

AS TO THE ADMISSIBILITY OF

Application No. 25781/94  
introduced by CYPRUS  
against TURKEY

The European Commission of Human Rights sitting in private on  
28 June 1996, the following members being present:

MM. S. TRECHSEL, President  
H. DANELIUS  
C.L. ROZAKIS  
E. BUSUTTIL  
G. JÖRUNDSSON  
A. WEITZEL  
J.-C. SOYER  
Mrs. J. LIDDY  
MM. M.P. PELLONPÄÄ  
B. MARXER  
M.A. NOWICKI  
I. CABRAL BARRETO  
B. CONFORTI  
I. BÉKÉS  
J. MUCHA  
G. RESS  
A. PERENIC  
P. LORENZEN  
K. HERNDL

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 24 of the Convention for the Protection  
of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 November 1994  
by the Government of Cyprus against the Government of Turkey and  
registered on 24 November 1994 under file No. 25781/94;

Having regard to :

- the observations on the admissibility of the application  
submitted by the respondent Government on 10 July 1995;
- the observations in reply submitted by the applicant Government  
on 19 December 1995;
- the additional documentary material submitted by the applicant  
Government on 11 and 13 June 1996 and by the respondent  
Government on 24 and 28 June 1996;
- the parties' oral submissions at the hearing on 28 June 1996;
- the report provided for in Rule 45 para. 2 of the Commission's  
Rules of Procedure;

Having deliberated;

Decides as follows:

THE FACTS

1. Original submissions

On 22 November 1994 the applicant Government submitted the  
application to the Commission in the following terms:

"1. The Republic of Cyprus, a Member State of the Council of Europe and High Contracting Party to the European Convention on Human Rights and the Additional Protocols thereto requests under Article 24 of the European Convention on Human Rights the Secretary General of the Council of Europe to refer to the European Commission of Human Rights the following breaches of provisions of the Convention and its First Protocol committed by the Republic of Turkey, a Member State of the Council of Europe and High Contracting Party to the European Convention on Human Rights and Additional Protocols thereto.

2. The Republic of Cyprus contends that the Republic of Turkey since 4 October 1983, when the European Commission of Human Rights adopted its Report in respect of Application No. 8007/77, for violations of human rights by Turkey in the areas occupied by the Turkish army in Cyprus, continues to commit breaches of Articles 1, 2, 3, 4, 5, 6, 8, 9, 11, 13 of the Convention and of Articles 1, 2, 3 of the First Protocol and of Articles 14 and 17 of the Convention in conjunction with all the above mentioned Articles.

3. Turkey continues to occupy about 40% of the territory of the Republic of Cyprus seized in consequence of the invasion of Cyprus by Turkish troops on 20 July 1974.

4. In the Turkish occupied area of Cyprus in question, and ever since the adoption of the aforesaid Report by the Commission, the following violations of human rights continue to be committed, by way of systematic conduct, by Turkish state organs and other persons acting with the support and knowledge of Turkey, in utter disregard of the obligations of Turkey under the European Convention on Human Rights:

- (a) Unlawful detention of at least 1619 missing Greek-Cypriots (a considerable number of them being civilians) who were unlawfully deprived of their liberty, in Turkish custody, in 1974, Turkey having failed until now to account for the fate of these persons.
- (b) Refusal to allow over 170.000 Greek-Cypriots to return to their homes in the Turkish occupied area of Cyprus.
- (c) Turkey continued, during also the last six months, to force by inhuman methods Greek-Cypriots living in the occupied area in question to leave their homes and seek refuge in the Government-controlled area of Cyprus and they are being prevented by Turkey from returning to their homes.
- (d) The homes and properties of the Greek-Cypriots mentioned in paragraphs (b) and (c) above continued to be the object of de facto expropriation and illegal possession and exploitation contrary to Article 1 of the First Protocol and the general principles of International Law. These continuing violations have been intensified through the increased and systematic settlement of settlers from Turkey, with the encouragement and assistance of Turkey, against the will of the lawful Government of

Cyprus. Also, the agricultural produce of the Greek-Cypriot properties continue to be collected and exported to markets in several European and other countries against the will of the lawful owners thereof.

- (e) Families were and are still separated as a result of the aforesaid continued refusal of Turkey to allow the displaced Greek-Cypriots to return to their homes in the Turkish occupied area of Cyprus.
- (f) Through the continued and organised settlement of settlers from Turkey in the occupied area of Cyprus violations of the rights of the Greek-Cypriots under Article 8 of the Convention and Article 1 of the First Protocol have been continuously taking place.
- (g) In concrete cases inhuman treatment of Greek-Cypriots still living in the occupied part of Cyprus has taken place contrary to Articles 3, 5, 6, 8 and 9 of the Convention and Article 2 of the First Protocol. Particulars of such treatment will be made available in due course.
- (h) The above displacement of Greek-Cypriots and the carrying out of elections by the illegal regime operating in the Turkish occupied area of Cyprus, with the support of Turkey, has resulted in violations of the rights of the displaced Greek-Cypriots under Article 3 of the First Protocol.

5. The situation resulting from the Turkish occupation of the area of Cyprus in question continues to affect also the rights and freedoms of Turkish-Cypriots living there, particularly of those who in furtherance of Turkey's political aims were forced and induced to move from the southern part of Cyprus where they had their homes and properties. More specifically there have been and continue to be violations of the rights of Turkish-Cypriots to return to their homes and properties and to associate freely with Greek-Cypriots living in the Government-controlled area.

6. No military operations or any fighting whatsoever has taken place during the period to which the present application relates.

7. The violations in question were directed against Greek-Cypriots because of their ethnic origin and religion.

8. The victims of the above violations have no effective remedy as provided under Article 13 of the Convention.

9. No remedy in Turkish Courts was under the circumstances likely to be effective and adequate for the violations in question. In any case, all the above violations were committed and continue to be committed under such circumstances which excuse the failure to resort to any domestic remedy for the purposes of Article 26 of the Convention.

10. All the above violations will be proved by concrete and positive evidence. Full particulars regarding these violations will be made available in due course.

11. The Turkish occupied area is still sealed off and the Turkish Military Authorities do not allow free access to it.

12. The Government of the Republic of Cyprus requests the Commission to give precedence to the present application in view of the extent and continuing nature of the violations complained of.

13. This application is made without prejudice to individual applications against Turkey under Article 25 of the Convention which have already been made or which will be made in future."

2. Particulars submitted by the applicant Government

On 3 March 1995 the applicant Government submitted "Particulars" of the application, supported by documentary evidence included in Annexes, which were later supplemented by further material. These "Particulars" may be summarised as follows:

a) As to the scope of Turkey's control over northern Cyprus

The applicant Government contend that notwithstanding the creation of local administrative structures ("the Turkish Republic of Northern Cyprus" - TRNC), Turkey continues to be exclusively responsible under international law for events in northern Cyprus, including any violations of the Convention, because it exercises "exclusive de facto actual authority and effective control" and thus "jurisdiction" within the meaning of Article 1 of the Convention over all persons and property in this area which in the applicant Government's submission continues to be under the military occupation of Turkey.

The applicant Government claim that, apart from Turkey's legal responsibility for northern Cyprus under the general principles of international law, "Turkey's actual overall control is pervasive and has been unaffected by her establishment and/or sponsorship of illegal local administrative structures". It is claimed that "the local administrative apparatus is in fact subject at all times to Turkey's informal direction. It is financially and physically dependent on and directed by Turkey. In short, Turkey has unfettered and unimpeded power to enforce obedience to her behests, despite any appearance of puppet institutions. If violations of human rights are effected by such institutions and persons acting under their purported authority, Turkey has both the duty and the actual power to act to prevent, stop and remedy such violations: it is Turkey's support to the illegal local administrative apparatus which keeps it in being; Turkey has full knowledge of decisions and conduct by so-called 'officials' of that apparatus; and, from behind the scenes, Turkey directs it."

In support of these allegations, the applicant Government submit the following:

- The presence of over 30.000 members of the armed forces of Turkey in northern Cyprus make it "one of the most highly militarised areas in the world in terms of the ratio between numbers of troops and civilian population". Allegedly, there has been a recent increase in the numbers of troops and upgrading of their equipment. The troops are stationed throughout the occupied area and not only in the area adjacent to the buffer zone. Turkish military courts exercise jurisdiction not only over members of the Turkish armed forces, but also over civilians entering military areas. Allegedly 90 % of the occupied territory are military areas of various categories, leaving only 10 % as "Free Tourist Areas", and even the latter are not excluded from military enforcement action (Prohibited Military Areas Decree

1979).

- Fortifications and minefields are maintained by the Turkish armed forces along the cease-fire lines (which the applicant Government refer to as "forward defence lines"). The applicant Government contest that the so-called "buffer zone" is a term of art reflecting the result of international agreements; as confirmed by UN documents, there are no agreements concerning the "buffer zone" by which powers were conferred on Turkish Cypriot authorities. Rather, it is the Turkish armed forces who "seal off" the occupied area along the "contact line", permitting no movement either by Greek or Turkish Cypriots to or from the occupied area. Entry into the First Prohibited Military Area (within a distance of 500 m from the "contact line") requires military authorisation. Movement across the lines is only exceptionally allowed, subject to grant of prior permission by the Turkish armed forces. Also Turkish Cypriots who work in the area controlled by the Cypriot Government or at the British Sovereign Base Area of Dhekelia and even UNFICYP members need the Turkish military authorities' permission for crossing. Allegedly, the crossing points have been arbitrarily closed by the Turkish armed forces on certain occasions (e.g. on 11 July 1994 following a judgment of the European Court of Justice relating to the importation of goods from northern Cyprus into States members of the European Union).

- As to the status of the Turkish Cypriot administration in northern Cyprus, the applicant Government submit that the proclamation of both the "Turkish Federated State of Cyprus" (13 February 1975) and of the "Turkish Republic of Northern Cyprus" (18 November 1983) were effected with the collaboration and under the responsibility of the Turkish mainland authorities. The creation of these local administrative structures and the purported establishment of diplomatic relations between Turkey and the TRNC (17 April 1984) have been condemned and declared legally invalid by the UN Security Council. The UN consider that "the Turkish Forces are the party to the cease-fire established in 1974 and cannot abrogate their responsibility in that regard". The TRNC has not been recognised by the international community.

The applicant Government claim that the Government of the TRNC is subject to the authority and directions of the Government of Turkey and merely a product of Turkey's military occupation: "Turkish State organs are systematically involved in the governance of the occupied area and no decisions can be taken without Turkish knowledge and approval or acquiescence". Reference is made in this context to the creation of special bodies in the Republic of Turkey for dealing with Cyprus issues, and to the manner in which the coordination between these bodies and the Turkish Cypriot administration is effected.

Until 1986, the major administrative mechanism to exercise political control was the "Cyprus Coordination Council" composed of Turkish Ministers. Decisions were made in Ankara, submitted to the Turkish Cypriot Government for approval, and finally adopted and implemented by that Council. The present structures include the existence, in Turkey, of a special State Minister for Coordination of Cyprus Issues, and of a Council for Aid, under the direct supervision of the Turkish Deputy Minister for Cypriot Affairs, which plans and coordinates the application of all funds emanating from Turkey to northern Cyprus. Officials of that Council are present in many departments of the TRNC administration. Political decisions regarding the TRNC are coordinated between the Cyprus Desk of the Turkish Foreign Ministry and the "Special War Department" of the Turkish General Staff. Allegedly, the Turkish Ambassador to the TRNC from time to time gives explicit instructions and informal directions to the TRNC Government and keeps close surveillance on their decision-making, the Embassy being represented at Cabinet meetings. The applicant Government claim that, de facto, northern Cyprus is administered by a committee which meets regularly every week in Nicosia, and which consists of (i) the

Commander of the Turkish Forces in the occupied area, (ii) the Commander of the Turkish Cypriot Security Forces, (iii) the Ambassador of Turkey and (iv) Mr. Denktash.

- As regards the Turkish Cypriot Security Forces, the applicant Government claim that they are under the authority and subject to the orders of the Turkish Army's General Staff. Their Commander is a Turkish national on active duty with the Turkish Army. The expenses for maintaining these Security Forces are provided by Turkey.

- Turkish control of the economy of the occupied area has been formalised by a series of "Economic Cooperation Protocols". The first Protocol, signed on 5 December 1986, established a technical committee composed of Turkish Civil Servants and Turkish Cypriots to direct finance and economic policy. A further document signed on 25 July 1990 was designed to integrate the economy of the TRNC with that of Turkey. The Turkish lira was introduced as the currency in the occupied area. Another document signed on 6 March 1992 purported to create an Economic Cooperation Area between Turkey and the TRNC. Turkey pledged contributions to the TRNC budget, the financing of investment projects and technical assistance for drawing up a development plan. According to Turkish Cypriot press reports, the Central Bank of the TRNC was integrated with the Central Bank of Turkey in August 1994. The applicant Government also refer to the substantial size of direct financial payments by Turkey to the TRNC without which the administration of the occupied area could not function.

- Finally, the applicant Government observe that Turkish State organs and the leadership of the TRNC cannot be expected to proclaim the reality of Turkey's control over the area. Allegedly, they pursue a deliberate policy of dissimulating this reality. Thus it is claimed that Turkish Cypriot political leaders and the press were warned not to provide information which could be used by the applicant Government as evidence of Turkish control in northern Cyprus. However, the applicant Government quote a number of "revealing" statements of politicians published in the Turkish or Turkish Cypriot press which in their submission show that Turkey is determined, on grounds of national ideology and strategic military interests, to uphold its control of northern Cyprus and not to allow any change of the present situation.

b) As to the alleged violations of the Convention

The applicant Government refer to the findings in the Commission's Reports on Applications Nos. 6780/74 and 6950/75 and No. 8007/77 and observe that no measures were taken by Turkey since the adoption of those Reports to end the violations of the Convention established by the Commission. They claim in particular that there are continuing violations concerning the Greek Cypriot missing and displaced persons. Also new facts have emerged, involving, in particular, the process of settlement of mainland Turks in the northern part of Cyprus, the deterioration of the conditions of life of the people of the Karpas peninsula, and the coercive displacement of Greek Cypriots from the northern area. The applicant Government submit that there is a "continuation of systematic measures and conduct aimed at the eventual extinction of the Greek Cypriot community in the Karpas peninsula". They claim that "the cumulative effect of politically induced changes in the demographic make-up of the Turkish-controlled area, including the coercive displacement of Greek Cypriots, the refusal to allow Greek Cypriots to return to their homes and properties and the separation of families" amounts in effect to "ethnic cleansing". It leads to "continued suffering and frustration to the victims and their families and to the people of Cyprus as a whole".

Greek Cypriot missing persons

The applicant Government submit that at least 1619 Greek

Cypriots, many of them civilians, who were last seen alive in the occupied area of Cyprus after the Turkish invasion, or in Turkey in the custody of the Turkish armed forces, are still missing. The applicant Government refer to the Commission's findings in this respect in the Report on Application No. 8007/77. They point out that since 1975 the UN General Assembly has called for the tracing and accounting for these persons, that a Special Committee on Missing Persons has been set up in 1981, consisting of a Greek Cypriot member, a Turkish Cypriot member and a Red Cross representative appointed by the UN Secretary General. The arrangement is between the two Cypriot communities and does not involve Turkey. However, due to procedural difficulties, the Committee achieved no progress in its investigative work. After a call by the UN General Assembly in December 1982, it resumed work in March 1984, but soon its activities again came to a standstill. Informal work started after a letter from the UN Secretary General of October 1993, but certain procedural matters have not been agreed upon. In any event, even if it begins formal work, the Committee cannot deal with Turkey's responsibility or give any remedy against Turkey or any other bodies or persons. Turkey herself has not provided any relevant information about the fate of the missing persons, and the resulting uncertainty has caused severe suffering to their families.

#### Greek Cypriot displaced persons

The applicant Government submit that Turkey, as a matter of policy, continues to refuse to allow over 170,000 (with children 211,000) Greek Cypriots to return to their homes in northern Cyprus. This is effected by the sealing off of the whole northern area by the Turkish armed forces. Turkey ignores the resolutions of the UN General Assembly and Security Council calling for urgent measures to facilitate the voluntary return of all refugees to their homes in safety. Turkey has consistently supported the view that in the Island of Cyprus there are and must remain two separate demographically homogeneous States. The applicant Government describe this as "apartheid à la Turquie" and "Turkish racialism".

As a particular example of this policy, the applicant Government refer to the situation in the Varosha suburb of Famagusta. A large part of the suburb, the so-called "fenced area", remains under the overt control of the Turkish armed forces, despite Turkey professing to have handed over control to Turkish Cypriots. The applicant Government refer to repeated calls of the UN Security Council since 1984 to hand over this area to the UN for administration prior to Greek Cypriot settlement, the Security Council considering attempts to settle any part of Varosha by people other than its inhabitants as inadmissible. They further point out that the UN Security Council and Secretary General hold the Government of Turkey responsible for maintaining the status quo in the fenced area, and that despite this in 1994 Turkey sought unilaterally to change long-standing procedures for access to the fenced area, the Turkish forces refusing to treat with UNFICYP on this issue and referring them to Turkish Cypriot authorities. Except for a Turkish army club, the use of two hotels as recreational facilities for the Turkish armed forces and a limited amount of settlement in hostels by students of the Turkish-sponsored Eastern Mediterranean University, Varosha has remained uninhabited for 20 years. Turkish Prime Ministers have since 1977 repeatedly declared that they refuse to hand over Varosha to Greek Cypriots.

#### Enclaved Greek Cypriots in the Karpas area

Before 1974, the Karpas peninsula was predominantly inhabited by Greek Cypriots. Their number fell from 22,000 in 1974 to only 506 in 1994. They are mostly old people (45 % over 70 and half of these over 80) and there is no renewal of population. There is a clear danger of the Greek Cypriot population in that area becoming extinct within a few years.

The applicant Government have provided the following statistics:

20.7.74	20.8.74	20.10.74	1975	1976	1979	1983	1993	1994
22,000	16,372	14,577	9,308	6,393	1,533	940	524	
506								

They claim that whereas physical methods of expulsion were prevalent from 1976 to 1979, they had become unnecessary for Turkey by 1980. Since then, the Turkish forces have delegated their functions to Turkish Cypriot "police" elements, a special plain-clothes "police" unit being responsible for surveillance of Greek Cypriots. Allegedly, many of the methods of harassment earlier employed continue. The applicant Government request the Commission to make a special finding concerning the inhuman methods used to force the remaining Greek Cypriot inhabitants to leave their homes and seek refuge in the area controlled by the Government of Cyprus, and which are described as "ethnic cleansing". These practices include the following measures:

- Enclaved Greek Cypriots are not allowed to leave their villages without special permission from the local "police" elements. Such permission is rarely given and only subject to restrictive conditions such as reporting to the "police". For example, permission to visit Famagusta is only given for purposes of receiving medical attention; it involves four attendances at "police stations" on the day of the visit (in addition to two earlier visits for applying and receiving permission to travel). Similarly, persons granted special permission to visit the Government-controlled area are required to notify the "police" at their home villages on leaving and on re-arrival. Such "temporary transfer" requires giving 15 days notice in writing to the local "police" elements. Travel can only occur once weekly in a specially designated bus. Apart from that Greek Cypriot (and Turkish Cypriot) residents of the occupied area may apply for "family meetings" in the presence of UNFICYP in the Ledra Palace Hotel, a crossing point in Nicosia. They can also receive short daily visits from Greek Cypriots residing abroad. Permission is not given for transfer from one village to another, thus preventing the small numbers of isolated Greek Cypriots from forming larger communities and supporting each other. Moreover, enclaved Greek Cypriots are not freely permitted to visit their fields and graze their animals. They are confined to a very small area in the immediate vicinity of their particular villages.
- Greek Cypriot doctors are not allowed to visit enclaved Greek Cypriots, and the local medical facilities are poor; sometimes the "police" refuse UNFICYP permission to evacuate Greek Cypriots for urgent specialist medical treatment in the Government-controlled area. This is particularly grave having regard to the advanced age of many ill persons.
- Greek Cypriots are forbidden to communicate with UNFICYP except in the presence of Turks. UNFICYP Humanitarian Branch personnel visiting Greek Cypriots are escorted by Turkish Cypriot "police". UNFICYP must itself obtain prior permission for visits. Visits are closely watched by Turkish Cypriot "police" and speech in the presence of such "police" is constrained. Failure to observe these restrictions results in arrest and sometimes beating. Communications between enclaved Greek Cypriots and their relatives in the Government-controlled area are permitted only by means of messages censored by Turkish military authorities and then delivered by UNFICYP. Such messages are often destroyed and not handed to UNFICYP for delivery. Telephones are available to Greek Cypriots only in Turkish Cypriot local "police stations" and calls are only possible with "police" permission and "police" presence. Persons who have exceptionally obtained permission for a "temporary transfer" to visit the Government-controlled area are searched and letters carried by them for relatives or other enclaved persons are seized. Greek Cypriot newspapers in Greek language are not permitted to circulate in the Turkish-occupied

area and copies brought back by visitors of the Government-controlled area are confiscated. Books are also confiscated.

- Greek Cypriots are not permitted freely to transact commercial transactions or to carry on any profession, trade or business in the occupied area and thus to earn a living. They have to rely mainly on charity and food and financial support sent to them by the Cyprus Government through UNFICYP. Fishermen are only permitted to line-fish from the shore and may not use their boats.

- As to educational facilities for Greek Cypriots in northern Cyprus, the situation is particularly grave. There remain only two elementary schools and only three Greek Cypriot teachers. All Greek Cypriot secondary schools had to be closed. Teachers from the Government-controlled area are not permitted to render services in the occupied area. Much of the equipment of the remaining elementary schools has been confiscated, school books are censored or banned. Children at the age of 12 have to make the choice whether to leave northern Cyprus in order to obtain secondary education or stay with their parents without receiving secondary education. 40 % of the parents opt for the latter solution because the Turkish authorities permit secondary school children to return to visit their parents only in the Christmas, Easter and summer vacations. Once boys reach the age of 16 and girls that of 18, they are not allowed at all to return to the occupied area or to visit their parents.

- The manifestation of their religion by enclaved Greek Cypriots is restricted by the prohibition on replacement of Greek Cypriot priests of whom only two remain in the occupied area. Services at the major church and shrine of pilgrimage in the Karpas peninsula are prohibited except on 15 August and 30 November of each year. Attendance of funeral services is restricted to close relatives living in the Government-controlled area, remoter relatives and friends not being given permission.

- Cases continue of direct physical violence or death threats against Greek Cypriots. Breaking into houses and damage to property occur on such a scale that people fear leaving their homes unattended. Cases of psychological pressure are frequent, such as repeated knocking on doors and stoning of houses at night time. The fear of harassment suffered by Greek Cypriots has been intensified by the large-scale systematic settlement of colonists from the Turkish mainland which has created an alien, often hostile and threatening environment. In the remaining six villages where Greek Cypriots still live, Turkish settlers greatly outnumber the Greek Cypriot residents. It is alleged that no effective remedy exists for Greek Cypriots who wish to complain about assaults and robberies. Fears of victimisation prevent such complaints and the naming of witnesses. The applicant Government refer in particular to a report of 8 April 1994 by the UNFICYP Chief Humanitarian Officer which explains the reasons why Greek Cypriots are reluctant to report crimes committed against them.

- The far-reaching restrictions which affect most aspects of the daily life and civil rights of Greek Cypriots in northern Cyprus are arbitrary and not established or regulated by law or controlled by the courts. The applicant Government again refer to the above report by the UNFICYP Chief Humanitarian Officer.

- Greek Cypriots who succumb to the fierce pressures to leave the occupied area include persons of both sexes and all ages. When they leave their homes are allocated to settlers from Turkey. Once they have left, they may not change their minds and are prevented by the Turkish forces from returning to their homes. There are some limited exceptions for temporary reunion of families, but permanent reunion by way of return of Greek Cypriot family members to their parents in the Karpas or by regular or even intermittent visits is denied. Greek Cypriots who have once left the Karpas are under no circumstances

permitted to return to reside there.

#### Turkish settlers

The applicant Government submit that the grave situation in Cyprus has been intensified by the increased and systematic settlement of colonists from the Turkish mainland. They refer to a Report on the Demographic Structure of the Cypriot Communities, by Mr. A. Cuco, Rapporteur to the Committee on Migration, Refugees and Demography of the Parliamentary Assembly of the Council of Europe, published on 27 April 1992, in which it was inter alia stated that "most of the settlers were transferred to Cyprus as the result of a decision of the Turkish authorities" and that "the aim of the Turkish-Cypriot administration's policy regarding the Turkish migrants has been to encourage their permanent settlement on the island". The applicant Government submit that since the compilation of the Cuco Report, Turkish settlement has continued, the process being accelerated in 1991, to a degree that even Turkish Cypriot politicians took exception. They refer to statements of the Secretary General of the Republican Turkish Party, Mr. Soyer, who declared in May 1993 that "Turkish Cypriots are face to face with annihilation" and that "when the occupied area opened to the settlers without any control, the Turkish Cypriots started feeling aliens in their own country". A similar statement was also made by the leader of the same party, Mr. Özgür, in August 1993. Reference has further been made to a number of critical comments in the Turkish Cypriot press.

The new measures adopted since 1991 were the following:

- After 2 September 1991, no passports were demanded to be shown for entry by Turkish citizens to the TRNC. They could enter with Turkish identity cards only. From October 1992 no "entry cards" were required for Turkish citizens.
- By a Turkish law of 17 November 1992 persons with a "work permit" in the TRNC were exempted from the military draft in Turkey, and this despite the armed conflict in South East Turkey and Turkey's need of army personnel for this purpose. In the applicant Government's view this indicates the high priority which Turkey gives to the settler programme.

Turkey's direct involvement is also shown by Turkey's declared policy to "balance", i.e. to achieve the parity of population numbers of Turks and Greek Cypriots in the island of Cyprus. The applicant Government refer to statements in this sense made by Turkey's State Minister for Cyprus Affairs, Mr. Kilercioglu, in August 1992, by TRNC "Prime Minister", Mr. Eroglu, in September 1993, and by "the compulsorily retired 'Director of Registration'", Mr. Adali, in December 1994. In this context, it is also alleged that Turkey refused to allow the TRNC to import 5000 Romanian and Bulgarian migratory workers, instead insisting on the importation of Anatolians. Newspaper articles revealed that 5000 were recruited by the Employment Agency of Konya in December 1992, and that an agreement was reached between Turkey and the TRNC in January 1993 to meet an immediate demand for 2000 Turkish guest workers.

It is further alleged that Turkey is directly involved in the grant of TRNC "citizenship" to settlers. Turkish citizens need permission of the Turkish Ministry of the Interior to acquire foreign citizenship. According to an article of the Turkish Cypriot newspaper "Yenicag" of 20 September 1993 Turkey ordered the TRNC administration not to grant "citizenship" to anybody without such permission, and to exclude Kurds. Reference was also made to a practice of substitution in the official TRNC papers of a northern Cypriot birthplace for that in mainland Turkey. Other newspaper articles reported about the large numbers of settlers who were granted "citizenship": during an election

period in 1993, 5000 "citizenships" were offered by a change in the citizenship law, apparently to illegal workers; 250 new identity cards were being issued every day; voter registration continued rapidly to expand also in 1994, the number of voters increased by 4800 in 5 months; 2281 Turkish settlers were granted "citizenship" in 1994 according to the TRNC "Minister of the Interior".

According to the applicant Government, Turkey and the TRNC conceal the number of settlers and refuse to conduct a census as requested by the Turkish Cypriot political opposition, the Parliamentary Assembly of the Council of Europe and the UN Security Council. For this reason it is difficult to provide statistics. According to estimates prepared by the Republic of Cyprus Department of Statistics and Research, the number of settlers ranged between 65,500 and 70,600 at the end of 1990, between 69,000 and 87,000 at the end of 1992, and between 73,700 and 92,100 at the end of 1993. Some sources speak of 100,000 settlers. To these must be added 30,000 or more Turkish army personnel and their families and 12,000 illegal Turkish workers, so that the total number of mainland Turks (between 115,000 and 135,000) already outnumbers that of Turkish Cypriots (between 60,000 and 100,000). There is a strong emigration of Turkish Cypriots to the United Kingdom, according to one source a total of 57,000 having left the island in the period between 1974 and 1993.

The applicant Government allege that in connection with the settlement policy the nature of Greek Cypriot homes is changed. Measures to "turkicise" the area include the change of all place names and public signs from Greek to Turkish to eliminate evidence of Greek culture and language and the deliberate turning of churches into mosques. In addition, these measures also adversely affect Turkish Cypriots, as evidenced by the Turkish Cypriot press. The demographic changes are intensified by measures for the allocation of Greek Cypriot property to the settlers.

#### The treatment of the possessions of displaced Greek Cypriots

The applicant Government submit that the situation concerning the property of the 170,000 Greek Cypriots displaced from the north remains the same as before, they continue to be prevented from returning to their possessions and getting access to it for any purpose, their titles being denied. This applies to both movable and immovable property.

As regards movable property, the applicant Government refer to the severing and harvesting of agricultural produce from the land belonging to Greek Cypriots by labourers sent from Turkey to northern Cyprus, and its commercialisation by Turkish companies, in particular those of Mr. Asil Nadir, which, "acting on invitation in the early 1980s from the Turkish Government", became responsible for most of the exploitation of citrus orchards in the areas of Morphou and Lefka. Following a judgment of the European Court of Justice in July 1994, holding that lemons and potatoes cannot be imported from the TRNC into the European Community, because they are not supported by lawful movement and phytosanitary certificates, Turkey in January 1995 decided to remove all restrictions on import from northern Cyprus and to use Mersin as the export gate for this area. In this way agricultural produce from northern Cyprus is since November 1994 being exported to third countries accompanied by Turkish certificates.

Other movable property was also taken into official Turkish custody. Thus 70 tons of Greek and English books, magazines and brochures collected from Famagusta were stored in a warehouse. An attempt to dispose of this material by auction in October 1994 was stopped by some Turkish Cypriot politicians.

Furthermore, there has been interference with movable property of the Church of Cyprus, such as relics, icons, church furniture and

mosaics severable from the fabric left behind in northern Cyprus. The Church has not been permitted to safeguard its treasures, by having access to guard, remove or restore them. There continues to be wanton destruction, theft by individuals, and official connivance in the export for the international sale of such items. The applicant Government have submitted a documentation of such acts covering a period of three years preceding September 1994. They also refer to an incident concerning the 6th century mosaics from the apsis of the church of Kanakaria. By coincidence, the Church of Cyprus learnt in November 1979 that the mosaics had been removed. The Cypriot Government sought the assistance of UNESCO and in the late 1980s it was discovered that Turkish, Dutch and American dealers were selling four of these mosaics, valued at 1,5 million US \$. They were ultimately restored to the Church of Cyprus by a judgment of 8 August 1989 given by the US District Court (Indianapolis Division). The Turkish dealer returned two more of the mosaics, but 10 remain missing. The applicant Government describe this incident as symptomatic. They also mention another recent incident where a German tourist to northern Cyprus brought to light the theft of an icon.

As to the immovable property left behind by Greek Cypriots in northern Cyprus, the applicant Government describe the Turkish authorities' policy as a "systematic and continuing process" effected in various stages: (i) unlawful dispossession of the Greek Cypriot owners by their eviction from the occupied area; (ii) de facto exclusion of the owners by the Turkish forces preventing them from returning to their homes and properties; (iii) reduction into Turkish possession, effected by Turkish State personnel or subsequently authorised bodies, or toleration of individuals' unlawful occupation and possession without the Turkish authorities taking counter-action; (iv) purported enactment of "law" by the administrative apparatus operating in the Turkish occupied area in order to "legalise" takings and to facilitate "land allocation"; (v) "amendments" to the "law" to enable grant of "title" especially to Turkish settlers, and (vi) continuing implementation of such "laws" by land "allocation" and "grant of title".

The so-called "legalisation process" started in 1975 when the "Assembly of the Turkish Federated State of Cyprus" purported to enact a "Law to consolidate and amend the Law in respect of the Control, Custody and Administration of Immovable Properties belonging to Aliens and Abandoned in the Turkish Federated State of Cyprus" (No. 32/1975). This law qualified the Greek Cypriot displaced persons as "aliens".

It was followed in 1977 by a "Law for Rehabilitation, Land Allocation and Equivalent Property" (No. 41/1977) with two main policy objectives: (i) to concentrate ownership of all Greek Cypriot property in northern Cyprus in the hands of the "Federated State", a large area being kept as "State" land, part of it being allocated to Turkish Cypriots displaced from the south of Cyprus, and the last part being reserved for allocation to settlers from Anatolia; (ii) to concentrate in the hands of the "Federated State" all Turkish-Cypriot owned land in the Government-controlled area, this being effected by establishing a value-points system by which Turkish Cypriots surrendered their land there to the "Federated State" by signing a "renunciation certificate" upon obtaining Greek-Cypriot owned land in the occupied area. Allegedly, this law was also used to benefit members of the Turkish Cypriot political hierarchy, it was administered corruptly and used as a vehicle for rich Turks and proteges of the Turkish Government, including even Turkish Generals, to buy "value points" from Turkish Cypriot displaced persons.

Subsequently, there was a continuing process of "amending" the law in order to be able to grant "title", rather than mere physical possession, to Turkish settlers (amending laws 5/1981, 27/1982, 23/1985, 3/1988, 12/1989 - changing the title of the law into "Law for Settlement and Distribution of Land and Property of Equivalent Value"

- 44/1990 and 24/1991). According to the applicant Government, these amendments pursued fresh policy aims, namely (i) to clarify (and extend) the categories of persons "entitled"; (ii) to enable tourist development (by "leasing" areas for this purpose, in particular to Mr. Asil Nadir's company); (iii) to make it feasible for mortgages to be obtainable by "certificate" holders; (iv) to allow land to be bought by Turkish settlers and persons who did not surrender their property in the Government-controlled area, and (iv) to allow the grant of "title" rather than "indefinite possession" as earlier provided.

The law now accords a claim to be issued "deeds of title" to the following categories of persons: (i) Turkish Cypriots who have left property in the Government-controlled area; (ii) "War veterans" (Turkish army officers illegally seconded to Cyprus in 1958-59 or 1963-67); (iii) Members of the "Turkish Peace Force" (the 1974 Turkish army of invasion); (iv) Turkish army personnel who served in Cyprus after the 1974 invasion and (v) persons who had settled by May 1983 in the occupied area. Post-May 1983 Turkish settlers may be "allocated" custody of land on different criteria and conditions.

On the pretext that there had been "a population exchange" which ought to be followed by a "property exchange", "certificates of definite possession" started to be issued to Turkish Cypriots as from 20 December 1982. The holders of such certificates were permitted to burden the property with mortgage. However, further implementation of the law was not pursued at that time, due to the introduction of the last inter-State application by Cyprus against Turkey. However, by mid-1986 international pressures on Turkey regarding Cyprus had eased and Turkey required full implementation of the law in order to satisfy the promises which had been made in Turkey to intending settlers that they would be given ownership of land in the occupied area. Thus the Economic Co-operation Protocol of 1986 provided that "the laws for the distribution of equivalent property shall be reviewed so that a just distribution shall be provided and the criteria for the allocation of property shall be reviewed". Nevertheless, because of international pressure the law had still not been fully implemented by 1990. In particular, Turkish settlers, "war veterans" and persons who had participated in the "Peace Operation" were not given "titles". A document of principles signed by the Prime Minister of Turkey on 25 July 1990 stipulated that "taking into consideration the importance and the value of the right to property, the Turkish Republic shall provide all necessary support to speed up the application of the Settlement, Rehabilitation and Equivalent Property Law and to complete the necessary legal arrangements in 1990". The subsequent 1991 amendment of the law distinguished between "compensation rights" for land vacated in the Government-controlled area, such rights going to Turkish Cypriots, and "allotment rights" for Turkish settlers. According to a statement of the TRNC "Housing Minister", Mr. Yumuk, of February 1991 "title deeds" would be issued to all "entitled" to them and all TRNC "citizens" would become "legal owners" of such property. According to a further statement by Mr. Yumuk of March 1992, all land not kept by the TRNC State for its own purposes was to be disposed of by grant of these rights, 53 % being allocated to persons who had left property in the south and 47 % to settlers.

Nevertheless, the law was still only partly implemented, most of the issued deeds going to Turkish Cypriots. The Economic Co-operation Protocol of 1992 therefore again provided that the TRNC authorities "will try to complete implementation" of the law concerned and that the Republic of Turkey "will provide necessary assistance and support". However, due to international pressure and alleged "legal difficulties", "title deeds" were still not issued to Turkish "war veterans" and settlers. According to the Turkish Cypriot press it was reported in February 1994 that Turkey, as an aspect of the "support" mentioned in the 1992 Protocol, would now provide money to Turkish "war veterans" and settlers in order to enable them to purchase land. TRNC "Prime Minister" Atun then explained that Turkey had only discussed the

question of "title deeds" being used for mortgages to secure bank loans.

The applicant Government also refer to provisions of the TRNC "Constitution" of 1985 (Article 159 read in conjunction with Articles 36(5) and 164) according to which Greek Cypriot property was expropriated on the ground that it had been found "abandoned" on 13 February 1975 in the "Turkish Federated State of Cyprus", that it was "described by law" as "abandoned", or that the title deeds belong to "non-citizens" of the TRNC. They submit that the acts concerned were declared illegal and invalid by the UN Security Council and that accordingly the purported "expropriation" is void in international law and in the municipal law of the Republic of Cyprus. Although Turkey and her local administrative apparatus have sought to throw a cloak of legality over the process of de facto expropriation, they have not achieved their objective of obtaining "legality". It is contended that there has not yet been a "final taking" of most Greek Cypriot property by way of lawful issue of new "title deeds", despite repeated threats to do so. The international community was even from time to time assured that Greek Cypriot ownership rights remained, e.g. in a statement of Mr. Denktash to the UN Secretary General in 1987 according to which "no actual transfer of ownership had taken place". Nevertheless, TRNC "Prime Minister" Eroglu stated in 1993 that in his administration 10,000 "title deeds" had been issued and a UN Report of December 1994 mentions that 17,000 "title deeds" were about to be issued. As the Turkish Cypriot press reported in February 1995, a new amendment bill was being prepared which would allow the grant of "clean title deeds", i.e. unrestricted ownership, to 17,000 families. The President of the Republic of Cyprus on 27 February 1995 addressed the UN Secretary General informing him of the threat of this system being introduced in northern Cyprus.

The applicant Government refer to a number of examples of Greek Cypriot property affected by specific measures. They include

- the situation in Varosha where the property of 15,130 Greek Cypriots has been left uninhabited for 20 years (see above);
- the transfer of all Church-owned land to Evkaf, the Moslem religious trust, by a decision of the "Government of the Turkish Federated State of Cyprus" in 1975;
- the subdivision of land at Ayios Epiktitos and its advertisement for sale in plots;
- the development of land for commercial profit, in particular for touristic purposes, including the construction of hotel apartments offered for sale to foreigners; exploitation of hotels by a tourism organisation controlled by mainland Turkish companies; licencing of the repair and alteration of hotels; licencing of the construction of a touristic village on hitherto unconstructed land; leasing of land for development; and exploitation of properties by Turkish business establishment and persons closely associated with Turkey's political and banking hierarchy.

The applicant Government submit that the Greek Cypriot owners are not given any compensation or remedy for the continuing deprivation of their property.

#### Turkish Cypriots

The applicant Government submit that the Turkish armed forces also restrict the freedom of movement of Turkish Cypriots. It is contended that no such restrictions are being applied by the authorities of the Republic of Cyprus. As a consequence, Turkish Cypriots are denied access to the property which they have left behind

in the Government-controlled area, nor can they attend meetings with Greek Cypriots in the occupied area, in the buffer zone, or in the Government-controlled area, all this requiring permission which is often refused and sometimes withdrawn after permission has been granted. The case of Dr. Ahmed Cavit An has been mentioned. He was on 107 occasions refused permission to leave northern Cyprus for the Government-controlled area. Dr. Cavit has introduced an individual application to the Commission complaining of these restrictions. Allegedly, he was told that he could never again leave the northern area and his social contacts there were strangled.

Turkish Cypriots are also affected by the prohibition on the circulation of Greek language newspapers in northern Cyprus and by the fact that Article 156 of the TRNC "Constitution" confers extensive jurisdiction over civilians on "military courts".

The Turkish Cypriot gypsy community is allegedly discriminated against. Some 70 gypsy families (over 300 persons) sought asylum in the United Kingdom in 1994, alleging that they had no human rights in the occupied area and were treated as second class citizens. They embarked on a Turkish Airlines flight to London, but the flight stopped at Istanbul. The gypsies were severely beaten by the Turkish police and returned to northern Cyprus. They eventually managed to leave and arrived in London in September 1994, where they sought asylum.

## COMPLAINTS

The applicant Government allege violations of Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 and 13 of the Convention, of Articles 1, 2 and 3 of Protocol No. 1 to the Convention, and of Articles 14 and 17 of the Convention in conjunction with all these Articles.

As to Article 1, it is submitted that Turkey fails to secure Convention rights by its agents participating in, assenting to, acquiescing in, or tolerating the violation of these rights, and by lack of diligence in taking action to prevent, stop or remedy such violations.

The applicant Government also allege a violation of Article 32 para. 4 of the Convention by Turkey's failure to put an end to the violations of the Convention established in the Commission's Report on Applications Nos. 6780/74 and 6950/75, as requested in the Committee of Ministers decision in that case. In the applicant Government's submission this decision is binding on Turkey, the only State which the Commission had found to have committed violations of the Convention.

As to the violation of specific Convention guarantees, the applicant Government invoke the following provisions:

1. Regarding the Greek Cypriot missing persons, it is submitted that if they should still be in Turkish custody 20 years after the cessation of hostilities, this would be a grave breach of Article 5 of the Convention and also a form of slavery or servitude contrary to Article 4 of the Convention. The consistent failure of Turkey to provide information on the fate of these persons to their relatives allegedly constitutes a grave breach of Articles 3 (inhuman treatment), 8 (respect for family life) and 10 of the Convention (right to receive information).
2. Regarding the Greek Cypriot displaced persons, the applicant Government, relying on the Commission's Reports concerning the earlier inter-State cases, submit that there is now a gravely aggravated violation of the right to respect for family life under Article 8 of the Convention by the continued and consistent refusal to allow displaced Greek Cypriots to return to their families in northern Cyprus. The continued refusal to allow the return to their homes allegedly constitutes a further violation of Article 8, the concept of

"home" in that provision extending to the human and natural environment and conditions of life surrounding the buildings and localities concerned. In this context the applicant Government refer to the measures to change the nature of Greek Cypriot homes in northern Cyprus by the organised settlement of mainland Turks, the "turcisation" of the area and the elimination of all traces of Greek culture. The continuing refusal to allow the return of displaced Greek Cypriots to the northern area is not just a question of the right to liberty of movement as guaranteed by Protocol No. 4 (which Turkey has not ratified). As it is specifically designed to prevent Greek Cypriot owners from having access to, from using and from enjoying their property in the northern area, it also amounts to continuing violations of Article 1 of Protocol No. 1, intensified by the consistent pattern of interferences carried out by stages, the allocation of the property in question to Turkish Cypriots and settlers, the attempts for the legalisation of the de facto expropriation and for the eventual deprivation of Greek Cypriot titles. The applicant Government also emphasise that the Greek Cypriot owners were not given any compensation and no remedies against the deprivation of their possessions and their exploitation under Turkish authority. Any remedies which may be available in domestic courts in Turkey or in northern Cyprus cannot be considered as practicable and normally functioning in respect of displaced Greek Cypriots who are denied entry to that area and are treated as "aliens" under the TRNC "Constitution", which further regards their properties as "abandoned". The courts, being policy-bound to implement measures by the Turkish authorities, or working under the TRNC "Constitution", cannot be impartial or provide an effective remedy under such circumstances. The applicant Government therefore also allege a violation of Article 13 of the Convention.

They further submit that the continued refusal to allow displaced Greek Cypriots to return to their homes and families in the northern part of Cyprus, and the continued deprivation of their possessions located in this area are discriminatory and contrary to Article 14 of the Convention.

It is finally alleged that displaced Greek Cypriots are deprived of their right under Article 3 of Protocol No. 1 to be able to vote in free elections under conditions which will ensure the free expression of the will of the people in the choice of the legislature. While they can vote in the Republic of Cyprus, they are being prevented from effectively enjoying freely elected representatives in the Cyprus legislature in respect of the northern territory. The deputies elected in the Republic of Cyprus in respect of this territory cannot get access to it and are prevented from legislating effectively in respect of that area.

3. As regards enclaved Greek Cypriots in the Karpas area, the applicant Government submit in the first place that the combination of restrictions and fierce pressures placed on them, having regard to the advanced age of many of the victims and the consistent pattern of action against them, amounts to inhuman and degrading treatment within the meaning of Article 3 of the Convention. They contend that this treatment is deliberately inflicted on the persons in question with a view to making them leave the area. The Commission is specifically asked to make a finding on the inhuman methods of coercion used for this purpose. The Turkish conduct in its totality should be examined under Article 3 notwithstanding that various aspects of it also fall to be considered under other provisions of the Convention.

In this respect, the applicant Government further allege breaches of the following Convention articles : Article 2 (denying the protection of life to enclaved persons in urgent need of medical treatment); Article 5 (threat to individual Greek Cypriots' security of person and absence of official Turkish action to prevent this); Article 8 (interference with the right to respect for private life, family life, home and correspondence); Article 9 (freedom of religion); Article 10

(freedom to receive and impart information and ideas); Article 11 (restrictions on freedom of association, in particular between the various groups of enclaved persons and between enclaved persons and Greek Cypriots in the Government-controlled area); Article 13 (failure to provide effective remedies); Article 14 (Convention rights not being secured to Greek Cypriots without discrimination, the violation of their rights occurring on grounds of their race, language, religion, national origin or status as Greek Cypriots or Maronites, the latter being subjected to somewhat less harsh treatment); Article 1 of Protocol No. 1 (deprivation of possessions and interference with peaceful enjoyment of possessions); Article 2 of Protocol No. 1 (denial of secondary education and disrespect for parents' right to ensure education in conformity with their religious and philosophical convictions). Also alleged is a breach of Article 6 of the Convention by virtue of withholding a fair and public hearing by an independent and impartial tribunal to Greek Cypriots whose civil rights have been infringed.

4. As regards Turkish Cypriots, the applicant Government submit that they are also victims of violations of their right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1, since the Turkish authorities do not allow their return to their properties in the Government-controlled area; of Article 11 of the Convention, because they are denied the right to freely associate with Greek Cypriots either in the occupied area, the buffer zone or the Government-controlled area; of Article 10 of the Convention, because they too may be affected by the prohibition on the circulation of Greek language newspapers in northern Cyprus; of Article 6 of the Convention, by virtue of their being subjected to "military courts" which do not ensure that charges against them are heard by an independent and impartial tribunal; and of Article 5 of the Convention, because the security of person of Turkish Cypriots is not ensured. Concerning the particular incident involving the Turkish Cypriot gypsies who sought asylum in the United Kingdom, the applicant Government invoke Articles 3, 5 and 8 of the Convention. It is also submitted that there are no relevant or sufficient remedies available to the Turkish Cypriots concerned as the interferences with their rights have been effected by Turkish State policy, administrative practices and "law" incompatible with the Convention. Therefore it is claimed that Article 13 is violated also in this respect.

#### PROCEEDINGS BEFORE THE COMMISSION

The application was introduced by the applicant Government on 22 November 1994 and registered on 24 November 1994.

On 24 November 1994, the President of the Commission decided, pursuant to Rule 45 para. 1 of the Commission's Rules of Procedure, that notice should be given to the respondent Government. A time-limit was fixed for the submission of written observations on the admissibility of the application by the respondent Government, but this time-limit subsequently became obsolete due to the delay in the submission of the "Particulars" announced by the applicant Government in the initial application.

The Commission considered the state of proceedings on 28 November 1994. On 5 December 1994 it agreed to fix 9 January 1995 as the time-limit for the submission by the applicant Government of the "Particulars" announced in the initial application. The "Particulars" with appendices were submitted by the applicant Government, after two extensions of the time-limit, on 3 March 1995.

On 8 March 1995, the "Particulars" were transmitted to the respondent Government who were invited to submit observations in writing on the admissibility of the application before 5 June 1995. After two extensions of this time-limit, the respondent Government submitted their observations, with appendices, on 10 July 1995.

On 17 July 1995, the applicant Government were invited to submit observations in reply before 16 October 1995. After two extensions of this time-limit, the applicant Government submitted observations, together with extensive annexes, documentary exhibits, legal and other appendices, on 19 December 1995. They were received by the Commission and transmitted to the respondent Government for information, on 3 January 1996.

On 23 January 1996, the Commission considered the state of the proceedings and decided to invite the parties to submit oral argument at a hearing to be held at its session in June 1996. Specific questions were put to the parties to be dealt with at the hearing.

In preparation of the hearing, the applicant Government submitted additional documentary material on 11 and 13 June 1996. The respondent Government submitted a brief on 24 June and further documents on the day of the hearing, 28 June 1996.

At the hearing, the parties were represented as follows:

- the applicant Government:  
Mr. Alecos MARKIDES, Attorney General of the Republic, Agent of the Government, assisted by the following Counsel: Mr. Ian BROWNLIE, Q.C., Member of the English Bar; Prof. Malcolm SHAW, University of Leicester, Barrister-at-Law; Mr. Polyvios POLIVIOU, Barrister-at-Law; Mrs. Stella Mary JOANNIDES, Council of the Republic; Dr. Claire PALLEY, Consultant to the Ministry of Foreign Affairs; and Mr. Nicos EMILIOU, Consultant to the Ministry of Foreign Affairs;
- the respondent Government:  
Prof. Dr. Bakir ÇAGLAR, Agent of the Government, assisted by the following Counsel: Prof. Dr. Heribert GOLSONG, Mr. Zaim NECATIGIL, Mrs. Denis AKÇAY, Mr. Özer KORAY, Mr. Ertugrul APAKAN, Mr. Türel ÖZKAROL and Mr. Aydin AKAY.

## THE LAW

In their written and oral submissions the respondent Government have raised a number of objections to the admissibility of the application. The Commission will examine these objections under the following headings:

- I. Alleged lack of jurisdiction and responsibility of the respondent Government in respect of the acts complained of by the applicant Government;
  - II. Alleged identity of the present application with the previous applications introduced by the applicant Government against the respondent Government, and alleged abuse of the Convention procedure by the applicant Government;
  - III. Alleged special agreement to settle the dispute by means of other international procedures;
  - IV. Alleged failure to exhaust domestic remedies and to comply with the six months rule.
- I. Alleged lack of jurisdiction and responsibility of the respondent Government in respect of the acts complained of by the applicant Government

The respondent Government claim that the facts alleged do not fall within their "jurisdiction" within the meaning of Article 1 (Art. 1) of the Convention. They deny their responsibility for the alleged violations, due to the absence of Turkish authority in northern Cyprus and the omnipresence of Turkish Cypriot authority.

The respondent Government argue that the questions of "jurisdiction" and "imputability" belong in principle to the merits stage of the procedure. Nevertheless they have submitted a number of arguments concerning these questions already at the admissibility stage.

In the respondent Government's submission, the concept of "jurisdiction" within the meaning of Article 1 (Art. 1) of the Convention does not necessarily coincide with the notion of international State responsibility. In their submission a distinction must be made in this respect between the exercise of "territorial jurisdiction" and "personal jurisdiction". International responsibility coincides with territorial jurisdiction where it is exercised on a State's own national territory. Responsibility under the Convention for exercise of territorial jurisdiction outside the national territory is exhaustively regulated in Article 63 (Art. 63) of the Convention. It presupposes a situation where the State concerned is responsible for the international relations of the territory in question and requires a special declaration to be made at the time of ratification or later. This will circumscribe the applicability of the Convention *ratione loci*. The respondent Government refer by way of example to the Commission's decision concerning an application against the United Kingdom which was rejected on the ground that the facts complained of had occurred in Hong Kong for which no declaration had been made under Article 63 (Art. 63) (No. 16137/90, Dec. 12.3.90, D.R. 65 p. 330).

Also in the decision on the admissibility of applications Nos. 6780/74 and 6950/75 introduced by Cyprus against Turkey (Dec. 26.5.75, D.R. 2 p. 125), the Commission did not state that northern Cyprus was within the territorial jurisdiction of Turkey. Rather, Turkey was held to be responsible on the basis of personal jurisdiction exercised by her agents outside the national territory over the alleged victims of violations of the Convention. Quoting this decision, the same approach was adopted by the Court in its *Drozd and Janousek v. France and Spain* judgment of 26 June 1992 (Series A no. 240). The respondent Government submit that in the case of exercise of such personal jurisdiction it is necessary in each case to prove the causal link between the action of a State official and the alleged facts. It must be shown that at the time of the incriminated acts the State authorities exercised effective control over the victims, this being a question of fact. In the respondent Government's submission the applicant Government wrongly seek to be relieved from having to demonstrate on a case by case basis the imputability to Turkey of the various acts complained of, relying only on the allegedly illegal presence of Turkish troops along the cease-fire line and disregarding the fact that there is no global territorial jurisdiction of Turkey in northern Cyprus.

The respondent Government contend that there is no military occupation of northern Cyprus by Turkey, but rather that there has been an evolution towards the creation of their own independent State by the Turkish Cypriot community in exercise of their right to self-determination. In this respect, the respondent Government refer in detail to the history of Cyprus since 1960 emphasising in particular:

(i) 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;

(ii) 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;

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

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

(v) 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;

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

(vii) the alleged 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 intercommunal talks;

(viii) the contention that 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 it was not secession as the bi-communal Republic of Cyprus had ceased to function due to the actions of the Greek Cypriot side since 1963;

(ix) the contention that the subsequent development of TRNC institutions was legitimate and in line with democratic principles and that it consolidated the statehood of the TRNC according to criteria accepted in international law;

(x) that despite the fact that it has not been recognised de iure by any other State than Turkey, the TRNC exists de facto as an independent State exercising all branches of State power on its territory - the respondent Government invoke de facto recognition of the TRNC by the courts of several States and the fact that Turkey has recognised the TRNC de iure and does not claim for herself to exercise power in that area;

(xi) finally as regards the role of the Turkish forces in northern Cyprus, the respondent Government claim that they are there in a peace-keeping function at the request and with the consent of the TRNC, that they act under the latter's authority and do not themselves exercise governmental power. It is claimed that their status is not essentially different from that of Greek military forces in southern Cyprus.

The respondent Government therefore refute the applicant Government's submission that Turkey exercises overall control and jurisdiction in northern Cyprus and that this creates an "irrebuttable presumption of Turkish control and responsibility". The respondent Government claim that already in its Reports concerning the earlier inter-state cases the Commission qualified the finding as to Turkish jurisdiction in northern Cyprus by limiting it to the border area. They further observe that the alleged assumption of responsibility cannot be irrebuttable, because the Commission examined whether the particular acts complained of were in fact imputable to Turkey.

This approach was also followed by the Commission in applications Nos. 15299/89 and 15300/89, Chrysostomos and Papachrysostomou v. Turkey. In its Report of 8 July 1993 the Commission again limited its

finding of Turkish responsibility to the border area due to "overall control exercised by Turkish forces in that area". However, the Commission also found that the applicants' subsequent detention and trial were not imputable to Turkey, thus accepting that there was no control by Turkey over the prison administration or the administration of justice by Turkish Cypriot authorities, and furthermore taking cognizance of the law in force in the TRNC by finding that the detention had been "lawful" and "in accordance with a procedure prescribed by law".

The applicant Government refute all these arguments.

In their submission, the provisions of the Convention must be applied having regard to the general principles of international law concerning State responsibility. Under these principles, it is a sufficient condition for holding a State responsible under international law if it exercises effective control over a given territory. In the applicant Government's view Turkey, as the State in exclusive occupation and control of northern Cyprus, therefore is the only international person legally accountable in international law for events in the entire occupied area, including any violations of the Convention. Because of its overall control it has the physical ability to impose its will on the area and its residents, and thus exercises "jurisdiction" within the meaning of Article 1 (Art. 1) of the Convention over all persons and property in that area. The exercise of jurisdiction creates an irrebuttable presumption of control and responsibility. The concept of "control" must be understood in a legal context and it does not require the actual presence of Turkish armed forces at the scene of a violation.

In the applicant Government's submission Turkey cannot avoid her legal responsibility by claiming that the acts complained of are imputable to the TRNC. The creation of local administrative structures or "puppet institutions" in northern Cyprus has been sponsored by the Turkish mainland authorities which in fact continue to control and direct these institutions. Their establishment has been declared illegal and invalid by the UN Security Council and States have not recognised, and are obliged not to recognise, the TRNC, which thus is not capable of exercising any jurisdiction of its own. Moreover, it is claimed that Turkish armed forces are stationed throughout the occupied area and that Turkish military courts exercise effective authority over civilians.

In support of their argument, the applicant Government rely in particular on the Eur. Court HR *Loizidou v. Turkey* (Preliminary Objections) judgment of 23 March 1995 (Series A no. 310) which in their submission confirms the view that Turkey must be considered as exercising effective control and thus jurisdiction within the meaning of Article 1 (Art. 1) of the Convention, over the entire area of northern Cyprus. At the same time the applicant Government criticise the approach adopted by the Commission in its Report concerning the *Chrysostomos and Papachrysostomou* case, where Turkey was not held responsible for certain acts of the TRNC authorities. They claim that the Commission's approach in that case was based on wrong assumptions concerning the legal status of the so-called "buffer zone" and the relationship between the Turkish and the Turkish Cypriot authorities.

The Commission agrees with the respondent Government that the question as to Turkey's "jurisdiction" in northern Cyprus and its responsibility under the Convention for the acts complained of must in principle be determined at the merits stage of the proceedings. Article 27 para. 2 (Art. 27-2) of the Convention, which permits the Commission to reject applications *inter alia* on the ground that they are incompatible with the provisions of the Convention, does not apply in respect of applications submitted under Article 24 (Art. 24) of the Convention and accordingly cannot be applied either in such applications where the respondent Government raise the objection that

particular complaints are incompatible with the Convention *ratione loci* or *ratione personae*. However, this cannot prevent the Commission from establishing already at this preliminary stage, under general principles governing the exercise of jurisdiction by international tribunals, whether it has any competence at all to deal with the matter laid before it.

In this respect, the Commission follows the approach adopted by the Court in the *Loizidou v. Turkey* (Preliminary Objections) judgment of 23 March 1995. It will limit the examination to the question whether its competence to examine the applicant Government's complaints is excluded on the grounds that they concern matters which cannot fall within the "jurisdiction" of the respondent Government (*loc. cit.*, p. 23, para. 60), leaving open, at this stage, the question whether the respondent Government is actually responsible under the Convention for the acts which form the basis of the applicant Government's complaints and the further question as to which are the principles that govern State responsibility under the Convention in a situation like that obtaining in the northern part of Cyprus. The Commission's examination will thus be limited to determining whether the matters complained of by the applicant Government are capable of falling within the "jurisdiction" of Turkey even though they occur outside her national territory (*ibid.*, para. 61).

The Commission recalls that, although Article 1 (Art. 1) sets limits on the reach of the Convention, the concept of "jurisdiction" under this provision is not restricted to the national territory of the High Contracting Parties. In its above judgment, the Court quoted a number of examples from its case-law and then continued, with regard to the particular situation in the northern part of Cyprus:

"Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration." (*loc. cit.*, p. 24, para. 62)

The Commission notes that certain of the complaints submitted by the applicant Government in the present case relate to the loss of control of property by Greek Cypriots due to the presence of Turkish troops in the northern part of Cyprus and the establishment there of the TRNC, it being claimed that access to the property concerned is being prevented by Turkish troops. This situation is similar to that in the *Loizidou* application where the Court held that the acts complained of were capable of falling within Turkish "jurisdiction" within the meaning of Article 1 (Art. 1) (*loc. cit.*, p. 24, paras. 63-64). The Commission reaches the same conclusion concerning the above complaints.

The Commission has examined whether the various other complaints submitted by the applicant Government in the present application are also capable of falling within Turkey's jurisdiction in this sense. While a definitive answer cannot be given regarding each particular complaint at this stage, the Commission considers that, generally speaking, the applicant Government have sufficiently demonstrated the possibility of a direct or indirect involvement of Turkish authorities. The Commission therefore does not find reasons to exclude at this stage any part of the application on the ground that the acts complained of are *prima facie* incapable of falling within Turkish jurisdiction within the meaning of Article 1 (Art. 1).

This finding does not in any way prejudge the questions to be

determined at the merits stage of the proceedings, namely whether the matters complained of are actually imputable to Turkey and give rise to her responsibility under the Convention.

II. Alleged identity of the present application with the previous applications introduced by the applicant Government against the respondent Government, and alleged abuse of the Convention procedure by the applicant Government

The respondent Government claim that the present application is essentially a repetition of the previous applications Nos. 6780/74, 6950/75 and 8007/77. Claimant and respondent are identical and the alleged violations of the Convention are essentially the same as those covered by application No. 8007/77. The respondent Government contest that there are "continuing violations " and claim that in reality the applicant Government complain of the lasting consequences of instantaneous acts which occurred a long time ago and which under the Commission's case-law cannot as such give rise to new complaints. The acts or omissions complained of do not relate to new victims (e.g. no further persons went missing, and the 170,000 displaced Greek Cypriots and the separated families are the same as before) nor do they disclose new information (e.g. the problem of Turkish settlers, the alleged inhuman treatment of enclaved Greek Cypriots and the alleged violations of the rights of Turkish Cypriots had all been included in the previous application). The Convention articles invoked are the same as in application No. 8007/77, except for Articles 9, 10 and 11 (Art. 9, 10, 11) which were not cited in that case while the facts raised under those articles had indeed been mentioned. The only apparently new allegation concerns the alleged violation of Article 3 of Protocol No. 1 (P1-3), but in substance also this complaint had been contained in the previous application when the applicant Government complained of the autonomous State structure in northern Cyprus. The respondent Government moreover consider this apparent new allegation as wholly misconceived and unsubstantiated, lacking the requirement of a genuine allegation in the sense of Article 24 (Art. 24) of the Convention.

The respondent Government recall that an argument based on the principle "ne bis in idem" had been submitted by them already in application No. 8007/77, but had been rejected by the Commission. They nevertheless maintain that there should be a limit to repetitive applications and, even allowing for a different treatment of State applications in this respect, the Convention cannot be interpreted in such a way as to make it possible for inter-State applications to be brought ad infinitum. In their view the limit was exhausted with application No. 8007/77.

The respondent Government further submit that since the consideration of that case by the Commission the situation has changed in that Turkey has in the meantime accepted the compulsory jurisdiction of the Court by making a declaration to that effect under Article 46 (Art. 46) of the Convention. In this context, they submit that it is inadmissible and contrary to basic principles of the administration of justice that an attempt is now apparently being made by the applicant Government to raise the same matters again with a view to eventually bringing the case before the Court. This, it is claimed, violates not only a general principle of law to be found in all developed national legal systems, but also the basic concept of the Convention itself.

The principle in question is reflected in the Roman law adage "electa una via non datur recursus ad alteram", in the French concept of "procedural foreclosure", in the German and U.S. concepts of "claims preclusion" and in the common law principle of "procedural preclusion" or "collateral estoppel". The respondent Government submit that similarly the Convention system provides for two separate and mutually

exclusive channels for the final decision of any application under Article 24 or 25 (Art. 24, 25) of the Convention, one before the Committee of Ministers and the other before the Court. There is no link allowed between the two channels and their respective final decision-making body. Each decision made by either of these bodies is a matter of "res iudicata" within the legal framework of the Convention to the effect that neither body may reopen matters decided upon by the other body. The one cannot act as a court of appeal or revision over the decisions of the other.

In the present case, this must lead to the conclusion that the application is incompatible with the supervisory system of the Convention because the matters raised have already been dealt with in the previous inter-State applications and are "res iudicata" after the relevant decisions of the Committee of Ministers, Res. DH (79) 1 of 19 January 1979 concerning applications Nos. 6870/74 and 6950/75, and Res. DH (92) 12 of 2 April 1992 concerning application No. 8007/77. The respondent Government consider that these resolutions made under Article 32 (Art. 32) of the Convention have settled finally and with binding effect with respect to other bodies within the Convention system, the earlier cases introduced by the applicant Government, the Committee of Ministers not agreeing with the Commission's opinion and finding no violation by Turkey of any provisions of the Convention.

In the respondent Government's opinion the applicant Government's apparent attempt to have the above rulings of the Committee of Ministers "revised" by the Court, also amounts to an abuse of the Convention procedure.

The applicant Government refute these arguments and claim that they are entitled to complain of continuing violations in respect of situations which have already been dealt with in the Commission's earlier reports. The continuing violations in question relate to a different period not covered by these reports, and they are supported by new facts which have occurred since the adoption of the last report and which have led to an intensification and aggravation of the violations in question. It is further claimed that certain of the complaints raised in the present application are entirely new.

In the applicant Government's view there can be no question of "res iudicata" as the alleged violations are continuing and the decisions concerning the earlier cases produce no forward effect. In any event they claim that the Committee of Ministers' resolutions in these earlier cases were not sufficiently specific to constitute decisions with "res iudicata" effect; rather these resolutions must be regarded as non-decisions.

The Commission recalls its decision on the admissibility of the previous inter-State application between the same parties (No. 8007/77, Dec. 10.7.78, D.R. 13, p. 85) where it was confronted with similar arguments of the respondent Government. The Commission reiterates that, having regard to the clear terms of Article 27 para. 1 (b) (Art. 27-1-b) of the Convention, it cannot find that it is authorised under the Convention to declare inadmissible an application filed under Article 24 (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 in inter-State cases must be entirely reserved for the post-admissibility stage (*loc. cit.*, p. 155, para. 49). This does not exclude, however, that the Commission will have to consider at the merits stage whether and, if so, to which extent the present inter-State application is substantially the same as a previous one. As the Commission observed in its Report on the above application (No. 8007/77, Comm. Report 4.10.83, D.R. 72, p. 5), Article 27 para. 1 (b) (Art. 27-1-b) of the Convention reflects a basic legal principle of procedure which in inter-State cases arises during the examination of

the merits. It cannot be the Commission's task again to investigate complaints already examined in a previous case, and a State cannot therefore, except in specific circumstances, claim an interest to have new findings made where the Commission has already adopted a Report under Article 31 (Art. 31) of the Convention concerning the same matter (loc. cit., p. 22, para. 56).

The Commission therefore reserves the question whether and, if so, to which extent the applicant Government can have a valid legal interest in the determination of the alleged continuing violations of the Convention insofar as they have already been dealt with in previous Reports of the Commission. The Commission notes, in this context, that at least some of the complaints raised do not seem to be covered by definitive findings in earlier Reports, and some others seem to concern entirely new facts.

As to the further argument of the respondent Government that the Commission is precluded from examining the present application by virtue of an alleged "res iudicata" effect of the Committee of Ministers' decisions concerning the previous inter-State applications, this could apply only to the extent that the subject matter of the application is the same as that of the previous cases. As stated above, this is a question which can only be determined at the merits stage of the proceedings.

In any event, the Commission, having regard to the specific text of the Committee of Ministers' Resolution DH (79) 1 concerning Applications Nos. 6780/74 and 6950/75, did not accept a similar argument presented by the respondent Government in relation to Application No. 8007/77 and confirmed the applicant Government's legal interest in the determination of alleged continuing violations (Report 4.10.83, D.R. 72, p. 23, para. 62). The same must apply in the present case insofar as a precluding effect of the same Committee of Ministers' Resolution is invoked. As to any precluding effect attributed by the respondent Government to the Committee of Ministers Resolution DH (92) 12 concerning Application No. 8007/77, the Commission notes that this resolution merely authorised the publication of the Commission's Report, without containing any findings as to violations of the Convention. For this very reason there can be no "res iudicata" effect of this decision.

Insofar as the respondent Government claim that the applicant Government, by raising the same complaints again, apparently want to bring the matter before the European Court of Human Rights thereby abusing the Convention procedure in a manner incompatible with the structure of the Convention ("collateral estoppel"), the Commission observes that this argument, again, presupposes a pronouncement on the question whether the present application is identical to the previous ones, a matter which can only be decided at the merits stage. Apart from that, the Commission does not find it appropriate to speculate about the intentions of the parties concerning their further conduct of the proceedings. If in fact the applicant Government should decide in the future to bring the case before the Court, it would be for the latter to decide the question whether or not it is precluded from examining the application on the grounds invoked by the respondent Government.

The Commission also recalls that the Convention itself does not empower it to reject an application introduced under Article 24 (Art. 24) of the Convention as constituting an "abuse of the right of petition", Article 27 para. 2 (Art. 27-2) of the Convention being applicable only to applications lodged under Article 25 (Art. 25). Even if there should exist a general principle of law allowing the Commission to reject an inter-State application as inadmissible on the ground that it is manifestly abusive (cf. No. 8007/77, Dec. 3.10.78, D.R. 13 p. 78, para. 56 at p. 156), the Commission does not find this to be the case in the present application.

For all these reasons, the respondent Government's above objections to the admissibility of the application must be dismissed.

III. Alleged special agreement to settle the dispute by means of other international procedures

The respondent Government invoke Article 62 (Art. 62) of the Convention and claim that there exists a "special agreement" within the meaning of this provision by which the parties undertook to settle their dispute within the framework of the United Nations. In this respect it is claimed that, in fact, all the matters raised by the present application are directly or indirectly handled within the United Nations, by the Secretary General acting under the direction of the Security Council. The Secretary General's mission of good offices established by a Security Council resolution of March 1975 involved the convening of the parties under new agreed procedures. The 1977 and 1979 high-level agreements between the leaders of the two communities laid the "common ground" for the subsequent intercommunal talks, the Secretary General stating in his inaugural address of August 1980 that both parties supported a federal solution of the constitutional aspect and a bi-zonal solution of the territorial aspect of the Cyprus problem. The intercommunal talks are being conducted on an "equal footing" between the two communities with the objective of elaborating a new constitution for the state of Cyprus on a federal, bi-communal and bi-zonal basis. The Secretary General of the United Nations has repeatedly stressed the importance of the intercommunal talks as the best available method for pursuing the negotiating process, and the basic principles proposed by the Secretary General as the basis for these negotiations have been accepted by the parties.

The respondent Government further observe that both parties are members of the UN Security Council and that they have consistently voted since 1974 for the involvement of the United Nations in finding a peaceful solution. The Security Council acts under Chapter VI of the UN Charter, which implies as an essential ingredient the agreement of all parties concerned, i.e. no decision can be imposed on any of the parties against its will. It is further submitted that while the UN efforts are directed immediately to an understanding between the Greek Cypriot and Turkish Cypriot communities, they are also labelled to include three other concerned parties, namely Greece, the United Kingdom and Turkey. Thus, all steps taken within the United Nations have the agreement of the five concerned parties, including the applicant Government.

In the respondent Government's submission the procedures laid out by the Security Council for the intercommunal talks amount to a "special agreement" as provided for in Article 62 (Art. 62) of the Convention. There is a mutual binding commitment within the meaning of this provision, if not in the shape of a formal agreement then at least in that of an implied agreement or a set of concordant unilateral declarations having the effect of a mutual agreement.

The relevance of the UN Security Council's efforts was sufficiently underscored, for identical issues of alleged human rights violations, by the Council of Europe's Committee of Ministers in its resolutions on the previous inter-State cases. The Committee of Ministers was fully aware of the relevance of the intercommunal talks when it expressed the conviction "that the enduring protection of human rights in Cyprus can only be brought about through the re-establishment of peace and confidence between the two communities and that intercommunal talks constitute the appropriate framework for reaching a solution of the dispute" (Res. DH(79)1, loc.cit.). The respondent Government point out that the Committee of Ministers strongly urged the parties to resume intercommunal talks under the auspices of the UN

Secretary General and that more recently the Parliamentary Assembly of the Council of Europe also urged the political leaders of both communities to accept the proposals of the Secretary General, proposals which include regulation of fundamental rights such as freedom of movement, freedom of settlement and rights of property.

The respondent Government state that they encourage an early negotiated settlement on this basis. They consider that any attempt by the Greek Cypriot side to resort to international and regional forums is bound to prejudice the intercommunal talks and that therefore the applicant Government should be estopped from renegeing on the agreed principles that form the basis of these talks.

As regards the activities of the Committee on Missing Persons, the respondent Government recall the agreement on the terms of reference for the establishment of this Committee (1981), on the rules of procedure (1984), on the guidelines for investigations (1995) and the criteria of the UN Secretary General which have been accepted by both sides. They claim that the activities of the Committee were delayed by procedural difficulties for which the Greek Cypriot side was responsible, because until 1994 they submitted only 548 cases for investigation and refused to submit further cases. These difficulties have now been overcome, the Greek Cypriot side having submitted all their cases by December 1995, the number of these cases now being reduced to 1493. The respondent Government submit that therefore an adequate and exclusive agreed forum exists to examine the question of missing persons, and that the mechanism established in this context also amounts to a special agreement under Article 62 (Art. 62) of the Convention.

The applicant Government deny that there is a special agreement under Article 62 (Art. 62) of the Convention by which they undertook to deal with the matters raised in the application exclusively within the framework of the United Nations. In their submission the respondent Government distort the meaning of Article 62 (Art. 62). This provision has no application to procedures which are not by way of petition, such as political negotiations (the intercommunal talks) or humanitarian activities (the Committee on Missing Persons). Also, the parties to the intercommunal talks and to the Committee on Missing Persons are different from the parties to the present application: they only concern the two Cypriot communities and do not involve Turkey. Moreover, neither the intercommunal talks, with the objective of reaching a political settlement of the Cyprus problem, nor the activities of the Committee on Missing Persons, with the objective of ascertaining the fate of missing persons, concern a dispute arising out of the interpretation or application of the Convention. Finally, the applicant Government submit that Article 62 (Art. 62) is designed to secure the autonomy of the Convention system by preventing States involved in such a dispute from using means of settlement other than those set out in the Convention. Its function cannot be to stop States from coming to Strasbourg to ensure collective enforcement of the European public order, in particular where, as in the present case, the complaints relate to alleged massive violations of human rights protected in the Convention. The applicant Government also rely on case-law of the International Court of Justice according to which a judicial body which as such is competent to deal with a dispute is not deprived of its jurisdiction by ongoing settlement negotiations concerning the same matter.

Article 62 (Art. 62) of the Convention reads as follows:

"The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention."

The Commission has never before been called upon to examine the meaning of this provision, nor is there any relevant case-law of the Court in this respect. However, the Commission considers that, having regard to the wording of Article 62 (Art. 62) itself and the aim and purpose of the Convention as a whole, the possibility for a High Contracting Party of withdrawing a case from the jurisdiction of the Convention organs on the ground that it has entered into a special agreement with the other High Contracting Party concerned, is given only in exceptional circumstances.

The principle stipulated in Article 62 (Art. 62) is the monopoly of the Convention institutions for deciding disputes arising out of the interpretation and application of the Convention. The High Contracting Parties agree not to avail themselves of other treaties, conventions and declarations in force between them for the purpose of submitting such disputes to other means of settlement. Only exceptionally is a departure from this principle permitted, subject to the existence of a "special agreement" between the High Contracting Parties concerned, permitting the submission of the dispute - concerning "the interpretation or application of the Convention" - to an alternative means of settlement "by way of petition".

The Commission considers that the conditions for invoking such a special agreement are not fulfilled in the present case. A primary condition, namely the consent of both High Contracting Parties concerned to withdraw the particular dispute from the jurisdiction of the Convention organs, is lacking, the applicant Government clearly opposing such a way of proceeding. Even assuming that both Turkey and Cyprus are bound by international obligations concerning the intercommunal talks and the Committee on Missing Persons, it is difficult to see how this could amount to a "special agreement" between them to resort exclusively to these means of settlement precluding the Convention organs from performing their normal functions. The parties to the agreements establishing the intercommunal talks and the Committee on Missing Persons are formally different from the parties to the present proceedings. In particular, Turkey is not a formal party to these agreements. Moreover, neither agreement relates specifically to the settlement of a dispute on the interpretation or application of the Convention, let alone the particular dispute now submitted to the Commission. Nor is it provided in these agreements that any such dispute can be submitted to the intercommunal talks or the Committee on Missing Persons "by way of petition".

The Commission concludes that it is not prevented from examining the present application on the ground that there exists a "special agreement" to this effect between the two High Contracting Parties concerned. The Commission would add that, generally speaking, the performance of its functions under Article 19 (Art. 19) of the Convention cannot in any way be impeded by the fact that certain aspects of the situation underlying an application filed with it are being dealt with, from a different angle, by other international bodies.

The respondent Government's above objection to the admissibility of the application must accordingly be rejected.

#### IV. Alleged failure to exhaust domestic remedies and to comply with the six months rule

Under Article 26 (Art. 26) of the Convention the Commission may only deal with a case after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

The Commission has in the previous cases between the same parties confirmed its case-law according to which the rule requiring the exhaustion of domestic remedies applies not only in individual applications lodged under Article 25 (Art. 25) but also in cases brought by States under Article 24 (Art. 24) of the Convention. This rule means in principle that remedies, which are shown to exist within the legal system of the responsible State, must be used and exhausted in the normal way before the Commission is seized of a case; on the other hand remedies which do not offer a possibility of redressing the alleged injury or damage cannot be regarded as effective or sufficient and need not, therefore, be exhausted.

The respondent Government submit that the alleged victims of violations of the Convention have made no use of the judicial system set up by the TRNC, which comprises effective and adequate institutional guarantees. The TRNC Constitution is based on the principles of the rule of law and supremacy of the Constitution (Articles 1 and 7), it provides for an independent judiciary (Articles 136, 137, 141 and 150) and for effective judicial control of executive and legislative activity (Articles 146-148 and 152). Article 17 (Art. 17) relating to fair and public hearing is similar to Article 6 (Art. 6) of the Convention and prohibits the establishment of judicial committees or special courts under any name whatsoever. No one is denied the right to have any criminal charge brought against him to be heard by an independent and impartial tribunal. No act of the administration can be excluded from judicial review. Article 152 provides for judicial review of administrative action on the grounds of excess and/or abuse of power, illegality and unconstitutionality. Military courts function under Articles 156 and 157 and have competence to try only military offences defined in special laws. It is only in rare cases, as when an offence has been committed in a military area, that civilians may be tried by military courts. There is also provision for judicial review of legislation by way of reference to the Supreme Constitutional Court (Article 148) and institution of proceedings for annulment of legislation and subsidiary legislation (Article 147).

The respondent Government claim that the existence of an effective and independent judicial system in the TRNC has also been recognised in the Commission's own case-law. They refer to the Commission's Report of 8 July 1993 on applications Nos. 15299/89 and 15300/89, *Chrysostomos and Papachrysostomou v. Turkey*. In paragraph 169 of that Report, the Commission found that there was no indication of control exercised by Turkish authorities over the administration of justice by Turkish Cypriot authorities. In paragraph 174 the Commission recognised the existence of an effective remedy before the national authority in northern Cyprus when it noted that the applicants in that case had been brought before judicial authorities which they refused to recognise, and that they had not wished to avail themselves of such remedies as might have been available to them with regard to the circumstances of their arrest by Turkish Cypriot police. The Commission concluded that in the circumstances there was no breach of Article 13 (Art. 13) of the Convention.

The respondent Government further submit that the question of exhaustion of domestic remedies must be approached on a case by case basis having regard to the particular violations of the Convention alleged by the applicant Government. They point out in particular that the alleged Turkish Cypriot victims and the Greek Cypriot victims from the Karpas area did not make use of the remedies available to them in the TRNC. In this respect the respondent Government have submitted a list of cases brought by Greek Cypriots in Turkish Cypriot courts and which includes inter alia cases relating to trespass by other persons and unlawful cultivation of land belonging to Greek Cypriot plaintiffs in the Karpas area and where the claims of the plaintiffs were accepted by the competent TRNC courts.

The applicant Government refute these arguments. They claim that any remedies which may exist in Turkey or in the TRNC are not practical and effective for Greek Cypriots living in the Government-controlled area; and that they are ineffective for enclaved Greek Cypriots or Turkish Cypriots having regard to the particular nature of the complaints and the legal and administrative framework set up in the north of Cyprus; as regards the case-law of TRNC "courts" referred to by the respondent Government, the applicant Government claim that it relates to situations different from those complained of in the present application, i.e. to disputes between private parties and not to challenges to legislation and administrative action.

With regard to the question whether the remedies indicated by the respondent Government can in the circumstances of the present case be considered as effective, the Commission first observes that some of the complaints, in particular those concerning property rights, relate to the implementation of purported legislative acts of the TRNC, and that, according to the Commission's case-law, the rule requiring the exhaustion of domestic remedies does not apply to complaints the object of which is to determine the compatibility with the Convention of legislative measures and administrative practices, except where specific and effective remedies against legislation exist. It is true that in the TRNC the judicial review of "legislation" as to its "constitutionality" is provided for, but in the particular circumstances of the present case this is of no avail because the measures complained of are essentially stipulated in the TRNC "Constitution" itself.

The Commission has noted the respondent Government's reference to the existence of effective remedies in the TRNC and the survey of case-law which has been presented to it on the occasion of the oral hearing. In this respect the Commission recalls its findings in the decision on the admissibility of Application No. 8007/77 (D.R. 13, p. 152, paras. 36-37) according to which the overwhelming majority of Greek Cypriots, whose rights and freedoms under the Convention are alleged to have been violated, are at present resident in the southern part of Cyprus controlled by the applicant Government and are not permitted by the Turkish authorities to enter the northern part of the island. In these circumstances, any remedies which might be said to be available to such Greek Cypriots in the northern area cannot on principle be considered as "practicable".

The Commission has further noted, in particular as to the alleged violation of property rights of Greek Cypriots still resident in the north of the island, that it does not appear from the cases referred to in the above material submitted by the respondent Government that the proceedings concerned interferences with property rights as alleged in the present application - namely, interferences by a public authority or by private persons acting with the consent of such an authority, as described in the "Particulars of the application".

It follows 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.

Apart from these considerations, the Commission considers it relevant to observe that, in distinction from the previous applications, the respondent Government in the present case rely exclusively on remedies which are claimed to be available before Turkish Cypriot authorities whereas the applicant Government claim that these authorities are de facto under the control of Turkey. The Commission also notes the applicant Government's submission according to which these remedies are generally ineffective for Greek Cypriots, and the related complaints submitted under Article 13 (Art. 13) of the Convention. In the light of the Court's *Loizidou* (Preliminary Objections) judgment according to which Turkish responsibility under

the Convention may arise also where it exercises control over an area outside its national territory "through a subordinate local administration" (loc. cit. p. 24, para. 62), it appears that the question of the exhaustion of domestic remedies before TRNC courts is closely related to the issue of Turkish "jurisdiction" which can only be determined at the merits stage of the proceedings. To this extent the Commission must accordingly reserve the final determination to the later stage of the proceedings.

The Commission concludes that the application cannot be rejected under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention for non-exhaustion of domestic remedies.

The respondent Government also submit that at least part of the application is inadmissible for non-observance of the six months rule laid down in Article 26 (Art. 26). They claim that the applicant Government's complaints, in particular those relating to missing and displaced persons, do not concern continuing violations, but instantaneous acts which occurred a long time ago and which are therefore time-barred.

The applicant Government maintain that the application concerns "continuing violations" within the meaning of the Commission's case-law to which the six months rule is not applicable.

In this respect, the Commission reiterates its findings in the decision on the admissibility of Application No. 8007/77 according to which, on the one hand, in the absence of remedies, the six months period must be counted as from the act or decision which is alleged to be in violation of the Convention, but on the other hand, it does not apply to a permanent state of affairs which is still continuing. As the present application alleges for the most part continuing violations of the Convention, in respect of which the Commission cannot at the present stage of the proceedings examine whether or not they are well-founded, because this would imply a preliminary examination of the merits of the case, it must reserve this question for later consideration (loc. cit., pp. 153-154, paras. 43-45).

The Commission concludes that the application cannot be rejected under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention for non-observance of the six months rule.

For these reasons, the Commission, unanimously,

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

H.C. KRÜGER

S. TRECHSEL

Secretary  
to the Commission

President  
of the Commission