkey and not necessary for any of the purposes mentioned in Art 1 of Protocol N° 1.

153. In its examination of the complaints concerning interference with possessions in the present case, the Commission notes that, since the adoption of its Report in the previous applications, deprivation of property of Greek Cypriots in the North of the Island has been confirmed by what is referred to by the applicant Government as the "Law to Provide for the Housing and Distribution of Land and Property of Equal Value" of 16 August 1977. There have also been interferences with property rights of some 7,000 Greek Cypriots who since 18 May 1976 (when the Commission terminated its investigation in the first two applications) have moved to the South (cf above para 124 in fine). The Commission observes that the occupation and taking of Greek Cypriot property in the North is not disputed by the respondent Government (cf para 143 above).

154. The Commission is of the opinion that the measure described of 16 August 1977 consolidates the earlier occupation of immovable property and for that reason constitutes a violation of Art 1 of Protocol N° 1. In addition it is not disputed that new takings of movable property occurred after the adoption of the Report of the Commission of 10 July 1976.

155. The Commission concludes, by 13 votes against one and with three abstentions, that Turkey has violated Art 1 of Protocol N° 1.

Chapter 3. - Absence of Remedies

(a) Submissions

156. The applicant Government submit (1) that, throughout the relevant period, there was no effective relevant remedy in the Turkish courts or before any authority in the Turkish occupied area of Cyprus or in Turkey in respect of any of the violations complained of. According to the so-called "Constitution of the TFSC" practically all the human rights of the Greek Cypriots that have been violated are not even recognised.

The applicant Government invoke Arts 6 and 13 of the Convention.

157. The respondent Government, at Annex I (para 73) to their observations on the admissibility (2), submitted that all cases of offences committed against Greek Cypriots living in the North of Cyprus and their properties, which come to the knowledge of the authorities of the Turkish Federated State of Cyprus, are investigated and referred to courts. Severe sentences were imposed on a number of persons convicted for serious criminal offences committed during 1976 on Greek Cypriots living in the North.

(b) Opinion of the Commission

157. In its decision on the admissibility the Commission found under Art 26 of the Convention (at para 39 of The Law) "that the remedies indicated by the respondent Government cannot, for the purposes of the present application, be considered as relevant and sufficient and that they need not, therefore, be exhausted."

158. The Commission, in its examination of the merits of this complaint, does not find it necessary to add anything to its finding in the decision on admissibility.

(1) Final submissions paras 91 et seq.

(2) Cf para 53 above.

Chapter 4. - Discrimination

(a) Submissions

159. The applicant Government submit (1) that, in as much as the above violations were directed against members of one of the two communities in Cyprus, namely the Greek Cypriot community because of their ethnic origin, race and religion, the respondent Government should be found responsible for continuing violations of Art 14 of the Convention in failing to secure the rights and freedoms set forth in the Convention without discrimination on the grounds of ethnic origin, race and religion as required by that Article.

160. The respondent Government did not participate in the proceedings on the merits.

(b) Opinion of the Commission .

161. The Commission recalls that, in its Report on Applications Nos 6780/74 and 6950/75 (at para 503), having found violations of a number of Articles of the Convention, it noted that the acts violating the Convention were exclusively directed against members of one of the two communities in Cyprus, namely the Greek Cypriot community. The Commission then concluded that Turkey had thus failed to secure the rights and freedoms set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by Art 14 of the Convention.

162. Having again found violations of the rights of Greek Cypriots under a number of Articles of the Convention in the present case, the Commission does not consider it necessary to add anything to its finding under Art 14 in the previous case.

(1) Final submissions para 97.

Chapter 5. - Position of Turkish Cypriots

163. The applicant Government allege (1) that, during the relevant period, Turkey committed continuous violations of the rights of the Turkish Cypriots living in the occupied area by her policy and operation of colonisation and her policy and measures of segregation by the force of arms of the two communities within the Cyprus population on the basis of what came to be known as the "Attila line". These violations fall under two categories: various systematic acts of violence, threats, insults, and other oppressive acts by Turkish settlers from Turkey, encouraged and or countenanced by the presence of the Turkish troops, and prevention of any return by Turkish Cypriots, who were transferred from the Government controlled area in 1974-75 to the occupied area, to their homes and properties in the Government controlled area and denial of any exercise of their rights in respect of such property. In respect of both the above categories of violations no effective remedy before any authority exists.

The applicant Government submit that the above facts constitute continuous violations of Arts 3, 5, 6 and 8 of the Convention and Art 1 of Protocol N° 1.

164. The respondent Government, at Annex I (para 91) of their observations on the admissibility (1), submitted that the above complaint was "another example of the insincere and dishonest way in which those who have tried to annihilate the Turkish Community and have caused them to suffer all sorts of hardships, now, for purely propaganda purposes, express false and mock concern for the well-being of the Turkish Cypriots."

165. The Commission, having regard to the material before it, finds that it does not have sufficient available evidence enabling it to come to any conclusion regarding this complaint.

(1) Final submissions paras 98 et seq.

PART IV - CONCLUSIONS

The Commission,

Having examined the allegations in this application (see Parts II and III above);

Having found that Art 15 of the Convention does not apply (see Part I, Chapter 4);

Arrives at the following findings and conclusions:

1. Missing persons (para 123 above)

The Commission, having found it established in three cases, and having found sufficient indications in an indefinite number of cases, that Greek Cypriots who are still missing were unlawfully deprived of their liberty, in Turkish custody in 1974, noting that Turkey has failed to account for the fate of these persons; concludes by 16 votes against one that Turkey has violated Art 5 of the Convention.

2. Displacement of persons and separation of families
(paras 135, 136 above)

The Commission concludes, by 13 votes against two with two abstentions that, by her continued refusal to allow over 170,000 Greek Cypriots the return to their homes in the North of Cyprus, Turkey continues to violate Art 8 in all these cases.

The Commission further concludes by 14 votes against two and with one abstention, that, in the cases of continued separation of families resulting from Turkey's refusal to allow the return of Greek Cypriots to their family members in the North, Turkey continues to violate Art 8 of the Convention.

3. Deprivation of possessions (para 155 above)

The Commission concludes, by 13 votes against one and with three abstentions, that Turkey has violated Art 1 of Protocol N° 1.

4. Absence of remedies (para 158 above) .

The Commission, in its examination of the merits of this complaint, does not find it necessary to add anything to its finding in the decision on admissibility.

5. Discrimination (para 162 above)

Having again found violations of the rights of Greek Cypriots under a number of Articles of the Convention in the present case, the Commission does not consider it necessary to add anything to its finding under Art 14 in the previous case.

6. Position of Turkish Cypriots (para 165 above)

The Commission, having regard to the material before it, finds that it does not have sufficient available evidence enabling it to come to any conclusion regarding this complaint.

Secretary to the Commission

President of the Commission

(H.C. KRUGER)

(C.A. NØRGAARD)

Separate opinion of Mr M.A. Triantafyllides

1. I am in agreement with the findings of the Commission regarding the violations of the Convention which are referred to in the Report of the Commission in the present case.

2. In order to avoid making this opinion unduly lengthy I repeat that I still adhere in principle to the views which I have expressed in my Separate Opinion in the previous case of Cyprus v Turkey (Applications N°s 6780/74 and 6950/75) and, also, I endorse the salient features of the Separate Opinion of Mr G. Tenekides in the present case (N° 8007/77).

3. I wish, furthermore, to add the following:

(a) Missing Persons:

(i) In addition to the violation of Art 5 of the Convention, which was found by the Commission, I am of the view that there have been established violations of Arts 3, 4 and 8 of the Convention, of which missing persons are the victims, and violations of Arts 3 and 8 of the Convention, of which the families of missing persons are the victims, especially as the suffering to which the families of missing persons are being daily subjected for over nine years, due to the persistent refusal of the respondent Government of Turkey to account for their fate, amounts to inhuman treatment of the gravest nature.

(ii) Also, I think that it cannot be really seriously disputed that there is a presumption of Turkish responsibility for deprivation of life contrary to Art 2 of the Convention in so far as there are concerned any missing persons who may have died in the meantime whilst in Turkish detention.

(iii) Lastly, there should be pointed out that the Commission has been overcautious in weighing uncontradicted oral evidence adduced in relation to the five cases of missing persons in respect of which witnesses were heard by a Delegation of the Commission in Strasbourg. I am, consequently, of the view that it could have been found, with adequate certainty, that all five missing persons concerned, and not only three of them, were, at the material time, in Turkish detention.

(b) Displacement of persons and deprivation of possessions

(i) I am of the opinion that the settlement of Turkish settlers in the northern part of Cyprus occupied by the Turkish military forces constitutes, by itself, a separate violation of Art 8 of the Convention and Art 1 of the First Protocol to the Convention.

(ii) Also, there should be observed, in addition to the finding of the Commission in the present Report regarding the violation of Art 1 of the First Protocol to the Convention, that the violation of the said Art 1 by means of deprivations of possessions which were found by the Report of the Commission in the previous case of Cyprus v Turkey (Applications N^os 6780/74 and 6950/75) are still continuing in a most aggravated manner.

(c) Violations of human rights of Turkish Cypriots

In my view there exists before the Commission material which, having remained uncontradicted, justifies, prima facie, further examination of whether there are occurring continuous violations of human rights of Turkish Cypriots now living in the northern part of Cyprus occupied by the Turkish military forces.

4. I would like to conclude this Separate Opinion by stressing that there exists great urgency to restore the public order of Europe in Cyprus and, in this connection, the Committee of Ministers of the Council of Europe are invited to take immediate action in order to ensure the restoration of the human rights which have been found to be violated by Turkey.

Professor Dr Bülent Daver's Dissenting Opinion

May I take the liberty to say that I am not in agreement with the present Report for the reasons stated below.

1. First of all, in my view the Commission's decision on admissibility did not properly deal with the problem of the locus standi of the applicant Government (1). As I stated in my previous dissenting opinion, joined to the Report of the Commission adopted on 10 July 1976 "Applications N°s 6780/74 and 6950/75 (Cyprus against Turkey)", the Commission should have had the primary task of examination from the point of view of ius standi of an application referred to it by a High Contracting Party under Art 24 of the Convention. However, in this Report the Commission refrained again from dealing with the ius standi of the applicant Government.

In my opinion, the actual applicant Government is not the legal and legitimate authority entitled to bring a case before international instances. The Cyprus Constitution of 1960 and international agreements (London and Zurich Agreements and the Treaty of Guarantee) which gave birth to the Cyprus Republic originally envisaged a sui generis state composed of two communities. The Constitution of Cyprus expressly recognized the Turkish community not as a mere minority but as a full founding partner. The Constitution also gave the Turkish Vice-President powers beyond those of a normal Vice-President, including the right of vetoing the decisions taken by the President. (See Cyprus Constitution, Arts 1, 46, 47-c, 49-d, 50-(1)a, 54-a, b, 57. Peaslee, Constitutions of Nations, 3rd Ed 1968, Vol III, Europe, pp 138-216.)

(1) Because of the Commission's constant and general practice not to allow the members to make separate opinions to the admissibility decision, I am stating my objection here as to the admissibility decision. For my previous separate opinion to the Report of the Commission in Applications N°s 6780/74 and 6950/75 (Cyprus against Turkey), see pp 186 - 192.

However, in this case as in the previous applications, the Cyprus Government did not act in conformity with the Cyprus Constitution and the international instruments cited above. Instead, the Greek Cypriot authorities, in flagrant violation of the 1960 Constitution, unilaterally abrogated in practice the legal status of the Turkish community and of their legal representatives such as Vice-President and the Turkish Ministers.

2. In my opinion, the Commission's present Report, adopted on 4 October 1983, does not comply with Art 31 of the Convention. Art 31 envisages, in wording and in spirit, a full investigation of the facts and requires clear-cut evidence as to the findings. The Law part of the Report could only be based upon such extensive and clear-cut findings.

3. In the very important issue of missing persons, for instance, almost half of the testimonies by Greek Cypriots in a "very conveniently chosen" five illustrative cases, heard before the Commission's Delegates in Strasbourg, are not credible and therefore not convincing.

4. I would also like to emphasize the fact that the Commission held an oral hearing without the participation of the respondent Government, although Art 28 (a) of the Convention expressly provides for the participation of the two Parties. The respondent Government, on the ground that they are not recognising the "Greek Cypriot Administration" as the legitimate representatives of the Cyprus Republic, did not participate in the proceedings on the merits before the Commission. The Commission, which observed the non-cooperation of the respondent Government, decided to make an Interim Report to the Committee of Ministers to complain about this matter. But, the Commission, instead of awaiting the decision of the Committee of Ministers, went ahead with the proceedings and held an oral hearing with one Party only. In my opinion, this is incompatible with and contrary to the wording and the spirit of the Convention. The reading of Art 28 (a) of the Convention clearly shows this point. I must add that the Committee of Ministers' decision did not tackle the essence of the problem.

Furthermore, the Commission is not entitled to give a "judgment by default", because the Commission is not a court, but mainly an investigating body, performing quasi-judicial duties and making inquiries under the Convention. Therefore, the Commission cannot give an opinion in absentia like domestic or international courts. It can be argued that this is on account of the non-cooperating attitude of the respondent Government. However, as I stated earlier, the Commission's task and obligation should have been to refer it to the Committee of Ministers and suspend its proceedings until the Committee of Ministers brings a proper solution to this political problem.

5. It is my considered judgment that, in order to cast more light on the complex facts relevant to this case, the Commission should have examined ex officio the Memorial submitted by the respondent Government to the Committee of Ministers.

Conclusion

The Commission's Report, unfortunately like the previous one, is incomplete, lacking in many crucial facts relevant to the case, arrives at conclusions without the counter evidence and omits some important factual and legal issues indicated above. I consider that the content and the presentation of the Report as such do not reflect in an accurate and complete way the historical, factual and legal situation in Cyprus.

Finally, as I stated in my separate opinion to the Commission's Interim Report, "the best way of serving the cause of European public order and watching over the respect of human rights within the ambit of our Convention would be to have a probing analysis of this important and many sided issue." For these reasons, I am against the Report as a whole, and I am opposed to the conclusions of the Commission therein.

Separate opinion of Mr G. Tenekides (1)

While accepting the conclusions of the Commission as set out in particular in paras 123, 134, 135, 136, 155 and 161 of the Report I must make it clear that I differ on some points which refer:

- to a difference of approach on a matter which is of vital importance in this case, namely the question of the missing persons;
- the absence of any reference in the Report to a certain number of provisions of the Convention which were applicable in the present case and which in the opinion of the undersigned were or are still being violated by the actions of officers of the respondent Government on Cypriot territory.

I. Allegations of the applicant Government relating to the treatment and fate of missing persons

(a) In para 87 of the Report it is recalled that the Commission requested the applicant Government to supply evidence to show that the missing persons were really in detention under Turkish military control and that there were witnesses who had actually seen this.

It is precisely on this question of the burden of proof that I differ fundamentally from the point of view adopted by the Commission.

One fact emerges clearly from the circumstances of the case: the persons whose names were on the population registers of the Cypriot towns and villages disappeared following what has been called Turkish "military action" which occurred in two successive waves in July and August 1974. Since that time nobody (with some exceptions) has been able to provide any information on the fate of these persons who are euphemistically described as missing. No Greek Cypriot, whether a Government officer or private individual, has been able during the last nine years to enter either the occupied zone in North Cyprus or Turkey itself in order to obtain information about the treatment undergone by these persons. Nor has anything come to light either from Turkish Government sources or through the press. There has in fact been complete silence on the matter.

(1) Original French.

Following the state of belligerence created by the intervening power there was created in Cyprus in 1974 a large area in which the territorial sovereign has no power of control. Anything may occur in this area: arrests; detention in concentration camps; deportation to Turkey; inhuman and degrading treatment; in extreme cases execution without anyone (except the officers of the respondent Government) being able to prove the circumstances in which these persons have undergone their detention. In these circumstances to require the applicant Government (which has absolutely no means of obtaining information on what happens in the prisons in North Cyprus or Turkey) to prove that these persons have undergone any particular treatment contrary to Arts 5, 4, 3 and 2 is to ask for the impossible.

The special features of the case call for a different legal approach to that currently applied both as regards the basis of liability and consequently also as regards the burden of proof.

As a general rule (and this applies in the present case) the respondent Government is automatically responsible for damage caused by abnormal activities or activities which involve exceptional risks if they occur or originate within its jurisdiction. That being so a military occupation following on a series of hostile acts and massive and repeated violations of the Convention (see Commission's Report of 10 July 1976 on Applications N°s 6780/74 and 6950/75, Cyprus v Turkey) produces a type of liability which may be classified as strict liability. It must accordingly be admitted that misconduct on the part of individuals exercising government authority, whatever their exact position in domestic law, results in a violation by the State of its obligations under the Convention. The actions of such officers in a situation where the pre-existing legal order has been fundamentally upset by the occupying power is a risk liability for which responsibility must be borne exclusively by the State which produced this situation.

As regards the burden of proof, it is true that in principle the complaining or applicant State is under an obligation to prove the internationally illegal act prejudicial to its interests. This proof is facilitated by the "presumption of effectiveness" which applies to the territorial sovereign with respect to its actions (including illegal actions) within its territorial and maritime frontiers. It follows that the presumption of effectiveness based on normal territorial control does not necessarily imply knowledge by the applicant State of the illegal acts committed on the territory of the State accused of having violated the provisions of the Convention. This is a rule of international law of general application. This point should be noted because the organs of the Convention have frequently and

rightly referred to the rules of international law (consistent case-law illustrated by: Application N° 6315/73, DR 1, p 73; Engel judgment, para 72; Lawless judgment, paras 39 - 41; Court's judgment in the Irish case, para 222; Application N° 343/57, Yearbook 2, p 413; Application N° 788/76, Yearbook 4, p 116 etc).

What has been said above with regard to the burden of proof appears clearly from the following passage of the International Court of Justice's decision in the Corfu Channel case:

"It is clear that knowledge of the minelaying cannot be imputed to the Albanian Government by reason merely of the fact that a minefield discovered in Albanian territorial waters caused the explosions [....] It cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves *prima facie* responsibility nor shifts the burden of proof. On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to interferences of fact and circumstantial evidence." (Reports of ICJ 1949, pp 18 - 22)

The concept of effectiveness of territorial control (which applies particularly to the respondent Party because, failing to comply with the requirements of Art 28, it refuses to co-operate with the Commission) may contribute to remedy the natural inequality between States in the production of evidence. In this connection Charles de Visscher (Les effectivités en Droit International Public, 1967, p 120) speaks of proof by presumption "which makes it possible to apply against the respondent State the means of information which it controls on the specific ground of the effectiveness of this control".

In the instant case it is for the applicant State to prove the existence before July and August 1974 of the persons subsequently reported missing on the basis of the population registers, but it would be contrary to the rules of international law and natural justice to require the applicant State to prove

facts of which by the nature of things it has no knowledge seeing that they occurred on the territory over which the respondent exercises exclusive control either as a military occupant or as territorial sovereign. The undersigned considers that it would have been a correct application of the Convention to consider the specific case of persons reported missing by using the method which has just been indicated and which is better adapted to the special nature of the law governing inter-State relations (in particular inter-European relations), as they are regulated by the Convention, and above all a method better suited to the circumstances of the present case.

The reasoning which I have just expounded brings me by a different path, which I consider the only appropriate means of approaching the case before us, to support the Commission's conclusions (para 123) concerning the violation of Art 5. But this is not the only provision which was violated in the case of the missing persons.

(b) In my opinion the Commission was under an obligation to apply Art 4 (1) of the Convention and to find that it had been violated.

Under this provision "no one shall be held in slavery or servitude". The fact that the persons reported missing in the present case (presuming they are still alive) have been detained for more than nine years without possible contact with their family amounts to servitude within the meaning of Art 4 (1). According to the definition given by the Commission in *Van Droogenbroek v Belgium* (Application N° 7906/77, para 79 of the Report), "in addition to the obligation to provide another with certain services the concept of servitude includes the obligation to live on another's property and the impossibility of changing his condition". It is not clear how in the case under consideration there can be any question of "services rendered" though servitude in the ordinary sense of the term implies a state of dependence or inferiority and a constraint. Moreover the notion of "services rendered" falls into the category of forced or compulsory labour (Art 4 (2)). What is relevant and well established in the instant case is that these persons were obliged to live on the territory (the "property") of another and that they were and are "unable to change their condition". This strictly speaking amounts to servitude.

(c) Though Art 5 is relevant, Art 3 is so in a greater degree. It states a fundamental rule which like that contained in Art 4 is mandatory law (jus cogens) (see Art 15 (2) of the Convention). A State is not only obliged not to violate this provision directly but also take all necessary preventive measures of an administrative nature or by passing statutes or making regulations to ensure that inhuman or degrading treatment does not occur on its territory. Detention or deprivation of freedom which continues for more than nine years in circumstances in which the families of the missing persons (wives, fiancées, fathers, mothers and children) are kept in complete ignorance of the fate of their close relatives amounts both as regards the persons directly concerned and as regards their families to inhuman treatment. There is a further aggravating circumstance: the respondent Government remains obstinately silent and refuses to engage in any dialogue: it does not reply to the families' petitions and is not prepared to allow any enquiry on the spot.

(d) Though in July 1976 when the Commission adopted its first Report on Applications N°s 6780/74 and 6950/75 there might have been some doubts as to their survival, at the end of 1983 the chance of discovering them alive has decreased to the point that it has practically disappeared. After nine years, in the face of enquiries from numerous different sources, including international organs and private associations, the respondent Government, which could and should have provided information, which might have been satisfactory, as to the fate of one or other of the missing persons, refuses to provide the least explanation to the persons concerned. There is therefore a strong presumption ("proof by presumption" to adopt the wording used above) that a certain number of the missing persons have died as a result of the treatment they received: inordinately long detention in solitary confinement, ie a violation in the instant case of Art 2 seeing that, according to the Commission's case-law, States have an obligation to take adequate measures to protect life.

II. Displacement of persons and separation of families

My comments relate to para 128 of the Report. Although the Commission in setting out in its Report the respective submissions of the Parties to the proceedings was obliged on equitable grounds to maintain an equal balance between the applicant and the respondent (even though the respondent Government's submissions were only put forward at an earlier stage of the proceedings relating to admissibility) it is nevertheless the Commission's duty not to repeat assertions which from an historical point of view are completely without foundation, particularly when facts which prove the contrary are a matter of common knowledge. The Report takes

note of the respondent Government's submission that the colonists newly installed in the North of Cyprus are former Turkish Cypriots who had been expelled by the Greek Cypriots and merely returned to their former homes and homeland after 1974. On the contrary it is quite clear and irrefutably established that the persons installed by the occupation forces in the north of the island in violation of Art 49 (6) of the Geneva Convention of 12 August 1949 on "the protection of civilian persons in time of war" (1) are purely and simply colonists of Anatolian origin, and the difference in culture and behaviour has been a source of conflicts and clashes between these new arrivals and the Turkish Cypriots. Moreover the general question of repatriating Cypriots living outside Cyprus was dealt with in great detail by the Establishment Treaty between the United Kingdom, Greece, Turkey and the Republic of Cyprus of 16 August 1960 (Appendix D: "Nationality"). About 50,000 colonists transferred from Anatolia were installed in the north of Cyprus in violation of this agreement. The Commission, which is also an organ of "enquiry" (Art 28 of the Convention), had a duty to exclude ex officio any allegation which was manifestly and notoriously contradicted by the facts and to restrict itself to its final conclusion as set out in para 476 of its Report of 10 July 1976 and reproduced in para 149 in fine of the present Report: "the Commission found strong indications that Turks from the mainland had settled in the North in houses belonging to Greek Cypriots".

III. Destruction of cultural property

It is regrettable that, in the part of the Report relating to violations of Art 1 of the First Protocol to the Convention (paras 137 - 155), the Commission did not refer to cultural property (destruction of historical churches, ancient or medieval monuments, looting of private collections of ancient objects and private libraries particularly in the city of Famagusta; export and sale by auction of property of historical value) seeing that this heritage (which is both Cypriot and European) is an essential element affecting the identity of the community which is the victim of a situation which has lasted for more than nine years.

(1) "The occupying power shall not deport or transfer part of its own civilian population into the territory it occupies."

The Commission, which according to the Preamble is required in all circumstances to maintain the rule of law, was under a duty to apply Art 1 of the First Protocol, and in fact did so (paras 148 - 150) by drawing the legal consequences, but it also had a duty to apply this provision in the light of numerous conventions and agreements relating to the protection of cultural property (these texts are often of a declaratory nature and thus constitute customary law): first and foremost the Hague Convention of 14 May 1954 "for the protection of cultural property in the event of armed conflict" (1) and the "Convention concerning the means of prohibiting and preventing the illicit import, export and transfer of ownership in cultural property" adopted by the General Conference of UNESCO on 14 November 1970 (2).

IV. Failure of the Commission to make "proposals" under Art 31 (3) of the Convention

These last comments are based on the idea that law should be effective as otherwise there cannot be any valid system for the protection of human rights and fundamental freedoms. Though this principle of effectiveness is of general application it is particularly urgent and compelling in the instant case. It is now nearly ten years since the first Cypriot application was brought before the Commission (N° 6870/74) soon to be followed by a second (6950/75). This was the starting-point of rather long and meticulous proceedings which led to the adoption of the Report on 10 July 1976: the Commission found a considerable number of violations without making any proposals with a view to remedying a situation which is continuing indefinitely to the detriment of the rule of law in Europe. It took five years for the Commission to determine the merits of the present case after its decision on the admissibility of this application on 10 July 1978. The inordinate length of the proceedings (five years: 1978 - 1983) and also the fact that nothing has been done in the meantime to remedy the violations committed (3) will no doubt produce a feeling of frustration among the thousands of direct and indirect victims of the violations committed. Such a situation is certainly incompatible with the general spirit of the system of protection which obligatorily binds the member States of the Council of Europe.

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- (1) This Convention was ratified by the respondent State in 1965.
- (2) See in particular Art 11: "The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of the country by a foreign power shall be regarded as illicit."
- (3) See Committee of Ministers Resolution DH (79) 1.

According to the Preamble to the Convention, which refers expressly to the Universal Declaration of Human Rights, the Commission was required to comply with the requirement contained in Art 28 of that Declaration which provides that "everyone is entitled to an international order in which the rights and freedoms set forth in this Declaration can be fully realised".

In fact the mere statement of human rights as mandatory rules binding the member States implies as a logical corollary the guarantee of their effectiveness. In the instant case it would have been desirable that, as in the First Greek case, the Commission attempted, in addition to the violations which it found to exist, to discover the root of the trouble and indicate practical means of remedying it. Because here, far more than in the great majority of cases with which the Commission dealt, European public order has been disturbed. It follows that the charge of "denial of justice", which in the case of failure of the organs of the Convention to perform their task would certainly be raised, would involve particularly serious repercussions for everything connected with the future of our institutions.

It would therefore have been in accordance with the spirit of the Convention and the principle of effectiveness if the Commission were to decide to make proposals so that:

- urgent action was undertaken to provide a remedy for the breaches of the human rights found to be violated by the present Report. This remedial action would be coupled with an assurance that the rights of all Cypriots would be guaranteed and effectively protected;
- that without delay full information should be provided by the competent authorities of the respondent Government on the fate of the missing persons.

Unless considerations outside the Convention constitute an obstacle to the statement of such a conclusion in the Report it is impossible to find any good reason or counter-indication of a legal or technical nature for not formulating these two proposals which would have constituted the minimum required by European public order in such circumstances.

Separate opinion of Mr H.G. Schermers on
the violation of Art 8 with respect to the
occupation of houses (para 135 of the Report)

In its Report of 10 July 1976 on Applications N°s 6780/74 and 6950/75 the Commission found that in 1974 Turkey had violated Art 8 of the Convention with respect to a large number of people who were chased away from their houses and not allowed to return.

In its decision of 21 October 1977 the Committee of Ministers of the Council of Europe took note of the Commission's Report and asked that measures be taken in order to put an end to such violations as might continue to occur.

In my opinion this created an obligation for Turkey under Art 32 (4) of the Convention to remedy the violations found. Therefore, in the present case a violation of Art 32 (4) should be found rather than a violation of Art 8.

But there is another aspect of Art 8 in as far as it guarantees the right to everyone to respect for his home. The home is the building in which people live. With their chasing away the factual situation changes. After some time the people concerned will establish a new home. This does not legalise the violation of Art 8 but it will initiate a development which gradually replaces the obligation to restore the original situation by an obligation to provide due compensation. Generally, there will be other people occupying the building. They establish there their home. As Art 8 guarantees the right to respect for his home to everyone, the rights of the new occupant should be taken into account, even if the occupation was originally established on an invalid title. After a long period of time restoration of the status quo ante will become a violation of Art 8 with respect to the new occupant. It is difficult to establish how long this period is to be, because in fact it is a gradual process. On the one side, original occupants of a house will die, their rights being taken over by heirs who will succeed in the financial interest in compensation but who have not the attachments of a home. On the other side, children will be born in the house who have no other place which they could consider as their home.

I accept that Turkey has violated the Convention in 1974 and that it is still under the obligation to provide for a remedy (under Art 32 (4)), but I cannot accept as the only possible remedy that Turkey should (under Art 8) be obliged to break up the homes of all present occupants in order to allow the original occupants to return.