CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41355/98
by Savvas GAVRIEL
against Turkey

The European Court of Human Rights (Third Section) sitting on 1 February 2000 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J.-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mr K. Traja, *judges*,
Mr F. Gölcüklü, *ad hoc judge,*
Mrs F. Tulkens,
Mr K. Jungwiert,
Mrs H.S. Greve,
Mr M. Ugrekhelidze, *substitute judges*,

and Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 27 March 1998 by Savvas Gavriel against Turkey and registered on 25 May 1998 under file no. 41355/98;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 11 March 1999 and the observations in reply submitted by the applicant on 25 June 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Cypriot citizen, born in 1942. He resides in North Wales and is self-employed. In the proceedings before the Court he is represented by Mr Christos Clerides, a lawyer practising in Nicosia.

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

Until 14 August 1974 the applicant and his family lived in Morphou in Cyprus in a detached house belonging to his wife. On 14 August 1974, as the Turkish forces were advancing, the applicant and his family fled their home leaving behind all its contents, including precious personal belongings.

The applicant also left behind the following real property of which he claims to be the owner:

- a grapefruit farm of approximately 4 acres in Morphou,

- 196 acres of land, located by the sea, at Livera village in the Kyrenia district and

- 21 acres of land, located in Laxia tou Fani, also in the Kyrenia district.

Since 14 August 1974 the applicant has not been able to return to his house and has been continuously prevented from exercising his property rights and enjoying his property.

COMPLAINTS

The applicant complains under Articles 1, 8 and 14 of the Convention and Article 1 of Protocol No. 1 that his rights to respect for his private life and to the peaceful enjoyment of his possessions are violated and that he is subjected to discrimination in the enjoyment of the above-mentioned rights.

PROCEDURE

The application was introduced on 27 March 1998 and registered on 25 May 1998. On 7 September 1998 the European Commission of Human Rights decided to communicate the application.

The Government's written observations were submitted on 11 March 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 25 June 1999, also after an extension of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains that his rights to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 and to respect for his home under Article 8 of the

Convention are violated. He also complains that he is subjected to discrimination in the enjoyment of the above-mentioned rights contrary to Article 14 of the Convention.

Article 1 of Protocol No. 1 provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 8 of the Convention provides as follows:

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

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

Article 14 of the Convention provides as follows:

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

The Government submit that the applicant has no title to the properties in question in view of the constitutional and legal provisions applying in the Turkish Republic of Northern Cyprus (TRNC) and/or in view of the administrative acts of expropriation under the laws of the TRNC. As a result of the entry into force of the provisions of Article 159 of the TRNC Constitution, these properties are no longer registered in the name of the applicant. According to the information supplied by the Lands and Survey Department of the TRNC, the property registered no 5139, sheet plan XIX, 16, plot 576, situated at Kalkani/Kaputi is now registered in the name of the TRNC for being abandoned property. The property registered no A 258, Sheet Plan 32.5.2, plot 315 situated at Güzelyurt/Morphou, Piyale Paşa Qr./Ay Mama, was divided into two separate plots and joined with adjacent plots and new title deeds have been issued to Turkish Cypriots whose properties have been expropriated by the Greek Cypriot authorities in South Cyprus. As to the other properties allegedly owned by the applicant at the Sadrazamköy/Livera locality, the certificate obtained by the applicant from the Greek Cypriot authorities (no 9-500409 of 26 February 19992) is not reliable and has in all probability been based on the information supplied by the applicant himself. In particular, property under Sheet Plan 5/62, plot 14 at the village of Sadrazamköy/Livera, was not owned by the applicant in 1974 and is now attributed to Turkish Cypriots whose property was expropriated in the South. Property shown as "field" under Sheet Plan 5/62, plot 39/1, is now State

property and has been declared a "forest area". Properties under Sheet Plan 5/63, plots 34 and 45, were not owned by the applicant in 1974 and are now TRNC property. The Government recalls that in view of the temporal restriction in the Turkish Declaration recognising the jurisdiction of the Court, the applicant's allegations of a violation of the Convention prior to 22 January 1990 should be declared inadmissible. Furthermore, there would be no causal link between the Turkish intervention in 1974 and the alleged violation after the recognition of the compulsory jurisdiction of the Court in 1990, in view of the political developments which took place after the Turkish intervention.

In the light of all the above, the Government submit that the application is incompatible either *ratione materiae* or *ratione temporis*.

Moreover, the Government contend that the application is incompatible *ratione personae*. Turkey has no jurisdiction or control over the northern part of Cyprus as regards the complaints of the applicant. The existence of "jurisdiction" under Article 1 of the Convention does not create an irrebuttable presumption of control and responsibility, as is indicated by the Commission in the case of Chrysostomos and Papachrysostomou v. Turkey (D.R. 86-A, p. 4). The applicant's property has been expropriated by administrative acts of the authorities of Northern Cyprus under the laws and constitutional provisions applicable in the Turkish Federated State of Cyprus (TFSC) and its successor, the TRNC, an independent State, respectively. The acts complained of are not imputable to Turkey. In this connection the respondent Government refer in detail to the history of Cyprus since 1960, emphasising in particular the following:

- the bi-communal character of the 1960 Constitution and the obligation of Cyprus, under international treaty obligations guaranteed by the signatories of the 1960 Treaty of Guarantee to maintain her independence, territorial integrity and the fundamental principles of the Constitution;

- the alleged responsibility of the Greek Cypriot side for the breakdown of the 1960 constitutional arrangements in 1963 and the subsequent changing of basic principles of the Constitution;

- the allegedly intolerable situation of the enclaved Turkish Cypriots in the period between 1964 and 1974, which caused them to set up their own administration as from December 1967;

- the fact that the Turkish intervention in July 1974 was preceded by a coup d'état of Greek officers of the National Guard who pursued the aim of the unification of Cyprus with Greece (Enosis);

- the contention that the Turkish military operation in 1974 was carried out in conformity with Article IV of the Treaty of Guarantee to protect the right of Turkish Cypriots;

- the proclamation of the TFSC on 13 February 1975 and its Constitution which contained a declared intention that the TFSC would one day form part of a federation of the whole of Cyprus;

- the contention that the subsequent voluntary relocation of both the Turkish Cypriot and the Greek Cypriot communities in separate parts of the island was the result of agreements achieved in inter-communal talks held in Vienna in July/August 1975, these agreements being fully implemented under UN auspices, UN troops moving into the newly established buffer zone;

- the agreement achieved in 1977 and 1979 between the Turkish Cypriot and Greek Cypriot leaders for seeking a federal solution on the basis of a bi-communal and bi-zonal federation, a concept which, it is contended, is still valid as a basic guideline for the inter-communal talks;

- the stance of the Council of Europe and of its Parliamentary Assembly which refused to admit a unilateral Cypriot delegation from 1964 to 1983 and the fact that the bi-communal character of Cyprus were also reflected in the composition of the European Commission of Human Rights and the European Court of Human Rights.

- the establishment of the TRNC as an independent State on 15 November 1983 was declared by the legitimate representative body of the Turkish Cypriots in exercise of their right to self-determination, and that this did not constitute secession as the bi-communal Republic of Cyprus had ceased to function due to the actions of the Greek Cypriot side since 1963;

- the subsequent development of TRNC institutions was legitimate and in line with democratic principles and consolidated the statehood of the TRNC according to criteria accepted in international law;

- the contention that there exists in North Cyprus an administration exercising effective and exclusive executive, legislative and judicial authority, which has been acknowledged by the Commission in its report in the case of Chrysostomos and Papachrysostomou v. Turkey;

- the opinion that, despite the fact that it has not been recognised de jure by any other State than Turkey, the TRNC exists de facto as an independent State exercising all branches of State power on its territory. (In this connection the respondent Government refer to several decisions of English courts recognising that there was “an effective and autonomous administration in the North” and to the fact that Turkey, having recognised the TRNC de jure, does not claim for herself the exercise of power in that area).

In the Government’s view, the Loizidou v. Turkey judgment of the Court (judgment of 18 December 1996, Reports of Judgments and Decisions 1996-VI, p. 2216) cannot be considered as a precedent. The Court relied exclusively on Article 159 of the TRNC Constitution and had no knowledge of all the other facts entailing loss of the applicant’s property, such as the other intervening acts of the TRNC. Contrary to what the Court asserted, the Government never acknowledged in Loizidou v. Turkey that the applicant’s loss of control of her property stemmed from the occupation of the northern part of Cyprus and the establishment of the TRNC. As a matter of fact, the applicant’s loss of control and her inability to have access to her property depended on a number of factors, such as the cease-fire arrangements, the agreement for the relocation of populations, the unmanning agreement,

the status of the UN buffer zone and the agreed principles of bi-communality and bi-zonality for an eventual settlement of the Cyprus problem.

Instead of examining the questions of responsibility and imputability in the light of the supervisory organs' case-law on the matter, the Court preferred to make purely political statements regarding non-recognition of the TRNC on which it based its conclusions on the status of the TRNC, without even attempting to examine the criteria of statehood in international law. However, under international law, recognition is not a constitutive element of statehood. The Court disregarded the perfectly democratic structure of the TRNC, which possesses intrinsic legitimacy, and its comprehensive political and legal system, which maintains the legacy and great influence of Anglo-Saxon law.

The Court also disregarded other major aspects of the internationalisation, such as the Agreement on the Exchange of populations, the fact that the United Nations recognise the political equality of the two communities and the existence of a buffer zone. Although the Court made a political assessment of the TRNC, thus exceeding its jurisdiction, it confined itself on the merits to a narrow civil law approach, as if it was a matter of ordinary expropriation. Turkey does not have the power to interfere in the TRNC's domestic affairs or to order it to repeal its constitutional provisions. Nor can she handle the TRNC's foreign relations.

Turkey can neither legislate in respect of matters of property in the northern part of Cyprus, nor can she exercise any control over such property. Moreover, Turkey cannot compel the authorities of the TRNC to allow any Greek Cypriot to return to his or her property. As opposed to Loizidou v. Turkey, there is no question of Turkish involvement in preventing the applicant from having access to his property. The applicant's case does not relate to cease-fire/border violations. Moreover, there is no question that can be related to the Turkish intervention of 1974. Furthermore, the acts of the TRNC expropriating the properties referred to by the applicant in the application constitute *novus actus interveniens.* Because of these acts, Turkey cannot be held responsible.

Elaborating on the latter points, the respondent Government submit that, apart from the constitutional and legal provisions examined by the Court in Loizidou v. Turkey, there are actual acts of state by the TRNC expropriating the properties referred to by the applicant in his application. In this connection the respondent Government provide a detailed account of the legal framework that permitted the expropriation of properties such as those claimed by the applicant. The respondent Government argue that it would be unrealistic not to give any effect to the acts of the authorities in the northern part of Cyprus. A number of courts in Council of Europe countries have given legal effect to acts of unrecognised governments. Moreover, the Commission, in its above-mentioned report in Chrysostomos and Papachrysostomou v. Turkey, found that certain legal acts emanating from the TRNC had to be assumed to be legally valid acts under the Convention.

The Government further submit that, due to the relocation of the populations, it was necessary to facilitate the rehabilitation of Turkish Cypriot refugees, by looking after and putting to better use abandoned Greek Cypriot property. The Greek Cypriot side took similar measures in respect of abandoned Turkish Cypriot properties in the southern part of the island.

The status of the United Nations buffer zone should also be taken into consideration in deciding upon the applicant's claims relating to his purported properties, particularly access thereto. To recognise the right of the applicant to violate the buffer zone, as he aims to do with the present application, would encourage the breach of the agreed principles and aggravate the political problems.

Due to the agreed principles of bi-zonality and bi-communality, property rights and the question of reciprocal compensation have to be dealt with through negociations, within the context of inter-communal talks, and cannot be settled by individual applications to the organs of the Council of Europe.

There is a public interest in seeing to it that the inter-communal talks concerning freedom of movement, settlement and the right to property are not undermined. The status of the UN buffer zone also renders it necessary to regulate the right of access to possessions until a settlement of the political problem is achieved. In the light of all the above, it would be unrealistic to recognise for individual applicants the right of access to property and consequent property rights in isolation of the political situation.

As regards the applicant's complaint under Article 14 of the Convention, the Government submit that the differentiation that has come about in the exercise of freedom of movement and residence and the right to property of the two communities is a consequence of the political situation in the island, i.e. the existence of two governments that form the basis of a bi-zonal, bi-communal federal system. Such a situation cannot be an issue of discrimination under Article 14 of the Convention, but is entirely a matter for the two communities.

To sum up, the Government conclude that the applicant's complaints are the consequence of the political situation in Cyprus and in no way attributable to the Turkish intervention in 1974. It is evident that the present application is motivated by political considerations rather than by genuine grievances, which can only be realistically remedied by an overall political solution to the Cyprus problem. Restrictions on the use and control of properties left by the applicant are justified by the present situation of the island and by the general interest within the meaning of Article 1 of Protocol N° 1.

The applicant maintains that he was actually the owner of the properties mentioned in his application, as is corroborated by the copies he has submitted of the certificates of ownership issued by the lawful and internationally recognised authorities of the Republic of Cyprus. The respondent Government have failed to produce the original full records of the Land Authority of the Republic of Cyprus which they illegally detain.

As regards the *ratione temporis* jurisdiction of the Court, it is sufficient, according to the applicant, to demonstrate that he had a proprietary interest in the disputed properties after the date on which Turkey accepted the jurisdiction of the Commission and the Court, and that there had been an interference with that right after that date. There is no doubt that the applicant had such an interest since at least 1974. In addition, not only was the applicant denied access to the property but the respondent Government themselves point out that there was significant change in the treatment of Greek Cypriot owned property in northern Cyprus with the enactment by the TRNC of Law No 52 of 1995. The reasoning of the Court in the Loizidou case demonstrates that the Court denied legal validity not only to Article 159 of that law, but also to all subsequent legislation enacted by the TRNC authorities.

The applicant submits that the Government are responsible under the Convention for the violation of his rights and that there are no binding legislative or administrative acts that have any bearing on the matter. The present case cannot be distinguished from the Loizidou case. The effect of that case is that it is not necessary for the applicant to show that he has attempted, since the date on which Turkey accepted the competence of the European Commission of Human Rights, to cross the buffer zone in order to accede to his properties and has been prevented from doing so by the Turkish armed forces. It is enough that his property rights have been interfered with by the TRNC. The argument that in the present case there have been acts of State expropriating the properties is an admission that there has been such an interference. These acts cannot constitute *novus actus interveniens,* because they should have been passed by an independent State for which the respondent Government is not responsible in international law.

As regards the argument that the TRNC is not a "subordinate local administration", it has been put before the Court and the Commission on a number of occasions and has always been rejected. The judicial decisions mentioned by the Government, in support of their thesis that effect may be given to the acts of a de facto administration, concern an administration which has been established in defiance of the resolutions of the Security Council and which has obtained no international recognition at all. As to the buffer zone regime and the future outcome of the bi-communal talks, they have no bearing upon either the imputability of the interference to Turkey or the compatibility of the interference with the Convention.

The arrangements between the two communities, namely the "Makarios-Denktash Agreement" of 1977 and the "press communiqué" issued in Vienna in 1975, are not relevant to the application. Furthermore, the existence of inter-communal negotiations were well known to the Court when it decided the Loizidou case and have no bearing on the question of compensation, as alleged by the Government.

Moreover, the applicant argues that the interference with his property rights cannot be justified under Article 1 of Protocol No. 1. The policies of the TRNC cannot furnish a legitimate aim since the establishment of the TRNC was an illegitimate act condemned by the Security Council. *Ex iniuria ius non oritur*. For the same reason, the interference cannot be found to be in accordance with the law and the general principles of international law. Nor was the interference proportionate. As the Court held in Loizidou v. Turkey, the need to re-house displaced Turkish Cypriots cannot justify the complete negation of the applicant's property rights. This conclusion is reinforced by the existence of evidence that much of the property taken from Greek Cypriots has been used to house settlers from mainland Turkey. The Court also held in Loizidou v. Turkey that the fact that property rights were one of the subjects under discussion in the inter-communal talks could not justify the taking of property without any compensation.

Finally, the applicant argues that his human rights are violated solely because he is a Greek Cypriot. To argue that this is due to the separation between the two communities, as the Government do, would justify any discrimination between Turkish and Greek Cypriots. The laws of the TRNC discriminate against Greek Cypriots and the Commission has found a violation on this basis in the first and second inter-State cases (Applications Nos. 6780/74 and 6950/75 Cyprus v. Turkey, Comm. Report, 10.7.76, unpublished).

The Court will first examine the respondent Government's submission that the application is incompatible *ratione personae*. The Court recalls in this connection that in its Loizidou v. Turkey judgment of 18 December 1996 it found as follows:

> "(i)t is not necessary to determine whether, as the applicant and the Government of Cyprus have suggested, Turkey actually exercises detailed control over the policies and actions of the authorities of the 'TRNC'. It is obvious from the large number of troops engaged in active duties in northern Cyprus that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the 'TRNC'. Those affected by such policies or actions therefore come within the 'jurisdiction' of Turkey for the purposes of Article 1 of the Convention. Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus" (*op. cit*., pp. 2235-2236, § 56).

The Court notes that, unlike the Loizidou v. Turkey case, it is not clear in the present case whether the applicant was the registered owner of all the properties in question in 1974. Moreover, he never tried to cross the buffer zone. However, these factors notwithstanding, the Court considers that, insofar as the issue of "jurisdiction" under Article 1 of the Convention is concerned, the applicant' situation is not materially different from that of the applicant in Loizidou v. Turkey, since the present applicant claims to have had his home and to be the owner of properties in the northern part of Cyprus, and Turkey's obligation to secure to the applicant the rights and freedoms set out in the Convention extends to that part of the island. It follows that the application cannot be rejected as incompatible *ratione personae.*

The Court further notes that the Government argue that the application is incompatible *ratione materiae* because the applicant no longer has title to the properties concerned and incompatible *ratione temporis* because there is no question of a continuing violation that could have subsisted until 28 January 1987 when Turkey recognised the right of individual petition. The Court considers that these arguments are closely linked to the substance of the applicant's complaints. As a result, they have to be examined together with the merits of the application.

Having examined the parties' remaining observations, the Court considers that the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The application cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

S. Dollé
Registrar

N. Bratza
President