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. 16160/90
by Christos SAVERIADES
against Turkey

The European Court of Human Rights (Third Section), sitting on 26 September 2002 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 26 January 1990,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Christos Saveriades, is a Cypriot national of Greek Cypriot origin. He was born in 1938 and lives in Nicosia. He is represented before the Court by Mr P.N. Clerides, a lawyer practising in Nicosia.

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

The applicant states that he was born in Peristerona, a village in the District of Famagusta in northern Cyprus. He lived in Famagusta with his family, in an apartment which he claims that he owned and which was located at 128 Kennedy Avenue. The applicant further claims that at the time of the 1974 Turkish invasion he was the owner of land in Famagusta on which was located an Intercommunal Secondary Grammar school, known as the Centre of Higher Studies (plot no. 90, sheet / plan: 24/59). He was the owner and headmaster of the above-mentioned school the premises of which are now part of the 'Eastern Mediterranean University'.

Upon the 1974 Turkish invasion, the applicant and his family fled for southern Cyprus. He claims that he has been deprived of his property rights, all his property being located in the area which is under the occupation and the control of the Turkish military authorities. The latter prevent him from having access to and from using and possessing his home and property in Famagusta as well as from practising his profession.

COMPLAINTS

The applicant complains under Articles 1, 8 and 14 of the Convention, 1 of Protocol No. 1, 2 and 3 § 2 of Protocol No. 4.

THE LAW

1. The applicant complains of a violation of the general obligation to respect human rights enshrined in Article 1 of the Convention. Further, he complains of a violation of his right to respect for his home and family life under Article 8 of the Convention and to peaceful enjoyment of his possessions under Article 1 Protocol No. 1. He also complains of a violation under Article 14 of the Convention by virtue of discriminatory treatment against him in the enjoyment of the above-mentioned rights solely because he is Greek Cypriot.

The relevant provisions read as follows:

Article 1 of the Convention

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Article 8 of the Convention

"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

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

Article 1 of Protocol No. 1

"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."

The Government reject the applicant's complaints with submissions that include the following points:

-Turkey is not responsible for matters in northern Cyprus which fall within the jurisdiction and / or responsibility of the Turkish Cypriot authorities exercising effective and exclusive control over the northern part of Cyprus;

-the applicant has not submitted any evidence to substantiate his claims under the Convention to immovable properties in Famagusta and thus the application is inadmissible for being unsubstantiated and ill-founded;

-the plot of land within the campus of the Eastern Mediterranean University which the applicant alleges belonged to him in 1974, was in fact registered in the name of the Government of Cyprus, which since then has

devolved to the Turkish Federated State of Cyprus, and then to the Turkish Republic of Northern Cyprus ('TRNC') by virtue of the mandatory provisions of Article 159 of the Constitution of the TRNC. Consequently, the immovable property in question belongs to the TRNC and has been delivered to the use of the above-mentioned University;

-the existing divisions and the congregation of the Greek Cypriots in the south and the Turkish Cypriots in the north of the island is the result of agreements reached between the leaders of the two respective communities and which have been implemented by the United Nations.

The applicant contests these submissions relying essentially on the reasons given by the Court for rejecting similar objections raised by Turkey in its Loizidou v. Turkey judgment of 23 March 1995 (*preliminary objections*) (Series A. no. 310), the Loizidou v. Turkey judgment (*merits*) (*Reports of Judgments and Decisions* 1996-VI), and the conclusions of the European Commission of Human Rights in its report of 4 June 1999, (no. 25781/94, *Cyprus v. Turkey*, to be reported in ECHR 2001-IV).

The applicant further claims that the original documents for his property were held at his premises in Famagusta which he was forced to leave in great haste and has subsequently been unable to return or otherwise retrieve those documents. He maintains however that the documents attached to his observations constitute evidence of his title to the land where the school was located and clearly show that the land was not owned by the Government of Cyprus as Turkey claims.

As regards Article 8 of the Convention the applicant considers that his claim may be clearly distinguished on the facts from that rejected by the Court in the Loizidou case since he had his principal residence in the District of Famagusta.

The Court refers to its dismissal in the aforementioned Loizidou judgment (*merits*) of the Government's preliminary objections as to Turkey's alleged lack of jurisdiction and responsibility for the acts of which the complaint is made (§§ 39–47 and 49–57). This was confirmed by the Court in its judgment of 10 May 2001 in the inter-State case of *Cyprus v. Turkey*. The Court recalls that in its latter judgment it rejected the Government's arguments that it had erred in its approach to the issues raised by the Loizidou case, especially on the matter of Turkey's liability for alleged violations of Convention rights, including allegations of continuing interferences with property rights under Article 1 of Protocol No. 1 occurring within the TRNC (*Cyprus v. Turkey* [GC], no. 25781/94, §§ 69, 75–81, 173–175 and 184–189, to be published in ECHR 2001–IV).

The Court finds no reason to depart from these conclusions. Accordingly, it rejects the Government's aforementioned objections to the admissibility of the application.

The Court considers, in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the

determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant also complains of a violation under Articles 2 and 3 § 2 of Protocol No. 4 since he is not free to move and choose his residence in Cyprus and cannot enter northern Cyprus.

The relevant provisions read as follows:

Article 2 of Protocol No. 4

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 3 § 2 of Protocol No. 4

"No one shall be deprived of the right to enter the territory of the state of which he is a national."

The Court notes that Turkey is not a party to Protocol No. 4. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court by a majority

Declares admissible, without prejudging the merits, the applicant's complaints under Articles 1, 8 and 14 of the Convention and 1 of Protocol No. 1;

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President