EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No.25781/94

CYPRUS

against

TURKEY

REPORT OF THE COMMISSION

(adopted on 4 June 1999)

TABLE OF CONTENTS

TABLE OF CONTENTS

I. INTRODUCTION

A. BACKGROUND

1. This Report deals with the fourth application (No. 25781/94) introduced by Cyprus against Turkey under former Article 24 of the European Convention on Human Rights. [1]

1) Previous inter-State applications

2. The Commission recalls that it has already dealt with three earlier applications by Cyprus against Turkey under former Article 24 of the Convention which all related to the consequences of the Turkish military operations in northern Cyprus in July and August 1974.

3. In their first application, introduced on 19 September 1974 (No. 6780/74), the applicant Government stated that Turkey had on 20 July 1974 invaded Cyprus, had by 30 July occupied a sizeable area in the north of the island and by 14 August 1974 extended its occupation to about 40% of the territory of the Republic. The applicant Government alleged violations of Articles 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Article 1 of Protocol No. 1 and of Article 14 of the Convention in conjunction with the aforementioned Articles.

4. In their second application, introduced on 21 March 1975 (No. 6950/75), the applicant Government contended that, by acts unconnected with any military operation, Turkey had, since the introduction of the first application, committed, and continued to commit, further violations of the above Articles in the occupied territory.

5. The Commission joined the two applications and, after having obtained both parties' written and oral observations, declared them admissible on 26 May 1975 (cf. D.R. 2 p. 125 ff). The respondent Government subsequently refused to take part in the Commission's proceedings on the merits of the case, including in particular an investigation carried out by a Delegation of the Commission in Cyprus. Despite their refusal to take part in the proceedings, the respondent Government were informed of all steps in the proceedings and given the opportunity to react thereto, but did not in fact do so.

6. In its Report of 10 July 1976 (hereafter referred to as "the 1976 Report"), the Commission considered that, notwithstanding the respondent Government's failure to participate in the proceedings on the merits, it was required to perform its functions under former Articles 28 and 31 of the Convention. It therefore established the facts on the basis of the material before it and concluded that Turkey had violated Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 (cf. pages 163 to 167 of the 1976 Report).

7. The Committee of Ministers of the Council of Europe, on 20 January 1979, adopted Resolution DH (79) 1 concerning the above two applications. The Resolution referred to the Committee of Ministers' decision of 21 October 1977 by which it

- had taken note of the Commission's Report as well as of a Memorial of the Turkish Government and found that events which occurred in Cyprus constituted violations of the Convention,

[1] The reference to former Articles of the Convention means the text of the Convention prior to the entry into force of Protocol No. 11 to the Convention on 1 November 1998.

- had asked that measures be taken in order to put an end to such violations as might continue to occur and so that such events were not repeated,

- and consequently had urged the parties to resume intercommunal talks.

Considering with regret that this request had not been taken up by the parties concerned, the Committee of Ministers then 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" and decided "strongly to urge the parties to resume intercommunal talks under the auspices of the Secretary General of the United Nations in order to agree upon solutions on all aspects of the dispute". Finally, the Committee of Ministers stated that it "views this decision as completing its consideration of the case Cyprus against Turkey".

8. In the meantime, the applicant Government had on 6 September 1977 introduced a third application (No. 8007/77), in which they contended that Turkey continued to commit breaches of Articles 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and of Articles 1 and 2 of Protocol No. 1 and Article 14 of the Convention in conjunction with the aforementioned Articles after the termination of the Commission's investigations in the previous case. Having obtained written and oral observations from both parties, the Commission declared this application admissible on 10 July 1978 (cf. D.R. 13, p. 85 ff).

9. At the merits stage, the respondent Government again refused to take part in the Commission's proceedings. In an Interim Report adopted on 12 July 1980 the Commission informed the Committee of Ministers of the state of the proceedings and requested it to urge Turkey to meet its obligations under the Convention and accordingly to participate in the Commission's examination. In a decision adopted by the Ministers' Deputies during their 326th meeting (24 November to 4 December 1980) the Committee of Ministers recalled "the obligations imposed on all the Contracting Parties by [former] Article 28 of the European Convention for the Protection of Human Rights and Fundamental Freedoms".

10. However, even after that decision the respondent Government stated that they found it impossible to participate in the Commission's procedure on the merits of the case. In the particular circumstances, the Commission, through Delegates, heard witnesses' evidence on one aspect of the case (missing persons) in the absence of both parties. Only the applicant Government submitted observations in writing and were represented at a hearing before the Commission.

11. In its Report of 4 October 1983 concerning Application No. 8007/77 (D.R. 72, p. 5 ff, hereafter referred to as "the 1983 Report"), the Commission concluded that Turkey had violated Articles 5 and 8 of the Convention and Article 1 of Protocol No 1. It confirmed earlier findings on absence of remedies and discrimination, but in the absence of sufficient evidence did not come to any conclusion concerning the position of Turkish Cypriots (*ibid.*, pp. 50 - 51).

12. The Committee of Ministers of the Council of Europe, on 2 April 1992, adopted Resolution DH (92) 12 concerning Application No. 8007/77. It decided to make public the Commission's above Report, thereby completing its consideration of the case (cf. D.R. 72, p. 62).

2) Individual applications

13. Following Turkey's recognition, as from 28 January 1987, of the Commission's competence to receive individual applications under former Article 25 of the Convention, applications in relation to the situation in northern Cyprus have also been introduced against Turkey by individual applicants on a number of occasions.

14. Three such applications (Nos. 15299, 15300 & 15318/89, Metropolitan Chrysostomos, Archimandrite Georgios Papachrysostomou and Titina Loizidou v. Turkey) were jointly declared admissible on 4 March 1991 (see D.R. 68, p. 216). On 8 July 1993 the Commission adopted separate Reports concerning Applications Nos. 15299-15300/89 (Chrysostomos and Papachrysostomou v. Turkey, see D.R. 86-A, p. 4) and concerning Application No. 15318/89 (Loizidou v. Turkey, see Publications of the Court, Series A no. 310, p. 46).

15. The former case was subsequently dealt with by the Committee of Ministers which, on 19 October 1995, adopted a resolution (DH (95) 245; see D.R. 86-A, p. 51) confirming the Commission's findings, namely that there had been no violation of the Convention Articles invoked by the applicants (Articles 3, 5 para. 1, 8 and 13) except for a violation of Article 8 as regards the second applicant. Part of the reasoning in the Commission's above Report was based on the consideration that Turkey could not be held responsible under the Convention for acts of the Turkish Cypriot authorities in northern Cyprus.

16. Part of the Loizidou case (the complaints under Article 8 of the Convention and under Article 1 of Protocol No. 1 with regard to access to property) was referred to the Court by the Government of the Republic of Cyprus pursuant to former Article 48 (b) of the Convention, Turkey having in the meantime, on 22 January 1990, recognised the Court's compulsory jurisdiction by a declaration made under former Article 46 of the Convention. By a judgment of 23 March 1995 (Series A no. 310) the Court rejected the preliminary objections raised by the Government of Turkey, holding in particular that the acts complained of were capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention, responsibility of a Contracting Party also arising when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory and irrespective of whether such control is exercised directly, through its armed forces, or through a subordinate local administration (*ibid*. p. 24, paras. 62 and 64). On 18 December 1996, the Court ruled on the merits of the case, holding that the denial of access to the applicant's property and consequent loss of control thereof was imputable to Turkey and constituted a breach of Article 1 of Protocol No. 1, but that there had been no breach of Article 8 of the Convention (Loizidou v. Turkey (merits) judgment, Reports of Judgments and Decisions 1996-VI, p. 2216). A judgment on the application of former Article 50 of the Convention in this case was issued by the Court on 28 July 1998 (Reports 1998-IV, p. 1807).

17. A considerable number of further individual applications relating to various aspects of the situation in northern Cyprus have been introduced against Turkey and are still pending before the Commission or the Court.

B. THE SUBSTANCE OF THE PRESENT APPLICATION

18. In the present application the applicant Government state that "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". They contend that since 4 October 1983, when the Commission adopted its Report in respect of Application No. 8007/77, Turkey continues to commit "in the Turkish occupied area of Cyprus" breaches 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.

19. The applicant Government's specific complaints will be set out in detail at the beginning of each Chapter of Part II of the present Report. The violations alleged by the applicant Government concern essentially the fate of Greek Cypriot missing persons, interference with the property and home of Greek Cypriot displaced persons, the living conditions of enclaved Greek Cypriots in the Karpas area, allegations of interference with electoral rights of displaced Greek Cypriots and the situation of Turkish Cypriots in northern Cyprus. Finally, the applicant Government complain under former Article 32 para. 4 of the Convention that Turkey has failed to put an end to the violations of the Convention established in the Commission's 1976 Report.

C. PROCEEDINGS BEFORE THE COMMISSION

20. The representatives of the Parties in the proceedings before the Commission were:

- Mr. Alecos MARKIDES, Attorney-General of the Republic of Cyprus, Agent for the applicant Government; and

- Professor Dr. Bakir ÇAĞLAR, Agent for the respondent Government at the admissibility stage, and Ambassador Riza TÜRMEN, Permanent Representative of the Republic of Turkey to the Council of Europe, and subsequently Professor Zaim M. NEÇATIGIL, acting as Agents for the respondent Government at the merits stage.

1) Proceedings on admissibility

21. The application was introduced on 22 November and registered on 24 November 1994. Particulars of the application were filed on 3 March 1995.

22. The respondent Government, in their written observations of 10 July 1995 on the admissibility of the application and in their oral submissions at the hearing on 28 June 1996, requested the Commission to declare the application inadmissible on the following grounds:

- that Turkey lacked jurisdiction and responsibility in respect of the territory of the "Turkish Republic of Northern Cyprus" ("TRNC"), where the alleged acts were claimed to have been committed;

- that the application was substantially the same as the previous applications Nos. 6780/74-695O/75 and 8007/77 introduced by Cyprus against Turkey, and that the introduction by the applicant Government of a new application concerning the same matters

despite an allegedly binding and final decision of the Committee of Ministers amounted to an abuse of the Convention procedure ("collateral estoppel");

- that there had been a special agreement under former Article 62 of the Convention to settle the dispute by means of other international procedures, namely the intercommunal talks and the UN Committee on Missing Persons;

- that domestic remedies had not been exhausted, as required by former Article 26 of the Convention, and that the time-limit of six months, laid down in former Article 26, for bringing a case before the Commission had not been observed.

23. In the cover letter of their observations of 10 July 1995, the respondent Government also stated that, by submitting observations on the admissibility of the application, they did not intend to accord any degree of recognition to the "Greek Cypriot Administration of Southern Cyprus" or of their "*locus standi*" in the present case.

24. In their written observations in reply of 19 December 1995 and their oral submissions at the hearing on 28 June 1996 the applicant Government contested all these arguments.

25. In its decision of 28 June 1996 on the admissibility of the application (D.R. 86-A, p. 104 ff = Appendix I to the present Report), the Commission found:

- that there were no reasons to exclude at this stage any part of the application on the ground that the acts complained of were *prima facie* incapable of falling within Turkish jurisdiction within the meaning of Article 1 of the Convention, and that it was to be determined at the merits stage of the proceedings whether the matters complained of were actually imputable to Turkey and gave rise to her responsibility under the Convention;

- that the Convention did not authorise it to declare inadmissible an application filed under former Article 24 of the Convention on the ground that it was substantially the same as a previous inter-State application, and that it must reserve for the merits the question whether and to which extent the applicant Government could have a valid legal interest in the determination of alleged continuing violations insofar as they had already been dealt with in previous Reports of the Commission;

- that the application could not be declared inadmissible on the ground of an alleged *res iudicata* effect of the Committee of Ministers' decisions concerning the previous inter-State applications nor on the ground that there was "collateral estoppel" because of an alleged abuse of the Convention procedure;

- that the conditions for invoking a "special agreement" under former Article 62 of the Convention were not fulfilled in the present case and that it was not therefore prevented from examining the application notwithstanding the fact that certain aspects of the situation underlying the application were being dealt with, from a different angle, by other international bodies;

- that the application could not be declared inadmissible for non-exhaustion of domestic remedies and that the question of the relevance of any remedies available before the authorities of the "Turkish Republic of Northern Cyprus" must be reserved for consideration at the merits stage;

- finally, that the application could not be rejected for failure to comply with the six months time-limit.

2) Proceedings on the merits

a) The respondent Government's initial refusal to participate in the proceedings on the merits

26. The applicant Government's observations on the merits, together with voluminous evidential materials, were filed on 7 February 1997.

27. The respondent Government did not submit observations on the merits within the time-limit fixed for this purpose. By letter of 6 February 1997 they informed the Commission that, for the reasons invoked at the stage of admissibility, they were unable to participate in the proceedings on the merits. The reasons in question were summarised as follows:

> "As it has been repeatedly stated in connection with the applications introduced against Turkey by the Greek Cypriot Administration of Southern Cyprus and most recently in connection with the current application in our letter of 10 July 1995, the Turkish Government continue to believe that the said Administration lacks the capacity to represent the Republic of Cyprus, whose bi-communal structure based on equal political status constituted the condition *sine qua non* of all international instruments by which the said Republic was established. The Turkish Cypriot community, one of the founding communities of the Republic, having been evicted from the bi-communal constitutional organs, has in a democratic manner given itself an autonomous government in the framework of the Turkish Republic of Northern Cyprus.
>
> The only object of the present application, which is no more than a repetition of the previous applications, is to circumvent the *res iudicata* effect, in particular for the Commission and the Court, of the binding decisions adopted in 1979 and 1992 by the Committee of Ministers which, being fully aware of the political and legal dimensions of the Cyprus question, manifestly refrained from pronouncing itself under [former] Article 32 para. 1 of the Convention.
>
> In this context, the Turkish Government wishes to recall that in its resolution DH (79) 1 the Committee of Ministers stated that it was
>
> > 'Convinced 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'.
>
> This 'framework' preserves its validity up to the present day. It has even been strengthened by the relevant resolutions of the UN Security Council according to which the Cyprus question constitutes an integrated whole all aspects of which must be negotiated between the two communities on an equal footing. It

is also necessary to underline that the UN Security Council has recognised the two communities as being politically equal.

The framework of the intercommunal talks constitutes the only and exclusive legitimate forum where any question concerning the dispute between the two communities can be raised.

The involvement of the supervisory organs of the Convention in these matters would conflict with the negotiating parameters on the Cyprus question and could only harm the future process of re-establishment of peace and confidence between the two communities."

28. In a communication of 21 February 1997 the applicant Government submitted that, as in the previous inter-State applications of Cyprus v. Turkey, the Commission could and should proceed with the examination of the merits of the application notwithstanding the respondent Government's failure to co-operate. In view of the nature of the application and in particular the situation in the Karpas area the applicant Government requested the Commission to expedite the proceedings and give the case priority.

29. On 1 March 1997 the Commission decided to continue the examination of the case and to inform the Committee of Ministers of the respondent Government's refusal to participate in the proceedings on the merits.

30. On 11 July 1997 the Committee of Ministers adopted Resolution DH (97) 335 in which it

- supported the stand taken by the Commission that, notwithstanding the respondent Government's refusal to co-operate, the Commission will continue its examination of the present case with a view to preparing a report under [former] Article 31 of the Convention;

- urged the Government of Turkey, as a High Contracting Party to the Convention, to meet its obligations under this Convention and consequently to participate in the Commission's examination of the merits of the Application as required by [former] Article 28, paragraph 1, of the Convention.

31. In the meantime, the Commission had, on 29 May 1997, decided

- that despite the respondent Government's attitude, it would continue to keep both parties informed of its procedural decisions and to address to either of them any requests which it deemed necessary for the fulfilment of its duties under former Article 28 para. 1 (a) of the Convention;

- to invite the respondent Government to submit information on legal remedies which might be available in respect of the applicant Government's various complaints before the Turkish Cypriot authorities in northern Cyprus, including legislation and regulations applicable in northern Cyprus;

- to carry out no further investigation on the issues of missing persons and of alleged interferences with the right to respect for the home of displaced persons and their right to the peaceful enjoyment of their possessions, and to reserve its decision as to an investigation of the remaining aspects of the case.

32. By letter of 31 July 1997, the respondent Government informed the Commission that they declined to respond to the questions addressed to them. They confirmed their decision not to take part in the proceedings before the Commission on the merits of the application "because of the fact that the Government considers the decision of the Commission to admit the application *ultra vires*".

b) Taking of evidence in Strasbourg

33. On 15 September 1997 the Commission decided to inform the Committee of Ministers of Turkey's continued refusal to co-operate in the Commission's proceedings on the merits; to invite the applicant Government to provide the information originally requested from the respondent Government on legal regulations and remedies in northern Cyprus; and to appoint three Delegates (MM. Trechsel, Jörundsson and Pellonpää) who should, at the end of November 1997 and in Strasbourg, hear witnesses' evidence on the situation of enclaved Greek Cypriots in the Karpas area and on the situation of Turkish Cypriots in northern Cyprus. The investigation should, however, exclude

- facts which are also the subject of individual applications pending before the Commission;

- situations which ended more than six months before the introduction of the application, i.e. before 22 May 1994;

- distinct facts which occurred after the Commission's decision on the admissibility of the application, i.e. after 28 June 1996.

The parties were informed of this decision by letters of 17 September 1997.

34. On 30 September 1997 the applicant Government indicated that they intended to propose several enclaved Greek Cypriots and Turkish Cypriots as witnesses without disclosing their identity, there being serious security concerns as regards these persons. They requested that these witnesses be heard in the absence of the respondent Government. They referred *inter alia* to the Strasbourg case-law under Article 6 of the Convention concerning the hearing of anonymous witnesses and to the decision of 10 August 1995 which the International Criminal Tribunal for the former Yugoslavia had adopted on protective measures for victims and witnesses in the Duško Tadić case.

35. On 24 October 1997 the applicant Government submitted a list of 24 witnesses of whom 6 were named whereas 18 remained unidentified. They requested permission to nominate a few additional witnesses at a later stage.

36. On 27 October 1997 the respondent Government asked for an extension of the time-limit for replying to the Commission's letter of 17 September 1997.

37. On 29 October 1997 the Commission decided

- to seek an immediate clarification from the respondent Government as to whether their letter of 27 October 1997 implied that they were henceforth prepared to fully take part in the Commission's proceedings;

- that the hearing of witnesses by the Delegates should begin during the period fixed at the end of November 1997, but that the taking of further evidence at a later stage in Strasbourg or elsewhere was not excluded;

- that the Delegates should hear those witnesses which were available at the November date including witnesses listed in the applicant Government's letter of 24 October 1997 and, if at all possible, also witnesses to be nominated by the respondent Government;

- that the hearing of witnesses should in principle take place with the participation of representatives of both parties, but that an appropriate screening system should be applied in respect of the witnesses who did not wish their identity to be disclosed, it being understood that these witnesses must identify themselves at least to the Principal Delegate;

- that the Delegates should determine any further issues concerning the hearing of witnesses and the security measures at this stage.

38. On 6 November 1997 the applicant Government submitted a list of ten witnesses who would be available to be heard in Strasbourg at the end of November, five of whom being unidentified. On 7 November 1997 the Commission's Delegates decided to hear them all on 27 and 28 November 1997.

39. Following an extension of the time-limit for clarifying their position, the respondent Government informed the Commission by letter of 17 November 1997 that they had decided to participate in the hearing of witnesses on 27 and 28 November; they also proposed three named witnesses to be heard on their behalf and announced the submission of a list of additional witnesses.

40. The respondent Government's participation was declared to be subject to the following conditions:

> "a) The participation in the hearing of the witnesses constitutes in no way a recognition of the Greek Cypriot authorities and of their *locus standi* in the present application, the Government thus reiterating its initial position on this point.
>
> b) The Turkish Government entirely reserve their position as to the question of the solution of the Cyprus problem according to the principles of bi-zonality and bi-communality based on equal rights of the two communities. In this context, the reasons why the Government had decided not to participate in the proceedings on the merits of the Greek Cypriot applications remain still valid.
>
> c) The Government firmly oppose the procedural methods of hearing evidence as set out in Mr. Markides' letter to the Commission of 30 September 1997 and reserves the right to reply to the allegations contained therein which are both unjust and manifestly ill-founded.
>
> d) The participation in the hearing of witnesses is to be seen in the context, on the one hand, of the effectiveness of Turkish Cypriot jurisdiction in

northern Cyprus and, on the other hand, of the absence of any jurisdiction of Turkey in respect of the allegations which form the subject-matter of the present application."

41. Also on 17 November 1997, the Delegates decided for technical reasons not to hear at this stage any witnesses proposed by the respondent Government. Pursuant to the mandate given to them by the Plenary Commission, the Delegates fixed the modalities for the hearing of the witnesses as follows:

"The hearing of the named witnesses will in principle take place in the presence of the parties. According to the Commission's established practice, the questioning of the witnesses will be done by the Delegates; the representatives of the parties will subsequently be given an opportunity of putting additional questions. There will thus be no cross-examination in the sense of the Anglo-American legal system.

The Commission has already accepted that the Delegates should also hear those witnesses listed in the letter of 24 October who have requested that their names should not be disclosed, and that in this respect appropriate security measures should be applied. Accordingly, the Delegates do not consider it necessary to investigate whether or not the fear expressed by these witnesses that they might be exposed to reprisals is in fact justified.

However, the taking of evidence from such witnesses will respect fundamental procedural principles enshrined in the Convention (cf. *inter alia*, the Lüdi, Kostovski and Van Mechelen judgments). Accordingly, it must be ensured that the respondent Government can sufficiently participate in the proceedings, comment on the evidence taken and present counter-evidence.

Therefore, the Delegates have decided that the hearing of the above witnesses should in principle be conducted in the same way as the hearing of certain unnamed witnesses in Applications Nos.14116-14117/88, Sargın and Yağcı v. Turkey, where security reasons of a similar nature were invoked by the respondent Government (cf. the Commission's Report of 17 January 1991, paras. 21, 30, 31 and 35 ...)

Accordingly, prior to their hearing the unnamed witnesses must identify themselves to the Principal Delegate in the presence of the applicant Government's Agent. At the subsequent questioning of the witnesses, the parties will not be present in the examination room, but will be able to follow from a different room the examination of these witnesses by the Delegates and subsequently put questions to them. In order to avoid the use of voice-altering devices, the sound transmission to that room will be based on the English interpretation of the witnesses' statements, the parties thus being provided with the same information as the Delegates all of whom understand neither Greek nor Turkish.

For the use of the Plenary Commission the testimony of all witnesses will be recorded in its entirety, on the basis of the original language in which the witnesses make their statements. This recording on magnetic tapes will

subsequently be transcribed in the original language and then translated into English. As it was accepted by the Delegates in the above-mentioned Sargın and Yağcı case at the respondent Government's request (para. 30), the full transcript of the evidence need not necessarily be communicated to the parties. To the extent requested by one of the parties, a summary record will be made available to both parties in respect of any evidence for which no full transcript is being provided.

Additionally, to meet the applicant Government's concerns both named and unnamed witnesses will be advised by the Delegates that they are free not to reply to questions if they feel that the answer could lead to their own identification or to that of other persons whom they consider to be at risk."

42. On 24 November 1997 the respondent Government, "with a view to contributing to a just evaluation of the evidence of the witnesses to be heard on 27-28 November" transmitted to the Commission "observations and information provided by the Turkish Cypriot authorities", i.e. two documents entitled respectively "Observations of the TRNC" and "Opinion by Zaim M. Neçatigil on matters raised by the Commission in its communication of 6 June 1997 to the Permanent Representative of Turkey to the Council of Europe".

43. On 26 November 1997 the applicant Government noted that the observations on the merits emanated from an "illegal entity" and that that they had been filed out of time. They further considered that Turkey had not clarified her own full participation in the proceedings as requested by the Commission and should therefore be excluded from the hearing of the witnesses. They placed on record their "protest at Turkey's participation in those hearings in a manner inconsistent with the Convention and with the Commission's decision as to Turkey's full participation". In a separate communication of the same date, the applicant Government also protested against the fact that the respondent Government's representatives at the hearing of the witnesses included persons to whom "office in a non-existent Ministry of an illegal regime" was attributed.

44. The hearing by the Commission's Delegates of ten witnesses proposed by the applicant Government nevertheless took place in Strasbourg on 27 and 28 November 1997 with the participation of both parties' representatives (cf. Appendix II).

45. At preparatory meetings the parties agreed to the Principal Delegate's proposals that in any public documents of the Commission the designation of "TRNC" officials participating in the proceedings should be put in quotation marks; that the two witnesses who were former UNFICYP officers and in respect of whom the UN Secretary General had not waived the duty of confidentiality should be heard on the understanding that it was for these witnesses themselves to respect any confidentiality rules which bound them vis-à-vis the United Nations and that they were free to refuse answering questions when this would be in breach of confidentiality; that the unidentified witnesses should be informed about the security measures adopted, including the possibility for them to refuse answering questions if they felt that this would expose themselves or other persons to a risk and the safeguard provided by the confidentiality of the Commission's proceedings which also bound the parties' representatives; finally, that the decision as to whether a full or summary record of the witnesses' testimony should be provided to the parties would be taken by the Plenary Commission in the light of the parties' comments.

46. The Delegates heard the following witnesses in the presence of the parties' representatives: Colonel Rainer Manzl, Austrian, formerly Chief Humanitarian Officer of UNFICYP; Commandant A. O'Sullivan, Irish, former member of UNFICYP; Ms Lisa Catherine Smith, solicitor, London; Ms Margriet Stuijt, Dutch, freelance photographer and co-editor of the journal "O Drum"; Mr Kubilay Emirsoylu Lutfi, Turkish Cypriot residing in the UK; Mr Michalakis Laoutaris, Cypriot civil servant, welfare officer, service for humanitarian affairs; and Dr Joseph Moutiris, Greek Cypriot cardiologist. The identity of Mr. Lutfi and of Dr. Moutiris, who had been announced as anonymous witnesses, was disclosed only shortly before their hearing.

47. The Delegates further heard three unidentified Greek Cypriots from the Karpas area (Witnesses No. 5, 8 and 10) with the participation of the parties' representatives in a different room to which sound transmission in English was installed.

c) Taking of evidence in Cyprus

48. On 1 December 1997 the respondent Government submitted a list of further six witnesses, two of them anonymous. The applicant Government had proposed five additional witnesses, all of them anonymous, already on 24 November 1997.

49. On 11 December 1997 the Commission, noting that the respondent Government were now participating in the Commission's proceedings on the merits of the application, decided to inform the Committee of Ministers of this development. It also decided that further evidence should be obtained by its Delegates in February 1998 in the island of Cyprus, including a visit to the Karpas area and the hearing of witnesses in a neutral location. The Commission endorsed the modalities for the hearing of the witnesses, as determined by the Delegates.

50. The Delegates arrived in Cyprus on 21 February and stayed until 24 February 1998. On 22 and 23 February, they heard a total of twelve witnesses at the United Nations premises of Ledra Palace Hotel, Nicosia. Seven of the witnesses (Mrs Maureen Hutchinson and Mr Michael Moran, British residents of northern Cyprus; Mr Süleyman Ergüçlü, a Turkish Cypriot journalist; Mr Asım Altiok, "Director of the Department for Consular and Minority Questions at the Ministry of Foreign Affairs of the TRNC"; Mr Aşık Mene, a Turkish Cypriot artist of gypsy origin; Mr Osman Örek, a lawyer and "former Minister of the TRNC"; and Mrs Gönül Erönen, "judge at the Supreme Court of the TRNC") had been proposed by the respondent Government and five witnesses (Mr Ayhan Mehmet, a Turkish Cypriot living in southern Cyprus, and unidentified witnesses Nos. 6, 7, 12 and 26, all Greek Cypriots from the Karpas area) had been proposed by the applicant Government. Two further unidentified witnesses proposed by the respondent Government (Witnesses Nos 8 and 9, Maronites from northern Cyprus) did not appear and one unidentified witness proposed by the applicant Government (Witness No 11, a Greek Cypriot from the Karpas area) was not heard for lack of time. The hearings of the named witnesses took place in the presence of the parties' representatives (cf. Appendix II) whereas the same arrangements as before (see paras. 41 and 45 above) were applied for the hearing of the unidentified witnesses.

51. On 23 February, the Delegates, at the invitation of the respondent Government, visited the Court Building in northern Nicosia. They met, *inter alia*, the "President of the Supreme Court of the TRNC", Mr Salih Dayoğlu, and the "Attorney General of the TRNC", Mr Akın Sait.

52. On 24 February, the Delegates visited the Karpas area in northern Cyprus. They met, *inter alia*, the Chief of the Yialousa police station, Mr. Turkay Türet, the mayor of Dipkarpaz (Rizokarpasso), Mr. Marif Özbayrak, and a number of Greek Cypriot villagers in Ayia Trias (Sipahi) and Rizokarpasso (Dipkarpas), among them the Greek Cypriot village headman (muhtar) of the latter village, Mr Evangelos Kolatsi. In that village they also visited the Greek Cypriot coffeeshop, the orthodox church and the Greek Cypriot school.

d) Taking of evidence in London

53. On 9 March 1998 the Commission decided to authorise the Delegates to hear a number of further witnesses in London and to invite the parties to submit their final submissions on the merits at an oral hearing in July 1998.

54. The hearing of witnesses in London took place on 22 April 1998 in the premises of the solicitors' firm Clifford Chance. The United Kingdom Government were informed. The Delegates heard five witnesses proposed by the applicant Government, all Turkish Cypriot asylum seekers in the United Kingdom, under the same arrangements as had been earlier applied to unidentified witnesses (see paras. 41 and 45 above). One of the witnesses (No 16), who also submitted a number of documents, was later identified as Mr Ibrahim Denizer. The others (Witnesses Nos 17, 18, 22 and 24) remained unidentified.

55. In a letter of 9 June 1998, the respondent Government contested the necessity to proceed to the hearing of unidentified witnesses as some of them had indeed disclosed their identity. They contended that the security reasons invoked by the applicant Government were unfounded and that as a result of the procedure followed the respondent Government had suffered procedural disadvantages, being caught by surprise without background knowledge about the would-be witnesses and not able sufficiently to challenge the witnesses. A further disadvantage was that the applicant Government's witnesses had been heard last. The respondent Government therefore requested that the Commission should give far less probative value, or weight, to the evidence collected under such circumstances. In a letter of 3 July 1998, the applicant Government refuted the respondent Government's arguments concerning the hearing of unidentified witnesses. The respondent Government reasserted these arguments in a letter of 5 August 1998.

e) Further submissions in writing

56. In the meantime, on 1 June 1998, the applicant Government, reacting to the Commission's request to comment on the material submitted by the respondent Government on 24 November 1997 (see para. 42 above) and following several extensions of the time-limit, had submitted voluminous "Observations in reply (merits)" together with six volumes of additional documentary evidence. The respondent Government reacted on 22 June 1998, claiming that neither the nature nor the volume of the applicant Government's submissions corresponded to the Commission's above request and thus constituted a flagrant abuse of procedure and a breach of the principle of equality of arms. The respondent Government accordingly asked the Commission to disregard the applicant Government's submissions. This request was reiterated on 24 June 1998.

57. On 25 June 1998 the applicant Government, in turn, protested against the submission by the respondent Government on 9 June 1998 of a document entitled "The Legal System of the

Turkish Republic of Northern Cyprus", intended to replace one of the annexes to the respondent Government's submissions of 24 November 1997. On 6 July 1998, the applicant Government objected to the respondent Government's request to disregard the applicant Government's observations of 1 June 1998.

f) Oral hearing on the merits and subsequent submissions of the parties

58. On 7 July 1998, the Commission heard the parties' oral conclusions on the merits of the application. The parties' representatives at this hearing are listed in Appendix II.

59. Following the hearing, the Commission decided to reject the respondent Government's request to disregard the applicant Government's submissions of 1 June 1998. However, in order to give effect to the principle of equality of arms, invoked by the respondent Government, the Commission also decided that the respondent Government should have an opportunity to comment on the applicant Government's submissions. Such comments were submitted by the respondent Government, within the time-limit fixed for that purpose, on 27 August 1998.

60. Separately, in their above letter of 5 August 1998 (cf. para. 55), the respondent Government complained that they had suffered a procedural disadvantage by the late submission, at the oral hearing itself, of documentation on the question of missing persons by the applicant Government. On 31 August and 11 September 1998 the applicant Government, invoking in their turn the principle of equality of arms, submitted further comments on certain aspects of the Commission's procedure, including a reply to the document on "The Legal System of the Turkish Republic of Northern Cyprus" submitted by the respondent Government.

61. On 14 September 1998, the Commission decided to accept both parties' submissions which it had received up to that date, but not to take into account any further submissions. Nevertheless, the respondent Government on 2 October 1998 submitted an Aide-Mémoire on "measures relating to the living conditions of Greek Cypriots and Maronites in the Turkish Republic of Northern Cyprus", to which the applicant Government replied on 20 October 1998, protesting the unacceptability of the submission of any further material after the Commission's above decision of 14 September 1998. The respondent Government justified the submission of the Aide-Mémoire in a letter of 1 December 1998, refuting the applicant Government's counter-arguments. The applicant Government reaffirmed their position in a letter of 22 January 1999, claiming that no facts which occurred after the Commission's decision on admissibility should be taken into account. On 5 March 1999, the Commission decided to uphold its decision of 14 September 1998 and consequently not to take into account the Aide-Mémoire submitted on 2 October 1998.

62. On 16 April 1999 the applicant Government informed the Commission that one of the witnesses heard by the Commission's Delegates at their proposal had died in the Karpas area under what they considered to be suspicious circumstances. On 19 April the Commission decided to bring the matter to the attention of the respondent Government. The latter's comments were received on 22 April. On 2 May 1999 the applicant Government submitted further details about the incident in question. On 2 June 1999 the Commission took note of both parties' position concerning this incident and decided to take no further action in relation to it in the present case.

g) Efforts to reach a friendly settlement

63. After declaring the case admissible, the Commission, acting in accordance with former Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

D. THE PRESENT REPORT

64. The present Report has been drawn up by the Commission in pursuance of former Article 31 of the Convention and after deliberations and votes, the following members being present:

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

65. The text of this Report was adopted on 4 June 1999 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with former Article 31 para. 2 of the Convention.

66. The purpose of the Report, pursuant to former Article 31 of the Convention, is:

(i) to establish the facts, and

(ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

67. The Commission's decision on the admissibility of the application is annexed hereto (Appendix I). The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

PART ONE

GENERAL AND PRELIMINARY CONSIDERATIONS

Chapter 1

Locus standi of the applicant Government

68. At various stages of the proceedings, the respondent Government have contested the *locus standi* of the applicant Government to lodge an application under former Article 24 of the Convention. The respondent Government do not recognise the applicant Government, to which they refer as the "Greek Cypriot Administration", as being the lawful Government of the Republic of Cyprus. They submit that this administration has been established since 1963 in flagrant violation of the Cypriot Constitution of 1960 and of the international agreements underlying the independence of Cyprus, in particular the provisions on the bi-communal structure of the Government and other central State organs. The respondent Government therefore contend that the applicant Government cannot validly represent the Republic of Cyprus. Their initial refusal to participate in the proceedings on the merits was primarily based on the argument that by admitting the application introduced by that Government the Commission had acted *ultra vires*.

69. The applicant Government contest the respondent Government's arguments. They emphasise that they have been consistently recognised by the international community as the Government of the Republic of Cyprus whose territory covers the whole of the island. As regards non-compliance with the provisions of the 1960 Constitution and corresponding stipulations of the relevant international agreements, they invoke the "doctrine of necessity", i.e. the need to reorganise the State without the representatives of the Turkish Cypriot community after the latter had refused to continue co-operating in the bi-communal structures provided for by the Constitution.

70. The Commission recalls that the same arguments have been raised by the parties in the previous applications brought by Cyprus against Turkey. Furthermore, similar arguments concerning the applicant Government's *locus standi* to bring an individual application before the Court by virtue of former Article 48 (b) of the Convention have been examined by the Court in the Loizidou case. Both the Commission and the Court eventually rejected the respondent Government's claim that the applicant Government had no *locus standi* (cf. the Commission's decision on the admissibility of applications Nos.6780/74-6950/75, of 26 May 1975, D.R. 2, pp. 135-136, its decision on the admissibility of application No. 8007/77, of 10 July 1978, D.R.13, pp. 146-148, and the Court's Loizidou (Preliminary Objections) judgment of 23 March 1995, Series A no 310, p. 18, paras. 39 - 41).

71. In the present case, the Commission cannot but confirm the conclusions reached by itself and the Court in those decisions. It notes in particular the following:

- The Republic of Cyprus continues to exist as a State and High Contracting Party to the Convention.

- The applicant Government have been, and continue to be, recognised internationally as the Government of the Republic of Cyprus. Even assuming an inconsistency with the

Constitution of Cyprus of 1960, the practice under that Constitution, especially since 1963, must also be taken into account. International legal acts and instruments drafted in the course of that practice on behalf of the Republic of Cyprus have consistently been recognised in diplomatic and treaty relations, both by Governments of other States and by organs of international organisations including the Council of Europe. In any event, having regard to the purpose of former Article 24, the protection of the rights and freedoms of the people of Cyprus under the Convention should not be impaired by any constitutional defect of its Government.

- The fact that the respondent Government do not recognise the applicant Government does not deprive the latter of the possibility of introducing an inter-State application. The Convention does not only envisage rights and obligations between the High Contracting Parties concerned, but also "objective obligations" accepted by the High Contracting Parties which are primarily owed to persons within their jurisdiction. These obligations are subject to "collective enforcement", of which former Article 24 of the Convention is the vehicle, and which serves the public order of Europe (cf. No. 788/60, Austria v. Italy, Dec. 11.1.61, Yearbook 4, pp. 138-142). To accept that a Government may avoid "collective enforcement" of the Convention under former Article 24 by not recognising the Government of the applicant State would defeat the purpose of the Convention.

- Finally, insofar as former Article 28 of the Convention comes into play, that provision does not necessarily require direct contacts between the Governments concerned, so that non-recognition by one Government of the other does not make it impracticable for the Commission to conduct its proceedings with the participation of the Parties, as foreseen under this Article.

72. The Commission therefore rejects the respondent Government's objections.

Conclusion

73. The Commission concludes, unanimously, that the applicant Government have *locus standi* to bring an application under Article 24 of the Convention against the respondent Government.

Chapter 2

Legal interest of the applicant Government

74. In its decision on the admissibility of the present application, the Commission, reacting to the argument of the respondent Government that this application is essentially the same as the previous inter-State applications lodged by Cyprus against Turkey, has reserved for consideration at the merits stage the question whether and, if so, to what 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. Insofar as the respondent Government had invoked *res iudicata* and abuse of procedure in this context, the Commission further observed that this presupposed a pronouncement on the identity of the application with the previous ones which also could only be made at the merits stage (cf. D.R. 86, pp. 134 - 135).

75. In their observations on the merits, the respondent Government have reiterated their argument that the applicant Government have no legal interest to bring repetitive applications *ad infinitum*, with a view to changing the relevant resolutions of the Committee of Ministers which the applicant Government may find unsatisfactory, but which constitute *res iudicata* in relation to proceedings prior to January 1990, when Turkey accepted the Court's compulsory jurisdiction. The respondent Government claim that with the exception of the complaints under Articles 9, 10 and 11 of the Convention and under Article 3 of Protocol No. 1, the facts submitted and the Articles invoked are the same as in the applicant Government's previous applications and disclose no new information or victims.

76. The applicant Government refute these arguments. They claim that certain of their complaints are entirely new, that others have not been the subject of a definitive finding in the Commission's earlier Reports, and that even where there has been such a finding the present complaints, based on new information and evidence, relate to a later period during which the continued upholding of a situation in breach of the Convention constitutes an aggravation of that breach. *Res iudicata* can only concern a right, question or fact distinctly put in issue and directly determined by the appropriate body, which they submit is not the case with the Committee of Ministers' resolutions concerning the earlier inter-State applications. In any event, in their submission these resolutions have no forward reach.

77. The Commission first notes that certain of the complaints raised by the applicant Government (namely their complaints under Articles 9, 10 and 11 of the Convention and under Article 3 of Protocol No. 1, as well as the complaints relating to the alleged violation of the rights of the missing persons' relatives, the complaints concerning the actual living conditions of Greek Cypriots in northern Cyprus, and the complaints relating to the treatment of gypsies in northern Cyprus) are new and have not been covered by either the 1976 or the 1983 Reports on the previous inter-State applications by Cyprus against Turkey. This has at least in part been admitted by the respondent Government (cf. para. 75 above). In this respect an issue as to the applicant Government's legal interest to bring an application under former Article 24 of the Convention could only arise insofar as the same matters may also be the subject of individual applications under former Article 25 of the Convention (see paras. 83 - 86 below).

78. Insofar as the respondent Government's arguments relate to the alleged continuing violations (i.e. the complaints concerning the missing persons, those concerning the home and property of displaced Greek Cypriots, the complaints concerning the separation of Greek Cypriot families, and the complaints concerning the situation of Turkish Cypriots in northern Cyprus), the Commission recalls para. 56 of the 1983 Report (D.R.72, p. 22) where it found that former Article 27 para. 1 (b) of the Convention, while not applicable to cases brought under former Article 24, reflects a basic legal principle which in inter-State applications arises during the examination of the merits: A State cannot, except in specific circumstances, claim an interest to have new findings made where the Commission has already adopted a Report under former Article 31 of the Convention concerning the same matter.

79. Insofar as the Commission must therefore determine whether exceptionally there are specific circumstances which justify a legal interest of the applicant Government in the present case, the Commission first notes that certain of the applicant Government's complaints (e.g. those concerning the situation of Turkish Cypriots), while having been raised already in the earlier inter-State cases, did not lead to any definitive findings by the Commission in its earlier Reports, due to lack of evidence. To the extent that the applicant

Government have requested the Commission to now pronounce itself on the basis of new evidential material submitted by them, the Commission accepts their legal interest (cf. 1983 Report, D.R. 72, p. 22, para. 58).

80. As regards the remaining complaints concerning alleged continuing violations, the Commission notes the applicant Government's argument that these are not identical to those raised in the previous cases due to the time factor. The Commission accepts that at least in part the persons affected by the alleged violations of the Convention are different from those concerned in the previous applications, and even where the same persons' rights are at issue, the examination of the complaints now made by the applicant Government must take into account the evolution of the situation in northern Cyprus, including the creation of a new institutional framework by the proclamation of the "TRNC" - which the respondent Government qualify as a *novus actus interveniens* - and also the imposition of new and additional measures on those persons. Moreover, the Commission recalls the case-law according to which the time factor may in itself be constitutive of a violation of certain Convention rights (concerning deprivation of possessions during a lengthy period cf., e.g., the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, and the Papamichalopoulos and others v. Greece judgment of 24 June 1993, Series A no 260-B) or aggravate a violation already established (concerning separation of families, cf. para. 134 of the 1983 Report, D.R. 72, p. 42).

81. For all these reasons, the applicant Government cannot be denied a legal interest to obtain a finding that a situation previously found in breach of the Convention still persists after many years. In principle, this applies in the present case to all complaints of continuing violations in respect of which the Commission has found breaches of the Convention in its previous Reports, the decisive factor for affirming a legal interest being the long time since the adoption of those Reports without any significant change having occurred in the situation of the persons concerned despite important changes in the institutional framework.

82. In this context, the Commission also notes the applicant Government's complaint of a violation of former 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 previous Reports. The Commission recalls its findings in the 1983 Report (D.R. 72, pp. 22-23, paras. 59-62) and in its decision on the admissibility of the present case (D.R. 86, p.134), according to which the applicant Government cannot be denied a legal interest on the basis of an alleged precluding effect of the Committee of Ministers' resolutions concerning both previous inter-State cases. However, the Commission is not competent to make a finding - in the present case or otherwise - that the respondent Government have not complied with their obligations under former Article 32 of the Convention arising from those resolutions, this being a matter reserved for consideration by the Committee of Ministers of the Council of Europe.

83. The Commission must finally consider whether the applicant Government's legal interest is excluded or limited on the ground that complaints similar to those raised in the present case have been brought before it by individual applicants. The Commission recalls that Turkey has recognised the right of individual petition under former Article 25 of the Convention as from January 1987 and that since that time individual applications can be brought against Turkey *inter alia* on account of its exercise of jurisdiction in northern Cyprus (cf. Nos. 15299-15300/89, Chrysostomos, Papachrysostomou and Loizidou v. Turkey, Dec. 4.3.91, D.R. 68, p. 216). However, the mere possibility for the individuals concerned of bringing applications under former Article 25 in no way affects the right of the High Contracting Parties including

Cyprus to introduce an application under former Article 24 for the protection of the same individuals. Moreover, even where individual applications have been actually brought, the Commission has accepted in the Donnelly case that in principle inter-State applications and individual applications do not exclude each other since the applicants are different in each case and their respective claims are also different (cf. Nos 5577-5583/72, Dec. 5.4.73, Coll. 43, p. 122 at p. 149).

84. Thus, the applicant Government in an inter-State case cannot be denied a legal interest in having its claims determined merely because some of the facts coincide with the subject-matter of individual applications which have been or are pending before the Convention organs. The Commission notes that in the present case there is indeed some overlap with individual applications which have already been finally determined by the Committee of Ministers (the Chrysostomos and Papachrysostomou case, cf. D.R. 86, p. 4) or the Court (the Loizidou case, cf. the judgment on the merits, of 18 December 1996, Reports 1996-VI, p. 2216), or which are presently pending before it or the Court at various procedural stages. However, these applications concern the particular situation of each individual applicant whereas the present case deals with the broader aspects, including general measures affecting more persons than those who brought individual applications. The Commission recalls in this context that individuals can complain of legislation or administrative practices only insofar as they are being applied to them whereas in an inter-State application the High Contracting Parties can challenge legislative measures and administrative practices as such (cf. Ireland v. United Kingdom judgment of 18 January 1978, Series A no 25, p. 63 para. 157 and p. 91 para. 240).

85. The Commission understands that in the present case the applicant Government essentially complain of the consequences of legislative measures (which they do not recognise as such) and of administrative practices in the northern part of Cyprus. While putting forward, by way of evidence, a host of information concerning the manner in which these measures have been or are being applied to individual persons, they do not seek a determination of these individual cases under the Convention. They only ask for a finding that the said practices exist as alleged and that they are as such in breach of the Convention. On this basis, the Commission sees no reason to deny the legitimate legal interest of the applicant Government because of the fact that applications relating to the same or similar facts have also been introduced by individual applicants.

86. In the present inter-State case, the Commission must take account of the evidence placed before it, which by its nature relates to individual cases, which only together can make up the alleged administrative practices (cf. Ireland v. United Kingdom judgment, loc.cit., p. 63, para. 157). However, it has found it appropriate to exclude from its investigation under former Article 28 para. 1 a) of the Convention the facts underlying any individual applications actually pending (cf. para. 33 above). The present Report therefore in no way prejudges the eventual findings to be made in those cases.

Conclusion

87. The Commission concludes, unanimously, that the applicant Government have a legitimate legal interest to have the merits of the present application examined by the Commission.

Chapter 3

Responsibility of Turkey under the Convention

88. In the decision on the admissibility of the present application, the Commission rejected the respondent Government's objections as to their lack of jurisdiction and responsibility in respect of the acts complained of by the applicant Government, finding that it had not been shown that, generally speaking, these acts were *prima facie* incapable of falling within Turkish jurisdiction within the meaning of Article 1 of the Convention. The Commission added, however, that this finding did not in any way prejudge the questions to be decided at the merits stage of the proceedings, namely whether the matters complained of were actually imputable to Turkey and gave rise to her responsibility under the Convention (D.R. 86, p. 131).

89. At the merits stage, the respondent Government first refused to participate in the proceedings on the ground that by declaring the case admissible the Commission had acted *ultra vires*. When the respondent Government eventually decided to co-operate with the Commission, they *inter alia* declared to do so on the basis of "the effectiveness of Turkish Cypriot jurisdiction in northern Cyprus" and "the absence of any jurisdiction of Turkey" in respect of the matters complained of. Accordingly, the observations on the merits were declared to be “Observations of the TRNC”.

90. In these observations and again at the hearing on the merits it was submitted on behalf of the respondent Government that the application did "not concern acts or omissions of Turkey but those of the Turkish Republic of Northern Cyprus (TRNC)", an independent State established by the Turkish Cypriot community in the north of Cyprus in exercise of their right to self-determination after the collapse of the bi-communal constitutional arrangements. The "TRNC" had been recognised by Turkey and exercised governmental power, i.e. exclusive control and authority, over the territory north of the UN buffer zone. The fact that the "TRNC" had not been recognised by other States and international organisations did not justify the conclusion that this State did not actually exist and did not have all the attributes of statehood. According to the rules of international law, its acts had to be given effect and this was indeed the practice of the courts in several States. Also the Commission, in its Report on the Chrysostomos and Papachrysostomou case, which was subsequently approved by the Committee of Ministers (cf. D.R. 86, p. 4, in particular para. 169 at p. 38), had found no indication of control exercised by Turkish authorities over the prison administration or the administration of justice by Turkish Cypriot authorities and had stated that the acts complained of in that case were justified under domestic law and not imputable to Turkey.

91. The respondent Government consider that the Commission's finding of Turkish jurisdiction under Article 1 of the Convention in inter-State applications Nos. 6780/74 and 6950/75 was due primarily to the presence of Turkey's armed forces. They recall that in the 1983 Report on application No. 8007/77 the Commission observed that "the existence of some kind of civil administration in northern Cyprus does not exclude Turkish responsibility" (D.R. 72, para. 64 at p. 24). However, they reject the proposition that the existence of "jurisdiction" creates an irrefutable presumption of responsibility. Such responsibility cannot in their view be established regardless of the actors and parties involved. Imputability and, consequently, responsibility, necessarily requires an examination of the particular facts and proof of actual, and not presumed involvement of the High Contracting Party concerned with the acts or omissions alleged to constitute violations of the Convention.

92. In this context, the respondent Government categorically reject the Court's finding in the Loizidou (merits) judgment of 18 December 1996 (Reports 1996-VI, p. 2234, para. 52) that the "Turkish Republic of Northern Cyprus" is a "subordinate local administration" of Turkey. *Inter alia* they contest the basis of this finding, namely the assertion by the Court that "the Turkish Government have acknowledged that the applicant's loss of control of her property stems from the occupation of the northern part of Cyprus by Turkish troops and the establishment of the "TRNC" (*ibid.,* p. 2235, para. 54). They submit that in fact they have never made such an acknowledgement. The Court must have been aware of the process of administrative and political evolution in northern Cyprus and that Turkey could not exercise control directly through its armed forces in that part of the island. They further point out that "TRNC" authority in northern Cyprus is not delegated by Turkey but based on the free will of its people. The "TRNC" legal system, incorporating basic elements from English common law, is very distinct from the system obtaining in Turkey, and the "TRNC" is neither a province nor a protectorate of Turkey. It is further claimed that the establishment of the "TRNC" and the enactment of its legislation is a *novus actus interveniens* capable of rebutting any presumption of Turkey's responsibility for the acts complained of. Finally, the respondent Government submit that the Loizidou case, as an individual application, was decided on its own facts and the Court's judgment in that case therefore cannot be generalised for the purposes of the present inter-State application.

93. The applicant Government note that the respondent Government deny responsibility by invoking considerations of public international law. The applicant Government do not deny that the rules and principles of public international law may be relevant, but submit that they have to be seen in the context of the Convention, in particular its Article 1, which here constitutes the applicable law. The Convention as an agreement between States involves a standard form of responsibility for breaches by the Contracting States of their obligation to secure within their jurisdiction the rights enshrined in the Convention, which is an obligation of result and not one of conduct. Turkey cannot avoid this responsibility by claiming that the acts complained of are imputable to organs or authorities of the "TRNC". The military occupation of northern Cyprus results from the illegal use of force and the Turkish policy of fostering a secession based upon a racial division of Cyprus has been decisively rejected by the international community. When this policy led to the proclamation of the establishment of the "TRNC" in 1983, this declaration as well as all secessionist actions were declared to be legally invalid by the UN Security Council and also by a resolution of the Committee of Ministers of the Council of Europe. In terms of international law, this legal invalidity is based on two principles of *ius cogens*: the principle of non-recognition of changes resulting from the unlawful use or threat of force, and the prohibition of racial discrimination. In the applicant Government's view the illegality of the "TRNC" administration has also been confirmed by the Court in the Loizidou case (merits judgment of 18 December 1996, *loc. cit.*, in particular pp. 2230 - 2231, paras. 42 and 44).

94. In the applicant Government's submission, the essential illegality of the administration in northern Cyprus precludes Turkey from invoking any legal justification for her acts and policies motivated by discrimination. Turkey may have no legal title in the areas under occupation, but she does have legal responsibility, or overall accountability, in these areas. This is based on Turkey's overall and exclusive control, which is not shared with any other State. In this respect, the applicant Government invoke the Advisory Opinion of the International Court of Justice in the Namibia case where it was held that a State occupying a territory without title incurs international responsibility in relation to this territory (I.C.J.

Reports 1971, p. 16, para. 54 at p. 118). The applicant Government claim that there is overwhelming evidence of Turkish military presence and overall control in the occupied areas. If Turkey were not to be held responsible for conditions in northern Cyprus, no other legal person could be held responsible and the effectiveness of the Convention system and the public order of Europe would be undermined.

95. Finally, the applicant Government point out that according to the Loizidou (Preliminary Objections) judgment, (*loc. cit.*, p. 24, para. 62) the fact that Turkey acts to some extent through a subordinate local administration in no way affects the legal consequences of her control over the occupied areas. While a State may delegate the administrative process to agents of a subordinate local administration established in certain areas, this does not relieve it of the obligation to secure the protection of human rights in those areas. A State cannot by delegation, even if this be genuine, avoid responsibility for breaches of its duties under international law. In the present case Turkey has the duty to secure in the areas controlled by her the rights and freedoms protected by the Convention and to prevent violations thereof. The applicant Government submit that in the given circumstances there is therefore a strong presumption of Turkish responsibility for all violations of the Convention in the occupied areas, a presumption which in practical terms is irrefutable.

96. The Commission first recalls its Reports on the earlier inter-State cases (cf. 1976 Report, p. 32, paras. 83 - 85, and p. 33, para. 87, fifth indent; 1983 Report, D.R. 72, p. 23 - 24, paras. 63 - 65) where it distinguished between, on the one hand, acts of Turkish military forces and other Turkish authorities - for which the respondent Government were held responsible - and, on the other hand, acts of Turkish Cypriot authorities - which were not imputed to the respondent Government. Accordingly, in those Reports the question of imputability was examined separately in relation to each of the applicant Government's complaints on the basis of actual involvement of Turkish authorities or officers. Such involvement was seen as implying the respondent Government's responsibility under the Convention notwithstanding the fact that most of the acts complained of had occurred outside the national territory of Turkey.

97. Essentially the same approach was also followed in the Commission's Reports of 8 July 1993 in the cases of Chrysostomos and Papachrysostomou (D.R. 86, pp. 25 - 27, paras. 90 - 102; pp. 36 - 38, paras. 161 - 171) and Loizidou (Series A No.310, p. 46, paras. 48 - 51; p. 94, paras. 94 - 95), in which the Commission additionally distinguished between the "border area" or "buffer zone", where it considered that Turkish forces exercised overall control, and the remaining parts of northern Cyprus, where the Commission accepted that Turkish Cypriot authorities could exercise certain powers without engaging Turkey's responsibility (Chrysostomos and Papachrysostomou Report, *loc. cit.*, pp. 34 - 35, paras. 146 - 156; Loizidou Report, *loc. cit.*, pp. 50 - 51, paras. 76 - 83).

98. The Commission considers that these distinctions cannot be maintained after the Court's two judgments in the Loizidou case (Preliminary Objections judgment of 23 March 1995, Series A No 310; Merits judgment of 18 December 1996, Reports 1996-VI, p. 2216). In the Preliminary Objections judgment, already relied upon in the Commission's decision on the admissibility of the present case, it was stated (*loc. cit.*, p. 24, para. 62) that:

> "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."

The Court concluded (*ibid.*, para. 64) that the acts complained of in that case (loss of the applicant's control of her property) were capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention. However, the Court reserved for the merits phase the question whether the matters complained of were imputable to Turkey and gave rise to State responsibility.

99. In the Merits judgment, the Court answered that question as follows (*loc. cit.*, p. 2235, para. 56):

> "It is not necessary to determine whether, as the applicant and the Government of Cyprus have suggested, Turkey actually exercises detailed control over the policies and actions of the authorities of the 'TRNC'. It is obvious from the large numbers of troops engaged in active duties in northern Cyprus ... that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the 'TRNC'... Those affected by such policies and actions therefore come within the 'jurisdiction' of Turkey for the purposes of Article 1 of the Convention. Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus.
>
> In view of this conclusion the Court need not pronounce itself on the arguments concerning the alleged lawfulness or unlawfulness under international law of Turkey's military intervention in the island in 1974 since ... the establishment of State responsibility under the Convention does not require such an enquiry... It suffices to recall in this context that the international community considers that the Republic of Cyprus is the sole legitimate Government of the island and has consistently refused to accept the legitimacy of the 'TRNC' as a State within the meaning of international law."

100. The Commission considers that it should follow the Court's decision in this respect which must be considered as the authoritative ruling of the competent Convention organ from the point of view of international law. The fact that the Committee of Ministers seems to have implicitly accepted the Commission's different view of the matter by endorsing the Report in the Chrysostomos and Papachrysostomou case (Resolution DH (95) 245 of 19 October 1995, reprinted in D.R. 86 p. 51) cannot make any difference as the relevant resolution does not contain any express reference to the issue of Turkish responsibility and, in any event, the Loizidou judgment is the more recent decision.

101. In reaching this conclusion, the Commission has taken into account the arguments submitted by the parties in the proceedings concerning the present application, in particular the respondent Government's contention that the Court's Loizidou judgment was based on an acknowledgement which in fact had never been made by the respondent Government and their further contention that in any event it was limited to the facts of the particular case and not capable of generalisation for the purposes of the present inter-State application. The

Commission does not share these views of the respondent Government. It notes that the Court's proceedings in the Loizidou case were conducted in parallel to the Commission's proceedings in the present case and that both parties raised largely the same arguments before the Court and the Commission. Even assuming that the respondent Government's assertion is true that they never made an express acknowledgement in the terms referred to by the Court, the latter examined a wide range of other facts and arguments on which it based its above conclusion. Moreover, the Court expressly held that, in order to reach this conclusion, it was not necessary to determine whether Turkey actually exercised detailed control over the policies and actions of the "TRNC"; in these circumstances the Commission has not considered it appropriate to make such a determination in the present case and to carry out an investigation on this aspect of the case, as suggested by the applicant Government.

102. Finally, the Commission notes that the Court's findings as to Turkey's responsibility for events in northern Cyprus have been expressed in such broad terms in the Loizidou judgment that they must be taken as the statement of a general principle. Accordingly, the Commission considers that Turkish responsibility extends to all acts of the "TRNC", being a subordinate local administration of Turkey in northern Cyprus. This responsibility thus is not limited to property issues, such as considered in the Loizidou case, but covers the entire range of complaints raised by the applicant Government in the present application, irrespective of whether they relate to acts or omissions of Turkish or Turkish Cypriot authorities. Consequently, the Commission will not in the present Report examine the question of imputability separately for each of the various complaints at issue.

Conclusion

103. The Commission concludes, unanimously, that the facts complained of in the present application fall within the “jurisdiction” of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent Government’s responsibility under the Convention.

Chapter 4

Domestic remedies

104. In the decision on the admissibility of the present application the Commission reserved the question of exhaustion of domestic remedies to the extent that it concerns remedies before the Turkish Cypriot authorities. It considered that this question was closely related to the above issue of Turkish jurisdiction in the northern part of Cyprus which could only be determined at the merits stage of the proceedings (cf. D.R. 86, p. 141). The Commission just having found that the "TRNC" must be considered as a subordinate local administration of Turkey for whose actions and omissions the respondent Government is generally to be held responsible under the Convention, it must now examine whether this also implies that "TRNC" remedies have to be regarded as "domestic" remedies within the meaning of former Article 26 of the Convention. In other words, the Commission must determine whether it is a requirement under this provision in relation to any complaint about measures taken by "TRNC" authorities that remedies available in the "TRNC" should have been exhausted before the Commission can proceed to an examination of the merits of such a complaint.

105. It is the normal practice of the Commission to examine the issue of exhaustion of domestic remedies separately in relation to each particular complaint. The Commission does not propose to depart from this practice in the present case and will therefore consider

specific remedies invoked by the respondent Government in the appropriate context in Part II below. However, the above question whether or not in this context existing "TRNC" remedies can at all be taken into account is of a more general nature and therefore requires to be addressed in general terms.

106. The respondent Government claim that the judicial system set up in the "TRNC" provides adequate and effective institutional guarantees. The applicable substantive and procedural law includes not only the "TRNC" Constitution and the laws made thereunder, but also some laws enacted under the 1960 Constitution which have remained in force and - to a considerable extent where the criminal and civil law is concerned - the English common law and doctrines of equity insofar as they are not inconsistent with the Constitution. There is a fully developed system of independent courts in the "TRNC". The judges' independence is guaranteed by the "TRNC" Constitution and any interference with the courts' jurisdiction amounts to contempt of court. The rules on contempt of court can also be applied vis-à-vis the administration, *inter alia* when an administrative organ fails to execute a court decision. The organisation of the courts essentially goes back to the 1975 Constitution of the "Turkish Federated State of Cyprus", the relevant provisions having been implemented by the Courts of Justice Law 1976 and retained by the 1985 Constitution of the "TRNC". On the lower level there are Assize Courts (composed of three District Court judges sitting without a jury who try serious crimes including crimes carrying the death penalty), District Courts (with jurisdiction in civil and criminal matters), Family Courts and Juvenile Courts. On the higher level, jurisdiction is concentrated in the Supreme Court, composed of a President and seven judges, and which sits in different functions: as the Supreme Constitutional Court (five judges), as the Court of Appeal (quorum of three judges) and as the High Administrative Court (single judge in first instance, with an appeal lying to the Court sitting with three judges).

107. Apart from some other competences, the Constitutional Court has exclusive jurisdiction to decide on the constitutionality of laws and certain other acts. This involves control of the constitutionality of laws or decisions of the Legislative Assembly upon reference by the President of the Republic prior to their promulgation; actions for the annulment of laws and certain other general norms (but not decisions of the Council of Ministers) challenged, on the ground of unconstitutionality, by the President, political parties, political groups, nine deputies or affected associations; and - most importantly - reference by the courts of questions of constitutionality of laws and other norms (decisions of legislative and administrative organs) which are material for the courts' decision (the parties to the proceedings have a right to request such reference, the courts are not empowered to rule themselves on the question of constitutionality and are bound by the Constitutional Court's decision and therefore compelled to disregard provisions found to be unconstitutional).

108. The Court of Appeal determines appeals from lower courts in civil and criminal cases. All decisions of District Courts and Assizes are subject to appeal as of right. Criminal appeals can be lodged against conviction and/or sentence; in Assize Court cases the Attorney General can also appeal against acquittals. Both in criminal and in civil cases the appeals are determined by way of rehearing. The Court of Appeal may also issue orders in the nature of *habeas corpus, mandamus,* prohibition, *certiorari* and *quo warranto*. In distinction from the English common law system from which they were inherited, in northern Cyprus such writs have less importance as instruments for the judicial review of administrative acts as they cannot be used when other, more specific remedies are available, which generally is the case

in view of the exclusive competence of the High Administrative Court in administrative matters.

109. In fact, the competence of the High Administrative Court involves the judicial review of the acts, decisions and omissions of any organ, authority or person exercising any executive or administrative power. In practice this covers not only State organs *stricto sensu*, but also semi-official institutions (Electricity Authority, Telecommunications Authority, non-private radio and TV corporations), but only where individual administrative acts are concerned. Acts which by their nature are legislative (e.g. rules and regulations by the Council of Ministers) or judicial (e.g. decisions of the Lands Office relating to boundary disputes and ownership of land) are not considered as administrative acts subject to review by the High Administrative Court. However, decisions of the competent commissions under the 1977 Housing, Allocation of Land and Property of Equal Value Law (relating to distribution of "abandoned" Greek Cypriot property to Turkish Cypriots) are regarded as administrative acts. Any such acts can be challenged on the grounds of contravention of the Constitution, illegality, and excess or abuse of power. The High Administrative Court can annul the administrative act or decision and, in the case of an omission, declare that it should not have been made and that whatever has been omitted should have been performed. However, it cannot substitute its own decision for that of the competent administrative body nor revise the latter's decision, the matter thus normally being referred back to that body for reconsideration. Nor can the High Administrative Court adjudicate compensation to the aggrieved person, the latter being entitled to bring an action with the District Court to this end.

110. Finally, the "TRNC" judicial system provides for two levels of military courts which have been established since 1983: the "TRNC Security Forces Court" (composed of two officers of the Security Forces designated by the Security Forces Command, and two civilian judges designated by the Supreme Council of Judicature) and the "Security Forces Court of Appeal" (composed of two officers of the Security Forces designated by the Security Forces Commander, and two Supreme Court judges designated by the Supreme Council of Judicature). These courts try criminal and disciplinary offences of members of the Security Forces. They also have jurisdiction to try offences committed at military areas, during military service and in respect of military property. Otherwise, they have no jurisdiction in respect of civilians.

111. The respondent Government submit that there is access to independent courts for every individual in the "TRNC". As regards the Turkish Cypriots living in northern Cyprus, their rights are fully protected under the Constitution and the laws of the "TRNC". Independent and impartial courts are the guarantors of these rights. No evidence has been adduced to show that remedies do not exist or that those available are insufficient or unpracticable. The respondent Government further submit that Greek Cypriots and Maronites living in northern Cyprus are regarded as "TRNC" citizens and therefore enjoy the same rights and remedies as Turkish Cypriots. In particular, their immovable properties do not come within the definition of "abandoned" properties and therefore there is no restriction on the use and enjoyment of such property by their owners. Karpas Greek Cypriots who in the past instituted court proceedings for unlawful occupation and/or trespass to property under the Civil Wrongs Law have in fact been successful in their actions. In these cases the Attorney General of the "TRNC" was sued as a co-defendant, representing the State, because the occupation of the property in question took place as a result of wrongful allocation or authorisation or consent of the appropriate State organs.

112. However, the respondent Government contend that Greek Cypriots and Maronites living in northern Cyprus are being positively discouraged by the "Greek Cypriot Administration" from recognising, or appearing to recognise, Turkish Cypriot institutions and authorities and are thus prevented from seeking relief within the legal system of the north. Thus they are not allowed to conclude transactions at Turkish Cypriot Government departments or to apply to the "TRNC" authorities in order to realise their right to transfer and/or inherit property. If an application were made to the competent Turkish Cypriot court for grant of administration of the estate of a deceased Greek Cypriot, there is no reason why the court should not grant such an order and make it possible to inherit property. In this context the respondent Government also refer to the finding of the Commission in the Chrysostomos and Papachrysostomou case (Report 8.7.93, *loc. cit.*, para. 174) that the applicants in that case had not wished to avail themselves of existing remedies.

113. The applicant Government submit that the respondent Government's submissions on the judicial system of the "TRNC" cannot be relied upon by the Commission because they are tendentious and highly selective, singling out the formal paper provisions of the "TRNC Constitution" and "laws" and disregarding the context of total unlawfulness in which this "Constitution" and "laws" were created and in which they operate. The applicant Government describe these submissions as "an attempt to create an illusion of lawfulness, regularity and judicial remedies", or "an attempt to present unlawful arrangements as constituting a 'legal system'". They submit that these arrangements are unlawful in international law, as specified in UN Security Council resolutions 541 (1983) and 550 (1984); they are in violation of the 1960 Treaty of Guarantee and the result of Turkish aggression against the Republic of Cyprus; they are unlawful in the municipal law of the Republic of Cyprus; and they flow from violations of the law of the Council of Europe, which repudiates systematic violations of human rights and their results. Also, the false impression is conveyed that the "TRNC", its "Constitution" and its "legal system" just evolved through Turkish Cypriot actions, disregarding the role which the respondent Government played in setting up this institutional framework in northern Cyprus. The applicant Government observe that this has been done with a view to asserting that Turkish Cypriot institutions cannot be "national authorities" of Turkey, the respondent Government having expressly disclaimed responsibility for the "TRNC" and its institutions.

114. The applicant Government point out that according to the respondent Government's submissions the "TRNC Constitution" is the basic norm in northern Cyprus, and therefore there is no remedy against action consistent with or dictated by that "Constitution". The relationship between the "TRNC Constitution" and the European Convention on Human Rights, incorporated in the law of the Republic of Cyprus in 1962, has not been elucidated by the respondent Government. The Convention rights were directly applicable in Cyprus, but they have been substituted by the "TRNC Constitution" which is narrower in scope. Since that "Constitution" guarantees most fundamental rights only to "TRNC citizens", "non-citizens" and in particular non-resident Greek Cypriots cannot invoke them. In any event, the applicant Government claim that due to the conduct of "public servants" and of the "police", who have a crucial role in initiating remedial procedures, there are systematic administrative practices violating the Convention rights of Karpas Greek Cypriots and Turkish Cypriots (including gypsies) in relation to which there is no need to exhaust domestic remedies.

115. The applicant Government consider that the respondent Government are responsible insofar as the "legal system" which has been put in place in northern Cyprus does not ensure

observance of the Convention rights, leading either to actual violation of such rights or failure to observe positive duties arising under the Convention. The fact that responsibility can flow from the acts of Turkish-created institutions does not carry the correlative that such institutions must be treated as institutions which Turkey is required to set up under various Articles of the Convention, such as Articles 6 and 13 (for further arguments of the applicant Government concerning compliance with these Articles, see below, paras. 323, 353-354 and 525). Responsibility for subordinate organs does not mean either that these organs are therefore endowed with capacity to "secure" Convention rights within the meaning of Article 1 of the Convention. Accordingly, it cannot be necessary to exhaust "remedies" before such organs for the purposes of former Article 26 of the Convention. Even if in carrying out their control functions such organs do not violate the Convention or if they prevent violations, the system in which they operate cannot be validated. Otherwise there would be a risk that an illegal regime internationally recognised as such might be indirectly legitimated. In the applicant Government's view there is thus no equivalence between State responsibility and enforcement of Convention duties.

116. The applicant Government refer to the Court's jurisprudence according to which a realistic account must be taken not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate (Eur. Court HR, Akdivar and others v. Turkey judgment of 16 September 1996, Reports 1996-IV, p. 1211, para. 69). They submit that in the present case the violations complained of are interwoven with the nature of the regime in the occupied part of Cyprus and with that regime's declared policies. The regime is a subordinate local administration under the control of the military forces of Turkey. It is expressing and trying to implement the national policies and objectives of Turkey in respect of Cyprus, i.e. to divide the island into two separate States to be administered and populated by Greek Cypriots and Turkish Cypriots respectively. In a status of military occupation it is unrealistic and inconceivable to expect that local administrative or judicial authorities can issue effective decisions against persons exercising authority with the backing of the occupation army in order to remedy violations of human rights committed in furtherance of the general policies of the regime in the occupied area.

117. Invoking the decision on the admissibility of application No. 8007/77 (Dec. 10.7.78, D.R. 13, p. 152, para. 34), the applicant Government claim that remedies in the national territory of the occupying country cannot be expected to be taken by victims of human rights violations in the occupied territory. Remedies within the occupied territory, on the other hand, cannot be considered as "domestic remedies" of the occupying State, and even if they were regarded as "domestic remedies" a distinction must be made, in the applicant Government's view, between lawful and unlawful remedies, only lawful remedies, e.g. remedies which have not been established by the illegal regime, being envisaged by former Article 26 of the Convention. For it would be absurd to accept that the Convention which aims at the prevalence of the rule of law and democracy would require from those intended to be protected by its provisions to use procedures which are illegal as a condition for getting the benefit of such protection.

118. On this basis the applicant Government submit that Turkey is incapable of providing any lawful remedies in northern Cyprus, the military regime established there being undemocratic and illegal. In particular any Turkish courts in Cyprus are unlawful, Turkey's action in altering the court system being in breach of the Treaty of Guarantee. Even a belligerent occupier may not alter the legal system of the occupied territory under the

applicable rules of international law. It is submitted that in any event the provisions of the Convention prevail over the rules of public international law as regards the position of an occupying power, the Convention being the *lex specialis* on the subject of human rights.

119. Therefore the applicant Government also consider inapplicable the ruling of the International Court of Justice in the Namibia case (*loc. cit.*), according to which the invalidity of acts of a State which illegally occupies a territory should not result in depriving the people of that territory of advantages derived from international co-operation, such invalidity thus not extending to acts, such as registration of births, deaths and marriages, the effects of which could be ignored only to the detriment of the inhabitants of the territory. They point out that the Namibia ruling was cited in the Loizidou case by the Court, which however declined to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the "TRNC" (Merits judgment, *loc. cit.*, p. 2231, para. 45). The Namibia ruling was not applied by the European Court of Justice in Ministry of Agriculture, Fisheries and Food, *ex parte* S.P. Anastassiou (Pissouris) Ltd. v. Sunzest Products, nor by the U.S. 7th Circuit Court in Autocephalos Greek Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts (917 Fed. Reporter 2nd series 278 (7th Cir.) 1990). The applicant Government do not exclude that a few arrangements made in terms of the "legal system of the TRNC" and affecting private persons (e.g. a divorce or a testament) might be accorded validity, but consider that this is not inconsistent with the general position prompted by overriding considerations of public policy that the so-called "remedies" are illegal and not relevant to the Convention.

120. The Commission first emphasises that it cannot be its task in the present case to determine the status of the "TRNC" and the validity of the acts of its administration according to the general rules of international law. Its only function in the present context is to determine to which extent the remedies relied upon by the respondent Government must be taken into account for the purposes of former Article 26 of the Convention. Since the respondent Government have only invoked remedies claimed to be available in the "TRNC legal system", it must be assumed that there are no other remedies and in particular no remedies in Turkey which could provide relief in respect of the various matters complained of. Even if such remedies exist, they can be disregarded by the Commission in the absence of any claim by the respondent Government that they should have been exhausted.

121. Turning then to the remedies in the "TRNC", it seems that both parties agree that they should not be regarded as "domestic" remedies in the sense of former Article 26. However, the reasons for this proposition are different in the argumentation of each party. The respondent Government do not consider the remedies in question as "domestic" because they generally disclaim responsibility for actions of the "TRNC" which in their view is an independent State separate from Turkey. This proposition has already been rejected by the Commission which found that Turkey must be held responsible due to the overall control which she exercises over the "TRNC", the latter thus being a subordinate local administration of Turkey. The applicant Government, who accept that the "TRNC" is a subordinate local administration of Turkey, nevertheless contend that "TRNC remedies" are not "domestic" remedies of Turkey, the "TRNC authorities" having no legal capacity to discharge Turkey's duties under the Convention.

122. The Commission considers this distinction to be an artificial one. The question whether Turkey can discharge her duties under certain Convention Articles such as Articles 6 or 13 through institutions which have been set up in the framework of Turkey's subordinate local administration in northern Cyprus goes to the merits of the issues arising under those Articles

and has nothing to do with the general procedural requirement under former Article 26 of the Convention according to which any complaints raised before the Commission should first have been ventilated before the appropriate "domestic authorities" capable of providing effective relief. In the Commission's view it is a necessary corollary of the "TRNC" being considered as a subordinate local administration of Turkey that the remedies available before "TRNC" institutions must be regarded as "domestic remedies" of the respondent State for the purposes of former Article 26 of the Convention.

123. As regards the applicant Government's further argument that these remedies are irrelevant because they operate in a context of total illegality, the Commission notes that the establishment of the "TRNC" has in fact been declared illegal and invalid by resolutions of the UN Security Council and the Committee of Ministers of the Council of Europe, and that it has not been recognised by any State except Turkey. It is also obvious that the proclamation of the "TRNC" as an independent State is incompatible with the international agreements underlying the independence of Cyprus and with the Cypriot Constitution of 1960. Nevertheless, it cannot be denied that the "TRNC" regime *de facto* exists and that it exercises *de facto* authority in the northern part of Cyprus under the overall control of Turkey. While the Republic of Cyprus remains the sole legitimate Government of Cyprus with the consequence that at least certain provisions of the "TRNC Constitution" cannot be attributed legal validity for the purposes of the Convention (Loizidou (merits) judgment, *loc.cit.*, p. 2231, para. 44), the Court has acknowledged that "international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, ... the effects of which can be ignored only to the detriment of the inhabitants of the territory" (*ibid.*, para. 45, with a reference to the I.C.J.'s Namibia ruling).

124. The Commission notes that the particular provision of the "TRNC Constitution" which the Court considered as invalid purported to deprive the individuals concerned of a Convention right. However, as regards the remedies available in the "TRNC legal system" it is in essence contended by the respondent Government that they benefit the population of northern Cyprus in that they serve to prevent violations of their rights or provide redress against such violations. The Commission accepts that this is indeed the function of the remedies in question despite the fact that the framework within which they have been created and operate is illegal from the point of view of international law. However, this international unlawfulness does not by itself deprive the remedies of their effectiveness. To the extent that they are indeed effective, they provide the persons concerned with a practical means to improve their situation while ensuring at the same time that the authorities can create the state of affairs which they consider as the appropriate one and which should be the basis for their incurring any international liability, including responsibility under the Convention which in this instance must be imputed to Turkey.

125. Bearing in mind that the Convention is an instrument which is intended to protect rights that are practical and effective and having regard also to the subsidiary nature of the international control mechanism established under the Convention, the Commission considers that it must in principle take into account, for the purposes of former Article 26, any effective remedies which Turkey's subordinate local administration in northern Cyprus holds available for victims of alleged violations of the Convention. This is also in line with the Commission's approach in the Chrysostomos and Papachrysostomou case where it considered certain "TRNC" remedies to be valid (although it did not at that time attribute overall responsibility to Turkey; cf. Report 8.7.93, *loc. cit.*, in particular p. 35, para. 152).

126. Only effective remedies need to be exhausted. Whether or not a particular remedy can be regarded as effective must be determined in relation to the specific complaint at issue. It is true that in the present case the applicant Government's complaints concern essentially a number of alleged administrative practices for which there is no requirement to exhaust domestic remedies. However, the very question whether or not there exists an administrative practice depends on the unavailability of effective remedies in relation to the acts constituting such a practice, and therefore the Commission must consider the question of available remedies in the appropriate places in Part II of the present Report. In the light of the above conclusions it will take account of "TRNC" remedies in this context.

127. The Commission does not consider that a requirement for victims of alleged violations to exhaust available "TRNC" remedies amounts to indirect legitimisation of a regime which is unlawful under international law. The status of the "TRNC" in international law remains that of a subordinate local administration of Turkey for whose actions only the latter is responsible under the Convention.

Conclusion

128. The Commission concludes, by 19 votes to one, that for the purposes of former Article 26 of the Convention remedies available in northern Cyprus are to be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of those remedies is to be considered in the specific circumstances where it arises.

Chapter 5

Compliance with the six months time-limit

129. In the decision on admissibility the Commission also reserved the question whether the six months time-limit laid down in former Article 26 of the Convention has been complied with insofar as continuing violations of certain Convention Articles are alleged (cf. D.R. 86, p. 142). The parties have not submitted any arguments on this question at the merits stage of the proceedings.

130. The Commission notes that the alleged continuing violations arise in the context of administrative practices for which by definition no domestic remedies need to be exhausted and for which, therefore, the time-limit envisaged by former Article 26 does not run from the date of a final decision, but from the date when the acts complained of occurred. The Commission must essentially verify whether the alleged administrative practices are still being applied. In this context it can only take account of practices which remained in force until at least six months before the introduction of the application, insofar as they continued to be applied after that date. Practices which stopped earlier cannot be considered at all. It is with this in mind that the Commission decided to exclude from the scope of its investigation under former Article 28 para. 1 (a) of the Convention any situations which ended before 22 May 1994 (cf. para. 33 above).

Conclusion

131. The Commission concludes, unanimously, that no further issue arises as to the respect of the six months time-limit, as laid down in former Article 26 of the Convention.

Chapter 6

Assessment of the evidence

132. Before dealing with the applicant Government's allegations under specific Articles of the Convention, the Commission considers it appropriate to recall the principles which it must apply in the present case in exercising its task to establish the facts under former Article 28 para. 1 (a) of the Convention, in particular as regards the evaluation of the evidence submitted to it by the parties or taken during the investigation which the Commission's Delegates carried out together with the representatives of the parties.

133. According to the case-law of the Convention organs, the required standard of proof is establishment of the facts "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In addition the conduct of the parties when evidence is being obtained may be taken into account (cf. Eur. Court HR, Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 161). Moreover, as regards the establishment of the existence of administrative practices, the Convention organs do not rely on the concept that the burden of proof is borne by one or the other of the two Governments concerned. Rather, the Commission must examine all the material before it, irrespective of its origin (*ibid.*, p. 64, para. 160).

134. In the present case, the Commission is not confronted, as in the earlier inter-State cases, with difficulties arising from non-cooperation of the respondent Government. It does not consider it appropriate to draw any inferences from the respondent Government's non-cooperation at the early stages of the proceedings on the merits. Therefore, the Commission can rely on evidence submitted by both parties which has been tested in an adversarial procedure. Accordingly the Commission has not been compelled to resort to special precautions to avoid possible shortcomings of one-sided evidence (cf. 1976 Report, p. 31, para. 81; 1983 Report, D.R. 72, p. 31, para. 90, and p. 32, para. 95) nor to distinguish between different degrees of certainty as to the facts that could be established (cf. 1976 Report, p. 31, para. 82). However, since in the present case reference has frequently been made to findings of the Commission in the earlier inter-State cases, the Commission will take such findings into account where appropriate. It must emphasise in this context that, because the above-mentioned precautions were applied at the relevant time, those findings cannot be called into question as being unreliable.

135. It is of course true that, as in the earlier cases, one of the difficulties of the present application is the sheer number of alleged violations of the Convention and the very broad scope of the evidence submitted. The Commission finds that practically all aspects of the case are covered by documentary material submitted by the parties. However, in relation to some such materials objections have been raised by the opposite party with a view to obtaining a ruling of the Commission that they should not be taken into account, either on formal grounds or for reasons of procedural fairness. Thus the applicant Government have objected to the materials submitted by the respondent Government on 24 November 1997 on the ground that they had been submitted after expiry of the time-limit and on behalf of the "TRNC"; they have further objected to the submission by the respondent Government on 9 June 1998 of a revised version of one of the appendices to those materials, on the grounds that by that time the Commission had indicated to the parties that it did not expect them to make any further submissions and that the applicant Government was deprived of an opportunity to reply. On

similar grounds, the respondent Government have objected to the voluminous documents submitted by the applicant Government with their observations of 1 June 1998 and to the documentation on missing persons submitted by the applicant Government at the oral hearing on 7 July 1998. Finally, the applicant Government have objected to the submission of an Aide-Mémoire by the respondent Government on 2 October 1998, after the Commission's decision of 14 September 1998 not to take into account any further submissions of the parties (cf. para. 61 above).

136. The Commission has not found it appropriate to exclude from its examination any of the documentary material provided by the parties except the last-mentioned Aide-Mémoire which has been submitted out of time as well as the documents relating to the death of a witness, submitted by the applicant Government on 2 May 1999 (see para. 62 above). As regards the documents submitted on 24 November 1997, the Commission notes that they were received from the Agent of the respondent Government in reply to a specific request from the Commission. The non-compliance with the original time-limit set by the Commission for this purpose is explained by the development of the proceedings, the respondent Government having decided only at a late stage to co-operate with the Commission. The fact that the documentation in question has been prepared by the "TRNC" authorities, being a subordinate local administration of Turkey, does not deprive it of evidential value. The Commission wishes to emphasise in this context that the reference to the "TRNC" as the originating authority can in no way affect the status of Turkey as the respondent Government in this case. Finally, the fact that one of the appendices to that documentation was later replaced by a new expanded and updated version has not deprived the applicant Government of the opportunity to reply thereto. In fact, in order to give effect to the principle of procedural equality between the parties, the Commission has also taken into account the applicant Government's unsolicited comments of 31 August 1998.

137. As to the documentation submitted by the applicant Government on 1 June 1998, the Commission considers that it exceeded the scope of mere "comments" for which the Commission had asked the applicant Government. However, the extended time-limit set by the Commission was respected. In view of the nature and volume of the applicant Government's submissions the Commission granted the respondent Government a further opportunity to reply even after the oral hearing, which they did on 27 August 1998. The principle of procedural equality between the parties has therefore been respected as far as possible also in this respect. The Commission is, however, aware that due to lack of time the respondent Government may not have been able to address fully and in detail all the facts covered by the said documentation. Similarly, as regards the documents on missing persons submitted by the applicant Government at the oral hearing on 7 July 1998, while the respondent Government included some comments on this material in their letter of 5 August 1998, their possibility of fully replying to that material has been limited. In view of considerations of procedural fairness, the Commission can attribute only diminished evidential value to the above two sets of documents submitted by the applicant Government.

138. Among the documents before the Commission, there is a United Nations report on the humanitarian situation of Greek Cypriots in the Karpas area, the so-called "Karpas Brief" submitted by the applicant Government in two versions. The Commission was not initially aware that this document was of a confidential nature and had neither been published nor intended to be published by the United Nations. This was only discovered when the Commission's Delegates subsequently heard the authors of the said report, MM. Manzl and O'Sullivan, as witnesses who, despite certain limitations of their testimony due to the duty of

confidentiality which they owed the United Nations, gave valuable information on the circumstances in which this report and two similar reports, on the situation of Maronites in northern Cyprus and of the Turkish Cypriot minority in southern Cyprus, had been prepared. The applicant Government subsequently requested the Commission to procure the latter reports from the United Nations. The competent UN services would have been prepared to provide them to the Commission on the condition that both parties agreed. As the respondent Government raised objections, the Commission did not ask for the reports. However, the Commission notes that the respondent Government's objections did not relate to the "Karpas Brief", which by that time was already before the Commission. It can therefore be used as evidence although, due to its status as a non-public UN document, the Commission will refrain from quoting any details from that report. Nor will the Commission draw any inferences from the respondent Government's refusal to consent to the disclosure of the other two reports.

139. Apart from that, the following types of documentary evidence are before the Commission:

- a film, "Attila 1974" by Michael Kakoyiannis, and various documents, books, memoirs, articles, press reports etc providing a background to the events in Cyprus around the time of the Turkish intervention; the Commission notes that these materials do not contain matters of direct relevance to the administrative practices complained of in the present case and therefore does not propose to deal with them as a matter of evidence;

- numerous written statements by witnesses (partly anonymous, partly accompanied by official documents, photos, and other material); the Commission sees no reason to doubt the authenticity of the statements, but as it does not know the particular circumstances in which they were prepared, including the degree of involvement of Government agents when these statements were taken, it must use them with caution;

- a complete set of UN (Secretary General and Security Council) reports on the Cyprus question since 1974, covering, *inter alia*, the mandate of UNFICYP and the development of the intercommunal talks and of the proceedings of the Committee on Missing Persons; insofar as these reports relate to acts alleged to constitute violations of the Convention, they must be considered as an important objective source of information;

- a number of NGO reports on events in Cyprus; some, emanating from independent sources, carry considerable evidential value; to the extent, however, that the NGOs concerned are interest groups involved in the Cyprus conflict their evidential value appears diminished;

- press reports and broadcast transcripts (Greek Cypriot, Turkish Cypriot, Turkish, Greek and international); insofar as they concern specific facts relevant to the case, they may provide useful indications, without, however, amounting to full proof of the facts reported;

- the "TRNC" Constitution and extracts from "TRNC" legislation, treaties and other legal instruments; in the Commission's view it must be assumed that they indeed constitute the "law" of Turkey's subordinate local administration in northern Cyprus; however, the existence of such legal instruments does not prove that they are actually and effectively applied and that there are no other regulations or practices which might be in conflict with these instruments;

- several collections and surveys of judgments by Turkish Cypriot courts; their authenticity is not in doubt and therefore they provide proof that the cases at issue were decided in the reported manner;

- various other materials, including Government reports, memorials, statistics etc, which must be assessed in the particular context.

140. Despite the broad scope of documentary evidence submitted to it, the Commission has found it appropriate in the present case to proceed to its own investigation of certain of the facts. However, a full investigation of all aspects of the case was not considered necessary. Thus, the Commission has excluded the questions of missing persons and property issues from the investigation, considering that in this respect it can rely in part on findings made in earlier Reports and in part on documentary evidence which permits the establishment of the present state of affairs with a sufficient degree of certainty. The investigation has focussed on the Convention issues related, on the one hand, to the general living conditions of so-called "enclaved" Greek Cypriots and, on the other, to the situation of Turkish Cypriots, in particular political dissidents and members of the gypsy minority, in northern Cyprus. As concerning these issues, too, the Commission had before it voluminous documentary material, the investigation was not conceived as a comprehensive fact-finding for establishing all relevant circumstances. Rather, the Commission concentrated on matters which did not appear to be sufficiently clear from the other available evidence and on facts which were in dispute between the parties. The results of the investigation have provided the Commission with an important supplementary means of evidence which, due to the immediate impression which the Delegates could gain of certain relevant situations and of the credibility of the witnesses, must be given decisive weight in the assessment of disputed facts.

141. The investigation has involved visits to certain localities (Ledra Palace crossing point over the demarcation line, court building in northern Nicosia and Greek Cypriot villages in the Karpas area), and the taking of oral depositions from a number of witnesses and from officials and other persons encountered during the visit to the Karpas peninsula. The conditions under which these witnesses and other persons have been heard have been described in detail above. The Commission recalls in particular that the majority of witnesses used either the Greek or the Turkish language and that they were therefore heard through interpreters. Full verbatim records were prepared of all witnesses' oral evidence and a summary record of the statements heard during the Karpas visit. These records have been used not only by the Delegates but also by the plenary Commission. The Commission has noted the corrections made by the parties to the verbatim records and the objections to certain such corrections which in part were of a linguistic nature. It is aware of the difficulties attached to assessing evidence obtained orally through interpreters and has therefore paid careful and cautious attention to the meaning and significance which should be attributed to the statements made by witnesses appearing before its Delegates.

142. The Commission further notes that several of the witnesses heard by the Delegates on the applicant Government's proposal have remained unidentified and that in this respect a screening procedure was applied by the Delegates which allowed the parties' representatives to follow their interrogation only through the English interpretation. This might have caused some additional linguistic difficulties which, however, are mitigated by the fact that the parties subsequently also received a full transcript in the original language on which they could comment. The Commission has authorised the hearing of unidentified witnesses and the use of the said screening procedure mainly on the basis of the subjective fears of the

witnesses concerned that they might be exposed to pressure or reprisals. The Commission considers that the existence of such subjective fears has been sufficiently demonstrated when the applicant Government asked for the non-disclosure of the identity of the witnesses in question and it is satisfied that it has in each case also been confirmed by the witnesses' attitude when they appeared before the Delegates. This does not mean, however, that in the Commission's view the witnesses' subjective fears are objectively justified.

143. The respondent Government contend that they have suffered a procedural disadvantage by the very fact that an important number of the applicant Government's witnesses were heard without being identified and that some of them waived their objections to the non-disclosure of their identity only at the last minute. This, it is claimed, prevented the respondent Government's representatives from properly preparing for the cross-examination of the said witnesses and from putting useful questions at their interrogation. The Commission observes, however, that a broad profile of the witnesses and the subject-matters on which they were supposed to give evidence had previously been indicated. The procedural disadvantages encountered by the respondent Government's representatives should therefore not be over-estimated. Nevertheless, it cannot be denied that such disadvantages in fact existed and that the credibility of the witnesses in question could not always be fully tested, e.g. by confronting them with particular facts inconsistent with their testimony. With this in mind, the Commission has preferred to adopt a cautious approach in its assessment of the unidentified witnesses' evidence by ascertaining its evidential value having regard to the particular nature of each of these witnesses' testimony.

144. The Commission finally notes in this context that the respondent Government, too, had proposed two witnesses (probably Maronites living in northern Cyprus) who wished to remain unidentified. The Delegates were prepared to hear them under the same conditions as the other unidentified witnesses. They were summoned but eventually did not appear before the Delegates, for reasons which have remained unexplained. Nevertheless, the Commission does not consider it appropriate in the given circumstances to draw any inferences from that fact.

145. In conclusion, the Commission wishes to observe that apart from the material referred to in the first indent in para. 139 it has used the entire evidence placed before it, being well aware that in view of the nature and volume of this evidence it has been confronted with a particularly difficult task. It has attempted to attribute to each item of evidence the appropriate evidential value taking into account in particular the degree of objectivity and/or credibility of the source and the parties' procedural position as to the possibility of challenging the evidence. Where facts were in dispute between the parties, it has been the specific function of the Commission's Delegates to seek the necessary clarifications and therefore the Commission attaches decisive importance in this respect to the findings of its Delegates who had the advantage of gaining a direct and personal impression of the relevant witnesses and of the general situation prevailing in the northern part of Cyprus.

146. In exercising its functions under former Article 28 para. 1 (a) of the Convention, the Commission will thus determine the evidential value of each piece of evidence submitted to it having regard to the nature of this evidence and the procedure through which it has been obtained.

PART TWO

THE PARTICULAR COMPLAINTS

Chapter 1

Greek Cypriot missing persons

A. Complaints

147. The Commission has declared admissible the applicant Government's complaints that, if any Greek Cypriot missing persons should still be in Turkish custody 20 years after the cessation of hostilities,

- this would constitute a form of slavery or servitude contrary to Article 4 of the Convention;

- it would also be a grave breach of their right to liberty and security of person as guaranteed by Article 5 of the Convention.

148. Furthermore, the Commission declared admissible the applicant Government's complaints that the consistent failure of Turkey to provide information on the fate of these persons to their relatives

- constitutes inhuman treatment within the meaning of Article 3 of the Convention;

- interferes with the relatives' right to respect for their family life as guaranteed by Article 8 of the Convention;

- interferes with their right to receive information as guaranteed by Article 10 of the Convention.

149. At the merits stage of the proceedings the applicant Government have in addition alleged violations of the following Convention Articles:

- in respect of the missing persons themselves, violations of Articles 2 (right to life), 3 (inhuman or degrading treatment through prolonged holding or systematic ill-treatment), 6 (right to a fair and public hearing within a reasonable time), 8 (respect for private and family life), 13 (right to an effective remedy), 14 (discrimination on grounds of ethnic origin) and 17 of the Convention (action aimed at the destruction of Greek Cypriots' rights under the Convention).

- in respect of the missing persons' relatives, violations of Articles 2, 3, 4 and 5 (insofar as these provisions involve a right to proper investigation) and of Article 13 of the Convention.

150. The Commission must accordingly determine

- whether there are continuing violations of Articles 4 and 5 of the Convention in respect of the missing persons;

- whether Articles 2, 3, 6, 8, 13, 14 and 17 of the Convention can also be taken into account in respect of the missing persons and if so, whether their rights under these provisions have been violated;

- whether there are continuing violations of Articles 3, 8 and 10 of the Convention in respect of the relatives of the missing persons;

- whether Articles 2, 3 4, 5 (insofar as they imply a right to proper investigation) and Article 13 of the Convention can also be taken into account in respect of the relatives of the missing persons and if so, whether their rights under these provisions have been violated.

151. The Commission finds that the facts and legal arguments concerning these issues are closely interrelated. It therefore considers it appropriate to consider them together before expressing an opinion on the above issues in the light of individual Convention Articles.

B. Submissions of the parties

1) The applicant Government

152. The applicant Government submit that there are still 1492 persons missing whose fate has not been clarified. The number of cases has been revised downwards to 1493 cases when the UN Committee on Missing Persons (CMP) became operational and the Greek Cypriot side was requested to get its files in order and then present all its cases. A careful inquiry was carried out between August and October 1995 which led to the elimination of 126 persons from the previous list containing 1619 people. One more case was clarified due to the findings in the Dillon Report published in May 1998 (cf. paras 157 and 167 below). It is claimed that the remaining cases all concern persons who were last seen alive after 20 July 1974; the applicant Government refute the respondent Government's argument that the list includes any persons who disappeared during the fights within the Greek Cypriot community following the *coup d'état* of 15 July 1974. At the oral hearing on 7 July 1998 they submitted detailed statistical material with a break-down of the categories of persons who have disappeared (combatants or civilians, male, female or children) and of the dates and places where they were last seen alive. They claim that these tables show the systematic character of the disappearances as taking place within Turkey's expanding control, and involving also a widespread practice of violation by the Turkish army of Articles 2 and 3 of the Convention.

153. The applicant Government claim that they have a continuing legal interest in the determination of their complaints relating to the missing persons for several reasons. The findings of the Commission in the previous inter-State cases have not completely resolved all the issues. In particular, the 1983 Report was confined to missing Greek Cypriots who had been in Turkish custody in 1974. It is submitted that this concerns 475 persons (381 actually seen in the custody of the Turkish army and 94 in the custody of armed Turkish Cypriots). The whole question of the remaining persons who were within Turkish jurisdiction at the time they went missing, but who are not proven by specific evidence to have been in custody in 1974, has therefore remained open.

154. The applicant Government observe that the Cyprus situation does not fall within the mandate of the UN Working Group on Forced and Involuntary Disappearances and they do

not accept that the CMP is the most appropriate investigating body, as claimed by the respondent Government. They observe that the CMP is not a national authority of Turkey, which is not involved as a party to the CMP's proceedings, that the CMP consequently cannot operate in Turkey but only in Cyprus, that it does not apply the Convention and that it has only a narrow mandate, without the competence to establish responsibilities. Finally, even within its limited mandate, the CMP has not come to final results due to lack of co-operation by the Turkish Cypriot side, which recently introduced a new condition, criticised by the Secretary General of the United Nations, namely the prior investigation of killings of Greek Cypriots in connection with the *coup d'état* of 15 July 1974.

155. The applicant Government also claim that there are new facts which would have required a fresh investigation of the issue of missing persons by the respondent Government. The applicant Government refer in particular to a statement by Mr. Denktaş, transmitted on 1 March 1996 by Sigma TV. In reply to a question by the interviewing journalist about the fate of 42 Greek Cypriots who had surrendered to the Turkish army in Lapithos on 8 August 1974, Mr. Denktash stated the following:

> "What happened is this. As the Turkish army moved and they captured Greek Cypriots, unfortunately they handed them over to fighters, our fighters; among them there were people who had their families lost, the villages lost over the years and massacres, if happened, they happened like this. Instead of taking them to Police stations or to prison camps, they were killed. As soon as the Turkish army realised what was happening, that is why and that is when the rest of them were transported to Turkey".

156. A further statement on which the applicant Government rely in this context was made by Professor Yalçın Küçük, a former Turkish army officer now living in France. His interview was transmitted by Antenna TV in Greece in February 1998. Professor Küçük had taken part in the Turkish military operation in Cyprus in August 1974 and confirmed that he had been involved in cleaning ("temizlik") operations in Greek Cypriot villages in which many civilians were killed. He had himself been able to prevent killings on several occasions. Asked about transfer of prisoners to mainland Turkey he considered "that this is not the way the Turkish soldier does his mission... It's not my feeling that anybody should be alive... If there are missing, it's a good hypothesis that they are not alive". And asked about mass graves he said: "No... I know massive deaths. I don't know massive graves."

157. The applicant Government also rely on the Dillon Report submitted to the U.S. Congress in May 1998. It reported *inter alia* about an incident in Asha on 18 August 1974 where Turkish and Turkish Cypriot soldiers went from house to house, forcing Greek Cypriots to assemble in the town square where women were separated from men and then young boys under 15 from the older men. The men over 15 were taken to Pavlides garage in Nicosia where those over 50 were separated from the younger ones and told that they would go back to their village. However, most were reportedly killed when the trucks were stopped by TMT (Turkish Cypriot Militia) fighters. The U.S. team were unsuccessful in their efforts to identify former commanders of TMT units in the Asha area, Turkish Cypriot officials pretending that the identities of such persons were unknown. The same report stated that an elderly American citizen of Greek origin and suffering from overweight, who had been taken prisoner with a group of other persons, was eventually left behind in the foothills by three young Turkish soldiers with his hands tied behind his back. Probably he had a heart attack

and died. The applicant Government claim that both incidents clearly show the responsibility of the respondent Government.

158. As to the legal assessment under the Convention, the applicant Government note the prevalence which has been given in the case-law of the Convention organs to Article 5, *inter alia* in the previous inter-State applications and recently in the case of Kurt v. Turkey (Eur. Court HR judgment of 25 May 1998, Reports 1998-III, p. 1152). In this context it was also acknowledged that "Article 5 aims to provide a framework of guarantees against abuse of power in relation to persons taken into custody" and that it "plays an essential role in the system of protection under the Convention in effectively preventing the risk of treatment contrary to Article 3 and extra-judicial execution contrary to Article 2 and in holding State authorities accountable to independent judicial control for the detention of persons taken into custody" (Kurt v. Turkey, Comm. Report 5.12.96, *loc. cit.* p.1217, para. 201). However, the applicant Government consider that the guarantees of the Convention should not be confined to disappearance of persons in official State custody, but should also apply to disappearance of persons held in unofficial custody or whose taking into State custody cannot be proven, the State being responsible for both its acts and omissions. In any event, it is the applicant Government's claim that they cannot be required to discharge the burden of proof that the persons who have disappeared were actually detained, it being sufficient to establish that there are circumstances in which the respondent State has a duty to investigate, especially if further clarification is exclusively in the hands of that State.

159. Moreover, in the applicant Government's opinion a duty to investigate and to provide appropriate remedial action arises not only under Article 5, but also under other provisions of the Convention. As regards Article 2 of the Convention, this has been confirmed in the McCann and others v. United Kingdom judgment of 27 September 1995 (Series A no. 324, in particular p. 49, para. 161) where the Court stated a principle which can be generalised to cover all cases where a procedure should be in place to protect significant human rights. It is on this basis that the applicant Government now also invoke Articles 2, 3 and 8 of the Convention. However, they submit that the Commission should not presume that the missing persons are dead. Persons who were detained by Turkey cannot be presumed dead unless they were murdered; otherwise Turkey would have been under an obligation to inform the relatives of a natural death. There is thus a presumption of survival unless there is evidence to the contrary. As regards Article 3 it is submitted that the fact of subjecting a person to the anguish of being an unknown captive, to anticipation of barbaric treatment, to total uncertainty as to his or her fate, or alternatively, the fact of holding persons in custody for nearly 24 years, constitutes in itself inhuman treatment.

160. According to the applicant Government, such a broader approach would be in line with the principles enshrined in the UN Declaration on the Protection of All Persons from Enforced Disappearances (General Assembly resolution 47/1333 of 18 December 1992) and advocated by the UN Working Group on Enforced or Involuntary Disappearances (first report 1981 = UN doc. E/CN.4/1435) which are based on the consideration that forced disappearances affect a wide range of human rights of the victim and of his family. It is also reflected in the relevant case-law of other international jurisdictions such as the UN Human Rights Committee (reference is made to the Committee's decisions on Communications No. 30/1978, Lewenhoff and de Bleier v. Uruguay; No. 107/1981, Quinteros v. Uruguay; and No. 275/1988, Sofia de Epelbaum v. Argentina) and the Inter-American Court of Human Rights (Velasquez Rodriguez v. Honduras judgment of 29 July 1988). This is evidence of a universal standard to be applied in such matters which should also be followed in Europe.

161. As regards the rights of the missing persons' relatives, the applicant Government claim that they have been subjected to inhuman treatment contrary to Article 3 of the Convention. In particular in respect of close family members such as parents, spouses and children of the missing persons the severity of treatment attains the level required by this provision, since for a very long period they suffered agonies of alternating hope and despondency. The psychological effects upon them have been devastating, attempts to find out the fate of the missing persons and protests against the lack of information often having dominated the relatives' lives. Even at present, the families suffer acutely, in particular Mr. Denktash's statement of 1 March 1996 concerning the Lapithos incident having caused them new intense anxiety. In the applicant Government's submission, the Commission should take into account international law standards also in this respect, in particular Article 1.2 of the UN Declaration on the Protection of All Persons from Forced Disappearance and common Article 3 of the Geneva Conventions on the Laws of War. They further invoke the Kurt v. Turkey judgment of 25 May 1998 (*loc. cit.*, pp. 1187 - 1188, paras. 130 - 134).

162. The applicant Government note that in the 1983 Report (D.R. 72, p. 38, para. 118 and footnote 1) the Commission commented on the position of the families of the missing persons referring to its Report concerning applications Nos. 8022, 8025 and 8027/77, McVeigh and others v. United Kingdom (D.R. 25, p. 15). In that case a breach of Article 8 had been found because the applicants had been prevented from contacting their wives during detention. The applicant Government claim that for similar reasons there has been an interference with the family life of the missing persons' relatives contrary to Article 8 of the Convention. Furthermore, they consider that there has been interference with their freedom to receive information, as guaranteed by Article 10 of the Convention, by preventing them from making inquiries in Turkey and northern Cyprus. Finally, they contend that the right to proper investigation, deriving from Articles 2, 3, 4 and 5 of the Convention, and the right to an effective remedy, under Article 13 of the Convention, have also been breached in respect of the missing persons' relatives.

163. In conclusion, the applicant Government submit that it is implicit in Article 1 of the Convention that States must use reasonable means at their disposal to investigate alleged human rights violations committed within their jurisdiction, and any such investigation must be carried out in a serious and effective manner. This need for State investigation applies not only to the use of lethal force by State agents *inter alia*, but equally to other violations, especially of a serious nature, such as inhuman treatment, involuntary servitude, deprivation of liberty, gross interference with family life etc. It is also of a continuing character. The matters requiring investigation are not confined to direct action through State agents. If a State tolerates or acquiesces in conduct, this tolerance implicitly associates the State with that conduct and in order to avoid such an implication being drawn, the State must investigate situations which come to its knowledge where, if the conduct had been directly committed by a State agent, there would have been a violation. If the State itself organises, acquiesces in or tolerates "disappearances" without properly investigating these, the State violates the relevant Articles of the Convention. The State must afford an effective remedy under Article 13 of the Convention, involving, according to the circumstances, an investigation alone or also provision of just satisfaction. In cases of disappearances, separate findings require to be made in respect of each category of victims and in respect of their close family. Where there is substantial witness testimony and further clarification is dependent on information exclusively in the hands of the respondent State, the Commission may consider that such allegation is substantiated beyond reasonable doubt should there be a continued situation of

absence of credible explanation, of investigation and of satisfactory evidence to the contrary. Finally, there is a presumption that missing persons remain alive, unless there is satisfactory evidence to the contrary.

2) The respondent Government

164. The respondent Government refute these allegations. Their main submission is that the applicant Government do not have a sufficient legal interest to pursue their complaints relating to the missing persons before the Commission, because the matter has already been dealt with by the Commission and the Committee of Ministers in application No. 8007/77, and as there exists an adequate alternative mechanism which should be pursued, namely the UN Committee on Missing Persons.

165. The respondent Government recall that in application No. 8007/77 the applicant Government had submitted that about 2000 Greek Cypriots were still missing. When they introduced the present application, they referred to "unlawful detention of at least 1619 missing Greek Cypriots who were unlawfully deprived of their liberty in Turkish custody in 1974", thus basing their complaints on the presumption that those persons were taken alive into Turkish custody and, as their fate had not been accounted for, there was a continuing violation entailing Turkish responsibility. The respondent Government submit "that such a theory cannot stand to invoke the responsibility of Turkey 24 years after the spontaneous events sparked off by the Greek military coup in Cyprus of July 1974 and the consequent Turkish intervention".

166. The respondent Government contest that there is any proof that missing Greek Cypriots are still alive or being kept in custody. In this respect they refer to the public statement of the ICRC of 11 March 1976 that all Greek Cypriot prisoners had been returned to Cyprus and released and further statements by ICRC officers made in 1984 that "everything possible to trace those reported missing" had been done and that "taking into account the circumstances of the disappearances and the conditions prevailing in Cyprus then, those whose fate had been fully investigated should be presumed dead if information obtained, even though short of recovery of identifiable bodily remains, justified such a presumption." Also, after exhaustive investigations, the CMP "found no evidence whatsoever that any of the missing Greek Cypriots was alive. On the other hand, in most cases, sufficient evidence was found indicating that the missing persons concerned had lost their lives as a result of the events which took place on the island. The Greek Cypriot side insisted that whatever evidence might be found, a Greek Cypriot missing person would not be accepted as dead and his case considered as concluded, until his bodily remains were found and identified."

167. Finally, the respondent Government refer to Ambassador Dillon's report on the fate of five American citizens of Greek origin submitted to the United States Congress on 22 May 1998, where it was stated:

> "A large number of Greek Cypriot prisoners taken to Turkey during the hostilities were repatriated in October/November 1974 under the auspices of the International Committee of the Red Cross. Despite frequent rumours, the International Committee of the Red Cross has no evidence that any prisoners remained in Turkey. Both Turkish Cypriots and Turkish officials say all Greek Cypriot prisoners taken to Turkey in the summer of 1974 were repatriated by December 1974. The Turkish Government vigorously denies that any Greek

> Cypriot prisoners were held in Turkey beyond that date. Various governments, including the Government of Cyprus, and international organisations have looked into the allegations of prisoners still being held in Turkey and none has found any convincing evidence that there are such prisoners."

168. At the admissibility stage, the respondent Government indicated that the applicant Government were in possession of information showing that Greek Cypriots listed as missing had been killed and that they withheld this information from the public for purposes of political propaganda. They referred to various statements made in particular by Greek Cypriot and Greek politicians which showed that they were in possession of information according to which the missing persons were dead. At the merits stage, the respondent Government have submitted that even the applicant Government must now admit that the list of 1619 missing persons earlier relied upon was wrong. Revelations of the Greek Cypriot press between July and December 1995 showed that some of those listed missing were dead and had been buried on the Greek side.

169. The respondent Government submit that in these circumstances the Commission cannot rely on its findings in the earlier inter-State cases. The difficulties and dangers involved in reaching a sound decision on the matter are borne out by the Commission's 1983 Report concerning application No 8007/77, in particular paras. 87 - 95. Turkey had not participated in the investigation in that case, the Commission thus having acted on one-sided evidence, based on a wrong number of cases. That evidence being unreliable it cannot, in the absence of new evidence, be relied upon to form the basis of a similar finding by the Commission in the present application. In this respect, the respondent Government consider that the applicant Government have not produced any conclusive evidence, the various witness statements to which they refer not having been put to the test of an adversarial procedure in which the respondent Government would have had an opportunity to examine those witnesses and put questions to them. The respondent Government therefore contend that the Commission is not the most appropriate body to examine the fate of the missing persons.

170. The most appropriate body is the CMP, as acknowledged by the UN Working Group on Enforced and Involuntary Disappearances. The CMP's Terms of Reference provide that the Committee will use its best efforts to draw up comprehensive lists of missing persons of both communities, specifying as appropriate whether they are alive or dead. The Procedural Rules adopted in 1984 provide *inter alia* that investigations would be conducted in the sole interest of the families and that communication of information about the fate of missing persons would be through the appropriate member of the Committee. Earlier on, the Greek Cypriot side had delayed the CMP's procedures, *inter alia* by insisting that any missing persons could only be considered dead if their bodily remains had been found. While the Turkish Cypriot side had submitted all their cases, the Greek Cypriot side had submitted no more than 548 cases by May 1994, shortly before the introduction of the present application with the Commission. However, more recently the applicant Government have shown through their behaviour that they also consider the CMP as the appropriate forum. In May 1995, they agreed on the criteria for conducting the investigations of the CMP, as set out by the UN Secretary General. In December 1995 they submitted their complete list of 1493 cases. Finally, in a letter of 3 March 1997 the Greek Cypriot President Glafkos Clerides requested the appointment of the CMP's third member whose post had become vacant and stressed the readiness of the Greek Cypriot side to co-operate with the UN to reach a speedy and successful conclusion of the Committee's work.

C. Facts established by the Commission

171. It is an uncontested fact that following the events in Cyprus in the summer of 1974 a large number of persons belonging to both the Greek Cypriot and the Turkish Cypriot communities went missing. The present application does not concern missing Turkish Cypriots. As regards missing Greek Cypriots, it is limited to those who went missing in areas which at the relevant time had come under the control of the Turkish armed forces.

172. The Commission notes that at present 1492 case-files are pending before the UN Committee on Missing Persons all of which according to the applicant Government fall within the last-mentioned category. The respondent Government contest this and claim that persons who disappeared in the intra-communal fights between Greek Cypriots following the *coup d'état* against Archbishop Makarios have been included in the list. The Commission has examined both parties' arguments in this respect. Without knowing all the details, it is unable to express an opinion on this point. It is, however, satisfied that the vast majority of missing Greek Cypriots disappeared after the collapse of the *coup d'état* on 22 July 1974 and that not all disappearances before that date in areas which by then had come under the control of the Turkish army can be explained by the *coup d'état*.

173. The Commission considers that it is not called upon to establish in the context of the present application what exactly happened to the persons concerned in 1974. Its task is only to determine whether or not the alleged failure of the respondent Government to clarify these facts up to the present day constitutes a continuing violation of the Convention. The Commission will therefore refrain from assessing in detail the various statements of witnesses submitted by the applicant Government as to the conditions in which they last saw or heard of any of the missing persons. This has also been the reason why the Commission did not find it necessary to orally hear the witnesses in question with the participation of the respondent Government.

174. The Commission considers that it can rely on its findings of fact in the earlier inter-State cases. It is recalled that the respondent Government did not participate in the proceedings on the merits of those cases. However, the respondent Government were always kept informed of the procedure and could have participated if they had wished to do so. Moreover, due to their actual non-participation the Commission applied special precautions to ensure a maximum degree of objectivity. Nothing has been put forward that would lead to doubts as to the correctness of the Commission's conclusions in the earlier Reports.

175. In the 1976 Report, the Commission stated that it had "not been able to find out whether undeclared Greek Cypriot prisoners are still in Turkish custody, as alleged by the applicant Government" (p. 107, para. 306) and that the evidence then before it did not allow "a definite finding with regard to the fate of Greek Cypriots declared to be missing..." (p. 117, para. 347). However, the Commission also stated (p. 118, para. 349) that it was widely accepted that "a considerable number of Cypriots" were still "missing as a result of armed conflict in Cyprus" and that "a number of persons declared to be missing have been identified as Greek Cypriots taken prisoner by the Turkish army". The Commission concluded that there was "a presumption of Turkish responsibility for the fate of persons shown to have been in Turkish custody. However, on the basis of the material before it, the Commission has been unable to ascertain whether, and under what circumstances, Greek Cypriot prisoners declared to be missing have been deprived of their life" (p.118, para. 351). In the same Report, the

Commission dealt with allegations of mass killings of civilians by the Turkish army. It investigated one incident which had occurred near Elia and found it established that in that location twelve civilians had been killed by Turkish soldiers commanded by an officer. On the basis of other material before it the Commission concluded that killings had happened on a larger scale than in Elia (p. 119, paras. 353-354).

176. In the 1983 Report the Commission found it established in three of the investigated cases, and it found sufficient indications in an indefinite number of further cases, that missing Greek Cypriots had been in Turkish custody in 1974, this creating a presumption of Turkish responsibility for the fate of these persons (D.R. 72, p. 38, para. 117). The Commission noted that the evidence before it was limited in time to the situation of missing Greek Cypriots in 1974 and that no evidence had been adduced in support of the applicant Government's allegation that a considerable number had been seen alive in detention in Turkey more recently (*ibid.*, para. 120). Moreover, the Commission could not "exclude that missing persons found to have been in Turkish detention in 1974 have died in the meanwhile but, on the material before it, it cannot make any finding as to the circumstances in which such deaths may have occurred" (*ibid.*, para. 121).

177. The evidence submitted in the present case confirms the Commission's findings in the 1983 Report that certain of the missing persons were last seen in Turkish or Turkish Cypriot custody. In particular Mr. Denktash's statement broadcast on 1 March 1996 - which has not been contested by the respondent Government - clearly admits the fact that Greek Cypriot prisoners were handed over to Turkish Cypriot fighters who killed them.

178. Some written statements of witnesses submitted by the applicant Government also contain concrete direct evidence that their relatives or other persons were taken into Turkish custody in their presence (*inter alia* the statements of Mrs Panayota Pavlou Solomi from Komi Kepir village, Mrs. Phivi M. Loizou from Goufes village, Mrs Froso Demou from Voni village who prepared a list of persons detained by the Turkish army at the moment of their arrest, and Mrs Angeliki Yiannaka from Eptakomi village who reported about a refusal by the Turkish army in presence of UN officers to allow the drawing up of a list of arrested persons). In a few cases the witnesses claim that the fact of their relatives being alive in detention has subsequently been confirmed to them by Turkish Cypriots (cf. the statement of Mrs Loizou and that of Mrs Thalia Chr. Kaoudjani who submitted a handwritten note by Mr Denktash informing her that his efforts to trace her husband had been fruitless). The Commission has not heard these witnesses and tested their credibility. However, their concordant testimony seems to corroborate the Commission's earlier finding according to which many persons now missing were taken into custody while no evidence to the contrary has been brought forward.

179. As to the number of persons reliably reported to be taken into custody before they went missing, the Commission has not been able to verify the figures given by the applicant Government. Nor has the Commission found any evidence to the effect that any of the persons taken into custody are still being detained or kept in servitude by the respondent Government. The Commission takes it for granted that all persons registered as prisoners of war by the ICRC have in fact been returned to Cyprus by the end of 1974.

180. As to the question whether any of the missing persons have been killed or died of a natural death, the Commission again notes the statement of Mr Denktash broadcast on 1 March 1996 which suggests that the 42 missing persons who surrendered to the Turkish army

at Lapithos were subsequently killed by Turkish Cypriot fighters. The Commission is not aware of any measures taken to identify and punish those who were responsible for the murder. It notes Mr. Denktash's allegation that in order to prevent further killings of this kind the Turkish army then transferred prisoners of war to mainland Turkey. However, this statement is contradicted by Professor Kucuk's statement broadcast in February 1998 which suggests that the Turkish army itself engaged in widespread killings of, *inter alia*, civilians in so-called cleaning-up operations. This seems to corroborate the Commission's findings in the 1976 Report based on its investigation of the Elia killing. The Commission does not, however, dispose of any further evidence proving that any of the missing persons were killed in circumstances for which the respondent Government can be held responsible.

181. The Commission finds that to the present day all these facts have not been clarified and brought to the notice of the victims' relatives. It seems that investigations are exclusively carried out in the framework of the UN Committee of Missing Persons. The Committee was set up in 1981. According to its terms of reference, it "shall only look into cases of persons reported missing in the intercommunal fightings as well as in the events of July 1974 and afterwards". Its tasks have been circumscribed as follows: "to draw up comprehensive lists of missing persons of both communities, specifying as appropriate whether they are alive or dead, and in the latter case approximate time of the deaths". It was further specified that "the committee will not attempt to attribute responsibility for the deaths of any missing persons or make findings as to the cause of such deaths" and that "no disinterment will take place under the aegis of this committee. The committee may refer requests for disinterment to the ICRC for processing under its customary procedures." "All parties concerned" are required to co-operate with the committee to ensure access throughout the island for its investigative work. Nothing is provided as regards investigations in mainland Turkey or concerning the Turkish armed forces in Cyprus.

182. The CMP consists of three members, one "humanitarian person" being appointed by the Greek Cypriot side and one by the Turkish Cypriot side and the third member being an "official selected by the ICRC... with the agreement of both sides and appointed by the Secretary-General of the United Nations".

183. The CMP has no permanent chairman, the presidency rotating on a monthly basis between all three members. Decisions are to be taken by consensus to the extent possible. According to the procedural rules agreed upon in 1984, the procedure is to be conducted as follows:

> "1. Individual or collective cases will be presented to the CMP with all possible information. The CMP will refer each case to the side on whose territory the missing person disappeared; this side will undertake a complete research and present to the CMP a written report. It is the duty of the CMP members appointed by each side, or their assistants, to follow the enquiries undertaken on the territory of their side; the third member and/or his assistants will be fully admitted to participate in the enquiries.
>
> 2. The CMP will make case decisions on the basis of the elements furnished by both sides and by the Central Tracing Agency of the ICRC: presumed alive, dead, disappeared without visible or other traceable signs.

> 3. If the CMP is unable to reach a conclusion on the basis of the information presented, a supplementary investigation will be undertaken at the request of a CMP member. The third CMP member and/or his assistants will participate in each supplementary investigation, or, as the case may be, investigators recruited by the CMP with the agreement of both sides."

184. The 1984 rules state as "guiding principles" that "investigations will be conducted in the sole interest of the families concerned and must therefore convince them. Every possible means will be used to trace the fate of the missing persons." The families of missing persons may address communications to the committee which will be passed on to its appropriate member. That member will eventually provide the family with "final information as to the fate of a particular missing person", but no interim information must be given by any member of the committee to the family of a missing person during the discussion of a particular case.

185. The committee's entire proceedings and findings are strictly confidential, but it can issue public statements or reports without prejudice to this rule. According to the 1984 procedural rules, a press release will be issued at the close of a meeting or series of meetings and occasional progress reports will also be published. Individual members may make additional statements to the press or the media, provided they comply with the rule of confidentiality, avoid criticism or contradiction to the joint statement and any kind of propaganda.

186. Due to the strict confidentiality of the CMP's procedure, the Commission has no detailed information about the progress and results of its work. However, from the relevant sections of the regular progress reports on the UN Operation in Cyprus submitted by the UN Secretary-General to the Security Council it appears that the committee's work started in May 1984 with a limited, equal number of cases on both sides (Doc. S/16596 of 1.6.1984, para. 51); that by 1986 an advanced stage had been reached in the investigation of the initial 168 individual cases, supplementary investigations being started in 40 cases in which reports had been submitted (Doc. S/18102/Add. 1, of 11 June 1986, para. 15); and that, while no difficulties were encountered as regards the organisation of interviews or visits in the field, real difficulties then arose by the lapse of time and, even more importantly, lack of cooperation by the witnesses.

187. This prompted the committee to issue a lengthy press release on 11 April 1990 (Doc. S/21340/Annex). There the committee stated that it considered the co-operation of the witnesses as absolutely fundamental, but that the witnesses were often reluctant, unwilling or unable to give full information as to their knowledge about the disappearance of a missing person. However, the committee could not compel a witness to talk. The explanation of the witnesses' reluctance to testify was that they were afraid of incriminating themselves or others in disappearances, and this despite the witnesses being told by the committee that the information given would be kept strictly confidential and being reassured that they would "not be subject to any form of police or judicial prosecution". The committee appealed to the parties concerned to encourage the witnesses to give the very fullest information in their knowledge. It further stated:

> "In order to further allay the fears of the witnesses, the Committee, so as to give the strongest guarantees to the witnesses, is examining measures that could be taken to ensure that they would be immune from possible judicial and/or police proceedings solely in connection with the issue of missing

persons and for any statement, written or oral, made for the Committee in the pursuit of activities within its mandate."

188. In the same press release, the committee pointed out that it considered as legitimate the desire of the families to obtain identifiable remains of missing persons. However, despite systematic enquiries on burial places of missing persons, on both sides, it had not been successful in this respect. It recalled that according to its terms of reference it could not itself order disinterments. Moreover, while there was access to all evidence available, the committee had not reached the stage of finding a common denominator for the appreciation of the value of this evidence. Finally, the committee stated that it was considering the possibility of requesting that the two sides furnish it with basic information concerning the files of all missing persons, so as to allow it to have a global view of the whole problem.

189. In December 1990, the UN Secretary-General wrote a letter to the leaders of both sides observing that so far the committee had been given details on only about 15 % of the cases and urging them to submit all cases. He further emphasised the importance of reaching consensus on the criteria that both sides would be ready to apply in their respective investigations. Moreover, the committee should consider modalities for sharing with affected families any meaningful information available (Doc. S/24050, of 31 May 1992, para. 38). On 4 October 1993, in a further letter to the leaders of both communities the UN Secretary-General noted that no improvement had been made and that the international community would not understand that the committee, nine years after it had become operational, remained unable to function effectively. Only 210 cases had been submitted by the Greek Cypriot side and only 318 by the Turkish Cypriot side. He again urged both sides to submit all cases without further delay and the committee to reach a consensus on the criteria for concluding its investigations (Doc. S/26777, of 22 November 1993, paras. 88 - 90).

190. On 17 May 1995 the UN Secretary-General, on the basis of a report of the CMP's third member and proposals by both sides, put forward compromise proposals on criteria for concluding the investigations (Doc. S/1995/488, of 15 June 1995, para. 47), which were subsequently accepted by both sides (Doc. S/1995/1020, of 10 December 1995, para. 33). By December 1995, the Greek Cypriot side submitted all their case files (1493). However, the committee's third member withdrew in March 1996 and the UN Secretary-General made it a condition for appointing a new one that certain outstanding questions, including classification of cases, sequence of investigations, priorities and expeditious collection of information on cases without known witnesses, be settled beforehand (Doc. S/1996/411, of 7 June 1996, para. 31). After being repeatedly urged to resolve these issues (Doc. S/1997/437, of 5 June 1997, paras. 24 -25), both parties eventually came to an agreement on 31 July 1997 on the exchange of information on the location of graves of missing persons and return of their remains. They also requested the appointment of a new third member of the CMP (Doc. S/1997/962, of 4 December 1997, paras. 21 and 29-31). However, by June 1998, no progress had been made towards the implementation of this agreement. The UN Secretary-General noted in this context that the Turkish Cypriot side had claimed that victims of the *coup d'état* against Archbishop Makarios in 1974 were among the persons listed as missing and that this position deviated from the agreement (Doc. S/1998/488, of 10 June 1998, paras. 23).

191. A new third member of the CMP has in the meantime been appointed (*ibid.* para. 24). However, the Committee has not completed its investigations and accordingly the families of the missing persons have not been informed of the latter’s fate.

D. Opinion of the Commission

1) As to the alleged violation of the rights of the missing persons themselves

a) Article 4 of the Convention

192. Article 4 of the Convention provides *inter alia* that no one shall be held in slavery or servitude.

193. The applicant Government claim that if any missing persons should still be in Turkish custody 20 years after the events of 1974, this would amount to slavery or servitude prohibited by Article 4.

194. The respondent Government deny that any Greek Cypriots remained in their custody after December 1974.

195. The Commission notes the hypothetical character of the applicant Government's complaint. It finds that there is nothing in the evidence which could support the assumption that during the period under consideration in the present case (cf. para. 130 above) any of the missing persons were still in Turkish custody and that they were subjected to slavery or servitude.

Conclusion

196. The Commission concludes, unanimously, that there has been no breach of Article 4 of the Convention.

b) Article 5 of the Convention

197. Article 5 of the Convention provides that everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the cases enumerated in the Article and in accordance with a procedure prescribed by law.

198. The applicant Government claim that if any missing persons should still be in Turkish custody 20 years after the events of 1974, this would amount to a grave breach of Article 5.

199. The respondent Government deny that any Greek Cypriots remained in their custody after December 1974.

200. The Commission notes that this complaint, too, is of a hypothetical character and that nothing in the evidence supports the assumption that during the period under consideration in the present case any missing Greek Cypriots were still detained by Turkish or Turkish Cypriot authorities.

201. It follows that there is no basis for a finding of a breach of Article 5 on the ground of actual detention of missing persons.

202. However, the applicant Government also claim that there is a continuing breach of Article 5 on the ground that Greek Cypriots who are still missing were in Turkish custody in 1974 and that this creates a presumption of Turkish responsibility for the fate of these

persons, as acknowledged by the Commission in its 1983 Report, where it held that any unaccounted disappearance of a detained person must be considered as a particularly serious violation of Article 5, which can also be understood as a guarantee against such disappearances (D.R. 72, p. 38, paras. 117 and 119). However, despite the further lapse of time and the emergence of facts which would have required fresh investigations, the respondent Government have failed to investigate these cases in a serious and effective manner.

203. The respondent Government claim essentially that this issue has already been dealt with in the Commission's 1983 Report, although on the basis of a one-sided investigation and unreliable material, which does not warrant a new finding in similar terms being made in the present case. They also claim that the matter should not be taken up by the Commission because it is currently being considered in the Committee on Missing Persons.

204. The Commission finds that the evidence presented in the present case corroborates the finding in the 1983 Report that certain of the missing persons were in Turkish custody when they disappeared. This has been confirmed in particular by the television interview of Mr. Denktash to which the applicant Government have referred and whose contents have not been contested by the respondent Government. The situation described there that persons taken prisoner by the Turkish army were subsequently handed over to Turkish Cypriot paramilitary forces who killed them clearly falls within the responsibility of the respondent Government. That Government is also responsible where detention was effected directly by Turkish Cypriot forces co-operating with the Turkish army, such as described in the Dillon report. The applicant Government's initial contention that all missing persons must be presumed to have been in Turkish custody cannot be maintained, however. The Commission has not been able to verify the correctness of the figure indicated by the applicant Government of missing persons reliably reported as having last been seen alive in Turkish or Turkish Cypriot custody. Nevertheless, there is sufficient evidence that the number of persons in this category is considerable.

205. The Commission confirms the view it expressed in the 1983 Report that the fact of persons having been in custody creates a responsibility for their fate, and that the unaccounted disappearance of such detained persons amounts to a particularly serious violation of Article 5. This legal principle has been confirmed in the Court's Kurt v. Turkey judgment, where the fundamental importance of the guarantees of Article 5 against arbitrary detention, including life-threatening measures or serious ill-treatment, was emphasised. The Court stated (Eur. Court HR, Kurt v. Turkey judgment of 25 May 1998, Reports 1998- III, p. 1185, paras. 123-124):

> "What is at stake is both the protection of the physical liberty of individuals as well as their personal security in a context which, in the absence of safeguards, could result in a subversion of the rule of law and place detainees beyond the reach of the most rudimentary forms of legal protection. ... (T)he unacknowledged detention of an individual is a complete negation of these guarantees and a most grave violation of Article 5. Having assumed control over that individual it is incumbent on the authorities to account for his or her whereabouts. For this reason, Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since."

206. In the present case there exists therefore an obligation on the respondent Government, derived from Article 5 of the Convention, to conduct a "prompt effective investigation" in respect of the disappearance of any persons for whom an arguable claim has been brought forward that they were in Turkish detention at the time of their disappearance in 1974. For this obligation to arise it is not necessary that the detention be proven beyond reasonable doubt. Rather, it suffices that there is an arguable claim of detention. Where the facts of that detention are in themselves unclear, they would have to be among the elements to be investigated.

207. The Commission recalls that in 1983 when it adopted its Report on application No. 8007/77, it found a breach of Article 5 because by that time no information had been provided by the respondent Government on the fate of missing Greek Cypriots who had disappeared while in Turkish custody. In the Commission's opinion this breach continues as long as all available information has not been investigated and revealed by the respondent Government. There can be no limitation in time as regards the duty to investigate and inform, especially as it cannot be ruled out that the detained persons who disappeared might have been the victims of the most serious crimes, including war crimes or crimes against humanity. Nor can the duty to investigate and inform be subjected to conditions such as, e.g., prior investigation of disappearances by the other side or prior investigation of disappearances which occurred in a different context such as in connection with the *coup d'état*.

208. At the time of the 1983 Report the UN Committee on Missing Persons had already been established, but had not yet become operational. Now, more than 15 years later, the respondent Government claim that the CMP is the most appropriate forum for investigating the fate of the missing persons. As the Commission held in the decision on the admissibility of the present application, the establishment of the CMP under the auspices of the UN does not amount to a special agreement within the meaning of former Article 62 of the Convention and therefore does not deprive the Commission of its jurisdiction (cf. D.R. 86, p. 138). However, the respondent Government's reference to the CMP as being the most appropriate forum can also be understood as an argument that it is in fact through this investigating body that the respondent Government discharge their above duty of investigation. Indeed, procedures concerning the missing persons seem to be pending exclusively before this body which, moreover, has been created with the consent of the applicant Government.

209. The Commission considers that, in principle, a State can discharge its duty of investigation into the disappearance of detained persons also with the assistance of an international investigating body set up for the purpose. Such an approach introduces an element of objectivity and neutral assessment of the evidence, which is no doubt highly desirable in such delicate matters. In the present case, the Commission notes that the CMP's procedures are carried out separately on each side under the responsibility of the respective Committee member and with the assistance of the competent authorities. As regards missing Greek Cypriots who disappeared in northern Cyprus it is therefore the Turkish Cypriot authorities which are involved in the procedure. As these must be considered as a subordinate local administration of Turkey, they are in principle in a position to discharge that State's responsibilities under the Convention. The fact that the procedure foresees as an additional element the presence of the CMP's third member is of no relevance in this respect, as it cannot be assumed that this person would in any way prevent the competent authorities from performing their duties under the Convention.

210. The question arises, however, whether in view of its terms of reference and the practice based thereon the CMP is at all capable to fulfil the requirements of Article 5 of the Convention by its investigative activity. The Commission notes in particular that the scope of the investigations is limited to determining whether or not a missing person is dead or alive. The Committee is not empowered to make findings on the cause of death nor to establish responsibilities. It has even endeavoured to promise impunity to witnesses who through their testimony would risk to incriminate themselves or others for what, after all, would appear to be most serious crimes. Moreover, the territorial jurisdiction of the Committee is limited to the island of Cyprus, thus excluding investigations in mainland Turkey where some of the disappearances are claimed to have occurred. Furthermore, it is at least doubtful whether the Committee's investigations can extend to action by the Turkish army or its officials in Cypriot territory.

211. In view of these limitations the Commission considers that the CMP's procedures - while no doubt being useful for the humanitarian purpose for which they have been established - are not by themselves sufficient to meet the standard of an effective investigation required by Article 5 of the Convention. With this in mind, the Commission does not consider it necessary to express an opinion on the question whether one or the other side is to blame for the delay in the Committee's investigations and for the fact that to the present day is has not come to tangible results. Since the scope of the Committee's investigations is too narrow and there have been no other supplementary investigations which would have allowed a full clarification of the fate of those Greek Cypriot missing persons who were arguably claimed to have been in Turkish custody in 1974, there is a continuing violation of Article 5 for which the respondent Government must be held responsible.

Conclusions

212. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 5 of the Convention by virtue of actual detention of missing Greek Cypriot persons.

213. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 5 of the Convention by virtue of a lack of effective investigation by the authorities of the respondent State into the fate of missing Greek Cypriot persons in respect of whom there is an arguable claim that they were in Turkish custody at the time when they disappeared.

c) Complaints under Articles 2, 3, 6, 8, 13, 14 and 17 of the Convention

i) The Commission’s power to examine these complaints

214. At the merits stage of the proceedings, the applicant Government have invoked Articles 2, 3, 6, 8, 13, 14 and 17 of the Convention claiming that these provisions, too, have been violated in respect of the Greek Cypriot missing persons, a duty to investigate arising in cases of disappearances also outside the scope of Article 5. They refer in particular to the situation of those Greek Cypriot missing persons who cannot reliably be shown to have been in Turkish detention at the time when they disappeared in areas controlled by the Turkish army.

215. The respondent Government have not made any specific submissions in this respect.

216. As the applicant Government have not invoked the above Convention Articles in relation to missing persons at the admissibility stage, the Commission must first determine whether it can take them at all into account. In this context, the Commission recalls its constant practice according to which the decision on the admissibility of a case brought before it determines the facts or aggregate of facts as well as the substance of the complaints in relation to those facts which are being reserved for an examination as to their merits. However, the Convention organs are not bound by the legal qualification of the complaints by the parties and retain the power to look into the matters circumscribed by the decision on admissibility in the light of the Convention as a whole (cf. Assenov and others v. Bulgaria judgment of 28 October 1998, to be published in Reports 1998, para. 132, with further references).

217. In the present case, the Commission has admitted the applicant Government's complaints in relation to all Greek Cypriot missing persons who disappeared in the territory controlled by the respondent Government and on whose fate no information has been provided by the latter Government. It was also made clear at the admissibility stage that the eventuality that these persons might have been killed within the jurisdiction of the respondent Government was an element of the applicant Government's complaints in this respect, although they consistently claimed that the missing persons must be presumed alive as long as there is no evidence to the contrary. On this basis the applicant Government implicitly suggested a further presumption, namely that all these persons are still in Turkish "custody".

218. The Commission has not found any evidence to confirm the latter submission. However, it considers that the material put before it already at the admissibility stage is sufficient to warrant an examination as to whether the missing persons' right to life under Article 2 of the Convention has been interfered with at least by lack of proper investigations into the circumstances in which they might have been killed. In the Commission's opinion this aspect of the case is covered by the decision on admissibility. However, the further complaints of the applicant Government concerning alleged interference with the missing persons' rights under Articles 3, 6, 8, 13, 14 and 17 of the Convention are outside the scope of that decision and cannot therefore be entertained by the Commission.

ii) Consideration under Article 2 of the Convention

219. Having found that it can in principle examine the question of missing persons in the light of Article 2 of the Convention, the Commission must first determine whether and, if so, to which extent this provision is applicable to the facts complained of. Article 2 reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection."

220. The case-law makes it clear that Article 2, as a provision which not only safeguards the right to life but sets out the circumstances when the deprivation of life may be justified, ranks as one of the most fundamental provisions of the Convention. It extends to, but is not concerned exclusively with intentional killing as it also covers situations where it is permitted to use force which may result, as an unintentional outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the achievement of one of the purposes set out in the sub-paragraphs of para. 2. Moreover, a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision, read in conjunction with the States' general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State (cf. McCann and others v. United Kingdom judgment of 27 September 1997, Series A no. 324, pp. 45 - 46, paras. 146 - 150 and p. 49, para. 161).

221. In its Report concerning that same case, the Commission dealt with the minimum requirements of such an investigation in the following terms (McCann and others v. United Kingdom, Comm. Report 4.3.94, Series A no. 324, p. 79, para. 193):

> "The nature and degree of scrutiny which satisfies this minimum threshold must ... depend on the circumstances of the particular case. There may be cases where the facts surrounding a deprivation of life are clear and undisputed and the subsequent inquisitorial examination may legitimately be reduced to a minimum formality. But equally there may be other cases where a victim dies in circumstances which are unclear, in which event the lack of any effective procedure to investigate the cause of the deprivation of life could by itself raise an issue under Article 2 of the Convention."

222. In subsequent cases the Commission and Court found it to be a sufficient condition for a duty of thorough investigation to arise if the circumstances of a death are unclear, in particular if it is unclear whether it occurred by a natural cause or as a result of State action or due to other causes such as criminal acts of terrorists or unknown perpetrators (cf. e.g. Mehmet Kaya v. Turkey judgment of 19 February 1998, Reports 1998-I, p. 326, para. 91 and Comm. Report 24.10.96, *ibid.* p. 349, para. 180; Güleç v. Turkey judgment of 27 July 1998, Reports 1998-IV, pp. 1732-33, paras. 79 - 81). The Court has also made it clear that the obligation to investigate is not confined to cases where it has been established that the killing was caused by an agent of the State or that a criminal complaint to that effect has been lodged; the mere fact that the authorities have been informed of a murder or attempted murder *ipso facto* gives rise to such obligation (Ergi v. Turkey judgment of 28 July 1998, Reports 1998-IV, p. 1778, para. 82; Yaşa v. Turkey judgment of 2 September 1998, Reports 1998-VI, p. 2438, para. 100; as to positive obligations arising under Article 2 in respect of risks to life emanating from criminal acts of a private individual cf. also Osman v. United

Kingdom judgment of 28 October 1998, to be published in Reports 1998, paras. 115 and 123).

223. In the present case there is no certainty about the fate of the missing persons. The applicant Government contend that they must be presumed alive as long as there is no evidence to the contrary. The respondent Government claim that they are dead. The Commission considers that it is not called upon to speculate about what may be the real situation in this respect. In its opinion it is sufficient for the applicability of Article 2 to note that the missing persons disappeared in circumstances which were no doubt life-threatening. This has indeed been acknowledged by both parties. In this context it is also relevant that evidence exists according to which at the relevant time killings occurred on a large scale and that in certain cases such killings were not the result of acts of war, but of criminal behaviour outside the fighting zones. In this respect the Commission refers to its findings in its Reports concerning the earlier inter-State cases. It considers that in such circumstances a positive obligation to conduct effective investigations arose for the authorities under Article 2 of the Convention, and that this obligation is still continuing in view of the consideration that the missing persons might have lost their lives as a result of unprescribable crimes.

224. As with the cases to be considered under Article 5 of the Convention, the respondent Government may be understood as contending that they discharge their duty of investigation in the framework of the procedures of the UN Committee on Missing Persons. Again, the Commission would not exclude that the duty to investigate and to inform arising under Article 2 of the Convention can also be fulfilled with the help of an international investigating body. However, as already noted, in the present case the scope of these procedures is limited to the determination of whether the persons concerned are dead or alive, while they do not include enquiries into the causes for any deaths which may have occurred nor the establishment of any responsibilities. Persons who might be responsible have even been promised impunity. The Commission finds that in these circumstances the investigations in question are not sufficiently wide in scope to satisfy the requirements of Article 2 of the Convention. Nor is there any information that the said investigations are supplemented by any other, more effective enquiries.

Conclusion

225. The Commission concludes, unanimously, that it has power to examine the question of the missing Greek Cypriot persons in the light of Article 2 of the Convention, that this provision is applicable and that it has been violated by virtue of a lack of effective investigation by the authorities of the respondent State.

2) As to the alleged violation of the rights of the missing persons' relatives

226. The applicant Government claim that in the circumstances of the present case the families of the missing persons have been subject to inhuman treatment contrary to Article 3 of the Convention and to violations of their rights under Articles 8 (respect for family life) and 10 of the Convention (freedom to receive information). They further claim that the families' rights under Articles 2, 3, 4, 5 (insofar as those provisions imply a right to proper investigations) and Article 13 have been breached.

227. The respondent Government have not made any specific submissions in this respect.

228. The Commission first observes that the applicant Government's original complaints relating to the rights of the missing persons' relatives were limited to arguments under Articles 3, 8 and 10 of the Convention. The other complaints, which are of a different nature, have for the first time been raised after the Commission's decision on the admissibility of the application and cannot therefore be entertained by the Commission. In any event, the Commission considers that, insofar as they overlap with the issues under Articles 5 and 2 of the Convention which the Commission has already examined above in respect of the missing persons themselves, these new complaints do not raise any separate issues. It is obvious that the duty to investigate deriving from the above provisions will in the first place benefit the relatives of the missing persons.

229. As regards the applicant Government's initial complaints under Articles 3, 8 and 10 of the Convention, they are closely interrelated as they all concern the effects which the lack of information on the fate of the missing persons has had on the latter's near relatives.

230. Article 3 provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment"; Article 8 guarantees the right to respect for private and family life[2] and Article 10, which concerns freedom of expression, includes *inter alia* the right to receive information[3]. The rights under the latter two Articles may be subjected to lawful restrictions for certain purposes if such restrictions are necessary in a democratic society.

231. As regards Article 3, the case-law of the Convention organs establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of this provision. Further, the Court has held that the suffering occasioned must attain a certain level before treatment can be classified as inhuman. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see e.g. Ireland v. United Kingdom judgment, *loc. cit.*, p. 65, para. 162).

232. The Commission and Court have held that where persons had disappeared and the authorities' responsibility to carry out an investigation was not properly discharged, the prolonged uncertainty, doubt and apprehension suffered by the relatives caused them such severe mental distress and anguish that it amounted to inhuman treatment (cf. Eur. Court HR, Kurt v. Turkey judgment of 25 May 1998, Reports 1998-III, pp. 1187-1188, paras. 133 - 134); No. 23657/94, Çakıcı v. Turkey, Comm. Report 12.3.98, p. 53, paras. 272 - 276; No. 23531/94, Timurtaş v. Turkey, Comm. Report 29.10.98, pp. 54-55, paras. 305-310).

233. In the present case, the relatives of the missing persons have been left without any information about the latter's fate for a period of 25 years. In view of the circumstances in which these persons disappeared following a military intervention during which many persons were killed or taken prisoners and where the area in which the disappearances took place was subsequently sealed off and became inaccessible to the relatives, the latter must no doubt have suffered the most painful uncertainty and anxiety. While their state of distress was most acute in the first period after the 1974 events, it has not vanished with the passing of time. As the applicant Government have pointed out, the subsequent life of the relatives was in many cases dominated by the consequences of the disappearance. The written evidence

[2] For the full text of Article 8, see para. 261 below
[3] For the full text of Article 10, see para. 456 below

submitted also shows that the relatives created organisations with a view to adopting a common approach in their quest to receive the necessary information. From time to time new hopes were raised, e.g. in connection with the procedure before the UN Committee on Missing Persons, but there were also new fears for the relatives, e.g. when they recently learnt of the statements of Mr Denktaş and of Professor Küçük. For all these reasons the question of the missing persons has remained a live issue for the relatives up to the present day. Even if the respondent Government's submission should be true that the issue has also been exploited for purposes of political propaganda, the Commission finds that the relatives do have legitimate reasons for concern.

234. The Commission considers that during the period under consideration in the present case the severity of the treatment to which the relatives of the missing persons were subjected attained the level of inhuman treatment within the meaning of Article 3 of the Convention.

235. In view of this finding, the Commission does not consider it necessary to deal with the applicant Government's further complaints under Articles 8 and 10 of the Convention which in essence concern the same grievance of the missing persons' relatives.

Conclusions

236. The Commission concludes, unanimously, that there has been a continuing violation of Article 3 of the Convention in respect of the missing persons' relatives.

237. The Commission concludes, unanimously, that it is not necessary to examine whether Articles 8 and/or 10 of the Convention have been violated in respect of the missing persons' relatives.

Chapter 2

Home and property of displaced persons

A. Complaints

238. The Commission has declared admissible the applicant Government's complaints

- that the continued and consistent refusal to allow displaced Greek Cypriots to return to their homes and families in northern Cyprus amounts to a violation of their rights under Article 8 of the Convention;

- that the fact of preventing displaced Greek Cypriots from having access to, from using and enjoying their property in northern Cyprus, the allocation of this property to Turkish Cypriots and settlers, the withholding of any compensation and the attempt to legalise this *de facto* expropriation by the deprivation of the titles of Greek Cypriot owners amounts to a continuing violation of Article 1 of Protocol No 1 to the Convention;

- that the displaced Greek Cypriots have no effective domestic remedies against these violations of the Convention, contrary to Article 13 of the Convention; and

- that the continued refusal to allow displaced Greek Cypriots to return to their homes and families in northern Cyprus and the continued deprivation of their possessions are discriminatory and contrary to Article 14 of the Convention.

B. As to Article 8 of the Convention.

1) Submissions of the Parties

a) The applicant Government

239. The applicant Government submit that Turkey, as a matter of policy, continues to refuse to allow over 170,000 displaced Greek Cypriots (with children about 211,000 at the time of the introduction of the application, i.e. one third of the Cypriot population) to return to their homes in northern Cyprus, thereby ignoring the relevant UN resolutions. The whole northern part of the island is sealed off by Turkish military forces. Turkey has consistently supported the view that in Cyprus there are and must remain two demographically homogeneous States and to this end has applied a policy of forcing Greek Cypriots to leave the northern part of the island, which is in effect a policy of ethnic cleansing. The applicant Government stress that the restrictions on access by displaced Greek Cypriots to the northern part are imposed by the Turkish armed forces and Turkish Cypriot authorities and not by the UN peace-keeping forces stationed along the cease-fire line. This is borne out by the UN documents on the role of UNFICYP and in particular their functions in the so-called "buffer-zone".

240. The displaced persons include not only Greek Cypriots *stricto sensu*, but also members of religious minorities (such as Maronites, Armenians, Latins) and individuals who under the provisions of the 1960 Constitution opted for belonging to the Greek Cypriot community. Also a small number of foreign nationals formerly living in northern Cyprus were displaced. There are persons who fled from the northern area, or were expelled, or were compelled by pressure, including harassment, to leave that area. Most of them were made refugees in their own country during the military operations in 1974 or soon afterwards. About 7000 Greek Cypriots were forced to sign applications to leave the occupied area between May 1976 and February 1983. After that date, pressure continued to be exercised on Greek Cypriots in northern Cyprus by more subtle methods which are still being applied to inhabitants of the Karpas area, especially students who are forced to leave their homes and families without a possibility to return.

241. An intensification of the pressure took place in 1996 when, in reaction to demonstrations aimed at dissuading tourists from visiting northern Cyprus, threats were made by the "TRNC" administration that Greek Cypriots from the Karpas would be prevented from visiting the Government-controlled area. As from 6 November 1996 the crossing point at Ledra Palace was closed, thus stopping such visits and temporarily preventing several families on visit in the south from returning to their homes. The crossing point was subsequently reopened due to UN representations, but restrictions were then placed on intercommunal contacts and meetings (cf. Security Council resolution S/1996/1092, of 23 December 1996 which "regrets the obstacles which have been placed in the way of such contacts and strongly urges all concerned, and especially the Turkish Cypriot community leadership, to lift all obstacles to such contacts").

242. The applicant Government also draw the Commission's attention to the particular situation in the Varosha district of Famagusta which shows the direct involvement of Turkish forces in the policy of keeping the area free of Greek Cypriot home and business owners. The policy "to keep Varosha empty" (apart from limited use by Turkish forces or Turkish Cypriots under Turkish forces' authority) was initially decided by Turkey's Cyprus Co-ordination Council. From time to time the "TRNC " administration has threatened to occupy all buildings in Varosha and to put them into use. In this respect reference is made to a report in Bayrak Radio broadcast on 10 January 1997.

243. As regards the other areas of northern Cyprus, the applicant Government refer to their submissions under Article 1 of Protocol No 1 concerning the attribution of the properties concerned to Turkish Cypriots and Turkish settlers (see below, paras. 274-287), which not only affects the property rights of the displaced persons but also the character of their homes.

244. The applicant Government claim that these facts disclose "continuous and gravely aggravated violations" of Article 8 by reason of interference with the right to respect for Greek Cypriot refugees' homes. It is submitted that, indeed, the standard of justifying interference with the displaced persons' rights under Article 8 is more strict than the one applicable under Article 1 of the Protocol. Not only is it required that the interference be "in accordance with law", but the legitimacy of the aim and proportionality of the interference must also be based on a "pressing social need". In this respect the applicant Government invoke, *inter alia*, the Gillow v. United Kingdom judgment of 24 November 1986 (Series A, no. 102, p. 22, para. 55). They contend that a government is not acting within the margin of appreciation when it deprives one set of individuals of their homes in order to make these homes available to other individuals, some of whom are displaced persons while others, in far greater numbers, are not displaced persons, but are either settlers, Turkish Cypriots long resident in the occupied area, or Turkish Cypriots who have emigrated and are now returning to the occupied area.

245. The applicant Government further claim that the policy of "turkisation", the implantation of massive numbers of Turkish settlers and the deliberate elimination of manifestations of Greek culture, have resulted in another distinct kind of disrespect for refugee's homes. They contend that the notion of "home" under Article 8 ("domicile" in the French version) includes the human and natural environment and conditions of life which surround and are closely associated with the building and its locality. In their submission destruction and manipulated change of that environment and conditions of life is likewise prohibited by Article 8, which must be interpreted in the light of present day conditions. While in the Loizidou v. Turkey (merits) judgment (*loc.cit*., p. 2238, para. 66) the Court held that the notion of "home" in Article 8 could not be interpreted "to cover an area of a State where one has grown up and where the family has its roots but where one no longer lives", the applicant Government consider that this does not affect their above interpretation of Article 8 in respect of persons who, in distinction from Mrs Loizidou who had left her home in Kyrenia prior to 1974, were in effect evicted from their homes. They submit that there is interference of an arbitrary and serious character when, as is still the case in the Karpas area, the houses of persons are surrounded by settlers implanted and who are not required by the responsible authorities to respect the rights of others.

b) The respondent Government

246. The respondent Government stress that population movements and relocation of displaced persons have occurred as regards both the Greek Cypriot and the Turkish Cypriot communities. However, these are events of the past which are irreversible. The respondent Government invoke in particular the agreement reached at the third round of the inter-communal talks in Vienna (31 July - 2 August 1975) where the two sides agreed on a voluntary transfer of their remaining populations to their respective zones (UN Doc. S/ 11789). This agreement was accepted by the Greek Cypriot Council of Ministers on 5 August 1975 and has been fully implemented under the auspices of the United Nations. There has thus been no practice of "coercive displacement" of Greek Cypriots from northern Cyprus. All Greek Cypriots applying to the Turkish Cypriot authorities for a permanent transfer to the south are interviewed in private by the Humanitarian Branch of UNFICYP in order to verify the voluntary nature of the transfer. The respondent Government rely on the relevant UN reports confirming that such verifications have actually been carried out. They further observe that the transfers themselves are effected by UNFICYP.

247. In the respondent Government's submission, the above agreement on the relocation of populations paved the way for seeking a settlement of the Cyprus question on a bi-communal and bi-zonal basis. In the 1977 and 1979 high-level agreements between the leaders of the Greek Cypriot and Turkish Cypriot communities a federal solution on this basis was envisaged. The 1977 agreement provides in guideline III that "freedom of movement, freedom of settlement and the right to property and other specific matters are open for discussion taking into consideration the fundamental basis of a bi-communal federal system ...".

248. Later on, Security Council resolutions 649(1990) and 744(1992) confirmed that a federal solution sought by the two sides will be "bi-communal" and "bi-zonal". In his Opening Statement of 29 June 1989 the UN Secretary-General said that "the bi-zonality of the federation is clearly brought out by the fact that each federated state will be administered by one community which will be guaranteed a clear majority of the population and of the land ownership in its area". As to the "three freedoms" the Secretary-General said:

> "Ideas were suggested which will ensure that these rights are recognised in the federal constitution and that they are regulated by the federated states ...in a manner consistent with the federal constitution. Freedom of movement will be exercised as soon as the federal republic is established. Freedom of settlement and the right to property will be implemented taking into account the ceilings to be agreed upon concerning the number of persons from one community who may reside in the area administered by the other and the amount of property which persons of one community may own in the federated state administered by the other. These rights are to be implemented after the arrangements concerning the displaced persons have been completed."

249. These principles were restated in the Secretary-General's Opening Statement of 26 February 1990 and the Secretary-General's Set of Ideas of 15 July 1992 which includes the following passage:

> "The freedom of movement, the freedom of settlement and the right to property will be safeguarded in the federal constitution. The implementation of these rights will take into account the 1977 high-level agreement and the guiding principles set out above.

> The freedom of movement will be exercised without any restrictions as soon as the federal republic is established, subject only to non-discriminatory normal police functions. The freedom of settlement and the right to property will be implemented after the resettlement process arising from the territorial adjustments has been completed. The federated states will regulate these matters in a manner to be agreed upon during the transitional period consistent with the federal constitution. Persons who are known to have been or who are actively involved in acts of violence or in incitement to violence and/or hatred against persons of the other community may, subject to due process of law, be prevented from going to the federated state administered by the other community."

250. In view of the above agreements and discussions in the framework of the inter-communal talks, the respondent Government submit that there can be no question of a right of displaced persons to return. The claim of the Greek Cypriot displaced persons to return to the north and settle in their homes cannot be settled in isolation of the freedom of movement and the right to property. The enjoyment of these freedoms throughout Cyprus would depend on a final settlement of the Cyprus problem. Even then, taking into consideration the bi-zonal and bi-communal character of the proposed federal settlement these freedoms will be regulated and their exercise will be restricted, as indicated above. It would be highly prejudicial to the inter-communal negotiating process, as well as the efforts of the UN Secretary-General, if the applicant Government's claims were determined in isolation from the other elements of the Cyprus question which are being discussed as an "integrated whole".

251. As regards the applicant Government's complaints concerning the Varosha district of Famagusta, the respondent Government state that there have been discussions within the process of the inter-communal talks on a package of confidence building measures, which would also include the reopening of Nicosia International Airport for the use of the two communities for civilian passenger and cargo traffic under UN control. The proposal for Varosha (UN Doc. S/26026 of 1 July 1993, §§ 37 - 43) provides for the resettlement by Greek Cypriots of the so-called "fenced area", which would be governed by the UN until there is a final settlement. Greek and Turkish Cypriots would be allowed into the area, property would be reclaimed by former owners, Greek and Turkish Cypriot business would be there, property for renting being made available to Turkish Cypriots. Basically it would be re-established as a tourist and free trade zone, though it would be predominantly owned by Greek Cypriots. Foreign tourists would be able to move through the area to either side. The proposal was accepted by the leaders of both sides and proximity talks for the implementation of certain key issues started in February 1994. Despite difficulties which subsequently emerged, the respondent Government submit that it would be wrong to assume that the package has been abandoned.

252. The respondent Government dismiss the applicant Government's allegation concerning the importation of settlers from Turkey as propaganda. They observe that prior to 1974 a great number of Turkish Cypriots had to emigrate from the island as a result of oppression and discrimination. Thousands returned to Cyprus after 1974 under conditions of security and freedom. Turkish Cypriots then proceeded with all available means to reactivate the economy. In this context, in accordance with the relevant "TRNC" legislation (Law No 3/1975, now replaced by Law No 25/1993 enacted pursuant to Article 67 (5) of the "TRNC Constitution"), some workers who had arrived from Turkey after 1974 have been granted citizenship after five years of residence. It is claimed that to do this was completely within

the competence and jurisdiction of the "TRNC", just as the resettlement and employment of thousands of foreign immigrants was allowed in southern Cyprus, migration of labour being an international phenomenon which affects all countries. It is therefore inappropriate to designate a part of the population of northern Cyprus as "settlers", there being no distinction between the citizens of the "TRNC". The respondent Government furthermore contest the correctness of the allegation that the so-called "settlers" have outnumbered the Turkish Cypriot population. It is true that after September 1991 the authorities of the "TRNC" allowed the entry of Turkish citizens with identity cards, as an alternative to passports, but this has nothing to do with settlement in northern Cyprus, for which aliens require to obtain residence and work permits. If there are also some illegal workers without such registration, this is not different from the situation in other countries.

253. The respondent Government also emphasise that it is the function of UNFICYP to prevent the unauthorised entry of persons into the UN buffer zone while the control of the movement of persons at the official crossing points is regulated by the authorities of northern Cyprus in the exercise of State authority. They refer in particular to regulations communicated to the United Nations on 30 November 1995 (UN Doc. S/1995/1020, Annex IV = Appendix III to the present Report) and decisions of the "TRNC Council of Ministers" of 11 February and 15 April 1998 (published respectively in the "TRNC Official Gazette" No 31, Supplement IV, 19 March 1998, and No 59, Supplement IV, 25 May 1998 = Appendices V and VI to the present Report). There is thus no Turkish involvement regarding control of, and regulations applicable to, such crossings. It is accordingly claimed that these acts are not imputable to Turkey.

254. Finally, as regards the justification of the restrictive measures, the respondent Government invoke the security aspect of the Cyprus question. They claim that the two hostile communities have found security in a bi-zonal separation in the island and the agreement that they should live side by side and not intermingled when a bi-zonal settlement is reached. That such security considerations are still topical is illustrated by a statement of Archbishop Chrysostomos, published in the Greek Cypriot newspaper "Makhi" on 22 March 1993. He was reported to have said: "Had our people lived within the occupied areas, we would have been able to wage guerrilla warfare. Unfortunately, our people fled these places and left the Turks unchallenged in these areas." It is therefore claimed that the measures taken by the authorities of the "TRNC" are necessary in a democratic society in the interest of public safety.

2) Facts established by the Commission

255. It is common knowledge that with the exception of a few hundred Maronites living in the Kormakiti area and Greek Cypriots living in the Karpas peninsula (cf. Chapter 3 below) the whole Greek Cypriot population which before 1974 resided in the northern part of Cyprus has left that area, the large majority of these people now living in southern Cyprus. In its 1976 Report on applications Nos 6780/74 and 6950/75 the Commission dealt extensively with the displacement of persons and the various methods through which it was effected (cf. Part II, Chapter 1 of that Report, pp. 34 - 74, paras. 89 - 212). While the Commission refrained from expressing an opinion on the imputability to Turkey under the Convention of the refugee movement of Greek Cypriots caused by the Turkish military action in the phases of actual fighting (*ibid*. p. 69, para. 202, and p. 72, para. 208) and of the subsequent negotiated transfer of certain persons, including prisoners, to southern Cyprus (*ibid*. p. 71, para. 205), it established Turkey's responsibility for the forceful eviction or expulsion of a

considerable number of persons (*ibid*. pp. 66 - 67, paras. 189 - 193, and pp. 70 - 71, para. 204).

256. Already in that Report the Commission established that the various categories of displaced persons were not allowed to return to their homes (*ibid*. p. 58, para. 168 and p. 69, para. 199) and that Turkey was to be held responsible for that refusal (pp. 70 -71, paras. 203 - 205). In the 1983 Report on application No 8007/77 the Commission confirmed that finding, noting that displaced Greek Cypriots in the South are physically prevented from returning to the northern area as a result of the fact that the demarcation line across Cyprus ("green line" in Nicosia) is sealed off by the Turkish army, this fact being common knowledge and not disputed by the respondent Government (cf. D.R. 72, p. 42, para. 133).

257. It is clear from the parties' submissions that the situation is essentially unchanged today. The Commission notes in particular that the refusal to return to northern Cyprus also applies to the persons who have left their homes after the adoption of the 1983 Report either under the voluntary transfer scheme or as students. The respondent Government have expressly stated that they do not recognise a right of the displaced Greek Cypriots to return to their homes, this being a question which can only be settled within the framework of an overall solution of the Cyprus problem as a result of the inter-communal talks. It is true that the question of the so-called "three freedoms", including the freedom of settlement, has been discussed in this context, in particular in the Set of Ideas which the UN Secretary-General submitted in 1992, and as regards the resettlement of Varosha in the 1993 proposals for confidence building measures. However, since then no significant progress has been made despite recent efforts to relaunch the negotiating process.

258. The Commission notes the respondent Government's submission that in the meantime the control of exit from and entry into northern Cyprus is exercised by the "TRNC" authorities. The principles applied in this respect were conveyed orally by the Turkish Cypriot authorities to UNFICYP and laid down in a UN document which was subsequently approved by those authorities (UN Doc. S/1995/1020, Annex IV, of 30 November 1995 = Appendix III to the present Report). However, this document only provides for family visits of Greek Cypriots and Maronites who have close relatives in the north. Nothing is stipulated for other visits by Greek Cypriots, except that nationals of countries other than Cyprus who are of Greek Cypriot or Maronite origin will be treated in the same manner as other nationals of the country concerned, i.e. they may visit the northern part of the island by applying to the Turkish Cypriot authorities when crossing at the Ledra Palace crossing point. In 1998, these measures were supplemented by new "Arrangements for entry to the TRNC from the Greek Cypriot Administration of Southern Cyprus and for exit from the TRNC to the Greek Cypriot Administration through the Ledra Palace check-point" (decision of the "TRNC Council of Ministers" No. E-195-98 of 11 February 1998, published in the Official Gazette [Rezmi Gazete] No 31, Supplement IV, on 19 March 1998 = Appendix V to the present Report). They introduced a passport and/or identity card control and visa requirement for Greek Cypriot and Greek nationals and various other categories of persons. For the visits to Apostolos Andreas Monastery, subject to passport and/or identity card control and payment of entry fee, the restriction on the number of Greek Cypriots has been lifted. By a further decision of 15 April 1998 (published in Official Gazette No 59, Supplement IV, on 25 May 1998 = Appendix VI to the present Report) the criteria applicable to Maronites were modified in that, *inter alia*, multiple entry visas can be granted for a period of 12 months to immediate family members (husband, wife and children under 18).

259. The Commission notes, finally, that the issue of the refusal to return to their homes is regularly being taken up by organisations of the Greek Cypriot displaced persons. In particular, the applicant Government have submitted a number of statements by representatives of associations of displaced persons, essentially confirming the organisation of protest marches and other campaigns.

260. The Commission has not found it necessary to obtain any additional evidence on this issue.

3) Opinion of the Commission

261. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

262. The applicant Government complain that the continued refusal to allow the return of the displaced persons to their homes in northern Cyprus constitutes a continuing and aggravated violation of the latter's right to respect for their home, as guaranteed by Article 8 of the Convention and that there is a further distinct violation of this provision by the deliberate change of the environment of the displaced persons' homes.

263. The respondent Government, apart from denying the responsibility of Turkey for measures taken by the Turkish Cypriot authorities, claim in essence that these measures are necessary in the interest of public safety and thus justified under Article 8 para. 2.

264. The Commission first notes that in relation to this complaint no argument has been raised by the respondent Government as to the failure of the persons concerned to exhaust the domestic remedies. Indeed, no remedies appear to be available to contest the authorities' refusal to allow the entry of Greek Cypriots into northern Cyprus. In this context, the Commission notes that the regulations on entry into the "TRNC" and the principles for their implementation are based on decisions of the "TRNC Council of Ministers" which in the legal system of the "TRNC" are not subject to any judicial review. Also, the refusal concerned reflects the acknowledged public policy of the authorities and therefore constitutes an administrative practice in relation to which it is not necessary, according to the established practice of the Convention organs, to exhaust any domestic remedies. It follows that the Commission is called upon to examine the merits of the complaint.

265. The Commission recalls that the issue of displacement of persons was examined under Article 8 of the Convention both in its 1976 Report on applications Nos 6780/74 and 6950/75 and in its 1983 Report on application No. 8007/77. In the 1976 Report, the Commission considered (at para. 208) "that the prevention of the physical possibility of the return of Greek Cypriot refugees to their homes in the north of Cyprus amounts to an

infringement, imputable to Turkey, of their right to respect of their homes" which could not be justified under any ground under paragraph 2 of Article 8. The Commission further considered (at para. 210), with regard to Greek Cypriots transferred to the south under various inter-communal agreements, that the prevention of the physical possibility of the return of these Greek Cypriots generally amounted to an infringement, imputable to Turkey and not justified under paragraph 2, of their right to respect for their homes under paragraph 1 of Article 8. In the 1983 Report (D.R. 72, p. 42, at paras. 133 - 135) the Commission, having found that the same situation continued to exist and that this continuing situation constituted an aggravating factor, confirmed these findings, concluding that Turkey continued to violate Article 8.

266. The Commission finds that the situation of the displaced Greek Cypriots is still essentially the same in that they continue to be prevented from returning to their homes in northern Cyprus. The fact that after the adoption of the 1983 Report the "TRNC" was established there and that the measures complained of are, according to the respondent Government's submissions, taken by the latter's authorities does not in any way affect the respondent Government's responsibility as those authorities are a subordinate local administration of Turkey. It is therefore not necessary to examine whether, during the period under consideration in the present case, Turkish armed forces or other Turkish authorities continued to be involved in the enforcement of the refusal of access to northern Cyprus by Greek Cypriots for any other purpose than family visits and pilgrimage to the Apostolos Andreas Monastery. What counts is that at present displaced Greek Cypriots, without any other exception, are effectively prevented by the authorities in place from even visiting their previous homes, let alone making any application for returning there for permanent settlement.

267. Even those who leave the northern area under the humanitarian transfer arrangements are left no other choice than unconditionally abandoning their homes, there being no possibility for a reconsideration of their cases if they should eventually wish to return. Likewise, children who moved to the south for the purpose of secondary school studies were until very recently prevented from returning after having attained a certain age. This still applies to Greek Cypriot males over the age of sixteen and to students of both sexes who finished their studies before the entry into force of the decision of the "TRNC Council of Ministers" of 11 February 1998, this regulation having no retroactive effect. Even assuming that in some cases Greek Cypriots wishing to return to northern Cyprus cannot claim to have an established "home" there (cf. Loizidou (merits) judgment, *loc. cit.*, p. 2238, paras. 65 - 66), the Commission finds that there are in fact cases where there is continuing interference with the displaced persons' right to respect for their home including cases of recent interference which justify a fresh consideration of the issue notwithstanding the Commission's findings in the previous Reports.

268. As to the justification of these measures, the Commission has noted the respondent Government's arguments to the effect that the question of the regulation of the freedom of settlement as part and parcel of an overall solution of the Cyprus problem is one of the subjects of the inter-communal talks, that in this context the introduction of a kind of quota system is envisaged, and that pending the achievement of such a solution the measures currently applied are necessary in the interest of public safety.

269. The Commission has already expressed its view that the arrangements made for the holding of inter-communal talks are not a special agreement within the meaning of former

Article 62 of the Convention which could prevent it from performing its tasks under the Convention. Nor can these talks, even if they aim at eventually bringing about a satisfactory solution to the problem, be invoked as a ground for maintaining measures which in themselves lack a justification under the Convention. As the Committee of Ministers of the Council of Europe acknowledged in Resolution DH (79) 1 (see para. 7 above), the inter-communal talks must be seen as an instrument to put an end to such violations as might continue to occur, but the negotiations in themselves, even if they are actively pursued, do not wipe out those violations. While it is true that certain proposals have been made for the return of at least some of the displaced persons to their homes - the Commission would refer here to the 1992 Set of Ideas of the UN Secretary-General and the 1993 proposals for the resettling of Varosha in the context of a package of confidence building measures - it appears that the process of the inter-communal talks is still very far from reaching any tangible results in this respect.

270. This being so, the Commission must consider the respondent Government's claim that the measures are justified in the interest of public safety. Admittedly, this is a legitimate aim recognised in Article 8 para. 2 of the Convention, which, however, can only justify a restriction on the rights enshrined in that Article if it is imposed "in accordance with the law" and if it is "necessary in a democratic society" . The respondent Government have not invoked any legal basis for the general exclusion of displaced Greek Cypriots from the territory of northern Cyprus, nor can it be said that such a general exclusion is in any way proportionate to the security interests invoked by the respondent Government. It follows that already for these reasons the measures complained of do not meet the requirements of Article 8 para. 2 of the Convention.

271. The applicant Government allege a further violation of Article 8 by the change of the demographic and cultural environment of the displaced persons' homes. The respondent Government, on the other hand, refer to the necessity to resettle Turkish Cypriots displaced from the south and Turkish Cypriot emigrants who returned to northern Cyprus after 1974. In substance they invoke a necessity of the measures complained of for the economic well-being of the country. However, having regard to its above finding under Article 8 of the Convention and the considerations below under Article 1 of Protocol No 1 to the Convention, the Commission does not find it necessary to examine this additional aspect of the case in the light of Article 8.

Conclusions

272. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 8 of the Convention by the refusal to allow the return of any Greek Cypriot displaced persons to their homes in northern Cyprus.

273. The Commission concludes, unanimously, that it is not necessary to examine whether there has been a further violation of Article 8 of the Convention by the change of the demographic and cultural environment of the displaced persons' homes in northern Cyprus.

C. As to Article 1 of Protocol No 1

1) Submissions of the Parties

a) The applicant Government

274. The applicant Government refer to the Commission's findings in its earlier Reports concerning the treatment of Greek Cypriot property in northern Cyprus and submit that the situation remains essentially the same in that the owners of that property continue to be prevented from returning to their possessions and getting access to them for any purpose, their ownership titles being denied. In particular as regards the immovable property left behind by Greek Cypriots in northern Cyprus, the Turkish authorities' policy is a systematic and continuing process effected in stages. After the unlawful dispossession of the Greek Cypriot owners by their eviction from the occupied area and their *de facto* exclusion from that area by preventing their return, the properties concerned were transferred into Turkish possession following which various measures were taken with the purported aim of "legalising" the taking of properties and facilitating their allocation to various "State" bodies, Turkish Cypriots and settlers, and through subsequent "amendments" to those "laws" the Turkish Cypriot authorities were eventually enabled to issue "title deeds" to the possessors, including especially Turkish settlers (for details, cf. decision on admissibility, D.R. 86, pp. 118 - 121). There has thus been an intensification of the violation of the property rights of the Greek Cypriot owners by many different interferences.

275. The applicant Government observe that the extent of the property concerned in the present case, both in respect of area and as to value, is considerable, the impugned measures having affected practically all Greek Cypriot property in the northern part of Cyprus, except that of the enclaved persons. Not only property of persons who are now displaced to the south is concerned, but also property of non-refugees. The occupied area consists of 36.4% of the Republic. In 1973, approximately 88% of property across the island was owned by Greek Cypriots, and a higher proportion in certain areas of northern Cyprus such as Morphou, Famagusta and Kyrenia. The Government have submitted many statements from individual owners describing the properties which they lost, but have refrained from adducing detailed evidence and valuations of the entire losses.

276. The applicant Government further submit that not only immovable property has been affected by the impugned measures, but also movable property. They refer in particular to the severing and harvesting of agricultural produce and the commercial exploitation of other property belonging to Greek Cypriots, and interference with the movable property of the Orthodox Church in northern Cyprus (cf. decision on admissibility, *ibid.*, pp. 117 - 118).

277. The applicant Government allege that these facts amount to continuing violations of all the component aspects of the right of peaceful enjoyment of possessions in respect of Greek Cypriot property in northern Cyprus. The refusal to permit the displaced persons' return to northern Cyprus is designed not merely to prevent access to their properties, but to effectively prevent them from using and enjoying those properties. In this respect the applicant Government rely in particular on the Court's Loizidou v. Turkey (merits) judgment of 18 December 1996 (Reports 1996-VI, p. 2216) where it was recognised that owners of property located in northern Cyprus must still for purposes of Article 1 of Protocol No 1 be regarded as legal owners of the land (p. 2232, para. 47) and that refusal of access resulting in

effective loss of all control over, as well as all possibilities to use and enjoy the property, amounts to an interference with the peaceful enjoyment of possessions which cannot be justified under that Article (p. 2237, paras 63 - 64).

278. The applicant Government observe that in the Loizidou case the Court also dealt with various arguments put forward by the respondent Government to justify the impugned measures, which are practically the same as those invoked in the present case. They claim that, as the Court rejected all these arguments in proceedings to which the applicant Government were a party, the matter is now *res iudicata* and the respondent Government therefore can no longer rely on those arguments. In particular, the applicant Government contend that the complaints in the present case cannot be distinguished from those raised in the Loizidou case and that the respondent Government's attempts to challenge the correctness of the Court's judgment in that case are inappropriate, the Court having issued a binding legal determination of the issues concerned.

279. In this context, the applicant Government oppose in particular the view expressed by the respondent Government that, notwithstanding the Court's Loizidou judgment, Article 159 of the "TRNC Constitution", being a *novus actus interveniens*, should be given legal effect, and that also the "legislative and administrative acts of the TRNC" relating to abandoned Greek Cypriot properties, especially those adopted since 1989 after the facts of the Loizidou case, should be examined by the Commission and given effect. It is submitted that these "legislative and administrative acts", in particular "Law No. 52 of 1995", purport to give effect to Article 159 of the "TRNC Constitution" and therefore can have no more validity than that provision itself. The Court, having examined the respondent Government's arguments, found Article 159 to be devoid of legal effect, recognising that despite this provision the Greek Cypriots must still be regarded as the legal owners of the properties concerned, and it also determined the responsibility of Turkey for the interference with their property rights. The Court further had before it information on the relevant "TRNC laws", but found that they did not provide a justification for the complete negation of property rights in the form of a total and continuous denial of access and a purported expropriation without compensation. Nor did the Court consider that a justification was provided by the fact that property rights were the subject of inter-communal talks involving both communities in Cyprus.

280. Having reviewed various provisions of the "laws" concerned and the respondent Government's arguments as to their purpose and justification, the applicant Government observe that an inappropriate use has been made in this context of the terms "foreigners" (defined as persons, including companies, partnerships and firms, who are not members of the Turkish community and not citizens of the "TRNC", but in practice limited to Greek Cypriots) and "refugees" (this term having been gradually extended to many other categories of people, including Turkish Cypriots displaced from Turkish military areas in northern Cyprus, veterans and settlers).

281. In the applicant Government's submission, the justifications provided by the respondent Government, namely that due to the relocation of populations it was necessary to facilitate the rehabilitation of Turkish Cypriot refugees and to look after and put into better use abandoned Greek Cypriot properties, and that the objective of the legislation was to find a solution to the social and economic problems of the Turkish Cypriot population, do not stand up to closer scrutiny. In fact, the main policy objectives were to concentrate ownership of all Greek Cypriot property in the occupied area in the hands of Turkey's subordinate local

administration so that it could be allocated to Turkish Cypriots and Turkish settlers and those persons it favoured, and to concentrate in that body's hands all Turkish Cypriot-owned land in the Government-controlled area. In the latter respect restrictions were imposed on the allocation of land to Turkish Cypriots displaced from the south in order to compel them to assign their properties in the Government-controlled area to the "TRNC State". Moreover, the land allocation system has been used as an instrument for economic and social policy to provide for redistribution of wealth to poorer Turkish Cypriots, whether refugees or not, and settlers from Turkey who were granted "TRNC citizenship". It also permitted political parties, trade unions and corporate bodies to acquire property used by them which belongs to Greek Cypriots.

282. Allegedly, there have also been certain distortions and abuses in the application of these laws, such as the creation of opportunities for undue benefits (in the form of allocation of Greek Cypriot property as secondary residences, acquisition of such property at cheap rates due to nepotism or political favour) and failure to allocate property to political opponents or gypsies.

283. The applicant Government furthermore emphasise the important role of the Turkish mainland authorities in the development of the land allocation legislation and in particular the extension of its benefits to other categories of persons than Turkish Cypriots. Allegedly, this was effected mainly through the various economic co-operation agreements between Turkey and the "TRNC" which contained specific clauses to this effect (cf. decision on admissibility, D.R. 86, p. 120).

284. The applicant Government note that the respondent Government have not contested the interference with the Greek Cypriots' rights under Article 1 of Protocol No 1. The respondent Government claim that this interference is attributable to the "TRNC" which has introduced the legislation "as a matter of necessity to control the use of property in the public interest". However, a justification for an interference with Convention rights can only be invoked by one of the High Contracting Parties itself. The respondent Government's submission should therefore be understood as an admission that Turkey is responsible for the acts complained of and that these acts are in the public interest of Turkey.

285. The applicant Government do not recognise that the contested legislation has the quality of "law" within the meaning of the Convention. It emanates from an illegal secessionist entity, and therefore is non-law in terms of national law (the law of the Republic of Cyprus). It is also unlawful in terms of international law in that it conflicts with treaty obligations of the respondent Government, namely Articles I and II of the Treaty of Guarantee which prohibited any activity likely to promote, directly or indirectly, partition of the island. Furthermore, the "legislation" concerned lacks the required precision, in that it contains excessive discretionary powers and no safeguards against arbitrary exercise of that discretion, and it also is not accessible, in particular for the displaced persons whose property rights it purports to regulate. Finally, the "legislation" in question is not in conformity with the general principles of international law in relation to deprivation of possessions. While these principles are not applicable to nationals (cf. James and others v. United Kingdom judgment of 21 February 1986, Series A no.98, p. 38, paras. 59 - 61), it should be noted that in the present case the Greek Cypriots deprived of their possessions have been treated as aliens and therefore must be entitled to adequate compensation under the general principles of international law. Even if those principles should not be applicable as such, the 1960 Constitution of Cyprus, which Turkey guaranteed by Article II of the Treaty of Guarantee,

provides that there can be no compulsory acquisition without just and equitable compensation. Turkey thus cannot invoke the lawfulness of "legislation" which is in conflict with its treaty obligations.

286. It is submitted that the "TRNC legislation" aimed at the expropriation of Greek Cypriots' property is not only illegal in terms of international law and consequently invalid, but also does not pursue a legitimate aim in terms of the Convention. In particular, the aim to give effect to the "principle of bi-zonality", i.e. the permanent maintenance of two separate demographically homogeneous "states" in Cyprus, implies apartheid which is unlawful in international law and therefore cannot be lawful under the Convention. Moreover, the public order of Europe does not countenance either involuntary population exchanges or even agreed population exchanges without the right of individual option. Also, colonisation of occupied territory is unlawful under international humanitarian law of armed conflict. Finally, the aims of the contested legislation are in conflict with calls by the competent UN bodies to permit refugees to return to their homes in safety. It is submitted that for all these reasons the margin of appreciation permitted under the Convention has been overstepped, the aims pursued by the respondent Government and its subordinate local administration in northern Cyprus being manifestly without reasonable foundation.

287. Finally, the applicant Government, invoking the relevant case-law of the Convention organs, submit that the contested "legislation" does not strike a fair balance between the general interest of the community and the requirement of the protection of the individuals' fundamental rights, there being no reasonable proportionality between the means employed and the aims sought to be realised by this "legislation". Even admitting that after 1974 it was necessary to house not only those Turkish Cypriots who came from the southern part of Cyprus after the Turkish invasion but also those who had settled in the northern part as from 1957, the total number of persons requiring housing could be no more than 50.000 while more than 170.000 Greek Cypriots had left their homes and properties. There was therefore much more property available than was needed. This has been confirmed by a statement of the "TRNC Housing Minister", reported in "Birlik" on 3 March 1992, according to which 47% of the land belonging to Greek Cypriot displaced persons was to be given to persons who were not Turkish Cypriot refugees. It is submitted that in view of the scale of the interference, which concerned all Greek Cypriot property, the lack of any compensation, the availability of alternatives, e.g. the taking of temporary measures, and the obvious discriminatory nature of the solution adopted, the disproportionality of this interference is self-evident.

b) The respondent Government

288. The respondent Government submit that the alleged violations of Article 1 of Protocol No 1 are not acts that are imputable to Turkey, due to the intervening legislative and executive acts of the authorities of northern Cyprus. Turkey can neither legislate in respect to matters of property in northern Cyprus nor can she exercise control over such property situated outside her jurisdiction.

289. The source of such legislative and executive acts in northern Cyprus are constitutional provisions, namely Articles 127 of the "TFSC Constitution" and 159 of the "TRNC Constitution". This latter Article provides that all immovable property abandoned since the declaration of the "TFSC" on 13 February 1975 belongs to the State and, excepting certain categories, may be transferred to real and legal persons, as regulated by law.

290. The respondent Government refer to the Court's Loizidou v. Turkey (merits) judgment (*loc. cit.*, in particular paras. 42, 45 and 46) and claim that this judgment does not preclude the Commission from examining in the present application the legislative and administrative acts of the "TRNC" relating to abandoned Greek Cypriot properties in northern Cyprus, which they consider to be of the utmost relevance for establishing *actus novus interveniens* and for determining the issue of responsibility or imputability. They refer in particular to the Abandoned Movable Property (Collection and Control) Law, No. 17/1975; the Immovable Property of Aliens (Control and Administration) Law, No. 32/1975; the Immovable Property of Aliens (Allocation and Utilisation) Law, No. 33/1975; and the Housing, Rehabilitation and Property of Equal Value Law, No. 41/1977, as amended.

291. Following the 1974 Turkish intervention and the 1975 Vienna Population Exchange (Regrouping of Populations) Agreement, approximately 65.000 Turkish Cypriot refugees moved to the safety of the Turkish Cypriot north and had to be rehabilitated within the boundaries of the "Turkish Federated State of Cyprus". Initially the situation was regulated by Laws Nos 32 and 33 of 1975, which provided for the administration, control, allocation and protection of immovable property belonging to foreigners. Law No. 32 provided that possession of all immovable property coming within its provisions vested in the Ministry of Finance. However, the Council of Ministers was empowered to order the vesting of such possession in another Ministry, organ or authority for purposes such as rehabilitation of refugees, housing, tourism, industry, agriculture, development or protection of such property. The Law contained provisions for the ejecting of trespassers who had taken possession or occupied such property without a certificate from the appropriate authority. Law No. 33 provided for the vesting of such property in the Council of Ministers, for the purposes of control, administration and allocation.

292. Law No. 33/1977 provided for the administration, control, allocation and general custody of abandoned immovable properties, including those abandoned by Greek Cypriots. It provided for the rehabilitation of Turkish Cypriots who had moved from the south to the north, making provision for the constitutional right of these to ask for immovable property or compensation from the State at the equal value of their own immovable properties left in the south (Art. 127 of the "TFSC Constitution"). They could be issued with a "certificate of immovable property of equal value" for each plot of property, which was a substitute for a certificate of registration and title under the Immovable Property (Tenure, Registration and Valuation) Law. Transfers, mortgages and similar transactions could be effected on the authority of such certificates. However, the issue of the certificate was conditional upon an undertaking of assignment to the State of all rights relating to the property in southern Cyprus in exchange for which the certificate was granted.

293. Law No. 41/1977 provided that immovable property covered by this law (i.e. abandoned Greek Cypriot property) is within the control and possession of the Minister for Development, Housing and Rehabilitation. The authorities dealing with and the procedures applicable to applications for immovable property were regulated. It was provided that certificates of land can be issued to Turkish Cypriot farmers with a yearly income below a specified average, and certificates of houses to Turkish Cypriots who do not own houses or suitable houses and to the next of kin of those fallen in the national struggle.

294. Law No. 27/1982 introduced an amendment to the Equal Value Law. It renamed the certificates issued under this law "definitive possessory certificates" and provided that,

subject to certain conditions, the right obtained under the certificate could be transferred or mortgaged. Whereas the principal law allowed transfer of land of equal value only after 20 years, the amending law enabled the holder of the certificate to transfer his right by way of mortgage in favour of the State, banks and co-operatives for a period not exceeding 3 years. The amending law also made provision for a new system of evaluation, called the points system.

295. Since 1982, the principal law has undergone substantial changes. Law No. 12/89 enlarged the class of persons entitled to land (e.g. fighters between the dates of 1.8.1958 and 31.12.1976), enabled those occupying flats, houses or shops under leases from the Cyprus Turkish Tourism Enterprises Ltd. to obtain definitive possessory certificates, provided for the regulation of the rights of families in possession of property without possessory right, excluded forests, parks, the coast line etc from being distributed as land of equal value, and simplified the procedure for granting to entitled persons property of equal value.

296. A further significant amendment to the principal law was made by Law No. 52/1995. It replaced the "definitive possessory certificate" by an "immovable property title deed". It thereby has given effect to the provisions of Article 159 of the "TRNC Constitution" and the administrative practice obtaining in the "TRNC" since June 1989 whereby title deeds of abandoned Greek Cypriot properties are being issued to Turkish Cypriots and the necessary changes are being made in the Land Registry books. Prior to June 1989, the Land Registry books had been kept unaltered and the properties in respect of which definitive possessory certificates were issued had been listed in a separate register. In addition, the 1995 amending law also made it possible to issue title deeds to political parties, municipalities etc for property in their use. Finally, it made provision for allocation of alternative properties to persons who had been allocated land of equal value of which they would have to be dispossessed upon the granting of a court order for registration of the same properties in the names of non-Greek Cypriot foreigners under Law No. 7/1980, as being property purchased prior to 20 July 1974 under contract of sale.

297. The respondent Government contend that the applicant Government have enacted similar legislation in relation to Turkish Cypriot property situated in the southern part of Cyprus. They refer to requisition of such property in 1975 under laws of 1962 and 1966; Law No. 139/1991 on the principles relating to allocation and control of such property; large scale acquisition of such properties by the authorities under the Compulsory Acquisition of Immovable Property Law (No. 15 of 1962), in practice no compensation being paid; and press reports on imminent issuing of possession certificates to Greek Cypriots who have built houses on Turkish Cypriot property ("Philephteros" of 2 February 1995). In view of this they consider it as inappropriate for the applicant Government to claim that comparable action by anyone else involves a breach of international obligations.

298. The respondent Government submit that the regulation of property rights and reciprocal compensation is a manifestation of the conflict in the island. These issues can only be settled through negotiations, on the basis of the already agreed principles of bi-zonality and bi-communality. Inevitably, the realisation of bi-zonality will involve an exchange of Turkish Cypriot properties in the south with Greek Cypriot properties in the north and, if need be, payment of compensation for any difference. The Turkish Cypriot side is supported in this policy by the United Nations, the above principles having been endorsed by the Secretary-General's 1992 Set of Ideas and Security Council resolutions 744 of 25 August 1992 and 789 of 24 November 1992. The respondent Government also refer to the development of the

inter-communal talks in which the right to property was discussed as one of the "three freedoms" together with the freedoms of movement and settlement (cf. paras. 247-249 above).

299. As to the question of reciprocal compensation, the respondent Government refer to the following proposal in the UN Secretary-General's Set of Ideas:

> "Each community will establish an agency to deal with all matters related to displaced persons. The ownership of the property of displaced persons, in respect of which those persons seek compensation, will be transferred to the ownership of the community in which the property is located. To this end, all titles of properties will be exchanged on a global communal basis between the two agencies at the 1974 value plus inflation. Displaced persons will be compensated by the agency of their community from funds obtained from the sale of the properties transferred to the agency, or through the exchange of property. The shortfall in funds necessary for compensation will be covered by the federal government from a compensation fund obtained from various possible sources such as windfall taxes on the increased values of transferred properties following the overall agreement, and savings from defence spending. Governments and international organisations will also be invited to contribute to the compensation fund. In this connection, the option of long-term leasing and other commercial arrangements may also be considered.
>
> Persons from both communities who in 1974 resided and/or owned property in the federated state administered by the other community or their heirs will be able to file compensation claims. Persons belonging to the Turkish Cypriot community who were displaced after December 1963 or their heirs may also file claims."

300. The respondent Government invoke the exception in paragraph 2 of Article 1 of Protocol No 1 and submit that

> "As Turkey cannot legislate for North Cyprus to whom the acts complained of are not attributable [sic], the Commission should take into consideration the laws of the TRNC cited above, which have been enacted by the TRNC as a matter of necessity to control the use of property in the public interest.
>
> Due to the relocation of populations, it was necessary, on the one hand, to facilitate the rehabilitation of Turkish Cypriot refugees, some of whom had become refugees two or three times since the EOKA campaign started in the 1950s (with the aim of uniting the island with Greece), and the events of 1964; and on the other, to look after and put into better use abandoned Greek Cypriot properties. Such extensive control of the use of property was necessary in the public interest, also because Turkish Cypriots who left their properties in the South, assigned all their rights in respect of such property in favour of their State, never intending to go back again.
>
> Moreover, due to the agreed principles of bi-zonality and bi-communality the property rights and reciprocal compensation had to be regulated and the exercise thereof restricted or limited. There is public interest in seeing to it that the principles of the inter-communal talks are not undermined. Otherwise the search for a peaceful and agreed settlement of the Cyprus question will become very difficult, if not impossible. One may also recall that, as stated by the UN Secretary-General on various occasions,

the inter-communal talks provide the most appropriate procedure in reaching an agreed and peaceful solution of the Cyprus problem.

What has already been said about the status of the UN buffer zone in the island confirms the necessity to regulate the right to access to possessions until a settlement of the political problem is achieved. Violations of the status and integrity of the buffer zone would lead to turmoil and chaos in the area with serious repercussions all over the island."

301. Finally, the respondent Government refer to the jurisprudence of the Convention organs according to which a fair balance has to be struck between the public interest on the one hand, and private interests on the other, the State being allowed a wide margin of appreciation. In invoking this margin of appreciation, the respondent Government refer to the measures of extensive control of Turkish Cypriot property taken by the applicant Government and observe that they must therefore be well aware that property rights cannot be settled in isolation from the political problems in the island.

2) Facts established by the Commission

302. The Commission finds that it is common ground between the parties that Greek Cypriot owners of property in northern Cyprus continue to be prevented from having access to, from controlling, using and enjoying that property.

303. The Commission recalls its findings in its earlier Reports concerning the manner in which this property was taken, occupied or destroyed (1976 Report, Part II, Chapter 5, paras. 411 - 487) and concerning the taking of further property and consolidation of the situation by Turkish Cypriot "legislation" , in particular the Equal Value Law of 1977 (1983 Report, Part II, Chapter 2, D.R. 72, pp. 43 - 47, paras. 137 - 155). The Commission notes that already before that Law various legal regulations had been enacted by the Turkish Cypriot authorities in 1975 to provide for vesting of possession rights in respect of the so-called abandoned property in the "TFSC" authorities who could transfer them to other bodies and individuals for various purposes. The relevant "laws" and "amendments" thereto have been submitted to the Commission in Turkish language, as published in the Turkish Cypriot "Official Gazette", with English translations of the key provisions. This shows that there is a complex system of procedures for identifying, registering, administering and allocating the property concerned to various classes of persons, including Turkish Cypriot refugees who had abandoned property in southern Cyprus, but also other persons. Under the "TFSC Constitution" the said Turkish Cypriot refugees had a "constitutional right" to the allocation of land in northern Cyprus, which however was made subject to the condition that they transfer the rights in respect of their own abandoned properties in southern Cyprus to the "TFSC State".

304. Article 159 para. 1 b) of the "TRNC Constitution" of 7 May 1985 provides as follows:

"All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined ... and ... situated within the boundaries of the TRNC on 15 November 1983, shall be the property of the TRNC notwithstanding

the fact that they are not so registered in the books of the Land Registry Office; and the Land Registry shall be amended accordingly."

305. On the authority of the respondent Government's submissions the Commission considers it as established that until June 1989 the administrative practice of the Turkish Cypriot authorities was to leave the official Land Register unaffected and to register separately the "abandoned" property and its allocation. The beneficiaries of allocations were accordingly issued with "possessory certificates" but not "deeds of title" to the properties concerned. As from June 1989 the practice was changed in that from then on "title deeds" were issued and the relevant entries concerning the change of ownership made in the Land Register itself.

306. This administrative practice has been confirmed by "Law No. 52/1995", which purported to give effect to Article 159 of the "TRNC Constitution". The Commission therefore considers it as established that at least since June 1989 the Turkish Cypriot authorities no longer recognise any ownership rights of Greek Cypriots in respect of their properties in northern Cyprus.

307. It is uncontested that the Greek Cypriots concerned have not to the present day received any compensation for the interference with their property rights. No provision for such compensation is made in any of the relevant "TRNC laws". However, the issue of compensation has been the subject of the inter-communal talks, in particular the UN Secretary-General's Set of Ideas of 1992. Proposals have also been made in this context for regulating the question of the return of Greek Cypriots to northern Cyprus on the basis of a quota system, and the restitution of Greek Cypriot property in the "fenced area" of Varosha (cf. paras. 248, 249 and 251 above). Since then, no progress has been made in the inter-communal talks which the applicant Government claim "are dead".

308. The Commission has had before it a considerable amount of evidence relating to the situation of Greek Cypriot property in the northern part of the island and the restrictions of access. This includes in particular written statements of witnesses, with supporting documents (extracts from the land register, photos, plans, hotel prospectuses etc), a witness statement of a police officer in charge of collecting information on "cultural heritage in the Turkish-occupied area" and concerning the situation of church property together with relevant photographs, a number of statements by representatives of associations of displaced persons, essentially confirming the organisation of protest marches and other campaigns, United Nations documents relating to various aspects of Greek Cypriot property in northern Cyprus, including, *inter alia*, reports about the issuing of title deeds to Turkish Cypriots and about demonstrations of displaced Greek Cypriot property owners and generally about restrictions on their freedom to move to or even visit the northern part of the island; various newspaper and radio reports, in particular concerning the Turkish and Turkish Cypriot attitude towards the property issue and the close economic ties of the "TRNC" to Turkey. Finally, the applicant Government have submitted extracts of treaties concluded between Turkey and the "TRNC" containing specific provisions to the effect that Turkey will assist the "TRNC" in the implementation of the land allocation legislation, and statistical material intended to show the scope of Turkish settlement in northern Cyprus.

309. The Commission has not considered it necessary to obtain any other evidence on this issue.

3) Opinion of the Commission

310. Article 1 of Protocol No 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

311. The applicant Government complain of a continuing violation of this provision by the fact that Greek Cypriot property owners are prevented from having any access to and from controlling, using and enjoying their properties in northern Cyprus, which have been allocated to other persons, and that they have not received any compensation for this interference with their property rights.

312. The respondent Government claim that they are not responsible under the Convention for the interference complained of, the property rights in northern Cyprus being regulated by the legislation of the "TRNC", and that in any event the restrictions imposed are necessary in the public interest for satisfying housing needs of displaced Turkish Cypriots, pending the outcome of the inter-communal talks, of which the property issues including the question of compensation are one of the subjects and which the public interest requires not to be prejudged.

313. The Commission notes that the applicant Government's complaints are essentially directed at the "legislation" and acknowledged administrative practice of the authorities of northern Cyprus. As such, they do not require the taking of any domestic remedies by the persons concerned. Indeed, it has not been suggested by the respondent Government, nor does it appear from the content of the "TRNC legislation" which they invoke, that any remedies are available to Greek Cypriots deprived of their property in northern Cyprus. Such remedies only seem to exist for foreign nationals ("non-Greek Cypriot foreigners") who prior to 1974 acquired property in northern Cyprus by act of sale (Law No. 7/1980) and for Greek Cypriots still resident in northern Cyprus whose property was interfered with by mistake (see below, para. 468). The Commission is accordingly required to deal with the merits of the complaint, the more so as in inter-State applications under former Article 24 of the Convention, as distinguished from individual applications under former Article 25, it has the power to examine the conformity with the Convention of legislative measures and administrative practices as such.

314. The fact that in the present case the impugned legislation and administrative practice has been adopted by the authorities of the "TRNC" cannot in any way affect the Commission's competence to examine them, those authorities being a subordinate local administration of Turkey for whose acts the respondent Government are responsible under the Convention. For this reason, the Commission cannot accept either the respondent Government's argument that the proclamation of the "TRNC" and the enactment of its

"Constitution" and "legislation" constitutes a "*novus actus interveniens*" which would have affected the respondent Government's responsibility. Nor does the Commission consider it necessary in this context to examine the applicant Government's arguments concerning a continued direct involvement of Turkish mainland authorities in the development and implementation of the "TRNC" land allocation legislation.

315. The Commission has dealt with the origins of the present situation in the earlier inter-State cases. It recalls its conclusion in the 1976 Report concerning applications Nos 6780/74 and 6950/75 (at p. 151, para. 486) that "there has been deprivation of possessions of Greek Cypriots on a large scale, the exact extent of which could not be determined. This deprivation must be imputed to Turkey under the Convention and it has not been shown that any of these interferences were necessary for any of the purposes mentioned in Article 1 of Protocol No. 1." It further recalls its conclusion in its 1983 Report on application No 8007/77 (D.R. 72, p 47, paras. 154- 155) that the legislative consolidation of the earlier occupation of immovable property and the taking of new property constituted a violation of Article 1 of the Protocol.

316. The respondent Government contend that by virtue of the "TRNC legislation" the persons concerned have lost their ownership titles to the properties in northern Cyprus and therefore no claims can any longer be raised on their behalf. The applicant Government submit that this issue has been finally determined in the Court's Loizidou v. Turkey (merits) judgment of 18 December 1996 (Reports 1996-VI, p. 2232, para. 47) where it was held that the applicant, being one of the persons concerned, must still be regarded as the legal owner of the land. The respondent Government refer to the reasons of this finding (*ibid.* p. 2230- 2231, paras. 42 and 46) which were limited to a consideration whether the applicant in that case had lost title to her property as a result of Article 159 of the "TRNC Constitution". The Court expressly left open the question in what manner a loss of ownership could have occurred before the adoption of that constitutional provision and noted that "no other facts entailing loss of title to the applicant's properties' have been advanced by the Turkish Government nor found by the Court". For these reasons the respondent Government consider that the Loizidou judgment cannot be generalised and applied to the present case.

317. It appears that the respondent Government now claim that a loss of title has been brought about by the administrative practice of issuing title deeds to the new occupants of the properties concerned, which has been applied since June 1989 and consolidated by Law No. 52/1995. However, as the applicant Government rightly observe, this "law" merely purported to give effect to Article 159 of the "TRNC Constitution" which, for the reasons stated by the Court in the Loizidou judgment (*ibid.* p. 2231, paras. 43 - 46) cannot be attributed legal validity for purposes of the Convention. While the Court did not wish to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the "TRNC", it must be clear that at least measures taken with the aim of implementing an invalid constitutional provision cannot be attributed any more validity than that provision itself. It follows that despite the administrative practice introduced in the "TRNC" subsequently to the facts relevant in the Loizidou case, the Greek Cypriots whose properties were affected by these measures must still be regarded as the legal owners.

318. As to the nature of the alleged interference with those person's property rights, the Commission finds that it is essentially the same as that of which Mrs Loizidou complained in her above application. In this respect, the Court stated (merits judgment, *loc.cit.* pp. 2237 - 2238):

"63. [A]s a consequence of the fact that the applicant has been refused access to the land since 1974, she has effectively lost all control as well as all possibilities to use and enjoy her property. The continuous denial of access must therefore be regarded as an interference with the rights under Article 1 of Protocol No 1. Such an interference cannot, in the exceptional circumstances of the present case ... be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of Article 1 of Protocol No 1. However, it clearly falls within the meaning of the first sentence of that provision as an interference with the peaceful enjoyment of possessions. In this respect the Court observes that hindrance can amount to a violation of the Convention just like a legal impediment ...

64. Apart from a passing reference to the doctrine of necessity as a justification for the acts of the "TRNC" and to the fact that property rights were the subject of intercommunal talks, the Turkish Government have not sought to make submissions justifying the above interference with the applicant's property rights which is imputable to Turkey.

It has not, however, been explained how the need to rehouse displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974 could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access and purported expropriation without compensation.

Nor can the fact that property rights were the subject of intercommunal talks involving both communities in Cyprus provide a justification for this situation under the Convention.

In these circumstances the Court concludes that there has been and continues to be a breach of Article 1 of Protocol No 1."

319. The Commission notes that the Loizidou case concerned one particular instance of the general administrative practice to which the complaints in the present case relate. The same considerations must therefore apply as regards this administrative practice as such.

320. As regards the justifications which the respondent Government now invoke, they are not essentially different from those advanced in the Loizidou case. In particular, the Commission does not consider that the detailed explanations given by the respondent Government as to the necessity to satisfy the housing needs of displaced Turkish Cypriots and to consolidate the Turkish Cypriot economy justify a departure from the Court's above conclusions. Even if these were legitimate aims of public policy, the means employed to achieve them are disproportionate to those aims and no fair balance has been struck between the public interest and the individuals' fundamental rights when the latter are being denied any rights at all. By this denial the authorities have overstepped the margin of appreciation which the Convention allows them.

321. Nor does the fact that a global solution to the Cyprus question, including the compensation of property owners on both sides and a possible return of some of them, is being sought in the framework of the inter-communal talks justify such total denial of rights in the meantime. The inter-communal talks have now gone on for decades without producing

any tangible results, although they should be the instrument for putting an end to the human rights violations occurring in Cyprus. As long as this aim has not been achieved, the Commission cannot refrain from denouncing the said violations if they continue.

Conclusion

322. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 1 of Protocol No 1 by virtue of the fact that Greek Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

D. As to Article 13 of the Convention

323. The applicant Government complain that in relation to the above complaints under Article 8 of the Convention (refusal to allow the return of displaced Greek Cypriots to their homes in northern Cyprus) and Article 1 of Protocol No 1 (interference with the right of Greek Cypriots to the peaceful enjoyment of their possessions in northern Cyprus) there are continuing violations of Article 13 of the Convention. They submit that the Greek Cypriots concerned cannot have an effective remedy because the "TRNC Constitution" itself purports to legalise the very violations complained of so that the "courts" operating under that "Constitution" cannot give a remedy. Furthermore, the complaints concern administrative practices in respect of which there are by definition no effective remedies. Finally, they consider that it is impossible to seek a remedy for breach of a right under the Convention before the "courts" of an entity which is not a State and not a High Contracting Party to the Convention.

324. The respondent Government have not made any submissions on the availability of remedies in respect of the above complaints under Article 8 of the Convention and Article 1 of Protocol No 1.

325. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

326. The Commission first notes that the applicant Government's above complaints under Article 13 of the Convention relate to administrative practices applied to displaced Greek Cypriots as regards their right to return to their homes in northern Cyprus (Article 8 of the Convention) and the exercise of their property rights in northern Cyprus (Article 1 of Protocol No. 1). These administrative practices are at least in part incorporated in "legislation" of the "TRNC". In this respect, the Commission recalls that Article 13, as interpreted by the Convention organs, does not require remedies to be provided to contest legislation as such. In the Commission's view this principle would also apply in the present case, notwithstanding the applicant Government's position that, due to the unlawfulness of the "TRNC", its "laws" should not be recognised as "legislation" within the meaning of the Convention.

327. However, in the present case the administrative practices concerned go beyond the enactment of the "legislation" in question. In particular the relevant "laws" do not regulate one of the crucial aspects of the interferences complained of, namely the physical exclusion of the Greek Cypriots from the territory of northern Cyprus which prevents the return to their homes and the access to their properties. In fact, no provision is made by the "TRNC legislation" for any remedies which could be taken by the individuals concerned to contest this exclusion, nor can they in any way take remedies to at least ensure the correct application of the laws in relation to particular properties, such as are given to non-Greek Cypriot foreigners and Greek Cypriots residing in northern Cyprus.

Conclusion

328. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention by reason of failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1.

E. As to Article 14 of the Convention

329. The applicant Government complain that there has been a violation of Article 14 of the Convention, in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1, in that the above administrative practices are being applied exclusively to Greek Cypriots not resident in northern Cyprus who are thus being discriminated against. They submit that the policy of the Turkish authorities is based upon racial discrimination and apartheid and thus illegal in terms of general international law. Also the "laws" giving effect to that policy, including the "constitutional" provisions relied upon, are by their very terms discriminatory against Greek Cypriots, which is an additional reason that they must be considered as invalid under international law. Despite their terminology which refers to "alien persons" (Section 2 of Law No 32/1975), in practice only Greek Cypriots are disentitled to acquire property in the "TRNC" and other "foreigners" such as British or Turkish citizens are not being treated in the same way. On the other hand, the exclusive beneficiaries of the discriminatory "legislation" are Turkish Cypriots and Turkish settlers who acquired "TRNC citizenship".

330. The applicant Government contend that such discrimination on racial or ethnic grounds is not merely in violation of Article 14 of the Convention, but also constitutes inhuman or degrading treatment under Article 3. They invoke the Commission's Report in the East African Asians' case (D.R. 78, p. 62, paras. 207-209) and submit that treatment singling out categories of persons on racial or ethnic grounds, subjecting them to severe hardship, denying them or interfering with their Convention rights, and doing so specifically and publicly, makes such conduct an affront to their dignity to the point of being inhuman treatment in terms of Article 3 of the Convention.

331. The respondent Government have not made any submissions regarding this point.

332. Article 14 of the Convention reads as follows:

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

333. The Commission recalls that, in its 1976 Report on applications Nos 6780/74 and 6950/75 (p. 156, para. 502), having found violations of a number of Articles of the Convention, it noted that the acts violating the Convention were exclusively directed against members of one of the two communities in Cyprus, namely the Greek Cypriot community. The Commission then concluded that Turkey had thus failed to secure the rights and freedoms set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by Article 14 of the Convention. In its 1983 Report on application No. 8007/77, the Commission did not find it necessary to add anything to its finding in the previous case (D.R. 72, p. 49, para. 162).

334. In the present case, the Commission finds that the above interferences with the rights under Article 8 of the Convention and Article 1 of Protocol No. 1 concerned exclusively Greek Cypriots not residing in northern Cyprus and were imposed on them for the very reason that they belonged to this class of persons. In these circumstances the treatment complained of was clearly discriminatory and thus infringed Article 14 of the Convention, read in conjunction with the above two Articles.

335. The Commission notes that the applicant Government's further complaint that this discrimination, being based on racial or ethnic grounds, also constituted inhuman or degrading treatment within the meaning of Article 3 of the Convention, has only been submitted at a late stage of the proceedings of the merits. In view of its above finding under Article 14 the Commission does not consider it necessary to examine this additional complaint.

Conclusions

336. The Commission concludes, by 19 votes to one, that there has been a violation of Article 14, in conjunction with Article 8 of the Convention and Article 1 of Protocol No 1, by virtue of discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for their homes and to the peaceful enjoyment of their possessions.

337. The Commission concludes, unanimously, that it is not necessary to examine whether this discrimination also constituted inhuman or degrading treatment within the meaning of Article 3 of the Convention.

Chapter 3

Living conditions of Greek Cypriots in northern Cyprus

A. Complaints

338. The Commission has declared admissible the following complaints relating to the "enclaved" Greek Cypriots:

- that there is a violation of Article 2 of the Convention by reason of denying the protection of life to persons in urgent need of medical treatment:

- that there is a violation of Article 5 of the Convention by reason of threats to individual Greek Cypriots' security of person and absence of official Turkish action to prevent this;

- that there is a violation of Article 6 of the Convention by virtue of withholding a fair and public hearing before an independent and impartial tribunal to Greek Cypriots whose civil rights have been infringed;

- that there is a violation of Article 8 of the Convention by reason of interference with the right to respect for private life, family life, home and correspondence;

- that there is a violation of Article 9 of the Convention by reason of interference with freedom of religion;

- that there is a violation of Article 10 of the Convention by reason of interference with the right to receive and impart information and ideas;

- that there is a violation of Article 11 of the Convention by reason of 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;

- that there is a violation of Article 13 of the Convention by reason of failure to provide effective remedies;

- that there is a violation of Article 14 of the Convention by reason of failure to secure Convention rights to Greek Cypriots without discrimination, the violation of these occurring on grounds of their race, religion, national origin or status as Greek Cypriots or Maronites;

- that there is a violation of Article 1 of Protocol No 1 by reason of deprivation of possessions and interference with peaceful enjoyment of possessions;

- that there is a violation of Article 2 of Protocol No 1 by reason of denial of secondary education and disrespect for parents' rights to ensure education in conformity with their religious and philosophical convictions.

339. The Commission has further declared admissible the applicant Government's complaint that in respect of the "enclaved" Greek Cypriots in the Karpas area there is a violation of Article 3 of the Convention in that, having regard to the advanced age of many of the victims

and the consistent pattern of action against them, the combination of restrictions and pressure placed on them with a view to making them leave the area, including the methods of coercion used for this purpose, amounts to inhuman and degrading treatment.

340. The Commission finds that the facts and legal arguments concerning all these issues are closely interrelated, having regard in particular to the last-mentioned complaint of the applicant Government. The Commission therefore considers it appropriate to deal with these facts and arguments in a global approach before expressing an opinion on the various legal issues in the light of individual Convention Articles.

B. Submissions of the parties

1) The applicant Government

341. The applicant Government submit that before 1974 the Karpas peninsula was predominantly inhabited by Greek Cypriots. Their number fell from 22,000 in 1974 to only 506 in 1994 and 477 in June 1998. Those who have remained in the area are mostly old people and there is no renewal of population. There is a clear danger that the Greek Cypriot population in that area will become extinct within a few years. While the crude methods of physical expulsion which were applied by Turkey until 1979 are no longer resorted to, the applicant Government submit that pressure is still being exercised on the remaining Greek Cypriots in order to make them leave the area. It is submitted that they are subjected to oppressive treatment, severe impediments and restrictions, and continuous interferences with everyday life, which cumulatively amount to the complete denial of their rights and the total negation of their dignity as human persons. A deliberate policy of "ethnic cleansing" is allegedly being pursued.

342. Similar but less extensive restrictions apply to Maronites, 177 of whom still lived in the Kormakiti area of northern Cyprus in June 1998.

343. Among other extensive material the applicant Government rely in particular on the results of a humanitarian review on the situation of Greek Cypriots located in the northern part of Cyprus, carried out by the Humanitarian Branch of UNFICYP in 1994 - 95, the so-called "Karpas Brief". Its text has been submitted to the Commission by the applicant Government in two versions. However, as this is a confidential document of the United Nations, the Commission will refrain from quoting any details therefrom. A similar report on the situation of Maronites in northern Cyprus has not been made available to the Commission (cf. para. 138 above).

344. The applicant Government stress in particular the comments which the UN Secretary-General made in his report of 10 December 1995 (S/1995/1020) on the results of this humanitarian review (see para. 387 below) and observe that with few exceptions the remedial action suggested by UNFICYP was not taken. The UN Secretary-General therefore reported to the Security Council on 7 June 1996 that "the key restrictions on Greek Cypriots living in the northern part of Cyprus that were noted in the UNFICYP survey remain" (S/1996/411, § 24). That the situation has not essentially changed is also confirmed by a further report of 9 March 1998 to the UN Commission on Human Rights (UN Doc. E/CN.4/1998/55, see para. 390 below).

345. The applicant Government reject the proposition that the enclaved Greek Cypriots are "TRNC citizens with a special status". They observe that at one stage the respondent Government themselves have expressed doubts whether Greek Cypriots residing in the "TRNC" can be regarded as "citizens" under Article 67 of the "TRNC Constitution" and whether, therefore, they have the same rights as Turkish Cypriots. This contradicts the statement of witness Erönen, a judge of the "TRNC Supreme Court", who asserted that Greek Cypriots residing in northern Cyprus are to be regarded as citizens and therefore enjoy the protection of the Constitution (cf. para. 397 below). In this context it is relevant that the "TRNC Constitution" in many cases merely protects the rights of "citizens", whereas its Article 13 provides that "the rights and liberties referred to in this Constitution may be restricted by law in respect of aliens, in accordance with international law". The applicant Government further observe that, in any event, in most cases the restrictions complained of have not been regulated by "law".

346. The applicant Government contest the respondent Government's assertion that "today, the Greek Cypriots living in Karpas enjoy human rights on a par with the Turkish Cypriots living in Cyprus and sustain their lives in serenity within the existing rule of law in the TRNC". In truth, as several of the witnesses heard by the Commission's Delegates confirmed, they live in fear and insecurity and are discriminated against by administrative practices which are being applied to them, but not to Turkish Cypriots.

347. Until recently, there were no "laws, rules or regulations" concerning freedom of movement of the enclaved Greek Cypriots, although in practice they were prohibited to move outside their villages (i. e. beyond three miles from the village, this limitation not applying to Maronites) without "police" permission and surveillance (reporting to the "police" on return). The relevant procedures were complicated and lengthy. This applied even to transfers to hospitals (in northern or southern Cyprus) and urgent medical visits, the necessary treatment thereby being delayed to the extent that the health or even the life of the patients was endangered, especially before a relaxation of the applicable "regulations" at the end of 1995. In many cases persons remained without proper medical treatment while permission was being considered and some died before such permission was granted.

348. It may be that after 14 February 1998 there are "regulations" on freedom of movement, but the "rule" or "law" under which they have been issued has not been indicated. In any event, there is uncertainty amongst enclaved persons, both Greek Cypriot and Maronite, whether these restrictions on movement have in reality been lifted. They still notify the "police" and obtain permission from them to go to Nicosia or Famagusta to obtain medical treatment. They still believe that they cannot move beyond a three mile radius of their villages, thus being unable to use their own property outside the village limits. The applicant Government also submit that still today the enclaved Greek Cypriots are not permitted to visit the Apostolos Andreas Monastery more than three times a year or to visit any other locations within northern Cyprus.

349. Due to the above-mentioned delays in getting permission to travel for the purpose of obtaining medical treatment, and also because many of the very old people are bedridden and cannot leave their homes, the Maronites in particular were dependent on humanitarian medical assistance provided to them in their own area. However, as is shown by the deposition of witness Moutiris (para. 405 below) this was prohibited when the witness refused to register in the local medical register. Also, offers of Greek Cypriot doctors made through the Cyprus Medical Association to provide medical assistance to the enclaved

population in the Karpas were rejected. These measures defied the "*droit d'ingerence*", the right to receive humanitarian assistance, recognised even in the most dictatorial regimes across the world and which, the applicant Government submit, must by implication be considered as part of the right to life, of the right not to be subjected to inhuman treatment and the right to respect for one's private life. The applicant Government also refer to the very poor conditions of medical care in northern Cyprus, the difficulties in getting medical attendance at night, the absence of homes for old aged persons and of proper facilities for persons with mental problems, and the communication problems which the persons concerned have if they turn to Turkish Cypriot doctors. In these circumstances, many of the very old people with health problems apply for transfer to the south, this in some cases having led to the separation of husbands and wives.

350. The applicant Government emphasise the very difficult general living conditions of the enclaved populations. They are surrounded by Turkish settlers who have been brought into the area in very large numbers. It is contested that these are all Turkish Cypriots who returned to their country. Furthermore, the influx of settlers has not come to a standstill. The applicant Government invoke Turkish Cypriot statistics according to which the 1993 census showed a population of 155,000 persons whereas that of 1997 showed 200,587. This means that, despite simultaneous emigration of Turkish Cypriots, there has been a net increase of more than 45,500 persons (= 30% of the total population) in only four years, which by far exceeds the natural growth rate. The applicant Government refer to the Report on the Demographic Structure of the Cypriot Communities presented to the Parliamentary Assembly of the Council of Europe in 1992 (AS/PR (43) Doc 6589) where it was stated in relation to earlier immigration waves that "no matter what the reasons are, a 28% surge in the population in five years is quite exceptional, wherever it occurs".

351. These figures are presented by the applicant Government because in their submission it is in particular the Turkish settlers who are disrespectful of the rights of Greek Cypriots in the area and subject them to harassment. There has been stone throwing, in particular against women who live alone, in order to encourage them to leave. There are frequent burglaries of homes, so that the owners do not dare to leave them unattended. Greek Cypriot property outside the three mile limit around villages has been occupied by settlers and even within this limit owners have found themselves unable to use their properties because of constant animal trespass, stealing of fruit, cutting down of trees, and theft of crops by settlers. The police remain inactive and in particular do very little against Turkish suspects. Court remedies are ineffective. This is allegedly borne out by the Turkish Cypriot statistics submitted by the respondent Government and by witness Erönen which show how few criminal "prosecutions" were brought despite the wide-spread criminality in the Karpas of which the main victims are Greek Cypriots.

352. Apart from burglary and trespassing, there are also other interferences with the enclaved Greek Cypriots' property rights. The applicant Government refer in particular to the wrongful allocation of such properties to "refugees", on the assumption that they were "abandoned properties", which occurred on a large scale (allegedly 10% of the properties concerned) in the late 1970s and early 1980s. In fact, the wording of the land allocation laws suggested that they applied to all Greek Cypriots, including the Karpas inhabitants, because of the definition of "alien persons". Some 20 cases were brought before the courts, but actually there were more such cases, because some were withdrawn, settled or dismissed for lack of prosecution. Even in successful cases, Turkish settler squatters would seize the land and no action would be taken against them.

353. The applicant Government submit that there is an administrative practice of denying inheritance rights in respect of Greek Cypriot-owned immovable property, a practice which continues to the present day. They contest the respondent Government's submission that Greek Cypriots are free to vindicate their rights in the "TRNC" courts and that it is only because they fail to apply to those courts that inheritance rights cannot be realised. Under the applicable law, the Administration of Estates Law, Cap 189, which remained in force in the "TRNC" by virtue of Article 4 of the "TRNC Constitution", the estate shall vest in and devolve to the heirs without such application to the courts. However, there is an administrative practice of ignoring the law. What actually happens upon the death of a Karpas resident is that the keys are surrendered to the "police" and thereafter the house is allocated to a settler. The same applies when a Karpas resident permanently leaves the area.

354. Contrary to what the respondent Government submit, there are no effective remedies for Greek Cypriots in the "TRNC" courts. The statistics of the "District Court" of Famagusta, i.e. the court in which the Greek Cypriots of the Karpas would sue, and which cover the period between 1977 and June 1997, reveal a large number of cases in the period from 1979 to 1982, which concerned unlawful land allocation. However, subsequently there were hardly any civil proceedings. There was one case in 1983, which was dismissed for want of prosecution. Three cases were introduced in 1987 about land, but two were dismissed for want of prosecution and one was withdrawn. Thereafter, there was only one case in 1993. The statistics of criminal cases show a similar picture: no prosecutions of offences against property from 1982 to 1985, one in 1986, five in 1987, two in 1989 and then, after a five year gap without any prosecutions, two in 1995 and nine in 1996. The applicant Government consider that this sudden increase is a result of their having introduced the present application with the Commission. They submit that similar considerations apply to offences against the person, where, in the four years between September 1990 and September 1994 there was not a single prosecution. Commenting on the evidence given by witnesses to the Commission's Delegates, the applicant Government submit that under the prevailing circumstances Greek Cypriots in northern Cyprus consider it futile to make complaints to the police and are reluctant to become involved in expensive civil proceedings, for which there is no legal aid and whose even successful outcome may be thwarted by new events. In sum, they do not believe that they would receive justice.

355. Particularly serious interferences also occur with the right to respect for the private and family life of the enclaved persons. In particular, as there are no secondary schools for Greek Cypriots in northern Cyprus, schoolchildren as from the age of 12 are compelled to make a choice whether they stay at home, thereby foregoing any secondary education, or whether they move to the southern part of Cyprus in order to obtain such education there. If they opted for going to the south, they were in the past not allowed to make any visits to their homes and families in the north nor to return there permanently after finishing their studies. Later, they were allowed to make visits during school holidays (two weeks at Christmas and Easter, two months in the summer). Boys over 16 and girls over 18 were for many years not allowed to make any visits at all. These restrictions have been relaxed only recently, first by allowing one day visits and then two days visits for these older students, and finally, as from 14 February 1998, by also allowing the permanent return of Greek Cypriot girls and Maronites of both sexes over 18. However, the prohibition to return still applies to Greek Cypriot males over the age of 16, on the pretext that they do their military service in the Government-controlled area (Maronites are exempt from military service).

356. As regards other family visits, they were allowed, as from 30 November 1995, to close relatives of Greek Cypriots living in the north once a month for one day. They had to apply five days in advance at the Ledra Palace crossing point. Maronites were permitted such visits for up to three days and had to apply only 48 hours in advance. The recent introduction of visa requirements with heavy fees has led to a considerable drop in the number of such visits.

357. During the visits, the visitors are being subjected to constant police surveillance. They have to check in at the local "police station" and policemen stay with them all the time, even within the home of the visited family. Such surveillance also applies to humanitarian visits of UNFICYP personnel who thus cannot speak to Greek Cypriots in private.

358. Police control also applies to correspondence, which is delivered by the "police", not the "TRNC postal service", letters from abroad being opened by the "police". Since there is no postal service available between the northern and southern part of Cyprus, letters are often carried by private persons when they move across for family visits. However, they are afraid to carry letters openly, as they are being searched and when letters are discovered this may lead to the sanction that for lengthy periods no more visits are allowed.

359. Until very recently it was prohibited for Greek Cypriots to bring newspapers from the Government-controlled area to northern Cyprus. Even now, none is available in the Karpas. There is one news agent in northern Nicosia who is allowed to sell Greek language newspapers. However, it has apparently not been possible to make arrangements to deliver them to the Karpas. As regards books, if they contain historical, political, cultural or religious matters they are seized at Ledra Palace check-point. The vetting procedure for schoolbooks, introduced by the UN as a confidence-building measure, is likewise being abused by the Turkish Cypriot administration which is imposing excessive measures of censorship. Not only books covering the above subjects, but even books on mathematics, English language or music have been banned. In 1996, out of 148 books requested to be permitted to be sent to all classes only 102 were permitted. Moreover, the procedure always involves considerable delay so that it is difficult to provide the books in time at the beginning of the school year.

360. For a long time, no telephones were available to Greek Cypriots and Maronites in the occupied area. Telephone lines have been installed in Rizokarpaso in March 1996, but Greek Cypriots got them later than Turkish Cypriots, there being thus discrimination in this respect. The applicant Government refer to statements of witnesses who believe that their lines are being tapped or intercepted.

361. Furthermore, private and family life is being interfered with in that Greek Cypriots are not allowed to bring a spouse from southern Cyprus to the north. Because there are few young people in the Karpas, it is difficult to find a marriage partner there. The applicant Government invoke Article 12 of the Convention in this respect.

362. Finally, the applicant Government submit that there is interference with the exercise of freedom of religion by the enclaved population. The Turkish Cypriot administration refuses to allow the appointment of new priests, and therefore for several years there has been only one priest covering the whole Karpas area. Instead of twice daily services in the village church, as usual elsewhere in Cyprus, services can be conducted only at three weekly intervals in the Karpas. Moreover, visits to the Apostolos Andreas Monastery are only allowed three times a year.

363. In conclusion, the applicant Government reiterate their earlier submission that the various interferences complained of constitute a whole. They are animated by the same philosophy of ethnic cleansing. There is not a number of independent and separate incidents of discrimination or harassment. There is a systematic pattern of harassment and discrimination with the aim of evicting the Greek Cypriots from the occupied area. Therefore, the East Africans Asians case (Comm. Report 14.12.73, D.R. 78, p. 3) is very relevant and apposite to the facts here and the Commission should, in addition to finding a violation of the various other relevant Convention Articles, find a breach of Article 3 of the Convention.

2) The respondent Government

364. The respondent Government submit that Turkey is not responsible for the measures taken in respect of the Karpas Greek Cypriots and Maronites. The responsibility lies with the Turkish Cypriot authorities which have exclusive jurisdiction in the "TRNC".

365. The populations concerned are "TRNC citizens" by virtue of Article 67 of the "TRNC Constitution", having acquired citizenship under Annex D of the Treaty of Establishment of 1960 and having resided in the "TRNC" on 15 November 1983. There is no special restrictive legislation relating to the status of Greek Cypriots living in the "TRNC". They have a special status due to the fact that they participate in Greek Cypriot elections and the males do their military service in southern Cyprus, and also because they regard themselves as part of the Greek Cypriot community and feel obliged to owe allegiance to the Greek Cypriot Administration in the south. The special status thus is not the making of the "TRNC" authorities or legislation but derives from the bi-communal nature of the State originally created by the 1960 Agreements and the present political state of affairs existing in Cyprus since 1963.

366. It should also be borne in mind that the Greek Cypriots living in the north are actively discouraged by the Greek Cypriot Administration from recognising "TRNC" institutions and authorities. It is the obstinate policy of that Administration, from which they get financial aid, to prevent them from accessing the courts in the north and from having any dealings with "TRNC" authorities and institutions. Due to this pressure not a single Greek Cypriot has brought a court action since the introduction of the present application with the Commission. They are thus prevented from fully enjoying their rights in the "TRNC". In addition, the low number of court cases can be explained by the low rate of crime in northern Cyprus. The evidence has shown that complaints may arise from minor offences, such as trespass or damage to property, but these matters are being dealt with by the appropriate "TRNC" police authorities and courts to which resident Greek Cypriots have access without any discrimination.

367. The respondent Government refer to their submissions concerning the legal system of the "TRNC" (cf. paras. 106 - 112 above) and submit that effective judicial remedies are available to all Greek Cypriots living in northern Cyprus in the same way as to Turkish Cypriots and that therefore, as regards this part of the application, domestic remedies have not been exhausted as required by Article 26 of the Convention.

368. The respondent Government submit that there is no question of a systematic violation of the basic rights of these people nor of an administrative practice to restrict their rights. The problems of the Greek Cypriots in the north stem from the fact that they are a community of

mainly elderly people living in a relatively remote part of the island and who therefore inevitably encounter certain difficulties. Every effort is made by the "TRNC" authorities to minimise their problems and to ensure their well-being in full co-operation with the United Nations authorities in Cyprus. The witnesses heard by the Commission's Delegates at the request of the applicant Government owe allegiance to that Government and therefore could not be expected to give completely impartial evidence. In addition, the non-disclosure of their identity or its disclosure at the very last minute prevented the respondent Government from adequately contesting their testimony and presenting counter-evidence. Nevertheless, it is submitted that, taken as a whole, the evidence of the Greek Cypriot witnesses has not substantiated the alleged violation of human rights.

369. There is no "coercive displacement" of Greek Cypriots from the north, the transfers to the south being controlled by UNFICYP as to their voluntary nature. The respondent Government dismiss the applicant Government's submissions regarding "Turkish settlers" as propaganda. They stress that the immigrants are mainly Turkish Cypriots who return to their country and submit that it is the sovereign right of the "TRNC" as a State to regulate questions of immigration and citizenship (cf. para. 252 above). The decrease in the Greek Cypriot population in the Karpas is primarily due to economic, social, cultural and sociological factors. The younger people find it attractive to go to the south where opportunities are abundant. Also, males over 18 have to do their military service in southern Cyprus. It is due to these factors that the remaining Greek Cypriot population is made up mainly of aged people.

370. Adequate health centres of the "TRNC Ministry of Health" exist to serve the local population without discrimination, Turkish Cypriots, Greek Cypriots and Maronites alike. There are two local health centres in the Karpas area. Where these fall short of providing the necessary medical treatment, patients are transferred to the Magosa (= Famagusta) or Lefkoşe (= Nicosia) State Hospitals and, where Greek Cypriots are concerned, they can upon request be transferred to the south. Similarly Maronites have access to health centres in neighbouring areas. The evidence of witness Moutiris (para. 405 below) concerned his complaint that he was denied to practice in the north after having refused to register with the "TRNC" authorities in accordance with the relevant "TRNC" laws. His evidence was clearly biased by his political views concerning the alleged legitimacy of the Greek Cypriot Administration and the alleged illegitimacy of the Turkish Cypriot Administration, which were more important to him than his medical practice and purported humanitarian services. The respondent Government observe that no other evidence relating to alleged violations of the Maronites' rights has been presented.

371. As regards the alleged interferences with property rights, the respondent Government observe that the immovable properties of Karpas Greek Cypriots do not come within the definition of "abandoned properties" under the applicable legislation. This means that there is no restriction on the use and enjoyment of such property by their owners. The list of cases decided by the District Court of Magosa (= Famagusta) which has been submitted by the respondent Government shows the successful outcome for the plaintiffs of all actions instituted under the Civil Wrongs Law (Cap. 143) by Karpas Greek Cypriots relating to unlawful occupation of and/or trespass to such property, and in which the "TRNC" Attorney General was sued as co-defendant because the occupation of the property took place as the result of wrongful allocation, authorisation or consent of State authorities.

372. As to the alleged impossibility to transfer and/or inherit Greek Cypriot property, the respondent Government submit that this is only due to failure to apply to the "TRNC" courts. If an application were made to the competent Turkish Cypriot court for grant of administration of the estate of a deceased Greek Cypriot, there is no reason why the court should not grant such an order making it possible to inherit property.

373. The respondent Government further submit that Greek Cypriots enjoy freedom of worship in the "TRNC", that there are no legislative provisions restricting the freedom of correspondence and communication for any class of persons, that Greek Cypriots and Maronites living in the north have free access to all press, television and radio broadcasts without any restrictions, in particular there are no restrictions on reception of Greek language broadcasts or on the importation and possession of Greek language newspapers. Also, the Karpas Greek Cypriots' ability to travel and communicate within and outside the "TRNC" has substantially improved in recent times.

374. As to the founding and joining of associations, organisation of meetings and exercise of professional activities, there are no restrictions on Greek Cypriots and Maronites living in the "TRNC" and indeed no complaints have been made in this respect. There is no law restricting the right of association except one dating from the Turkish Communal Chamber which deals only with the Turkish Cypriot community because at the relevant time these matters were within the jurisdiction of the respective communities. However, there is no law which prevents association between the two sides and if there should be any complaints in this respect there is no reason why the persons concerned should not get a remedy in the courts. In fact, the advantages and disadvantages of bi-communal contacts under the present circumstances are now being publicly discussed in the "TRNC" and there is a healthy diversity of opinion on this subject. In this context, the respondent Government also observe that one of the leading lawyers in Kyrenia is a Maronite who, having registered with the Turkish Cypriot Bar Association, is able to practice his legal profession in the same way as other members of the Bar.

375. In the field of education, Greek Cypriot and Maronite children are free to attend all elementary and secondary schools under the same conditions as Turkish Cypriot children whilst special Greek-teaching elementary schools are available in the Karpas area. The applicant Government's claim that "school books are banned by the Turkish forces" is inaccurate. School books sent by the Greek Cypriot Administration to Greek Cypriot students in the Karpas area have never been banned. However, all books are subject to a vetoing process which is rapidly discharged by the competent authorities in the "TRNC", this measure being applied in accordance with UN suggestions for confidence building measures in view of the necessity to cleanse books and other publications on both sides of material which is considered inflammatory to the other side and to ensure that hostility is not engendered among students through misinformation. There are currently three Greek Cypriot teachers in the area who conduct education with books and literature from southern Cyprus. It is claimed that the issue of the vacant position has been repeatedly expressed to UNFICYP by the Turkish Cypriot authorities.

376. Finally, the respondent Government submit that "relatively trivial or insignificant incidents complained of by different individuals at different times which do not in themselves amount to the breach of any Convention Article cannot be considered cumulatively so as to be regarded as a breach of any particular Article as this would be contrary to established

principles and would create a novel form of breach never envisaged by the letter and spirit of the Convention".

377. The respondent Government submit that the East African Asians' case (*loc. cit.*) is not a precedent for such a finding. That case concerned one measure which was sufficiently severe in itself to constitute a breach and in deciding this the cumulative effects of that one measure on those concerned, such as the publicity given to and the hardships caused by it, were taken into account. It thus was not an accumulation of measures, but the cumulative effects of one measure which prompted the Commission's finding that the treatment complained of in that case was an affront to human dignity to the point of being degrading treatment in breach of Article 3 of the Convention. However, the treatment complained of in the present case bears no resemblance to those facts and does not reach the degree of severity required for finding a violation of Article 3.

378. Nor has there been an interference with rights under Article 8 of the Convention. While there are difficult conditions arising from the special predicament of the Greek Cypriots living in the Karpas peninsula, there is no evidence of interference with Article 8 rights by the public authorities, nor of an intent or policy of interfering with such rights. The evidence is dominated by exaggerated fears and suspicions against an authority and people which the persons concerned find hard to accept because of the resentment they feel towards them, not least because of encouragement and pressure by the Greek Cypriot Administration to be resentful against Turkey and Turkish Cypriots in general.

379. Finally, there is no discrimination contrary to Article 14 of the Convention. For centuries there has been a form of differentiation between the ethnic groups in Cyprus. Different laws and regulations have been applied to educational, family and other social fields, and were also incorporated into the 1960 Constitution as a means of protecting the ethnic identity of the two communities. It is submitted that any differentiation complained of in the present application is no more than a continuation and development of bi-communal arrangements on the island.

C. Facts established by the Commission

1) Written evidence

380. The Commission has had before it voluminous material relating to the situation of the enclaved Greek Cypriots in northern Cyprus, submitted mainly by the applicant Government. Among the written statements by witnesses submitted by the applicant Government there is only one, by an anonymous witness, who at present is himself an enclaved person. He describes the situation in general terms without details of any events concerning himself. A general description is also given by Mr. Kalattas, who is the President of the Committee of the Enclaved and who, in this capacity, also was the source for reports by two different NGOs submitted to the UN Human Rights Commission (statement on behalf of the International Federation for the Protection of the Rights of Ethnic, Linguistic and other Minorities, submitted at the 51st session, March 1995; and statement on behalf of the Greek Orthodox Archidiocesan Council of North and South America, submitted at the 52nd session, April 1996). Reports on their activities for the Cypriot Government in the area of humanitarian affairs and educational matters, respectively, have been included in the written statements of Mr Laoutaris (with statistical annexes on the demographic situation of the enclaved persons,

and recorded incidents between September 1995 and September 1996) and of Mr Toumazos (with a statistical annex on the development of the enclaved school population and a list of banned schoolbooks for the schoolyears 1995/1996 and 1996/1997. The list for 1996/97 shows 152 items of which only 84 were approved and delivered. The 68 schoolbooks objected to include books on Greek language and grammar, English, civics, religion, history, geography, science, mathematics and music). The statement of Mrs Theocharous purports to describe the situation of medical services available to the enclaved population, but concentrates mainly on difficulties encountered in organisating an investigation mission on this subject to the "TRNC" by *Médecins du Monde*, whose report was annexed.

381. Other witness statements are by persons who are not themselves enclaved persons, but directly affected by restrictions imposed on them: several pupils and students who, after attaining the age limit of 18 (for girls) or 16 (for boys) cannot return from the Government-controlled area to their enclaved parents in the north and who also describe difficulties in communicating with them; a person who in 1995 was refused permission to attend the funeral of his grandmother (she had been enclaved, but died in a hospital in the south; her burial in her village was nevertheless permitted); and finally a school teacher and a priest who did not receive replies to applications to occupy posts in northern Cyprus which had become vacant.

382. The press reports submitted by the applicant Government provide indirect evidence insofar as they recount impressions by foreign parliamentarians who visited northern Cyprus and reveal certain attitudes of the "TRNC" authorities concerning the handling of humanitarian issues in favour of enclaved Greek Cypriots (Cyprus Mail of 30.8.1995, 6.4., 10.4. and 31.10.1996; Kıbrıs 29.10.1996; Ortam 5.12.1996). An outlook on the attitude of the Turkish mainland authorities is provided by a series of 15 articles published as from 20.7.1992 in Istanbul daily Cumhuriyet by Mr Barutçu, formerly Head of the Cyprus desk at the Turkish Ministry of Foreign Affairs.

383. The respondent Government have provided material on case-law of "TRNC" courts to show that effective remedies for their complaints are available to the enclaved Greek Cypriots. This includes a survey of applications made to the courts of the "TRNC" both in civil and criminal cases by Greek Cypriots, those of Greek Cypriot origin and other foreign nationals, covering the period between 1977 and 1 May 1996. They have further submitted a list of cases instituted by Greek Cypriots under the Civil Wrongs Law and criminal cases instituted by the "TRNC" Attorney General upon complaints by Greek Cypriots. Furthermore, the texts of a number of the judgments concerned have also been submitted together with English translations. Finally, some legislative texts underlying these decisions have been supplied.

384. The respondent Government have also submitted a UN document dated 30 November 1995 on measures being implemented by the Turkish Cypriot authorities in respect of Greek Cypriots and Maronites located in the northern part of Cyprus (S/1995/1020, Annex IV, see Appendix III to the present Report) as well as decisions of the "TRNC Council of Ministers" of 11 February and 15 April 1998 relating, respectively, to "Arrangements for the entry to the TRNC from the Greek Cypriot Administration of Southern Cyprus and for the exit from the TRNC to the Greek Cypriot Administration through the Ledra Palace check-point" (see Appendix V to the present Report) and to "Principles concerning the improvement of the arrangements regarding the crossings of Maronites from the South to the TRNC" (see Appendix VI to the present Report). Finally, they have submitted, "for information", an Aide-Memoire dated 2 October 1998 on measures taken by the Turkish Cypriot authorities in

relation to the living conditions of the Greek Cypriots and Maronites living in the "TRNC". However, the Commission has decided not to take into account the latter document (see para. 61 above).

385. Material concerning the living conditions of enclaved Greek Cypriots is contained in many UN documents, in particular progress reports of the Secretary General to the Security Council on the United Nations Operation in Cyprus, which regularly contain sections on humanitarian measures taken by UNFICYP in favour of this population group. The reports covering the period under consideration bear the following reference numbers: S/1994/680 (7.6.1994), S/1994/1407 (12.12.1994), S/1995/488 (15.6.1995), S/1995/1020 (10.12.1995), S/1996/411 (7.6.1996), S/1996/1016 (10.12.1996), S/1997/437 (5.6.1997), S/1997/962 (4.12.1997), S/1998/488 (10.6.1988), S/1998/1149 (7.12.98).

386. As already mentioned, the Commission has also had before it the report on the humanitarian review carried out by UNFICYP in 1994/1995 concerning the living conditions of Karpas Greek Cypriots, the so called "Karpas Brief". As this is a confidential UN document to whose disclosure the respondent Government objected, the Commission will not quote from it. The parallel report on the living conditions of the Maronites in northern Cyprus has not been made available to the Commission (see para. 138 above).

387. The outcome of the review has been summarised as follows in the Secretary-General's progress report of 10 December 1995 (*loc. cit.*, para. 23):

> "The review confirmed that those communities were the object of very severe restrictions, which curtailed the exercise of many basic freedoms and had the effect of ensuring that, inexorably with the passage of time, those communities would cease to exist in the northern part of the island. For example, Greek Cypriots living in the northern part of the island are not permitted by the authorities there to bequeath immovable property to a relative, even the next of kin, unless the latter also lives in the northern part of the island. In this way, more and more of the immovable property of Greek Cypriots located in the northern part of the island is expropriated by the Turkish Cypriot authorities for their disposal. Furthermore, there are no secondary school facilities for Greek Cypriots or Maronites in the northern part of the island. The Turkish Cypriot authorities have declined to permit the establishment of such facilities. Greek Cypriot children located in the northern part of the island who opt to attend secondary school in the southern part of the island are denied their right to reside in the northern part of the island once they reach the age of 16 in the case of males and 18 in the case of females."

388. Annexed to that progress report was the above-mentioned document on measures being implemented by the Turkish Cypriot authorities in respect of Greek Cypriots and Maronites located in the northern part of Cyprus (see para. 384 above and text in Appendix III) with a footnote that it "contains a record of the points conveyed orally by the Turkish Cypriot authorities to UNFICYP. The text was subsequently shown to the Turkish Cypriot authorities, which confirmed its accuracy."

389. UNFICYP made a number of recommendations for remedial action by the Turkish Cypriot authorities which was also reproduced in the UN Secretary-General's above progress report (*ibid*. paras. 24-25, see Appendix IV to the present Report). Subsequent progress

reports noted a number of improvements in the situation, while insisting that the main restrictions remained in force.

390. In a report of the UN Secretary-General to the UN Commission of Human Rights dated 9 March 1998 (UN Doc. E/CN.4/1998/55) the situation was described as follows:

> "26. .... The living conditions of Greek Cypriots and Maronites living in the northern part of the island have changed little from those reported previously. With regard to the recommendations in the 1995 Humanitarian Review, the Turkish Cypriot authorities have made some improvements, notably by increasing the number of telephone lines in the Karpas and Kormakiti areas and by allowing UNFICYP humanitarian patrols to meet privately with Greek Cypriots in the Karpas area without the presence of police. Furthermore, the two vacant Greek Cypriot schoolteacher positions have now been filled in Rizokarpaso. ...
>
> 27. Many of the restrictions on Greek Cypriots and Maronites living in the northern part of Cyprus that were noted in UNFICYP's 1995 Humanitarian Review remain. For example, travel within the northern part of Cyprus remains restricted for Greek Cypriots and they still cannot bequeath fixed property to their next of kin living outside of the northern part of Cyprus. The continuing policy of the Turkish Cypriot authorities is to consider property "abandoned and ownerless" whenever the Greek Cypriot or Maronite owner dies or permanently leaves the area. However, in February 1998, the Turkish Cypriot authorities announced new procedures and regulations for entry to and exit from the north. For Greek Cypriots and Greeks who wish to enter or depart, passports or identity documents are now required with a visa for which a fee of 15 pounds sterling is required. Turkish Cypriots or residents in the north requiring emergency medical treatment in the southern part of the island are exempt from the visa requirement. The period of stay allowed in the southern part of Cyprus for those who reside permanently in the north has been extended to six months, but they must carry a permit, passport or identity papers, and are required to pay a departure fee of 4 pounds sterling, as are tourists. A fee of 10 pounds sterling is levied for multiple departures. The age limitation for students studying in the southern part of the island was lifted for Greek Cypriot and Maronite girls and for Maronite boys, although Greek Cypriot boy students are still not allowed to return to their homes in the northern part of the island after they reach the age of 16. The students are required to pay a departure fee of 2 pounds sterling. The limitation on the number of persons allowed to visit the Monastery of Apostolos Andreas has also been lifted, provided that each visitor pays 15 pounds sterling and carries identity papers."

2) The Commission's investigation

a) Witnesses

391. In the course of the investigation carried out between November 1997 and April 1998, the Commission's Delegates heard the following witnesses on the situation of the Greek Cypriots and Maronites in northern Cyprus:

392. **Mr Rainer Manzl**. The witness submitted that he was a Lieutenant Colonel in the Austrian Airforce and that he had been sent to various United Nations missions mainly working as a humanitarian officer. He had been assigned to duties in Cyprus several times

starting in 1983. His last assignment was from June 1993 until mid-July 1994 when he was the chief humanitarian officer of UNFICYP. In that function he realised that there were no updated reports on various minority groups including the Greek Cypriots in the Karpas area. In order to improve and update the existing reports as to the situation of these minorities, the witness commenced obtaining information from the humanitarian officers working in the various sectors and on the basis of this information he decided to give priority to the situation of the Greek Cypriots in the Karpas area because members of this group were very old and because they had special needs. Information was obtained from various sources (including UNFICYP infantry battalions and civilian police, but also public and private sources in both parts of Cyprus) and the witness assumed the responsibility for checking this information and where necessary to send people out to confirm or verify the details. The witness also made regular visits to the Karpas area and was able to check for himself information which had been sent to him. On such occasions he also spoke personally with Greek Cypriots in the Karpas area. He did the same as regards the other minorities under his overall responsibility, i.e. the Maronites in the Kormakiti area of northern Cyprus and the Turkish Cypriots in southern Cyprus. However, the reports on the situation of those other minorities were only completed by his successor. The Karpas Brief was prepared by the witness only as an internal working paper which was given to the authorities of both sides for corrections or comments. However, the witness was then requested to hand the matter over to the UN political section who were not very happy about the report and the fact that it had become public in the south. As regards the contents of the report and the actual situation of the Greek Cypriots in the Karpas area the witness submitted that he was unable to present any further details, relying on the fact that the United Nations had not waived his duty of confidentiality.

393. **Mr Anthony O'Sullivan.** The witness submitted that as a member of the Irish defence forces he served in Cyprus with UNFICYP from the summer of 1993 until August 1995. He was working as an officer in the humanitarian section and part of his work brought him in contact with minority groups in Cyprus. It was his duty, among other things, to try and implement improvements in the humanitarian situation generally for the minority groups, including the Greek Cypriots in the Karpas area. The purpose of establishing the so-called Karpas Brief was to complete a review of the situation regarding Greek Cypriots living in the Karpas and the aim was to take stock, review and plan for the future by identifying areas in which improvements in their overall situation could be made. Because of the complex political situation those who prepared this report tried to divorce themselves from the politics and look at the matter from a purely humanitarian point of view. The report was not exclusively based on his own direct experiences but in any areas where he had certain doubts he checked the information obtained to the best of his ability. In this respect he visited the Karpas area on a number of occasions and he was in contact with all the persons who visited the Karpas area on a weekly basis and whose reports he had received. As regards visiting the area the witness submitted that he and other UNFICYP personnel could only visit the area with the permission of the Turkish Cypriot authorities and on entering the Karpas area they would have to report to the police station and get a police escort before going to the villages of the Greek Cypriots. Due to his duty of confidentiality the witness did not submit details about the living conditions of the Karpas Greek Cypriots.

394. **Mr Michalakis Laoutaris.** He submitted that he was working as a welfare officer in the Department of Social Welfare Services of the Government of the Republic of Cyprus. He was in charge of humanitarian affairs and had during the last four years been exclusively responsible for enclaved persons. In September 1996 their number had been 655, including 487 Greek Cypriots in the Karpas area and 168 living in the Maronite villages. He was in

daily contact with those of them who were able to travel to southern Cyprus. Karpas Greek Cypriots could travel to the south by bus once a week, usually on Fridays; Maronites were able to visit the south more often, also on other days of the week and in their private cars. On such visits, the persons concerned carried Turkish Cypriot identity documents marked "Greek Cypriot" and indicating their place of residence in Turkish. The witness believed that the Turkish Cypriot authorities considered them as their citizens, but he himself saw them as citizens of the Republic of Cyprus. They informed him of any problems they had, social economic or humanitarian. These contacts took place at the Red Cross Headquarters in Nicosia. There were no telephone contacts with the enclaved populations while they were in the north. For 21 years there had been no telephone links at all, and even after a few lines had been installed in the Karpas it was the practice not to discuss community problems over the phone. The witness further mentioned that visits of United Nations humanitarian officers always took place in presence of Turkish Cypriot policemen, and therefore the enclaved Greek Cypriots could not freely communicate their problems to them. His service kept detailed files on all the enclaved persons and their problems on the basis of their personal statements.

Among the problems reported, there were frequent instances of theft and burglary in the enclaved persons' homes as well as trespassing on their land. They frequently reported such occurrences to the Turkish Cypriot authorities of their own accord, but to no avail. The witness stated that his service did neither discourage nor encourage them to do so, but referred the victims to the police of the Republic of Cyprus who tried to investigate the matter as far as possible.

A further problem was that the enclaved people were forbidden to visit the Apostolos Andreas monastery except twice a year, on 15 August and 30 November. There was only one priest in the Karpas area and attempts to send more priests so that each community had its own were refused. The only priest was also taking care of the Apostolos Andreas monastery, in which there were no monks. The monks living in another small monastery were prevented from practising as they had no priest in charge of them.

The enclaved Greek Cypriots were not allowed to have their own secondary schools although this had been provided for in the Vienna 1975 agreement. There were only Turkish Cypriot secondary schools. In order to attend secondary schools, Greek Cypriot children from the age of 12 were forced to travel to southern Cyprus. There were about 45 secondary school children from the north in southern Cyprus, only one or two of the relevant age bracket remained in the north. This resulted in break-up of families. The children concerned were allowed to visit their parents in the north only during the fortnight Christmas holidays, the fortnight Easter holidays, and the two-months summer holidays. No visits were allowed, in the case of boys, once they reached the age of 16, and in the case of girls, the age of 18. Since after completion of their education they were not allowed to return to the north and rejoin their families it was obviously impossible for them to marry there and renew the population in the region and that was the reason why the majority of the enclaved were now elderly people.

There were Greek Cypriot primary schools in northern Cyprus, one with 35 pupils in Rizokarpaso and another one with one pupil in Kormakiti. In these schools, symbols such as crosses or the Cypriot flag were not permitted. There also existed serious problems of providing them with schoolbooks. The procedures in this respect were extremely complicated and regularly involved delays. The lists had to be submitted to the UN in April or May of

each year and yet it was difficult to have them approved by the beginning of the school-year in September. Referring to the lists attached to the written statement of Mr Toumazos (para. 380 above) the witnesses stated that many books were refused, last year only 102 out of 148 had been permitted. The books which could not be sent included books on Greek language, history, religion and civics. Another problem of the Greek primary schools in the north was trespassing by Turks who vandalised the premises, smashed windows, soiled the buildings and daubed the walls with slogans. There had also been an incident of pollution of the drinking-water supply of a school.

One of the major concerns of the enclaved persons was their health situation. Health visits were subjected to severe restrictions. They could not go to see their local doctors immediately, nor could the doctors visit them at home without police authorisation. Treatment in special hospitals could take place only after complicated and lengthy procedures. The witness mentioned a recent case in which a person needing special tests was refused permission to travel to southern Cyprus to have those tests. Repeated attempts to send doctors from southern Cyprus to the region on a regular basis remained without response from the Turkish Cypriot authorities.

Questioned by the Delegates, the witness also spoke of the taking of property of enclaved Greek Cypriots who move to the south or die. Their heirs have no right to take over that property, which is appropriated by the Turkish Cypriot authorities who hand it over to settlers who use it themselves or, in many cases, sell it to others. He described this as one of the most important problems of the enclaved Greek Cypriots. However, he considered that it was not legally impossible for an enclaved Greek Cypriot to sell his property to another Greek Cypriot or a Turkish Cypriot. However, they would usually prefer to keep their property for their heirs. He reported a case where even the husband of a deceased Greek Cypriot was not allowed to farm the land of his late wife which was assigned to settlers.

The witness also spoke of the situation of the Maronites in northern Cyprus, who generally speaking enjoy more favourable conditions than the enclaved Greek Cypriots in the Karpas. Kormakiti was still inhabited only by Maronites. However, the village headman appointed by the Government of Cyprus, Michalis Araouzos, had been removed from his office in August 1995. In order to prevent him from performing his duties, he had been banned from visiting southern Cyprus, despite certain health problems. In his place, the Turkish Cypriot authorities appointed Mr. Tsotsoukkis as headman and several members of the village committee. This led to a division in the community. Those who supported the former headman were then forbidden to visit southern Cyprus or to receive visits of relatives from southern Cyprus. When Mr. Araouzos died, the successor appointed by the Cypriot Government was subjected to the same restrictions, his home was searched several times, he was no longer allowed to leave the village and finally, two weeks before the witness' testimony requested to declare his resignation as headman to the Cypriot Ministry of Interior.

In practice there was no contact between the Maronites and the enclaved Greek Cypriots in the Karpas area, although they had common interests and were on friendly terms with each other when they met in the south. The areas of northern Cyprus where the two minorities lived were far apart and the procedures to travel from one area to the other were too complicated for anyone to make use thereof. In any event a Greek Cypriot from the Karpas would not be allowed to settle in the Maronite area. Only recently enclaved Greek Cypriots were allowed to move between different villages in the Karpas area. Previously, this had been forbidden and people wishing to do so had to give reasons to the police. The police

took their decision according to their discretion. The witness was not aware that there was a legal basis for these restrictions and observed that similar restrictions did not apply to Turkish Cypriots.

Finally, the witness confirmed that there were no impediments to receiving Greek Cypriot radio and television broadcasts in northern Cyprus.

395. **Mr. Aşik Altıok.** The witness submitted that he was the "director of consular affairs attached to the Ministry for Foreign Affairs of the TRNC". He stated that 473 Greek Cypriots were presently living in the Karpas area and that he was *inter alia* involved in improving their living conditions. He maintained that every facility available to other citizens and foreigners living in the area were available to them - they hardly made use of the facilities since they were politically exploited by the Greek Cypriot administration in southern Cyprus. As regards the judiciary all the statutory legal remedies were available to the Greek Cypriots.

As regards schooling the witness maintained that the Greek Cypriots in the Karpas area received tuition in Greek in their own schools. Their schoolbooks came from the southern part of the island as did their teachers. The education was entirely free and they were given the same rights as other foreigners living in the area. They could attend any language school if they so wished or choose to go to the south and do their secondary schooling there. Upon a question as to whether children from Greek Cypriot families were unable to return to the north after having finished secondary school in the south, the witness stated that until recent times that indeed had been the situation. This was however no longer the case as far as Greek Cypriot girls were concerned. Upon repeated questions about school children's possibilities of returning to the northern part of Cyprus following the end of secondary schooling the witness agreed that the new arrangement which would allow female students to return covered only students currently attending school but as it was a new arrangement it was still unclear what the future practise would be. The new arrangement had come about by a decision of the "TRNC" Government only a week before his hearing as a witness.

Upon a question concerning the prohibition of certain books the witness stated that books were sent to the Greek Cypriots in the north from the south through the humanitarian offices of the United Nations Peacekeeping Force but that almost all the books - except those on science and mathematics - contained anti-Turkish material. This was identified and reported to the United Nations every year and the "TRNC" authorities scrutinised these books in order to identify such passages. The books were not refused but topics, passages, pages and paragraphs containing anti-Turkish material would be removed. This was in the witness' view part of the education.

The witness further stated that health care was provided without distinction. Greek Cypriots in northern Cyprus received health care in their own area. The Greek Cypriots would also, if necessary, be sent by ambulance to Famagusta State Hospital or to the other State Hospital or if they so wished to the southern part of the island under a United Nations medical evacuation scheme known as "MEDIVAC".

As regards religious matters the witness stated that the "TRNC" respects everyone's beliefs and everyone could worship freely. The Greek Cypriots living in the Karpas area could go to the churches in their area with their own priests and they also had the possibility

to attend religious services three times a year at the Apostolos Andreas Monastery. Upon a question as to the measures taken to protect religious buildings the witness submitted that all churches and other historical monuments were under the authority of the "TRNC"and that they did what was possible within available means to protect them.

In respect of communications every person in the "TRNC" would have a direct telephone line installed once the relevant infrastructure was completed and they would be able to speak to anybody all over the "TRNC" and in fact with the entire world with the exception of those living in the southern part of Cyprus, the latter owing to the problem of a lack of a telephone link. The press broadcasting in the media was entirely free of any restrictions and the Greek Cypriots could take out subscriptions and have newspapers sent to them. They could receive all television channels in the south or television channels that broadcast in Greek. The Turkish Radio and Television Corporation in the "TRNC" also broadcast programmes for them in Greek.

As far as freedom of movement was concerned the Greek-Cypriots could - subject to certain rules - come and go from one side of the island to the other. School children could come and visit their close relatives whenever they liked and they could spend their holidays with their families. They were free to travel but were sometimes stopped on their way to the southern part of the island by the Greek Cypriot administration. As regards the Greek Cypriots living in the Karpas they had previously been requested to notify the local police if they were to move to other parts of the "TRNC". Now however they could visit all the open areas without conditions or limits, they were free to go wherever they wished and use their cars for that purpose. There were no restrictions at all. On application they could also change their place of residence within the northern part of Cyprus but so far there had been no such requests. On the question of freedom of movement the witness also pointed out that the Greek Cypriots living in the south could visit their relatives in the north provided they complied with the specific procedure. This he called a regulation rather than a restriction. A certain visa system had now been introduced, which would allow the relatives to visit as much as they liked.

Everyone living in the Karpas area was entirely free to pursue the occupation they wished. As regards the Greek Cypriots' possibilities of having access to the civil service the witness submitted that there would be no discrimination in this respect in so far as they applied. If the requirements for the post in question were fulfilled they could take up such a post. The witness did not know for certain however whether there were any civil servants of Greek Cypriot origin working in the Turkish Cypriot administration.

396. **Mr. Osman Örek**. The witness stated that, until five years ago, he had practised law in northern Cyprus. He had further held a number of public offices in the Turkish Cypriot administration, the last one being Speaker of the House of Representatives. He explained the legal system of the "TRNC" and in this context explained, *inter alia*, that there were no differences regarding access to the Supreme Court between "TRNC" citizens and persons who are not citizens or not resident in the "TRNC". All could employ the services of a lawyer and the presence of the applicant was not necessary. Asked whether he knew of cases brought by members of the Greek Cypriot community in relation to restrictions on freedom of movement, he replied that he was not aware of any such decisions or applications, but he knew that access to court was open to aliens, even if they were not in the territory, and that citizenship was no criterion in this respect. He did not know of any Greek Cypriots who had applied to the "TRNC" Administrative Court, they were prevented from doing so by their

own administration. In reply to questions by the applicant Government he admitted, however, that certain rights included in the "TRNC Constitution" were reserved to citizens and that the "TRNC" courts were bound to apply Article 159 para. 1 b) of this Constitution (cf. para. 304 above) to property of Greek Cypriots who were not resident in the "TRNC". He further stated that he considered the Maronites and the Greek Cypriots living in the Karpas area as "TRNC" citizens. As to the restrictions imposed on them, he claimed that they were justified for reasons of security. He thought that these restrictions did not continue at the moment as there was a change in the situation.

397. **Mrs. Gönül Erönen.** The witness, a judge of the "TRNC Supreme Court" since 1994, explained certain aspects of the legal system of the "TRNC". She submitted a survey of cases brought by Greek Cypriots in "TRNC" courts both in civil and criminal matters and explained some of these (a criminal case brought in 1996 and two successful civil cases about trespass on property, brought in 1979 and 1993 respectively ; a further action brought in 1994 had been withdrawn while an action brought by a Greek captain was partly successful in the Court of Appeal in 1994). She also stated that access to the Supreme Court would in principle be available to everybody, including Greek Cypriots, against acts of the administration for unconstitutionality, illegality or abuse or excess of power, but as a judge she could not answer the hypothetical question as to prospects of success of such an action e.g . in the case of a complaint against the refusal to allow the return of secondary school students from southern Cyprus to the north. Legal aid was available only in criminal but not in civil cases. She would not know whether legal aid applied in cases of violation of fundamental rights. Also in property cases everybody had access to the courts, but he had to show his title to the property and Article 159 para. 1 b) of the "TRNC Constitution" might be an obstacle in this respect. As this was a constitutional provision, its constitutionality could not be challenged and the courts were bound to apply it. In reply to questions from the applicant Government the witness further admitted that certain Articles of the "TRNC Constitution" guaranteed fundamental rights, including the right to property, only to citizens. However, she stated that Greek Cypriots living in the Karpas and Maronites were considered as citizens and therefore could rely on these rights before the "TRNC" courts. She further insisted that a number of other constitutional provisions guaranteed fundamental rights to all individuals.

398. **Witness No. 5 proposed by the applicant Government[4].** The witness complained that the Turks had taken over the secondary schools and the children therefore had to go to the southern part of Cyprus for secondary education. The witness had five children all of whom had gone to the south when they reached the age of 12. The eldest two came back for visits during the first two years, but then they could not come any longer for 15 or 16 years. Only the last two years were they allowed to come for short visits. The witness and his spouse regularly visited them in the south. They were alone in their village with other people who had the same suffering. Their boys were not allowed to come back and live with them after they reached 16 years of age and girls when they reached 18.

There were now only 108 Greek Cypriots left in the village. They could move to other villages in the Karpas, but had to apply to the police if they wanted to go to Famagusta. Formerly they had had to report to three police stations, but now they could travel directly to Famagusta if they stayed on the main road. In the bus to Nicosia there was always a policeman. There was no post office in the village ; there was one in Yialousa which they did

[4] In view of their wish to remain unidentified, the Commission will not disclose the gender of the unnamed witnesses. Accordingly, the male pronouns "he" or "his" will be used in the case of all witnesses.

not use. Telephones had recently been installed in the homes of 13 Greek Cypriot people ; Turkish settlers had got theirs two years earlier and when he himself applied for one at that time his money was sent back. Calls to southern Cyprus could be made through the UN until 5 p.m., but they had to wait until a call went through, there was background noise and voices, and the calls were cut off after two or three minutes. They had not had newspapers for the last 23 years, but they had radio and television. With television they did not get a clear picture, especially on national holidays the picture was very bad. They wanted their own priest in the village. For years they had not been able to celebrate Christmas or Easter.

The witness worked in agriculture and complained that it was not possible to make a livelihood out of this as they were prevented from farming all their land, in particular fields farther away including fields in a Turkish village to which they could not go at all. There was frequent trespassing by Turkish shepherds on those fields. They did not feel safe in their homes. There had been many cases of burglary and of throwing stones. Also the church had been broken into and the icons stolen. After this, enquiries had been made only with Greek Cypriots, no investigation was carried out among the Turkish Cypriots. Nobody was arrested. In such circumstances they did not leave their house unattended. When he left he always made sure that his spouse stayed behind.

He knew two cases where settlers had taken over the property of enclaved Greek Cypriots. In one case the wife died first and then the husband in southern Cyprus. They had no children or heirs. The other case concerned an old man who lived alone. When he fell sick, his children nursed him and after he died some three or four years ago the children came to see the house which, however, had in the meantime been taken over by settlers. The taking of the property occurred immediately upon the death. The children were not allowed into the house and could only bury their father and leave immediately.

In 1981 the witness had gone to court when a settler from Rizokarpaso crashed into his car. He was assisted by a Greek speaking lawyer and the court awarded him compensation. The defendant promised to pay, but the witness never got his money. He did not take further proceedings as he was threatened by the settler's brother and son. He stopped the proceedings as he did not feel safe.

There was a doctor in Rizokarpaso who spoke Greek and another one in Yialousa who did not speak Greek. Both were general practitioners and not specialists. There was also a dentist and a pharmacy. His own doctor was in Nicosia, but he could not go there whenever he wanted to see him as he had no car.

Five years ago the witness had been able to participate in the presidential elections of southern Cyprus, and a year ago also in the general elections. Before that, they had not voted for 18 years.

399. **Witness No. 6 proposed by the applicant Government.** The witness submitted that he was a Greek Cypriot living in the Karpas area. He had lived in the area all his life. He had seven children but none of them lived in the Karpas area. Three of the children lived abroad; the others lived in the southern part of Cyprus. His spouse was in an old peoples' home in the southern part of Cyprus for which reason the witness was on his own in the village. He remained in contact with his children in the southern part of Cyprus. He visited them regularly and stayed there for two or three weeks before he returned to the northern part. Whereas he did not subscribe to newspapers or send letters he brought mail and bought Greek

newspapers when he visited his children in the south. Whenever the witness wants to leave the village either to go to the south or to other places within the "TRNC" he needs permission from the local police. He does not know the basis for this requirement but he has just been told that he needs a permit and therefore he always goes to the local police and obtains the permits he needs.

The witness submitted that today there were not many Greek Cypriots in the area and they were old people. Otherwise the area was occupied by so-called settlers since Turkish Cypriots were not allowed to live in the area. The Turkish settlers who now surround the village have arrived over the years and he is often left with the feeling that they are trying to make him leave the village. The witness submitted that he could not sell his house, nor could he leave it for his children. Once he leaves the area permanently, or dies, one of the settlers will take over his property. He used to have animals but the settlers had taken the animals away from him and they had also broken into his house and stolen things. Although he had complained to the police they did nothing in order to investigate the incidents. The witness had two cases brought before the courts. The first case concerned an incident with a settler who drove into his tractor. Nevertheless he had to pay the settler when the case finally went to court. The other court case concerned the witness' complaint that persons had trespassed on his property. For about four or five years nothing happened but then he asked the president of the Court for assistance and he obtained justice.

In his village in the Karpas area the witness received weekly visits from members of the United Nations. However, he could not speak to them freely because they were always accompanied by Turkish Cypriot police officers.

The witness has the possibility to go to church in the village but the priest is not there on a permanent basis as he has to serve several villages in the area.

400. **Witness No. 7 proposed by the applicant Government.** The witness submitted that he was 26 years old and he lived in the northern part of Cyprus with his mother. He was a farmer and a beekeeper but had problems in carrying out his profession as the farmland had been destroyed as well as the beehives. Furthermore, it was difficult for him to transport his products to the southern part of the island. He goes to the southern part of the island once a year to visit his family but he otherwise stays at home, as he cannot leave his mother behind. He believes that if using a telephone it is being tapped and that therefore he cannot speak freely. His siblings who all live in the southern part of Cyprus do not visit him very often. If they do they cannot move around freely as they are followed by police officers constantly even when entering the houses. He cannot write letters to members of his family in the south and they cannot write to him because there is no postal service available. If the witness wants to go to different places in the north he needs to obtain a permit from the police. The witness further submitted that he was single and that he could not get married since all potential spouses had to go and live in the southern part of the island in order to attend high school. Furthermore, he would not be allowed to bring with him to the Karpas area a spouse from the south of the island. He has no particular education because he was faced with the choice of staying at home in the village or go to the south of Cyprus in order to get secondary education.

401. **Witness No. 8 proposed by the applicant Government.** The witness is a Greek Cypriot living in the Karpas area. He stated that the Greek Cypriot minority in that area faced many hardships because as soon as their children finish primary school they were forced to

send them to the south to carry on their studies. The Turks took over the secondary school to which now only Turkish children could go. His own children had also left to the south at the age of 12. Boys over 16 and girls over 18 were forbidden to return to their homes and live with their parents. The children had used to visit the family at Christmas, at Easter and two months during the summer holidays, but this stopped when the boys reached the age of 16 and the girls the age of 18. Only recently could the children come for one day visits, but they had to get a permit five days earlier and to pay the police something at the road check. The last six months they could come for two days and stay overnight. But it was still difficult because they spent most of the time on the road and had to hire a taxi which cost 40 pounds either way. To visit the children in the south was also difficult. You had to get a permit first, for which in the past you had to apply a month earlier, then it was twenty days and in the end it took a fortnight. There was therefore no possibility for a spontaneous visit, e.g . when a child had fallen ill. The permit could be refused. And then you were only allowed to go by bus once a week. Recently it was possible to go by car, but it had to be parked at the checkpoint and you had to walk to the other side. The recent improvements in freedom of movement were only minimal. He had been visited in the village by brothers, sisters and children, but they could not move outside the village without a special permit. Only recently was it possible to go to St. Andreas monastery in a Turkish bus during weekends, but not during the week. People from all over the world were allowed to go to the monastery, but they themselves were allowed to go there only twice a year, on 30 November and 15 August, and even then only with a permit and a police escort. There was no freedom of movement for Greek Cypriots in northern Cyprus. They could only go to Famagusta, but not to other places. As they had to indicate the purpose of the visit, they went to Famagusta only for business or health visits. The road to Famagusta was regulated and they had to stay on the main road.

For a long time they had not had telephones or postal services. So they did not get letters or newspapers through the post office. They could only get them through other enclaved people who carried them in secret. Letters from abroad were brought by the police to the Greek Cypriot coffeeshop, but they were never sealed. They were opened by the police and checked. Now telephones had been installed, but he thought he could not speak freely with his children as the telephones were controlled by the occupying forces. Sometimes one could not hear well, and there were Turkish voices on the line. They were allowed to speak only three or four minutes and then the line was cut. They did have radio and television, but often the reception was bad.

Since the occupation the people in Rizokarpaso have not been able to grow tobacco and were only allowed to keep a few animals at home. They had been left a very small number of fields within the village boundaries and up to three miles around the village. They were not allowed to go further for farming and the settlers occupied their land. They had a big yard behind the house, but even there the fruit was sometimes cut off or the settlers came with their animals which ate the crops. So they produced only the minimum which was necessary for their own needs. It was not possible to grow produce which they could sell. They had to rely on an allowance from the Cypriot Government which they received on a monthly basis.

Some people had gone to the courts, but hardly ever they got justice. He knew of two or three cases where Greek Cypriots had brought court actions in Famagusta for recuperating land which had been occupied by settlers. They got a lawyer and spent a lot of money, but in the end they did not get the land back. He himself had testified as a witness in a case concerning the burglary of a neighbour’s home, making a deposition in Greek language

which the judge understood. However, the accused were boys of 14 or 15 and nothing happened to them because they were too young.

At night the witness was afraid that someone might come and burgle the house or steal things or even set fire to the house and kill the witness. There were several cases where people had been murdered in the village. About three years ago a certain Dimitri and his wife were burned alive in their house which had been set on fire. The police were alerted and did nothing until the firemen came from Leonariso. Afterwards there was no post-mortem, they were simply buried. The witness believed that the arson had been done by settlers from Turkey to whom Dimitri had given some money which he had claimed back the day before. A Turkish Cypriot neighbour had seen how they had taken the mattresses from the bed and put them on top of some charcoal to which they set fire. The police however said it was just an accident. Some other people living further away were also burned. The witness' neighbours had been found dead in their home, allegedly having died of a heart attack, but the witness did not believe that this was the true reason.

402. **Witness No. 10 proposed by the applicant Government.** The witness, a Greek Cypriot from the Karpas area, stated that the enclaved Greek Cypriots live in fear all the time, they are locked up in their homes because they are afraid of burglaries, people knock at their doors and some people have been burned alive. Every house has been burgled. Recently the witness' own house had twice been broken into. On one occasion money was taken, the burglars were found, but the witness did not get the money back. He was told to institute a lawsuit, but is convinced that he will not get justice. The witness has not enough money to pay for a lawyer and the other legal expenses. He knew of several cases where people had gone to court, but nobody has ever won a case.

Another problem is that the children have to leave the home at the age of twelve and that it is so difficult to visit them in the south. While in the past a permit had to be applied for a month, three weeks or a fortnight earlier, it has become possible only recently to just telephone in order to be able to go. But still you could not leave your house unattended, you must make sure someone stays behind in the home.

They were not allowed to farm their own fields beyond three miles from the home. Even the few fields on which they can sow crops on are often subject to trespassing by animals. The settlers also cut down the olive and other fruit trees. Thus they only produced for their own consumption and kept the produce hidden in their homes so that it was not stolen. Procedures for selling it in the south were cumbersome and restrictive.

The procedures to see a doctor were also complicated and lengthy. A doctor came regularly to the homes. Earlier it was at two weekly, then at weekly intervals and now twice a week. However, for special treatment and in an emergency a special permit was needed, which in the past was delivered up to a week after the request. Also it was difficult to see the doctor of your own choice.

Recently telephones were installed, but the calls were always bugged and the time of connection was restricted. They could only speak two to five minutes. When the witness called the children to tell them about the burglary, the line was cut off at once.

403. **Witness No. 12 proposed by the applicant Government.** The witness submitted that he was 14 years old in 1974 and after finishing his elementary school he became a

butcher. Now, however, he had no work as his shop was destroyed on two occasions by settlers. Today he lives on an allowance, which is sent to him by the Cyprus Government. His brothers and sisters live in the south of Cyprus whereas he has stayed behind with his parents. The land belonging to them inside the village in which they live is still in their possession but the settlers have taken the land which was outside of the village. The witness considers it futile to try and get the land back through court proceedings as they are very expensive, since it is unclear whether he will win the case and since the settlers will return to the land afterwards anyway.

The witness submits that it is difficult to obtain the necessary medical care and in the area there are no Greek newspapers on sale, no magazines, no libraries, no books but he can watch television broadcasts from the south and listen to Greek Cypriot radio broadcasts.

The witness has remained single as all potential spouses left the village and went to the southern part of the island. He has been informed that it would not be possible to obtain a permit for a Greek Cypriot spouse from the southern part of the island to come to his village if he wanted to marry. The witness submits that he could only have received higher education in the south of Cyprus but in such circumstances he would have been obliged to sign an application to go to the southern part of the island and he would never be able to return to his home.

404. **Witness No. 26 proposed by the applicant Government**. The witness was born after the invasion in 1974. When he started school he noted that most classrooms had been destroyed and there were only very few books. Some lessons were banned by the Turks and some of the books, especially history and religious books, arrived with pages cut out. Turkish police would come and interrupt the classes and check what lessons they were having and whether they spoke about Greece. All classes were held in the same classroom and there were very few students. After primary school the witness decided to continue studying and therefore applied for permission to leave for the southern part of the island where he then received secondary school education. While in the southern part of the island he had very little contact with his parents and siblings. There was no postal service and no telephone communication. The parents would come twice or three times a year to visit the witness and he could go back three times a year during the school holiday periods. Now there have been some improvements in that telephone lines have been installed but in the witness' opinion the conversations are monitored. When the witness visited his parents during secondary schooling he was always accompanied by police officers who would even enter the houses and stay with them while they were there. The witness could not go unaccompanied anywhere and if the family visits lasted more than one day there would be regular checks.

405. **Dr. Joseph Moutiris.** The witness, a Maronite doctor specialised in cardiology and since 1987 a member of the Medical Association of Cyprus, stated that he had left his village in northern Cyprus on 14 August 1974. Since then he had been living in the southern part of Cyprus and all his family had not been able to return to the north despite repeated attempts. He explained that the Maronites were a small community of about 6000 people which prior to 1974 mostly lived in four villages: Kormakiti, Assomato, Karpasha and Ayia Marina. They are Roman Catholics. When the Republic of Cyprus was established in 1960, they were regarded as a religious group and, in accordance with the Constitution, they elected to belong to the Greek Cypriot community. Following the Turkish invasion in 1974, there were still 1000 Maronites in northern Cyprus, now there remained only 170.

In September 1994, following consultations between representatives of the Maronite community and the Ministry of Education of the Republic of Cyprus, the witness agreed to visit the enclaved Maronites on a fortnightly basis in their villages in order to provide them with medical care. First he examined patients at the doctor's surgery in Kormakiti; those who could not come to the surgery he visited in their homes. After a year, the Turkish Cypriot police chief of the region told him that in order to continue his visits he would have to submit a written application to the Turkish Cypriot Medical Council. He refused and a little later he was prevented from entering the northern part of Cyprus at Ledra Palace checkpoint. Following an intervention by the UNFICYP officer in charge of humanitarian affairs he was again allowed to carry out his humanitarian mission, but he could no longer use the medical surgery and had to visit all patients in their homes until the church put a room at his disposal where he could examine his patients. On 8 February 1998, however, the district police chief and four other policemen came and told him that he would no longer be allowed to treat sick people there. There were 15 people waiting to be examined, but he was prevented from doing so under threat of arrest. The patients begged to be allowed to be examined, but they were removed by the police. The witness was taken to the police station in Myrtou and subsequently expelled from the northern part of Cyprus, to which he subsequently could not return despite repeated attempts to do so and considerable efforts of UNFICYP's Head of Humanitarian Affairs.

The witness emphasised that his patients were mostly elderly persons who often suffered from cardiovascular problems and therefore were in need of continuous special care. In reply to questions from the respondent Government he confirmed that Turkish Cypriot health facilities were available to members of the Maronite community, but as they spoke Greek they had communication problems with Turkish Cypriot doctors and also difficulties with transport to the hospital in Morphou. Moreover, they had traditionally received care in the General Hospital in the southern part of Nicosia. When he started the mission, the medical care administered to the Maronites was very poor. He had not visited hospitals in the north, but from contacts with Turkish Cypriot colleagues he knew that in particular specialised services such as cardiology, vascular surgery, heart operations etc were not available.

He undertook his mission on a voluntary basis without being paid for it. He regarded it as a purely humanitarian mission and he pursued absolutely no political aims. He considered that his registration with the Board of Doctors of the Republic of Cyprus gave him the right to practice medicine in the whole of Cyprus and his refusal to sign written applications to other bodies was for him a matter of principle. He always respected the time-limits and cumbersome controls which were imposed on him by the Turkish Cypriot authorities and thereby showed his goodwill. He expressed the wish to be able to resume his humanitarian mission in northern Cyprus.

b) Visits

406. On 23 February 1998, the Delegates visited the **Court building in northern Nicosia**, meeting, *inter alia*, the President of the "TRNC Supreme Court", Mr. Salih Dayoğlu, and the "Attorney General of the TRNC", Mr. Akin Sait, who explained certain aspects of the judicial system of the "TRNC". In particular, it was explained that the judicial system created for the northern part of Cyprus in 1975 was based on the principles which had been at the basis of the judicial organisation of the Republic of Cyprus since its independence in 1960 and which also continued to be applied in the southern part of the island. In view of the fact

that this system perpetuated the Anglo-Saxon judicial tradition introduced in Cyprus during the colonial period, many of the Turkish Cypriot judges had been educated in the United Kingdom in the same way as judges in southern Cyprus. The "TRNC" courts also kept themselves informed of the development of the case-law of the courts in southern Cyprus. The Delegates were told that the "TRNC" courts functioned normally as in any other civilised State. They also saw a trial going on in one of the courtrooms.

407. On 24 February 1998, the Delegates paid a **visit to the Karpas area**. At the **police station in Yialousa** they spoke with the chief of police, Mr. Turkay Türet. He confirmed that there were complaints of burglary and stealing, but they concerned not only Greek Cypriots but also Turkish Cypriots. He insisted that the police immediately carried out investigations and took statements. If necessary, the matter was referred to the judiciary. He mentioned some cases. However, he could not produce statistics. They were kept in the security headquarters at Ziyamet. He denied that there was a security problem in the area and that there was insufficient protection for the houses, crops and gardens. Greek Cypriot property was protected in the same way as Turkish Cypriot property. Greek Cypriots were free in the same way as Turkish Cypriots and could go where they liked. This had been the situation for about three years. He cited the case of a Greek fisherman who had gone to Kyrenia for spare parts. He asked the police and was allowed to go there. The request to the police had not been necessary, it had only been made by this man in order to be sure. Greek Cypriots knew very well that the restrictions on freedom of movement had been lifted. Upon a question he confirmed that his service was competent for accompanying relatives of Greek Cypriots who came from the south, but denied that the visitors were under constant surveillance. Visitors asked for permits to visit the churches in the area only because they did not know the regulations. In the past his police had been present at interviews of UN officials with Greek Cypriots, but the system had changed in 1997. Asked about the applicable regulations, Mr. Türet replied that he had no copies, they were at the Ministry of Foreign Affairs where the questions concerning visits were handled. The Ministry also decided on the length of the stay. Thus the daughters of two deceased persons had been allowed to stay with their mothers some time after the funeral, in one case for a whole week.

408. The Delegates then visited the village of **Ayia Trias (Sipahi)** where they were met in the street outside the Greek Cypriot coffeeshop by a number of villagers and a priest. The coffeeshop was a bare room in poor condition of repair whose only decoration was an Atatürk portrait on one of the walls. There were no Greek language inscriptions, but some graffiti in Turkish language on the outside walls. The villagers explained that there were 103 Greek Cypriots and some 800 Turks in the village. The Greek Cypriot population was very old. The youngest person was a mentally retarded man of 25 years, and there were four schoolchildren. They went to the school in Rizokarpaso by a taxi which was paid by the Government of Cyprus. A major problem was that their children could not return after completing secondary school and could not visit them from the south. Those from Europe could only stay one day. They could not leave their properties to their children. The Greek Cypriot houses were scattered all over the village. The villagers said that there were no problems of attacks by the Turks, but one person complained that his family had been beaten up and nothing was done about it. The villagers also said that they had no problem of their crops being regularly stolen, but they could not cultivate all their land because they had no help and could not sell their produce. They needed a permit to take olive oil to the south, and there was no demand in the north as the Turks produced their own oil. They could take cheese and vegetables to the south. The priest was there because somebody from Nicosia was buried in the village. Relatives who came for a funeral from the south could only stay for the

day. There was only one priest in the area and therefore there could be no regular weekly services. No one in the village was aware of changes in the regulations concerning freedom of movement. They always asked the police who told them what they could do. They were sure they could not go to Kyrenia. They were only allowed to go to Famagusta.

409. In **Rizokarpaso (Dipkarpaz)** the Delegates first met the mayor, Mr. Marif Özbayrak, who was from Trabson, Turkey, and had come to Cyprus after 1974. He explained that there were 326 Greek Cypriots in the village and some 1400 Turks. There were no Turkish Cypriots. The Greek Cypriots and Turks lived dispersed throughout the village. They were all treated alike and there were no problems between them. There was a good dialogue with the priest, especially about the Apostolos Andreas monastery. There was no special department in the municipality dealing with the Greek Cypriot population, but there were three Turkish muhtars and one Greek Cypriot muhtar.

The Delegates later met the Greek Cypriot muhtar, Mr. Evangelos Kolatsi. He confirmed that there were a few Greek Cypriot couples in the village. He denied that Greek Cypriots could travel to Kyrenia. He also stated that his crops were stolen and that he could not cultivate his land.

In the Greek Cypriot coffeeshop the Delegates met a number of elderly Greek Cypriot villagers. There was only one young man and it was explained that there were 10 young Greek Cypriot men in the village, all unmarried because there were no girls. People in the coffeeshop said that they could freely move in the area, but that they could not travel to Kyrenia. While tourists could go to the Apostolos Andreas monastery, the villagers were allowed to go there only twice a year and always with an escort, although there were no military areas near the monastery. Transport to and from the south was excessively expensive. They could not leave their houses unattended for fear of burglary.

In the church, which was in a fair state of repair, the Delegates were approached by a man who said that for three nights he had received threats to kill him.

Finally, the Delegates visited the Greek Cypriot school in Rizokarpaso where they met the headmistress and two teachers (a married couple, the husband being of Greek nationality), as well as the schoolchildren. It was explained that after the recent filling of two vacant teachers' posts the school was functioning well and that repairs had been made to the building for which the Government of Cyprus had paid. Only the Greek and English languages were taught in the school. The headmistress was reluctant to speak about security problems, saying that a lot had happened in the past but that recently things were better.

3) Evaluation of the evidence

410. The Commission first recalls its findings in its 1976 Report on applications Nos. 6780/74 and 6950/75 (paras. 221 - 231) according to which at that time some 7000 to 8000 enclaved Greek Cypriots were still living in their homes, mainly in the Karpas area, and that they were subjected to a curfew and restrictions of movement. Furthermore, in its 1983 Report on application No 8007/77 the Commission noted the applicant Government's complaint that the remaining Greek Cypriots in northern Cyprus were forced by "inhuman methods" to leave their homes and to take refuge in the south; about 7000 Greek Cypriots allegedly had been "forced to sign applications to leave the occupied area", in which only 940

Greek Cypriots remained enclaved in February 1983 (D.R. 72, p. 39, para. 124). The Commission also noted the respondent Government's submission that the return of Greek Cypriots to the north other than those envisaged in the exchange of population agreement would endanger the bi-zonal solution which constituted the only basis for the peaceful co-existence of the two communities in the future and that the Greek Cypriots who moved to the south were doing so of their own free will within the framework of an agreement reached between UNFICYP and the Turkish Cypriot administration whereby UNFICYP verified that their wish to move south was genuine and that they had not submitted their application under pressure of any sort (*ibid*. p. 40, para. 127).

411. However, the Commission is not called upon to examine the facts that led up to the present situation. Notwithstanding that the applicant Government's complaints relate to alleged continuing violations of various Convention Articles by a number of administrative practices of the Turkish Cypriot authorities, the Commission can only examine those practices insofar as they continued to be applied during the period under consideration in the present application (cf. para. 130 above). Accordingly, it will confine its findings to facts that occurred during that period, leaving aside all the evidence and submissions of the parties that relate to earlier events.

412. The Commission finds that an accurate description of the situation of the enclaved Greek Cypriot and Maronite populations at about the time when the present application was introduced can be found in the UN report reflecting the UNFICYP humanitarian review of the living conditions of these groups (cf. paras. 386-389 above). The Commission's Delegates have heard two witnesses, MM Manzl and O'Sullivan, who were directly involved in the preparation of that review and who credibly explained that the review in question was carried out with the utmost care, which imposed itself also in view of the UN political organs' initial reluctance to the new approach which they had proposed. The Commission also notes that the reports on the review were counter-checked with representatives of both communities in Cyprus before they were released. It notes in particular that the description of the measures taken by the Turkish Cypriot authorities in respect of the enclaved populations (Appendix III) was shown to those authorities and accepted as being accurate. On this basis, the Commission finds that the proposals for remedial action suggested by UNFICYP following the humanitarian review (Appendix IV) reflected the real needs of the enclaved populations in face of administrative practices which actually existed at that time.

413. The Commission notes that from the time of preparation of the humanitarian review it has remained a reference document for the United Nations and that the Secretary-General's progress reports regularly informed about the subsequent developments in the administrative practices covered by that review. While progress was slow, it nevertheless happened step by step and has in the meantime led to a considerable improvement in the overall situation of the enclaved populations. In particular some important restrictions earlier applied to them have been either relaxed or lifted, but there still remain a number of severe restrictions which are relevant to the present application.

414. The Commission further finds it established that, despite the existence of such restrictions, they have not been laid down in any legislation of the "TRNC" and that, consequently, they are the result of administrative practices of the "TRNC" authorities. The respondent Government have expressly denied the existence of any special legislation. It is revealing in this respect that the measures acknowledged by the Turkish Cypriot authorities in 1995 were only orally communicated to the United Nations and that the chief of police at

Yialousa when questioned by the Delegates could not produce any regulations or instructions in relation to his dealings with Greek Cypriots although he admitted that there were special procedures in certain respects, e.g. as regards family visits from the south (cf. para. 407 above). The only measures that appear to have been published in the "TRNC Official Gazette" were the decisions of the "TRNC Council of Ministers" of 11 February and 15 April 1998 (cf. Appendices V and VI).

415. The Commission furthermore considers it as established that there exists a functioning court system in the "TRNC" which in principle is also accessible for Greek Cypriots living in northern Cyprus. In the past there has been a number of successful cases in particular before the civil courts as regards wrongful allocation of land to other persons. More recently, there have been only few cases before the courts, and even less with a successful outcome. However, there is no evidence of any court actions having been rejected for lack of standing of resident Greek Cypriot or Maronite plaintiffs. The evidence of the witnesses heard by the Commission's Delegates has revealed that many Greek Cypriots living in northern Cyprus are convinced that it is useless to bring proceedings because they are ineffective. The Commission is unable to ascertain whether this opinion is objectively justified in view of the practice of the "TRNC" courts or whether it is due to pressure to refrain or active discouragement by the applicant Government from introducing proceedings before authorities which they consider as illegal. In view of the scarcity of cases the effectiveness of the "TRNC" judicial system in respect of resident Greek Cypriot plaintiffs has not really been put to the test. It seems that at least in cases of trespassing and personal injury there have been some successful actions before the civil or criminal courts.

416. There is no evidence of continuing wrongful allocation of properties of resident Greek Cypriots to other persons during the period under consideration. However, the UN reports and the testimony of witnesses heard by the Commission's Delegates clearly confirm the continuing practice of the "TRNC" authorities to allocate the property of Greek Cypriots who have died or who have permanently left northern Cyprus to Turkish Cypriots or immigrants from Turkey, i.e. to treat such property as "abandoned" within the meaning of the "TRNC" land allocation legislation and not to allow its inheritance or continuing ownership by Greek Cypriots living in southern Cyprus. The respondent Government claim that also in such cases a court procedure would be available. It appears that in fact no such proceedings have ever been taken. In any event the legal status of the properties of Greek Cypriots or Maronites living in the "TRNC", including inheritance rights in the event of death, or upon permanent departure from the "TRNC", are determined by laws of the "TRNC". These laws (cf. paras. 291-296 above) have as such remained unchanged .

417. There is no evidence either that Greek Cypriots or Maronites living in northern Cyprus ever had recourse to administrative or constitutional court actions in order to contest the practices applied to them such as, e.g., restrictions on freedom of movement, limitation of family visits etc. In this context, the Commission considers it as established, on the basis of the respondent Government's submissions on the legal system of the "TRNC" (see paras. 106-112 above), that insofar as the practices complained of are based on decisions of the "TRNC Council of Ministers" the latter, being apparently considered as acts of State, cannot as such be challenged before the courts. It is further clear that the introduction of a constitutional complaint to assert rights which the "TRNC Constitution" guarantees only to citizens would presuppose a claim by the person concerned to be a "TRNC citizen". In the absence of proceedings it has not been tested in the courts whether or not Greek Cypriots or

Maronites living in northern Cyprus are in fact considered as citizens enjoying the protection of the "TRNC Constitution".

418. In the period under consideration there have been no cases of actual detention of Greek Cypriots or Maronites living in northern Cyprus.

419. However, there is clear evidence that during the period under consideration restrictions on movement and family visits continued to be applied to both Greek Cypriots and Maronites living in northern Cyprus, and that certain distinctions were made in this respect between the two groups. The existence of such restrictions has been acknowledged by the Turkish Cypriot authorities to UNFICYP in the above-mentioned document of 30 November 1995 (see Appendix III to the present Report). Subsequently, the relevant rules have repeatedly been modified, in particular by the decisions of the "TRNC Council of Ministers" of 11 February and 15 April 1998 (cf . Appendices V - VI to the present Report).

420. The Commission's Delegates were told at their visit to the Karpas area on 24 February 1998 that by that time full freedom of movement within the "TRNC" had been established for Greek Cypriots and Maronites, but the Delegates found that apparently the persons concerned had not been informed of this. It was confirmed by the chief of police in Yialousa that the police continued to receive requests for movement permits (cf. para. 407). Even if there is freedom of movement for resident Greek Cypriots and Maronites, restrictions continue to be applied on family visits to them. They are limited to first degree relatives (mother, father, spouse, children, siblings and grandchildren) and subjected to visa requirements and an entry fee. As regards visits of Greek Cypriots and Maronites living in northern Cyprus to the south, they also continue to be subject to permission by the Turkish Cypriot authorities. It is true that by the decisions of the "TRNC Council of Ministers" of 11 February and 15 April 1998 the maximum duration of such visits has been extended to six months, but at the same time a new formality has been introduced in the form of an exit visa, for which a fee of 4 pounds sterling is levied (a higher fee being levied for multiple exit visas).

421. Until the establishment of full freedom of movement for resident Greek Cypriots and Maronites within the "TRNC" the requirement of movement permits also applied when these persons sought access to medical facilities within northern Cyprus. An exit visa is still necessary for transfers to medical facilities in the south, although no fee is levied in urgent cases. As to the allegation that the processing of applications for movement has been delayed in certain cases and that this endangered the health or even the life of patients, no evidence has been produced before the Commission of any concrete events that occurred during the period under consideration. Nor has the Commission found indications of a deliberate practice of delaying the processing of such applications. The testimony of Dr. Moutiris and of several Greek Cypriots from the Karpas area has confirmed that in principle Greek Cypriots and Maronites living in northern Cyprus have access to the local medical services which, however, seem to be of a not very high standard. There is also a linguistic problem of communication with Turkish Cypriot doctors. However, as confirmed by the relevant UN reports, there has been a long-standing practice of transferring patients in need of treatment which cannot be obtained in northern Cyprus to hospitals in the southern part of the island. This applies both to Greek Cypriots and Turkish Cypriots. Moreover, in the period between September 1994 and February 1997 the witness Dr Moutiris was allowed to provide humanitarian medical assistance to patients in the Maronite villages in the north. Apart from being subjected to numerous police controls on his way to those villages, the main difficulties which he encountered were due to his refusal to register with the Turkish Cypriot Medical

Association. This was the reason why he was first refused to use the surgery in Kormakiti and then to continue his activity after 8 February 1997. The Commission considers as credible his description of the events on this day, namely that he was refused permissions to treat some 15 patients who had come to his waiting room (cf. para. 405 above).

422. Restrictions on freedom of movement also apply to Greek Cypriot and Maronite schoolchildren from northern Cyprus who attend schools in the southern part of the island. Until the entry into force of the decision of the "TRNC Council of Ministers" of 11 February 1998 they were not allowed to return permanently to the north after having attained the age of 16 in the case of males and 18 in the case of females. By the said decision this age limit has been lifted for Greek Cypriot and Maronite female students and for Maronite male students, but the age limit of 16 years is still being maintained for Greek Cypriot male students. Up to the age limit, certain restrictions applied to the visits of those students to their parents in the north, which were gradually relaxed. Today, such visits are subject to a visa requirement and a reduced "entry fee" of 2 pounds sterling.

423. The Commission finds that the restriction on the return of Greek Cypriot and Maronite schoolchildren to the north after the completion of their studies has led to the separation of many families. In fact, no secondary schools for Greek Cypriots exist in northern Cyprus and therefore at the age of twelve the children are faced with the choice to either stay with their families and forego secondary education, or to move to the south with a view of receiving such education at the risk of never being able to return permanently to the north. The difficulty of this choice has been very clearly described by several witnesses. In fact, the vast majority have opted for going south and those who have in the meantime completed their studies still cannot return to northern Cyprus. The respondent Government claim that the children could also attend Turkish Cypriot or English language secondary schools in northern Cyprus, but no such case has been brought to the Commission's attention. As regards primary school education, the Commission's Delegates have visited the Greek Cypriot school at Rizokarpaso which is attended by some 30 to 40 children in three classes. At the time of the visit the school seemed to function normally with three teachers. However, the Commission understands that this state of affairs is of recent origin and that previously the Turkish Cypriot authorities had objected to the continuing employment of one teacher, Mrs Eleni Foka (who has brought application No. 28940/95), and that there had been difficulties in filling vacant teachers' posts.

424. The education in the Greek Cypriot primary school is done exclusively in Greek language, with no lessons of Turkish language. The school books are provided by the applicant Government, but before being admitted to use in the school they are subjected to a "vetting" procedure in the context of confidence building measures suggested by UNFICYP. The Commission has no reason to doubt the correctness of the written and oral evidence of witness Laoutaris (paras. 380 and 394 above) according to which the procedure is cumbersome and a relatively high number of schoolbooks are being objected to by the Turkish Cypriot administration. The witness has provided a list of the books submitted to the procedure and which indicated which of them were refused for the school years 1995/96 and 1996/97. However, the information in this document is limited to the titles of the books in question without details of their contents. The Commission has therefore been unable to verify on which particular grounds the objections might have been based in each case.

425. The Commission has not had before it any evidence on restrictions applied during the period under consideration to the importation, circulation or possession of other books. As

regards newspapers, the UNFICYP review of 1995 stated that there was no restriction on the circulation in northern Cyprus of newspapers published in south Cyprus. On a daily basis, newspapers and magazines may be obtained from the south through the Ledra Palace crossing point and brought freely to villages in the north inhabited by Greek Cypriots and Maronites. Witness Ergüçlü confirmed that Greek Cypriot newspapers were transferred to the north every morning and that they were obtainable at a news-stand in northern Nicosia. However, he could not say anything about the dispatch of any such newspapers to the Karpas area (cf. para. 548). It appears that, in fact, there is no regular distribution system for the Greek Cypriot press in that area. However, the enclaved population is able to receive Greek Cypriot radio and television.

426. There is no direct post and telecommunications link between the two parts of the island. According to the UNFICYP review of 1995 mail may be channelled to and from Greek Cypriots located in the north only through the mail service established by the Turkish Cypriot authorities. In practice this means that mail between the two parts of Cyprus must be sent through persons in third countries. However, there has been no conclusive evidence concerning the alleged delivery and opening of mail by the "TRNC" police. Reference has been made to confiscation of letters carried by visitors, but the Commission has not been able to verify whether this is a systematic practice which continued to be applied during the period under consideration. As regards telephone communications, the UN has reported about the recent installation of private telephone lines for members of the enclaved populations. The Delegates have seen telephones in the houses of Greek Cypriots which they visited in the Karpas area. However it was explained to them that any communications with southern Cyprus could only be effected through the switchboard of the United Nations in Ledra Palace. Several witnesses stated that they suspected the lines to be tapped by the Turkish Cypriot authorities, but the Commission has been unable to verify whether this suspicion is justified.

427. The Commission finds that Greek Cypriots and Maronites in northern Cyprus are able to practice their religion. While on the way to the Karpas in areas no longer inhabited by Greek Cypriots the Delegates saw an orthodox church converted into a mosque and some small chapels used as barns or sheds, they could visit the orthodox church in Rizokarpaso which was in a relatively good state of repair. At Ayia Trias they also saw the church from some distance and met the only orthodox priest who operates in the Karpas area and who on that day had come to participate at a funeral. This priest and the villagers explained that it was not possible to hold daily services, but that nevertheless services were held at regular intervals in the various villages on an alternating basis. This has also been confirmed by Greek Cypriot witnesses from the Karpas area who clearly indicated that they would wish more frequent services. The main problem in the exercise of religion thus stems from the fact that there is only one priest for the whole Karpas area. The evidence before the Commission shows that attempts to authorise the nomination of additional priests from southern Cyprus did not receive a favourable response from the Turkish Cypriot authorities.

428. The Delegates were also told that from time to time services were held in the Apostolos Andreas Monastery. It was not entirely clear to the Delegates whether at the time of their visit the access to that Monastery was free at any time for Greek Cypriots living in the Karpas area. According to the UNFICYP humanitarian review of 1995 they could visit the Monastery only on religious holidays, provided they were doing so in groups of no less than 20 persons. It seems that at least on high religious holidays (three times a year) visits to the Monastery are now also allowed to Greek Cypriots from the southern part of the island. In

this respect the decision of the "TRNC Council of Ministers" of 11 February 1998 provides that such visits are subject to passport and/or identity card control and payment of entry fee, and that the restriction on the number of Greek Cypriots has been lifted.

429. Finally, as regards the exercise of the freedom of association, the Commission notes that the relevant law in force in the "TRNC" stems from the time of the Turkish Communal Chamber and only covers the creation of associations by Turkish Cypriots. However, no evidence has been brought to the Commission's attention that during the period under consideration any attempts were made by Greek Cypriots living in northern Cyprus to establish associations of their own or bi-communal associations and that this was prevented by the Turkish Cypriot authorities. By contrast, there have been certain obstacles to the holding of bi-communal meetings, as noted in a Security Council resolution of 23 December 1996.

D. Opinion of the Commission

430. The Commission first recalls that in its 1976 Report on applications Nos. 6780/74 and 6950/75 it examined the situation of the enclaved persons in the light of Article 5 of the Convention. The Commission concluded (at paras. 235 -236) that the restrictions applied to them did not amount to a "deprivation" of liberty within the meaning of Article 5, but would rather fall within the scope of Article 2 of Protocol No 4 which had not been ratified by either Cyprus or Turkey. The 1976 Report further dealt with the issue of separation of families brought about by the refusal to allow displaced persons to return to their homes and family members in northern Cyprus and concluded that it constituted a breach of Article 8 of the Convention (*ibid.*, para. 211). This conclusion was confirmed in the 1983 Report on application No 8007/77 (D.R. 72, p. 42, paras. 135 -136) .

431. In the present case the Commission is confronted with a wide number of complaints concerning various aspects of the living conditions of the Greek Cypriots who have remained in northern Cyprus, the applicant Government claiming that these should be examined separately under each relevant Convention Article and additionally in a global perspective under Article 3 of the Convention. The Commission will in essence follow the approach suggested by the applicant Government by first dealing with the more specific complaints, followed by an examination whether the combined effect of the impugned measures on the living conditions of the enclaved persons amounts to a breach of the Convention. However, in the particular circumstances of the case the Commission considers it appropriate to consider this question not only in the light of Article 3 of the Convention, but also under Articles 8 and 14. In relation to each complaint, the Commission must also consider whether domestic remedies were available and have been exhausted (see para. 126 above), and finally, as the last item, the Commission will examine whether and, if so, to which extent there may have been a failure to provide effective remedies as required by Article 13 of the Convention.

1) Separate examination of specific complaints

a) Article 2 of the Convention[5]

432. The applicant Government allege a violation of Article 2 of the Convention by virtue of denying protection of the right to life to enclaved persons in urgent need of medical treatment. This allegation is contested by the respondent Government.

433. The Commission considers that the respondent Government's responsibility under Article 2 of the Convention would indeed be engaged if the authorisation system operated by their subordinate local administration in northern Cyprus to movements of Greek Cypriots for purposes of medical visits had been applied in a manner endangering their life and health. However, the Commission has found no indication of an administrative practice during the period under consideration which could be said to have had such effects. There may have been shortcomings in individual cases, but in general access to medical services, including hospitals in southern Cyprus, has been available to the persons concerned. The Commission also notes that in the meantime an authorisation is no longer required for medical visits in northern Cyprus itself. As to the difficulties encountered by Dr Moutiris in administering humanitarian medical assistance to the Maronite community, they were essentially the result of his refusal to comply with an administrative formality. In any event, although his patients lost considerable advantages when he was no longer allowed to practice, they were not left without any alternative medical facilities in their neighbourhood. The applicant Government's complaint as to the existence of an administrative practice in violation of Article 2 of the Convention has therefore not been substantiated.

434. In view of this finding the Commission does not consider it necessary to discuss whether in relation to this complaint any domestic remedies which might have been available in the "TRNC" have been exhausted.

Conclusion

435. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 2 of the Convention by virtue of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus.

(b) Article 5 of the Convention[6]

436. The applicant Government allege a violation of Article 5 of the Convention by reason of threats to individual Greek Cypriots' security of person and of the absence of official action to prevent this. The respondent Government have not commented on this complaint.

437. The Commission recalls its finding in the 1976 Report that the situation of enclavement does not as such amount to a deprivation of liberty within the meaning of Article 5 (see para. 430 above). It notes the applicant Government's admission that there have been no cases of actual detention of enclaved Greek Cypriots during the period under consideration. Nor have

[5] See text of Article 2 in para. 219 above
[6] As to the contents of Article 5, see para. 197 above.

the allegations of threats to the security of person been substantiated. A question as to the exhaustion of domestic remedies does not arise in these circumstances.

Conclusion

438. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 5 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(c) Article 6 of the Convention

439. The applicant Government complain that Article 6 of the Convention is being violated by withholding a fair and public hearing by an independent and impartial tribunal to Greek Cypriots in northern Cyprus whose civil rights have been infringed. The respondent Government claim that an effective court system exists in northern Cyprus to which also Greek Cypriots have access.

440. Insofar as relevant, Article 6 para. 1 of the Convention reads as follows:

> "In the determination of his civil rights and obligations ...., everyone is entitled to a fair and public hearing .... by an independent and impartial tribunal established by law. ..."

441. The Commission first notes the widespread reluctance among Greek Cypriots living in northern Cyprus to submit cases to "TRNC" courts. According to the respondent Government not a single civil case has been instituted before those courts since the introduction of the present application with the Commission. In view of this fact the question may arise whether the domestic remedies have been exhausted in relation to this complaint, as required by Article 26 of the Convention. The Commission notes, however, that at least in some cases court actions had been brought earlier and that it is alleged, having regard to the manner in which they were dealt with, that there is a practice of denying access to the courts and fair proceedings to Greek Cypriots living in northern Cyprus. If this should be correct, the persons concerned would be relieved from exhausting remedies through the institution of further proceedings. The Commission considers that in these circumstances it is required to deal with the substance of the question whether or not there exists a practice of the "TRNC" courts as alleged.

442. However, the facts found by the Commission show that Greek Cypriots living in northern Cyprus are not prevented from bringing civil actions in those courts. In particular, there are no court decisions denying the standing of resident Greek Cypriots on the ground of their special status. It may be that in certain cases the applicable substantive law of the "TRNC" would not support a civil claim which they might wish to put forward, e.g. a claim that they must be allowed to bequeath or transfer their property to Greek Cypriots living in southern Cyprus. While the existence of such laws might raise issues under other provisions of the Convention, Article 6 cannot be invoked in this context, having regard to the consistent case-law of the Convention organs according to which this provision does not purport to regulate the content of the substantive law of the High Contracting Parties (cf. No. 10475/83, Dyer v. UK, Dec. 5.7.84, D.R. 39, 251 et seq, and the subsequent case-law of the

Commission, e.g. No. 17004/90, Dec. 19.5.92, D.R. 73, p. 170; see also Eur. Court HR, Skärby v. Sweden judgment of 28 June 1990, Series A no. 180-B, p. 36, para. 27). Also, it has not been shown that the "TRNC" courts would deny jurisdiction in such cases rather than rejecting the claim on the basis of the laws which they are required to apply. Accordingly, it has not been made out that there is a practice in the "TRNC" of denying access to court to Greek Cypriots residing in the "TRNC" for the purpose of bringing civil actions.

443. There remains the question whether the "TRNC" courts fulfil the requirements of Article 6, i. e. whether they can be considered as "independent and impartial tribunals established by law". The applicant Government claim that due to the fact that they operate in the framework of a "legal system" which as a whole is illegal from the point of view of international law and moreover discriminatory, these courts cannot be "independent" and "impartial" vis-à-vis Greek Cypriots, and that Turkey, although being responsible under the Convention for its subordinate local administration in northern Cyprus, cannot in principle discharge its duties arising under, *inter alia*, Article 6 of the Convention by the creation of illegal institutions such as the "courts" in question (cf. para. 115 above). The respondent Government, on the other hand, claim that the judicial system set up in the "TRNC" provides adequate and effective institutional guarantees, the independence of the courts, which are also impartial, being guaranteed by the "TRNC Constitution".

444. The Commission notes that the "TRNC Constitution" guarantees the independence of the courts and that indeed there is nothing in the institutional framework within the legal system of the "TRNC" as described by the respondent Government which is likely to throw a doubt on the independence and "objective" impartiality of the civil courts. In particular there are no special arrangements or procedures when they deal with cases of resident Greek Cypriots. The judges' "subjective" impartiality must be presumed unless there is proof of concrete instances of bias, which is lacking in the present case due to the absence of any proceedings during the period under consideration. Moreover, the fact that in the past a number of actions have been successful does not support the proposition that there is a general attitude of bias against resident Greek Cypriots among "TRNC" judges.

445. In the Commission's opinion the crucial issue concerning the conformity of the "TRNC" courts with the requirements of Article 6 thus is the question whether they can be considered as being "established by law" within the meaning of this provision. There is no doubt that they have a sufficient legal basis within the constitutional and legal system of the "TRNC", but the lawfulness of that legal system in terms of general international law and specific treaty obligations incurred by Turkey at the time of the creation of an independent Cypriot State is open to doubt. The answer to the above question therefore depends on whether or not the requirement in Article 6 that courts must be "established by law" has to be interpreted as referring only to the domestic legal basis of the judicial system in any given territory, or whether lawfulness under international law must also be taken into account.

446. The Commission is of the opinion that the words "established by law" in Article 6 para. 1 of the Convention must be understood as referring essentially to the domestic legal basis of the judicial system. It finds support for this view in the I.C.J.'s Advisory Opinion concerning the Namibia case (1971 I.C.J. Reports 16, p. 56, § 125), to which reference has also been made in the Loizidou v. Turkey (Merits) judgment (*loc. cit.*, p. 2231, para. 45), and according to which in a situation comparable to that of the "TRNC" international law recognises the "legitimacy of certain legal transactions and arrangements ... the effects of which can be ignored only to the detriment of the inhabitants of the territory concerned". This seems to

imply that, at least within the limits of the applicability of that principle, the institutions before which such transactions are being made, including the courts, must also be recognised as being legitimate from the point of view of international law. Indeed, it benefits the inhabitants of the territory in question if they can assert their civil rights in the courts. While it is true that foreign courts do not always recognise the decisions of the "TRNC" courts, this is not a universal practice which international law requires to be followed without any exception. Indeed there may be areas of law in which the decisions of these courts are given, and are required to be given, effect outside the "TRNC" territory.

447. The Commission further recalls its Report on applications Nos. 15299 - 15300/89, Chrysostomos and Papachrysostomou v. Turkey, Comm. Report 8.7.93, D. R. 86-A, p. 4, in particular p. 35, para. 152 and p. 38, para. 169) where it found, in the context of Article 5 of the Convention, that the requirement of "lawful" refers essentially to national law and that, as regards the legal basis of the applicants' detention and the proceedings against them, the judicial system in northern Cyprus was based on the English system of procedure and evidence as it stood for the whole of Cyprus in 1963. While the Commission cannot uphold the conclusion drawn in that same Report, namely that proceedings before the "TRNC" courts cannot be imputed to Turkey (*ibid*. para. 170), it still considers that its findings about the judicial system of northern Cyprus were essentially correct and are transposable to the area of Article 6 where civil court proceedings are concerned. It notes in particular that the ordinary courts called upon to deal with civil cases, while formally established by Turkish Cypriot legislation introduced after the events of 1974, are in substance based on the Anglo-Saxon tradition of judicial organisation. Thus they are not essentially different from the courts previously operating in the area concerned and from those which exist in the southern part of Cyprus.

Conclusion

448. The Commission concludes, by 17 votes to three, that during the period under consideration there has been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(d) Article 9 of the Convention

449. The applicant Government allege that there is a violation of Article 9 of the Convention by reason of interference with the enclaved Greek Cypriots' freedom to manifest religion. They point out that only four churches remain open, the others having been confiscated and converted to other use; that there is only one priest for the whole Karpas area as the authorities do not agree to the appointment of further priests; that there are restrictions on the number of religious services at the Apostolos Andreas Monastery and on access to that monastery; and finally that there are restrictions on the attendance of religious funerals and on the circulation of school books with a religious content. The respondent Government contest these allegations and submit that the Greek Cypriots residing in northern Cyprus enjoy full freedom of worship.

450. Article 9 of the Convention reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone

or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

451. The Commission will limit its examination to the question of the exercise of the right to freedom of religion by the Greek Cypriots still residing in northern Cyprus. It is not concerned here with the taking of church property in those parts of northern Cyprus where there are no longer any Greek Cypriots, this being a question which has already been considered in the context of Article 1 of Protocol No 1 (see Chapter 2 above).

452. The Commission notes that in the Karpas villages where Greek Cypriots live the churches are still operating and that there is no evidence of interference with religious worship as such, although the conduct of religious ceremonies is made difficult by the fact that there is only one priest for the whole area and that, at least until recently, there have been restrictions on access to the most important religious centre of that area, the Apostolos Andreas Monastery. The appointment of further priests has not been approved by the authorities, but there is apparently no administrative decision on this question which could have been challenged by any remedy available in the "TRNC". Nor does it appear that there would have been any effective remedies against the restrictions applied in respect of access to the monastery. The Commission must therefore deal with the merits of the above complaints under Article 9 of the Convention.

453. The Commission finds that the measures complained of are not only the result of the Turkish Cypriot authorities' general policy in the area of freedom of movement, but also constitute a specific restriction on the religious life of Greek Cypriots living in the northern part of Cyprus. They prevent the organisation of Greek orthodox religious ceremonies in a normal and regular manner and thus amount to an interference with the exercise of the resident Greek Cypriots' freedom of religion, which cannot be justified under paragraph 2 of Article 9. Indeed, it has not been shown that these measures have a sufficient legal basis nor that they are necessary in a democratic society for any of the legitimate purposes enumerated in this provision.

Conclusion

454. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(e) Article 10 of the Convention

455. The applicant Government allege a violation of Article 10 of the Convention by reason of interference with the right of Greek Cypriots living in northern Cyprus to receive and impart information and ideas. They complain in particular about the prohibition on the importation and circulation of Greek Cypriot (or other Greek language) newspapers and books, censorship of schoolbooks and prohibition to receive TV and radio broadcasts from

the Government-controlled area. The respondent Government contest these allegations, claiming that there are no restrictions on the importation of Greek Cypriot newspapers or on the reception of broadcasts and that, as regards books including schoolbooks, only propaganda material is refused.

456. Article 10 of the Convention reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

457. The Commission finds that it has not been substantiated that during the period under consideration restrictions on the importation of newspapers and on the reception of radio and TV broadcasts were applied as alleged. It notes, however, the absence of a distribution system for Greek Cypriot newspapers in the Karpas area itself. In this context it considers that, while Article 10 does not guarantee the availability of a particular distribution system for press products, the refusal to allow any practicable solution for their distribution to interested persons in a given area could in fact be seen as an interference with their right to receive information and ideas. However, in the present case the Commission has not been informed about any concrete attempts for setting up a regular distribution system for the Greek Cypriot press in the Karpas area nor of administrative measures preventing the establishment of such a system. Nor is it established that no effective remedies would have been available in the "TRNC" against such refusal. It follows that a violation of Article 10 has not been substantiated in this respect.

458. As to the further complaints concerning access of Greek Cypriots living in northern Cyprus to Greek Cypriot or Greek language books, the Commission has found no sufficient evidence that during the period under consideration an administrative practice was applied involving a general prohibition on the importation or possession of such books. However, a vetting procedure has been applied to schoolbooks provided by the applicant Government to the Greek Cypriot schools in northern Cyprus. The procedure has been accepted by the applicant Government in the context of confidence-building measures suggested by UNFICYP and there were apparently no remedies for those concerned (the teachers of the school and the parents of the schoolchildren) to contest its outcome. The procedure involved a unilateral control of the contents of the schoolbooks in question by the Turkish Cypriot authorities which in a significant number of cases objected to their distribution on the ground that they were susceptible of engendering hostility between the ethnic communities. In these circumstances the measures taken are imputable to Turkey's subordinate local administration in northern Cyprus.

459. The Commission notes from the lists attached to the written statement of Mr Toumazos (para. 380 above) and the testimony of witness Laoutaris (para. 394 above) that objections were raised by the Turkish Cypriot authorities to a considerable number of schoolbooks submitted to them. Thus of the 152 books submitted for the schoolyear 1996/97 only 84 were approved and could be delivered to the schools. The statement of witness Laoutaris apparently referred to the schoolyear 1997/98 when only 102 out of 148 proposed books were permitted. Those censored or rejected included subjects such as Greek language, English, history, geography, religion, civics, science, mathematics and music. It may be that in this category there was material that indicated the applicant Government's view of the history and culture of the island of Cyprus. If so, it would be for the respondent Government to show that the undisputed censorship or blocking of the books was done "in accordance with law" and pursued a legitimate aim, such as the prevention of disorder. It would then be for the respondent Government to show that the censorship measures were necessary in a democratic society, i.e. that there was a pressing social need for the measures; and that the measures - such as the degree of content censored - were not disproportionate to the aim pursued. None of this has been done. Moreover, it is almost impossible to imagine circumstances in which recognised schoolbooks for use at primary level on mathematics, science or Christianity would pose such a threat to public order that censorship would be justified under paragraph 2 of Article 10. Certainly, the respondent Government have not provided the records and justification for its actions which would enable the Convention institutions to assess whether the reasons given by the national authorities are "relevant and sufficient" (see the Sunday Times (No. 1) v. the United Kingdom judgment of 26 April 1979, Series A No. 30, p. 38 para. 62). In these circumstances there has been a violation of Article 10 with regard to the schoolbooks.

Conclusion

460. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in that schoolbooks destined for use in their primary schools were subject to excessive measures of censorship.

(f) Article 11 of the Convention

461. The applicant Government allege that there is a violation of Article 11 of the Convention by reason of 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. The respondent Government contest this, arguing that while the Law on Associations in force in the "TRNC", having been adopted by the Turkish Communal Chamber before 1963, is limited to associations of Turkish Cypriots, there is nothing in the laws of the "TRNC" which would prevent the formation or joining of associations by Greek Cypriots living in northern Cyprus. They also claim that any measures restricting their freedom of association could be challenged in the "TRNC" courts.

462. Article 11 of the Convention reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

463. The Commission notes that the applicant Government's allegations, as set out in the particulars of the present application seem to be based on a concept of "association" in the sense of the mere possibility for people to come together, without necessarily doing so in any organised form. It is clear that the restrictions on the movement of enclaved Greek Cypriots (and persons wishing to visit them) lead to a degree of isolation and interruption of many social contacts. However, in the Commission's view Article 11 of the Convention can only be applied to legal or factual impediments to found or join associations or to take part in the activities of such associations. There must in each case be a minimum of organisational structure which is being interfered with. No submissions have been made in the present case of any specific interference of this kind. In particular it has not been shown that during the period under consideration there has been interference with attempts by Greek Cypriots to establish their own associations or mixed associations with Turkish Cypriots, or interference with the participation of Greek Cypriots in the activities of associations. Even if for historical reasons the law in force in the "TRNC" is by its terms limited to associations of Turkish Cypriots, it is not excluded that, as the respondent Government claim, there may also be legal possibilities for the creation of Greek Cypriot associations. The Commission therefore finds that the applicant Government's allegations have not been substantiated.

464. The applicant Government have not submitted any specific complaint relating to interference with the enclaved Greek Cypriots' right to freedom of assembly, which is also guaranteed by Article 11. Certain of the applicant Government's submissions could be understood as involving complaints in this respect, in particular as regards alleged impediments to the participation of enclaved Greek Cypriots in bi-communal events organised by the United Nations. The Commission notes that the relevant UN documents in fact mention such impediments which were placed in the way of intercommunal meetings as from the second half of the year 1996. However, this relates to distinct facts which occurred after the date of the admissibility decision in the present case and which therefore are not covered by it. The Commission accordingly cannot entertain this complaint.

465. In these circumstances it is not necessary to consider whether any available domestic remedies have been exhausted in relation to the above complaints.

Conclusion

466. The Commission concludes, unanimously, that during the period under consideration there has been no violation of the right to freedom of association under Article 11 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(g) Article 1 of Protocol No 1[7]

467. The applicant Government allege a violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus by reason of deprivation of possessions and interference with peaceful enjoyment of possessions. They complain in particular that when enclaved Greek Cypriots die or leave their homes in northern Cyprus their properties are being allocated to Turkish settlers and that there is lack of protection against trespassing by Turkish settlers on property of enclaved Greek Cypriots. The respondent Government contest these allegations. They submit that the property of Greek Cypriots residing in northern Cyprus is not regarded as "abandoned property" within the meaning of the land allocation legislation and that there are effective remedies against trespassing on such property. As regards the alleged interference with inheritance rights, they claim that these too could be asserted in the "TRNC" courts. The respondent Government thus submit that the domestic remedies have not been exhausted in relation to the above complaints.

468. The Commission notes that in the past also properties of enclaved Greek Cypriots had been seized and distributed under the land allocation legislation, but that the Turkish Cypriot courts decided in a number of cases that this legislation did not apply, that the allocation of the properties concerned to other persons had been wrongful, and that they must be returned to their Greek Cypriot owners. There is no evidence that after these court decisions the practice of applying the land allocation legislation to the property of resident Greek Cypriots continued to be applied. In particular there is no indication that during the period under consideration in the present case there were any instances of "wrongful allocation" of Greek Cypriot property to other persons. The Commission therefore accepts that under the rules applicable in the "TRNC" the property of resident Greek Cypriots is not being treated as "abandoned property".

469. However, the evidence clearly shows that the concept of "abandoned property" continued to be applied during the period under consideration to the possessions of Greek Cypriots who died or who permanently left the territory of the "TRNC". In particular, the Commission considers it as established that Greek Cypriots who leave the north are no longer regarded as the legal owners of the property which they left there. In this respect even the respondent Government have not claimed that there are remedies by which the persons concerned could assert their property rights. Their situation according to "TRNC" law is apparently the same as that of persons who were displaced during or soon after the events of 1974 with which the Commission has already dealt in Chapter 2 above. There is accordingly a continuing violation of Article 1 of the Protocol in this regard.

470. The Commission notes the respondent Government's submission that the situation is otherwise in the case of resident Greek Cypriots who die. Allegedly a court procedure is

[7] For the text of Article 1 of Protocol No. 1, see para. 310 above.

available to their heirs by which they could assert their inheritance rights. The Commission notes from the relevant UN reports that such a procedure might in fact be available if the heirs themselves live in northern Cyprus. However, if they are resident in southern Cyprus, the Commission has serious doubts that the taking of proceedings in the "TRNC" courts is at all practicable. Even if formal access to the courts would not be denied, the courts would still have to apply the "TRNC" legislation on "abandoned" property which seems to be considered as pertinent at least by the administrative authorities of the "TRNC". Admittedly, the correctness of this legal view has not been tested in the "TRNC" courts, but the respondent Government themselves have submitted that this legislation is applicable. The Commission therefore considers that the remedies on which the respondent Government rely have not been proven to be effective. It furthermore considers that the restrictions which *de facto* continued to be applied throughout the period under consideration to the inheritance rights in respect of the property of deceased Greek Cypriots in northern Cyprus are incompatible with the letter and spirit of Article 1 of Protocol No. 1 in that they did not respect the very principle of peaceful enjoyment of possessions.

471. Finally, the Commission must consider the applicant Government's complaint that there is lack of effective protection of the property of Greek Cypriots residing in northern Cyprus against trespassing and damage caused by third persons. The evidence has revealed that at least in the past such trespassing and damage occurred on a relatively large scale. However, these are the acts of private persons and thus do not as such engage the responsibility of the respondent Government. The latter could be held responsible under the Convention only if the authorities were themselves involved in such acts or if they failed to secure the peaceful enjoyment of possessions by an administrative practice of withholding effective remedies against such acts. There is no evidence that during the period under consideration trespassing on or damage to Greek Cypriot property in northern Cyprus has taken place with the participation of or the encouragement by the "TRNC" authorities. On the contrary, it has been shown that in a number of cases civil actions or criminal complaints brought in relation to such incidents have been successful in the "TRNC" courts and in particular that there has been a recent increase in criminal prosecutions despite the general reluctance of Greek Cypriots living in northern Cyprus to turn to the "TRNC" authorities. In these circumstances the Commission does not find it established that there is an administrative practice in the "TRNC" of failing to provide effective remedies to Greek Cypriots in northern Cyprus against interference with their property rights by private persons.

Conclusions

472. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that in case of their death inheritance rights of persons living in southern Cyprus were not recognised.

473. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 1 of Protocol No. 1 by failure to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons.

(h) Article 2 of Protocol No 1

474. The applicant Government allege a violation of Article 2 of Protocol No. 1 to the Convention by reason of denial of secondary education to children of Greek Cypriots living in northern Cyprus and disrespect for the parents' right to ensure education in conformity with their religious and philosophical convictions. The respondent Government deny these allegations, submitting that school facilities of both primary and secondary level would be available to Greek Cypriots in Turkish Cypriot schools, that primary education in Greek language is in fact provided and that special secondary education facilities in Greek language could not be expected due to the small number of students. However, the students in question are allowed to attend schools in southern Cyprus.

475. Article 2 of Protocol No. 1 reads as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

476. The Commission recalls the case-law according to which this provision does not require the State to establish a particular educational system, but merely guarantees to persons subject to the jurisdiction of the Contracting Parties the right, in principle, to avail themselves of the means of instruction existing at a given time. The Convention lays down no specific obligations concerning the extent of these means and the manner of their organisation or subsidisation. In particular, the first sentence of Article 2 does not specify the language in which education must be conducted in order that the right to education should be respected. However, the right to education would be meaningless if it did not imply in favour of its beneficiaries the right to be educated in the national language or in one of the national languages, as the case may be. This right by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education or conflict with other rights enshrined in the Convention (cf. Belgian Linguistic judgment of 23 July 1968, Series A no. 6, pp. 31 - 32, paras. 3 - 5).

477. In the present case the Commission finds that the Turkish Cypriot authorities allow the giving of such education in Greek language to the children of Greek Cypriots in northern Cyprus on the primary school level. The problems which have existed in this respect due to the vacancy of teachers' posts have in the meantime been resolved. The further problems which have arisen in relation to the provision of schoolbooks have been considered above under Article 10 of the Convention. In the Commission's opinion they do not interfere with the essence of the right to education and thus raise no separate issue under Article 2 of Protocol No. 1. The Commission therefore finds that at primary school level the right to education of Greek Cypriots living in northern Cyprus has not been disregarded.

478. As regards secondary school education, it is not available in northern Cyprus in Greek language although it is well known to the Turkish Cypriot authorities that in practice all Greek Cypriots concerned prefer to be educated in their own language. It may be true that, as the respondent Government assert, secondary schools operating in northern Cyprus in Turkish or English language would also be open to Greek Cypriots living in northern Cyprus.

However, education in such schools does not correspond to the needs of the persons concerned who have the legitimate wish to preserve their own ethnic and cultural identity. While it is true that Article 2 of Protocol No. 1 guarantees access only to existing educational facilities, it must be noted that in the present case such educational facilities have in fact existed in the past and have been abolished by the Turkish Cypriot authorities. Moreover, the Commission understands that, as at primary school level, the applicant Government would be prepared to operate also secondary schools for Greek Cypriots living in northern Cyprus despite the limited number of pupils, and that they are prevented from doing so by the Turkish Cypriot authorities despite a stipulation to that effect in the intercommunal agreement concluded in Vienna in 1975. In the Commission's opinion the total absence of appropriate secondary schools for Greek Cypriots living in northern Cyprus cannot be compensated for either by the authorities' allowing the pupils concerned to attend such schools in southern Cyprus. In fact, this permission is not unconditional in that until recently all pupils were not allowed to return after completion of their studies and even now male students beyond the age of sixteen are not allowed to do so. In these circumstances the practice of the Turkish Cypriot authorities amounts to a denial of the substance of the right to education.

Conclusion

479. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that no appropriate secondary school facilities were available to them.

2) Global examination of the living conditions of Greek Cypriots in northern Cyprus

(a) Article 8 of the Convention

480. The applicant Government allege a continuing violation of Article 8 of the Convention by reason of interference with the right of Greek Cypriots living in northern Cyprus to respect for their private and family life, their home and correspondence. The respondent Government, while admitting that the persons concerned live under difficult conditions, deny that there has been an interference with their rights under this provision.

481. As indicated above, the Commission finds it appropriate in the particular circumstances of the present case to globally examine the living conditions of the Greek Cypriots in northern Cyprus in the light of Article 8 of the Convention. While it must not lose sight of the various distinct aspects of this provision, it considers a global approach justified having regard in particular to the applicant Government's contention that the multitude of restrictions imposed on these people is part of a deliberate policy of creating unbearable living conditions for them with the ultimate aim of making them leave northern Cyprus. It is true that the applicant Government have mainly invoked Article 3 of the Convention in this respect, but the Commission considers that by their very nature these complaints also raise issues under Article 8 .

482. This provision reads as follows:

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

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

483. The Commission first recalls its findings in the 1976 and 1983 Reports according to which the separation of families brought about by refusal to allow the return of displaced Greek Cypriots to their enclaved families in northern Cyprus constitutes an aggravated breach of Article 8 (cf. para. 430 above). The Commission notes that Greek Cypriots who have permanently left the north of Cyprus, including recent emigrants, still are not allowed to return even if they have a family there. While family visits of both Greek Cypriots living in southern Cyprus to their relatives in the north and of Greek Cypriots living in northern Cyprus to their relatives in the south have been facilitated by a number of measures most of which were taken during the period which is relevant in the present application, certain administrative restrictions such as limitation to first degree relatives, visa requirements and levying of entry and exit fees still continue to be applied to such visits. Until recently there were also severe limitations on the number and duration of the visits. These restrictions were also applied to Greek Cypriot schoolchildren above a certain age who attended secondary schools in southern Cyprus and who, like any other emigrants, were not allowed to return permanently to their families in northern Cyprus after attaining the age limit. This practice is still in force for students who have completed their studies before the entry into force of the new regulations of February 1998 and for Greek Cypriot males over the age of sixteen.

484. The Commission considers it as established that by these measures new cases of separation of families were brought about during the period under consideration and that the possibility of the Greek Cypriots residing in northern Cyprus to lead a normal family life continued to be affected in other ways during that period. The Commission finds that no remedies are available to the persons concerned to contest the measures in question. It considers that these measures, taken as a whole, constitute a grave interference with the right to respect for the family life of the persons concerned, which cannot be justified under Article 8 para. 2 of the Convention, having regard to the absence of a clear legal basis, the absence of any legitimate aim and the obvious disproportionality of the measures in question.

485. The Commission further considers it as established that the entirety of the measures which continued to be imposed on the enclaved population during the period under consideration went far beyond a restriction of their liberty of movement in the sense of Article 2 of Protocol No 4, which has not been ratified by Turkey. In particular the restrictions on their freedom of movement were until recently accompanied by measures of strict police control which applied even to visits to neighbouring villages or towns, with an apparent requirement to indicate the purpose of the visits such as seeing friends, shopping or medical consultations, participation in religious manifestations etc. Repeated reporting to the police was required when they made such visits inside the territory of northern Cyprus or to the southern part of Cyprus, and visitors whom they received were not only subjected to similar reporting requirements, but even physically accompanied by policemen who at least in certain cases stayed with the visitors inside the homes of the enclaved Greek Cypriots. Also the UNFICYP personnel who visited the Greek Cypriots in the Karpas area for

humanitarian purposes have until recently been accompanied by Turkish Cypriot police who went into their homes, thus preventing any conversations in private.

486. The Commission finds that also in this respect no remedies were available in northern Cyprus and that the administrative practice in question amounted to a clear interference with the right of the enclaved Greek Cypriots to respect for their private life and home which cannot be justified under Article 8 para. 2. In particular, as the measures in question lacked any basis in laws or regulations accessible to the persons concerned, the latter found themselves in a situation of total legal insecurity which continued even after the measures were lifted since that fact had not been brought to their attention. Moreover, the Commission does not see that these measures, whose scope was excessive by any standard, could have served any legitimate purpose recognised in the Convention .

487. In view of this finding, the Commission does not consider it necessary to examine the applicant Government's further complaints that there has also been interference with the enclaved Greek Cypriots' right to respect for their home by the change of the demographic and cultural environment of their homes and by failure to protect them against acts of private persons, in particular Turkish settlers, interfering with the undisturbed enjoyment of their homes. It appears that at least in the latter respect remedies are available to the persons concerned before the Turkish Cypriot courts.

488. The Commission has also considered whether during the period under consideration there have been unjustified interferences with the right of the enclaved Greek Cypriots to respect for their correspondence. It notes that even now no direct postal and telecommunications links exist between the two parts of Cyprus, but that after the recent installation of telephone lines in Greek Cypriots' homes in northern Cyprus calls can be made through the switchboard of the United Nations in Ledra Palace. Neither the allegation that such calls are being tapped nor the allegation that mail to Greek Cypriots in the north used to be delivered by the police rather than the Turkish Cypriot postal service and that the mail was opened by the police has been substantiated. There are certain indications that persons who crossed from one part of Cyprus to the other have been searched for letters which they carried with them, but the evidence is not sufficient to establish that there exists a consistent practice to that effect. The Commission considers that the non-existence of direct communication links between the two parts of Cyprus, which apparently is not the exclusive responsibility of the respondent Government, cannot be seen as amounting to an interference by that Government with the right to respect for correspondence within the meaning of Article 8. As regards the other aspects of this right discussed above, the Commission finds that the material before it does not allow the conclusion to be drawn that during the period under consideration there has been an administrative practice of disregarding the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

489. Finally, the Commission observes that, taken as a whole, the daily life of the Greek Cypriots in northern Cyprus is characterised by a multitude of adverse circumstances. The absence of normal means of communication, the unavailability in practice of the Greek Cypriot press, the insufficient number of priests, the difficult choice before which parents and schoolchildren are put regarding secondary education, the restrictions and formalities applied to freedom of movement, the impossibility to preserve property rights upon departure or death and the various other restrictions create a feeling among the persons concerned of being compelled to live in a hostile environment in which it is hardly possible to lead a normal private and family life. As these adverse circumstances in the living conditions are to a large

extent the direct result of the official policy conducted by the respondent Government and its subordinate local administration, they constitute factors by which the above interferences with the rights of the enclaved Greek Cypriots under Article 8 of the Convention are aggravated.

Conclusions

490. The Commission concludes, unanimously, that during the period under consideration there has been a violation of the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention.

491. The Commission concludes, unanimously, that during the period under consideration there has been no violation of the right of Greek Cypriots living in northern Cyprus to respect for their correspondence, as guaranteed by Article 8 of the Convention.

b) Article 3 of the Convention[8]

492. The applicant Government complain under Article 3 of the Convention that the various measures applied to the Greek Cypriots living in the Karpas area of northern Cyprus disclose a consistent pattern of discriminatory action against them with a view to making them leave the area, and that these measures, taken as a whole, amount to "ethnic cleansing" and thus constitute inhuman and degrading treatment. In this respect the applicant Government invoke the Commission's Report in the East African Asians' case (Comm. Report 14.12.73, D.R. 78, p. 62, paras. 207 - 209).

493. The respondent Government submit that the facts in the present case must be distinguished from those underlying the East African Asians' Report. They claim in particular that an aggregate of facts each of which does not in itself constitute a violation of the Convention cannot be considered cumulatively under Article 3.

494. However, the Commission recalls that the question whether "the refusal of a right which is not in itself protected by the Convention could nevertheless in certain circumstances violate another right already included in this treaty" has in fact been discussed in the East African Asians' Report itself. The Commission stated that "by admitting the present applications both under Article 3 and under other provisions of the Convention, the Commission impliedly accepted that the finding of such a violation was not excluded" (*ibid.* p. 54, para. 185). The Commission considers that in the present case, too, neither the fact that it has already found certain of the impugned measures to be in breach of the Convention nor the fact that no such finding was made concerning certain other measures prevents it from examining in addition whether through all these measures a policy of racial discrimination was pursued which, as such, can be seen to amount to a violation of Article 3 of the Convention.

495. In this respect, the Commission recalls para. 207 of the above Report (*ibid.* p. 62) where it confirmed the view that "discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention". The

[8] For the text of Article 3 of the Convention, see para. 230 above.

Commission further stated that "as generally recognised, a special importance should be attached to discrimination based on race; that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity; and that differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question".

496. The Commission recalls that, in its 1976 Report on applications Nos. 6780/74 and 6950/75 (at para. 503), having found violations of a number of Articles of the Convention, it noted that the acts violating the Convention were exclusively directed against members of one of the communities in Cyprus, namely the Greek Cypriot community. The Commission then concluded that Turkey had thus failed to secure the rights and freedoms set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by Article 14. In its 1983 Report on application No. 8007/77, the Commission did not find it necessary to add anything to its finding under Article 14 in the previous case (cf. D.R. 72, p. 49, para. 162).

497. With regard to the facts of the present case, the Commission has found above that during the period under consideration there has been interference with the rights of Greek Cypriots living in northern Cyprus under several provisions of the Convention. In particular it has found (para. 489 above) that the general living conditions of Greek Cypriots living in northern Cyprus are such that there is an aggravated interference with their right to respect for their private and family life and for their home. The Commission notes that also during the period under consideration in the present case all these interferences concerned exclusively Greek Cypriots living in northern Cyprus and were imposed on them for the very reason that they belonged to this class of persons. In these circumstances the treatment complained of was clearly discriminatory against them on the basis of their "ethnic origin, race and religion". While the predominant factor here is ethnic discrimination, the Commission considers that the principle stated in the East African Asians' case in relation to racial discrimination based on colour is applicable in the same manner.

498. However, this principle has not been stated in absolute terms, the conclusion of a violation of Article 3 of the Convention in the East African Asians' case having been reached by the Commission in the light of the very particular circumstances of that case. Indeed, in such a case as in any other case where Article 3 is applied a violation of this provision can only be found if the treatment in question attains the required level of severity. In the present case the Commission notes that the general living conditions of Greek Cypriots resident in northern Cyprus were imposed on them in pursuit of an acknowledged policy aiming at the separation of the ethnic groups in the island in the framework of a bi-communal and bi-zonal arrangement. This policy has led to the confinement of the Greek Cypriot population still living in northern Cyprus (other than Maronites) within a small area of the Karpas peninsula. There is a steady decrease of their numbers as a result of specific measures which prevent the renewal of the population. Moreover, their property is confiscated if they die or leave the area. As it was noted in the UN humanitarian review (cf. para. 387 above), the restrictions imposed on them have the effect of ensuring that "inexorably with the passage of time, those communities (will) cease to exist in the northern part of the island". The Commission considers that despite recent improvements in certain respects the hardships to which the Greek Cypriots living in the Karpas area of northern Cyprus were subjected during the period under consideration still affected their daily life to such an extent that it is justified to

conclude that the discriminatory treatment complained of attained a level of severity which constitutes an affront to their human dignity.

Conclusion

499. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment.

(c) Article 14 of the Convention[9]

500. The applicant Government complain that the various restrictive measures imposed on the Greek Cypriots living in northern Cyprus are discriminatory and thus amount to a violation of Article 14 of the Convention, read in conjunction with the other relevant Convention Articles. The respondent Government deny these allegations, claiming that any differentiation made between Greek Cypriots and Turkish Cypriots is only the result of the bi-communal structure of Cyprus in which certain matters concerning the two communities are being regulated separately with a view to preserving their ethnical identity.

501. In the light of its above finding under Article 3 of the Convention (para. 499), the Commission does not find it necessary to also examine the issue of discrimination of Greek Cypriots living in northern Cyprus in the light of Article 14.

Conclusion

502. The Commission concludes, unanimously, that it is not necessary to examine whether during the period under consideration there has been a violation of Article 14 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(d) Article 13 of the Convention[10]

503. The applicant Government finally complain that there has been a violation of Article 13 of the Convention by reason of failure to provide effective remedies to the Greek Cypriots living in northern Cyprus in relation to all the restrictions of their Convention rights discussed above. The respondent Government claim that the "TRNC" legal system in fact provides them effective remedies.

504. The Commission recalls its above finding under Article 6 of the Convention that the lawfulness under international law of the legal system of the "TRNC" is not to be taken into account in determining the question whether the "TRNC" courts are "established by law" (cf. paras. 446-447 above). The same consideration must apply in relation to any other remedies provided by the "TRNC" legal system.

505. The Commission has discussed above, in the light of Article 26 of the Convention, whether or not in relation to each complaint concerning the Greek Cypriots living in northern

[9] For the text of Article 14, see para. 332 above.
[10] Further text of Article 13, see para. 325 above.

Cyprus effective remedies were available. This question, however, does not arise in respect of those complaints which the Commission has found to be unsubstantiated (i.e. the complaints under Articles 2, 5, 6, and 11 of the Convention). As regards the remaining complaints, the Commission recalls its above findings according to which there are effective remedies against trespassing on and damage to property by private persons (cf. para. 471 above) and against interference by private persons with the right to respect for the home of Greek Cypriots (cf. para. 487 above). However, there are no effective remedies as regards the remaining complaints concerning interference by the authorities with Greek Cypriots' rights under Articles 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1. Nor are there any remedies against the discrimination against Greek Cypriots living in northern Cyprus and the resultant degrading treatment contrary to Article 3 of the Convention.

Conclusions

506. The Commission concludes, by 18 votes to two, that there has been no violation of Article 13 of the Convention in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Articles 8 of the Convention and Article 1 of Protocol No. 1.

507. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

Chapter 4

The right of displaced Greek Cypriots to hold free elections

A. Complaints and submissions of the parties

508. The applicant Government complain that there is a violation of Article 3 of Protocol No. 1 in that displaced Greek Cypriots, as a result of their displacement and their being refused to return, are prevented from effectively enjoying the right to have freely elected representatives in the Cyprus legislature in respect of the occupied territory. Although elections in the Government-controlled area are organised in respect of the whole territory of Cyprus, they are deprived of their meaning and effect insofar as there is no effective representation of the area under Turkish occupation and effective legislation cannot be passed in respect of that area.

509. The respondent Government deny the alleged violation of Article 3 of the Protocol. They submit in particular that the applicant Government still hold elections for the constituencies of Kyrenia and Famagusta and that Greek Cypriots in northern Cyprus wishing to vote are allowed to do so. They blame the applicant Government for not taking account of the exchange of population agreements setting the basis for a bi-communal and bi-zonal federation.

510. No particular evidence has been submitted in relation to this complaint, except a press report recording a statement by the Deputy Prime Minister of the "TRNC" that any enclaved

Greek Cypriot from the Karpas area who would be elected to the Cypriot Parliament in the May 1996 elections would be expelled from the "TRNC" .

B. Opinion of the Commission

511. Article 3 of Protocol No. 1 reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

512. The Commission notes that the electoral system in Cyprus has always been based on a principle of ethnicity. The organisation of free elections for all Greek Cypriots (including the Greek Cypriots in northern Cyprus) is possible and in fact carried out in the southern part of the island. The applicant Government have not contradicted the respondent Government's assertion in this respect that such elections are also held for constituencies in northern Cyprus and that Greek Cypriots still living there can participate in those elections. The only impediment is the deprivation from the applicant Government of the territorial basis in northern Cyprus both for holding the elections (the Greek Cypriots living there must vote in the south) and for implementing legislation adopted by the legislature. In the Commission's opinion this is only the consequence of the general political situation in Cyprus as it has existed since 1974 and does not involve a specific interference with the Cypriot electoral system as such.

513. The Commission finds it unsatisfactory that the electoral system operated in both parts of Cyprus does not provide for a proper place for Greek Cypriots living in northern Cyprus. Although they can participate in elections in the south, the legislature there is *de facto* incapable of regulating any of their problems. On the other hand it appears that the Greek Cypriots in the north, although being considered as "TRNC citizens", are excluded from participating in "TRNC" elections because of the principle of ethnic vote. However, since the principle operates on both sides, Turkish Cypriots in the Government-controlled area are in the same position and the Commission finds that no particular responsibility can be attributed in this respect to the respondent Government.

514. The Commission has considered the allegation concerning particular measures that would be taken against enclaved Greek Cypriots who stand for elections and manage to get elected. Such measures must clearly be seen as an impediment to the free expression of the opinion of the people in the choice of their legislature. However, the only evidence in this respect is a press report whose correctness the Commission has not been able to verify. Nor has the Commission been informed of any concrete measures being taken to the effect indicated in the press report. Therefore it has not been substantiated that during the elections concerned there has in fact been pressure on the free expression of the will of the people.

Conclusion

515. The Commission concludes, unanimously, that there has been no violation of the displaced Greek Cypriots' right to hold free elections as guaranteed by Article 3 of Protocol No. 1.

Chapter 5

Complaints relating to Turkish Cypriots

A. Complaints

516. The Commission has declared admissible the following complaints relating to Turkish Cypriots living in northern Cyprus:

- that there is a violation of Article 5 of the Convention because their security of person is not ensured;

- that there is a violation 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;

- that there is a violation of Article 10 of the Convention by reason of the prohibition on the circulation of Greek language newspapers in northern Cyprus;

- that there is a violation of Article 11 of the Convention by reason of the denial of their right to freely associate with Greek Cypriots;

- that there is a violation of Article 1 of Protocol No. 1 by reason of failure to allow them to return to their properties in southern Cyprus.

517. The Commission has further declared admissible complaints under Articles 3, 5 and 8 of the Convention in relation to the treatment of Turkish Cypriot gypsies who sought asylum in the United Kingdom.

518. The Commission has finally declared admissible the complaint that there is a violation of Article 13 of the Convention in that there are no relevant or sufficient remedies available to the Turkish Cypriots concerned as regards the interference with their above Convention rights.

519. At the merits stage of the proceedings, the applicant Government have in addition alleged the following violations of the Convention:

- degrading treatment not only of the gypsy community, but also of Turkish Cypriots and Turkish residents of northern Cyprus who were consequently compelled to seek asylum in the United Kingdom (Article 3);

- arrests and unlawful detention of persons politically opposed to Turkish policy in northern Cyprus (Article 5);

- Turkish soldiers are beyond the jurisdiction of "civil courts"; arrested persons or persons with civil claims are denied a fair trial of claims they have against members of the Turkish Mainland Army, the "police" of Turkey's subordinate local administration, settlers and their political opponents who inflict injuries upon them (Article 6);

- interference with the right to respect for private and family life and home (Article 8), occasioned by

a) Turkey's policy of massive mainland settlement.

b) Assaults on and threats to the lives of Turkish Cypriots opposed to Turkey's policy in the occupied area, such assaults being committed by "police", persons associated with the "police" and the Turkish "embassy", or tolerated by Turkish officials, such persons also condoning violence by mass entrants to the occupied area who have been encouraged by Turkey to come to Cyprus. The level of severity of some assaults and threats is such that they come under Article 3 of the Convention. They have led to persons seeking asylum in the United Kingdom.

c) Denial of family reunion with Turkish Cypriots who left the occupied area and now live in the Government-controlled area. Persons who subsequently managed to return to the occupied area have been assaulted by the "police".

d) Denial of the possibility of employment by the "State" and toleration of practices involving denial of employment in the private sector as regards persons politically not in support of the regime.

e) Refusal to permit medical treatment at nearby specialist facilities in the Government-controlled area.

- interference with freedom of expression (Article 10) effected by Turkish Forces, "police" or persons acting in association with them, who place a chill on the exercise of the rights to receive or impart information;

- interference with peaceful demonstrations by persons opposed to Turkey's policy in the occupied area (Article 11);

- discrimination in securing Convention rights to members of the gypsy community, in particular in conjunction with denial of gypsy children's entitlement to education under Article 2 of Protocol No. 1, and discrimination against Alevi Kurds resident in the occupied area (Article 14);

- interference with peaceful enjoyment of possessions and acquiescence in attacks on the possessions of members of political parties opposed to the Denktash regime (Article 1 of Protocol No. 1);

- denial *de facto* of the right to education to gypsy children by systematic misconduct of teachers, failure to provide them education according to their needs and failure to protect them against humiliation and degrading treatment (Article 2 of Protocol No. 1).

520. The Commission must accordingly determine whether the last-mentioned complaints can be taken into account in the context of its examination of the merits of the present application as declared admissible by the Commission.

B. Submissions of the parties

1) The applicant Government

521. The applicant Government recall that the parties have been invited by the Commission to present evidence on "the present situation of Turkish Cypriots in northern Cyprus, in particular alleged ill-treatment of political opponents and members of the gypsy minority, cases of actual detention, restrictions on access to court due to the organisation of the court system, harassment and interference with family life, restrictions on access to Greek language newspapers, interference with property, in particular restrictions on access by Turkish Cypriots to their property in southern Cyprus". They explain that their comments on "the present situation of Turkish Cypriots in northern Cyprus" are not limited to general aspects, but include "important violations of other Articles of the Convention, which were revealed by the testimony of witnesses and which the Commission has not particularised". They purport to establish "a situation, a continuing pattern of consistent interferences, interconnected, systematic and related to Turkey's continuing policy in the occupied area". In their submission, there are in fact administrative practices of interference with freedoms which constitute continuing violations of the Convention rights of Turkish Cypriots and in respect of which there are no effective remedies.

522. The living conditions of Turkish Cypriots in general are affected by the massive presence of Turkish military forces whose members are not regularly prosecuted or disciplined for misconduct which may occur in their contacts with Turkish Cypriots (witnesses Mehmet and Nos 17 and 18[11]). The Turkish Cypriot "police" and "security forces" are under the ultimate control of a commander from Turkey and attempts to change this, which were debated since 1995 when Mr Özgür resigned from the function of Prime Minister because the "police" refused to abide by certain Government decisions, have been unsuccessful because Turkey is determined to maintain her army's direct control.

523. Similarly, there is an important impact of the massive presence of Turkish settlers on the lives of Turkish Cypriots. There are tensions between the settlers and Turkish Cypriots as testified by several witnesses (witnesses Moran, Smith, Mehmet, Emirsoylu, and witnesses Nos. 17 and 24). The settlers' vote affects the result of elections, and so they were brought in in large numbers prior to elections. The settlers were allocated land whereas certain Turkish Cypriots were not. They harass Turkish Cypriots with impunity and sometimes have better chances in employment. Because of the Turkish settlers, there was a forced imposition of surnames for Turkish Cypriots after 1974, which the applicant Government consider to constitute an interference with family life. The "surnames law" (which carries sanctions including a prison sentence or a fine) had the purpose of hiding the influx of Turkish settlers by making it difficult to distinguish between them and Turkish Cypriots who earlier did not have surnames.

524. Numerous witnesses testified to police misconduct and arbitrariness, such as taking in for questioning on a false basis, searches without warrant, intimidation and threats during detention, failure to permit detainees to see their lawyers, and assaults by the police. In particular the applicant Government consider it as established by the evidence of the

[11] The references are to the statements of witnesses heard by the Commission's Delegates, as summarised in paras. 542 et seq. below).

witnesses (Mrs. Smith, MM Emirsoylu, Denizer, Mene, Mehmet and witnesses Nos. 17, 18, 22 and 24) that there is a pattern of arbitrary arrest and short term detention by the police against which there are no effective remedies. They speak of an "absence of the rule of law".

525. In this context, the applicant Government complain that there are also restrictions on access to court due to the organisation of the court system. In criminal cases the procedure begins with "police" registration of complaints following which action is initiated by the "TRNC Attorney General". However, as the above witnesses confirmed, the police do not act upon the complaints or even openly refuse to do so. The witnesses also testified to the difficulty of initiating civil proceedings, due to the absence of legal aid and reluctance of lawyers to be involved in any proceedings against the State or against the military. Nor are other adequate remedies available to persons who are "politically unacceptable".

526. The applicant Government submit that freedom of expression in northern Cyprus is in practice subjected to major interferences. This affects all Turkish Cypriots and their right to receive information. There is *de facto* restriction on access to Greek language newspapers. The Greek language is not accepted in northern Cyprus and only English newspapers printed in southern Cyprus are sold by one news vendor in northern Nicosia. Apart from that, as the witnesses confirmed, there are many things one cannot talk or write about (witness Emirsoylu), e.g. about the role of the military (witness No. 17) or putting in question the Atatürk principles (witness Ergüçlü). Critical views have to be dressed up as satire and addressed obliquely. The applicant Government have submitted examples of such self-censored materials, *inter alia* by the journalist Kutlu Adalı (who was murdered, allegedly because of his views and without a proper investigation having been conducted) and speeches of Özker Özgür, a leading political figure. The opposition newspapers cannot state their views really openly (witness Mehmet) and there have been attacks (bombing, stoning) on their premises or threats to individuals working for them who are also subjected to surveillance and interception of their telephone calls (witnesses Nos 16, 17 and 18). Persons opposed to the official policy are charged with "engaging in subversive activities" (witness Denizer), they are denied employment (witnesses Smith, Denizer and witnesses Nos. 17, 22 and 24) or subjected to harassment because of their opinions (witness No. 17).

527. Freedom of association is also subjected to extensive interferences for various purposes, such as hampering protest by the political opposition by the breaking up of demonstrations and arresting participants without having given a warning to disperse (witness Smith); preventing organisations which advocate political recognition of minority groups such as gypsies, contrary to Articles 2 and 71.1 of the "TRNC Constitution" which provide for an indivisible people and prohibit the establishment of ethnically separatist political organisations (witnesses Mene and Stuijt); intimidation of persons who want to meet persons opposed to the official policies (witness Stuijt) or who want to send their children to an institution operated by such persons (witness No 17); and finally preventing contact and association with Greek Cypriots in the southern part of Cyprus. In the latter respect the applicant Government refer to the statement of witness Ergüçlü and cite a number of examples where Turkish Cypriots were prevented from attending meetings in 1997 (*inter alia* a UN festival on "peaceful coexistence" in a school in Nicosia, a seminar cosponsored by the Delegation of the European Commission in Cyprus on "Media in the European Union", and a trade union conference). The applicant Government have submitted a list of some 28 Turkish Cypriot and Greek Cypriot organisations which co-operate and attempt to hold meetings and who signed a joint appeal for community co-operation and meetings on May Day 1997. They further mention that on 21 June 1997 the Turkish Cypriot daily "Yeni Duzen" reported about

a circular letter of the director of Bayrak radio station by which the latter's personnel was forbidden to travel to the southern part of Cyprus and to have any contacts or meetings with Greek Cypriots. A total ban was imposed by the Turkish Cypriot authorities on any intercommunal contacts as from 27 December 1997. Turkish Cypriot opposition politicians protested against this measure.

528. Surveillance of Turkish Cypriots in various forms (telephone tapping, interception of correspondence, following and surveillance of persons mainly by Turkey's counter-guerrillas under the Special Warfare Department of the Turkish Army) is largely directed at members of opposition parties, but also occurs in relation to persons not belonging to political parties. Telephone tapping has been confirmed by several witnesses heard by the Delegates (witnesses Stuijt, Denizer and witnesses Nos 17 and 22) without the respondent Government disputing their testimony. Witness Denizer also testified on interception of his correspondence on two occasions and witnesses Nos 17 and 18 on personal surveillance. Interference with private life also occurs through refusal to employ political opponents or persons who do not support the regime (witnesses Smith and No. 24), or denial to them of the advantages of "State functions and resources". There is also educational discrimination against political opponents (witness Denizer who was excluded from the Eastern Mediterranean University) or their children (witness Smith). Similar discrimination (including discrimination on religious grounds) is allegedly being practised against the Alevi and Kurdish minorities among the settlers and against gypsy children.

529. There is also a pattern of ill-treatment of political opponents orchestrated by representatives of the ruling party, in particular persistent harassment of opposition party militants by assaults, beatings, attacks by civilian gangs and death threats against both the activists themselves and their families including children. The police do not intervene or in some cases are themselves involved in the harassment, e.g. by dispersing demonstrations and arresting participants without subsequently bringing any charges, or by bringing fabricated charges. The Government rely on the testimony of Mrs Smith which was confirmed by several Turkish Cypriot witnesses (Emirsoylu, Denizer, Mehmet, No. 22). They also refer to bomb attacks on the premises of the New Cyprus Party, mentioned by several of the witnesses.

530. Turkish Cypriots are restricted in their freedom of movement in that they are not normally allowed to travel to southern Cyprus. Reasons have to be given for any visit to the south, and a strict practice prevails in this respect. Thus Turkish Cypriots have been refused permission to meet members of their family in their home in southern Cyprus or even at Ledra Palace checkpoint (witness Mehmet). In view of the land allocation legislation and the points system whereby Turkish Cypriots are required to waive claims to their property in the south it is submitted that it is politically sensitive and embarrassing for Turkish Cypriots resident in the north to request permission to visit their properties in the south. If they fall ill they cannot receive medical treatment in the General Hospital in Nicosia, the Turkish Cypriot authorities insisting on treatment in Turkey. Only if they are too ill to travel are they permitted to go by ambulance for specialised treatment in the Government-controlled area. The applicant Government see this as an interference with private life and cite two examples in 1997 where permission to travel was refused, in one case to six patients who had to undergo organ transplant operations and in another case for visits of Turkish Cypriot doctors and patients to the bi-communal Institute of Genetics and Neurological Research.

531. Finally, the applicant Government submit that the gypsy minority in northern Cyprus is subjected to interference with their rights under Articles 3, 5, 8 and 14 of the Convention and under Articles 1 and 2 of Protocol No. 1. The discrimination against them is of a level of severity and such an affront to their dignity that it amounts to degrading treatment under Article 3. Much of the discrimination is effected by the Turkish Cypriot authorities themselves, but in addition there is discrimination effected by private individuals against which Turkey has a positive obligation to intervene (reference to the X and Y v. Netherlands judgment of 26 March 1985 , Series A no. 91, p.11, para. 23). The applicant Government rely on the testimony of witnesses Mene, Stuijt and witness No. 24, concerning in particular the refusal of adequate educational facilities for gypsy children, refusal by Istanbul Airlines and Cyprus Turkish Airlines (the "TRNC State airline") in 1994 to sell tickets to gypsies unless they had a visa of the United Kingdom (which was not required of other Turkish Cypriots), the refusal to allow a political organisation for the gypsies, discrimination in employment and housing (non-allocation of adequate land to gypsies under the land allocation legislation), police harassment and arbitrary arrest, degrading treatment in police custody, and interference with their property. The incident concerning the removal of the gypsy houses or shacks in the riverbed at Morphou, as described by witnesses Mene and Stuijt, certainly concerned the possessions of the 8 families living there. They were bulldozed and destroyed in a sudden raid, without giving prior notice or an opportunity to remove them. As the materials belonged to the gypsies, their destruction constituted an interference with their properties which was not justified for any reason. Scenic preservation or hygienic action cannot be invoked as nearby animal shacks were not pulled down and the area was not cleared. The measure was in violation of Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention. It lacked *bona fides* and was a discriminatory attempt to move away the small gypsy community by a *fait accompli*.

2) The respondent Government

532. The respondent Government refer to the Commission's finding in its 1983 Report on application No. 8007/77 that it did not have sufficient evidence available to come to a conclusion and submit that the allegations in the present application should be rejected for the same reason. The applicant Government have not substantiated their allegations which are based on highly hypothetical, misleading and imaginary presumptions. The respondent Government contest that - but for one or two exceptions - Turkish Cypriots living in the north want to go the south or that they are prevented from doing so; that the Greek Cypriot Government would allow and welcome them to enter and to be accommodated there; that their properties were kept vacant for them to take possession; and that they are allowed in southern Cyprus to form associations with Greek Cypriots who are eager to do so. In fact, as the UN Secretary General observed in 1992, there is a deep crisis of confidence between the two communities in Cyprus which has become deeper since. The rights of the Turkish Cypriots living in the "TRNC" are protected by the authorities of the "TRNC", where such rights are under the protection of the independent courts. The allegations of the applicant Government therefore lack seriousness and are devoid of substance.

533. The "TRNC" authorities have not prohibited, but have allowed various crossings of Turkish Cypriots to the south or to Ledra Palace in the buffer zone, as well as of Greek Cypriots to the north, for bi-communal activities such as meetings and conferences. However, as any other democratic State, they reserve the right to exercise a margin of appreciation and to refuse such crossings for the protection of public interest, public safety and security, and

for the protection of the rights of others. They submit a list of bi-communal events for which crossings were allowed and observe that the crossing point at Ledra Palace has been closed on many occasions due to demonstrations on the Greek Cypriot side, thereby hindering bi-communal events. Such demonstrations aimed at hindering crossings by tourists to the north.

534. As to ill-treatment of Turkish Cypriots, the applicant Government rely substantially on allegations by so-called asylum-seekers. Such allegations, however, are far from being reliable in view of the nature of the applications before the authorities of the receiving State. Emigration for economic or personal reasons is likely to be presented as a genuine application. A considerable number of so-called asylum cases are those of Turkish citizens who have obtained "TRNC" passports in order to emigrate to the U.K., and such applicants tend to make up various stories to justify their applications. In fact, most of the asylum requests are being rejected.

535. As to allegations directly addressed to the "TRNC" authorities, the respondent Government consider it unacceptable that the Commission should examine them without prior exhaustion of domestic remedies in the Turkish Cypriot courts, which must be given an opportunity to pronounce themselves on the remedies available to the individuals concerned. In fact, the rights of Turkish Cypriots living in the "TRNC" are fully protected under the Constitution and the laws of the "TRNC". Independent and impartial courts are the guarantors of these rights and no evidence has been adduced that remedies do not exist or that those available are insufficient or impracticable for Turkish Cypriots.

536. The respondent Government submit that there is no administrative practice of interference with any Convention rights as regards political opponents or ethnic minorities such as the Roma. They consider the evidence adduced by the applicant Government as not being conclusive. The witnesses proposed by that Government were extremely biased. Moreover, in any society there will be a few people holding extreme views and it is not justified to make findings on the basis of such fringe views. Most of the witnesses heard belong to the same political party which, in their own submission, has not succeeded in obtaining more than one percent of the votes in democratic elections. They thus do not represent a fair cross-section of the Turkish Cypriot community. Also, some of them had personal problems (family disputes, criminal prosecution, avoidance of military service, illegal occupation of land) and were exploited by the applicant Government in that the personal problems of these people were elaborately dressed up so as to appear as an administrative practice applicable to political opponents in general. On the other hand, impartial witnesses were called up by the respondent Government who gave extensive evidence regarding the freedoms enjoyed universally by the Turkish Cypriots in the "TRNC" in all fields including freedom of the press, multi-party democracy, freedom of association and access to independent courts. All political parties function freely, have their own newspapers, enter free and democratic elections, carry out election campaigns without any restrictions and have equal air-time on radio and television during parliamentary and local elections.

537. As regards the allegations concerning the Roma, the applicant Government has dramatised the facts. The shacks demolished had been erected without building permission. The refusal to transport Roma without a visa had been done by the private company Istanbul Airlines for whose acts Turkey cannot be held responsible . The Roma, without any differentiation, are members of the Turkish Cypriot society and are able to enjoy human rights and live with dignity in their own State. Their complaints in northern Cyprus are not

different from those in other States and they are due to the difficulties to integrate into organised society due to their nomadic life-style.

538. Finally, the respondent Government contest the pretensions of the applicant Government to champion the rights of Turkish Cypriots. They consider that there is no genuine complaint before the Commission and refer to the applicant Government's poor human rights record vis-à-vis Turkish Cypriots living in the southern part of Cyprus, which they exemplify by references to various UN documents and a press article on the conditions in the Turkish Quarter of Limassol.

C. Facts established by the Commission

1) Written evidence

539. The applicant Government have submitted a number of statements from Turkish Cypriot witnesses in the UK where they had sought asylum (many of them anonymous, but in part certified as true by solicitors having acted for them) and also from Turkish Cypriots now living in southern Cyprus. They describe persecution of political opponents in northern Cyprus and various aspects of their living conditions.

540. To a large extent, the applicant Government also rely on press reports, mainly on Turkish settlers (including extracts from reported political statements of Turkish and Turkish Cypriot officials) and statistics. The respondent Government state that press reports cannot serve as a reliable basis for establishing human rights violations and question the correctness of the statistics put together by the applicant Government's services.

541. The UN reports contain some, though not very extensive material on the position of Turkish Cypriots living in northern Cyprus.

2) The Commission's investigation

542. Most of the evidence on this aspect of the case has been obtained through the hearing of witnesses by the Commission's Delegates in Strasbourg, Cyprus and London between November 1997 and April 1998. The Delegates heard the following witnesses on the situation of Turkish Cypriots in northern Cyprus:

543**. Ms Margriet Stuijt.** The witness stated to be a Dutch free-lance photographer. She is on the editorial staff of "o Drom", a magazine providing information about Roma and gypsies in Europe. She visited northern Cyprus in March 1994, June 1995 and June 1997, where she enquired into the situation of gypsies. She met with a number of gypsies, including Mr Aşık Mene, a spokesman for the gypsy community who, according to her, is one of the only four or five persons from this community to have received a higher education.

She estimates that about 4,000 - 6,000 gypsies are living in the northern part of Cyprus, where this community had moved in 1974. They are referred to as "Gürbet" and speak Turkish. Generally speaking they are poorly educated and mostly live sedentary lives, separated from the main population, in very poor social and economic conditions. Insofar as

she knows, the Constitution does not allow them to create their own specific organisation in order to improve their general situation.

In 1994, a group of about 80 gypsies from northern Cyprus sought to leave the country for the United Kingdom in order to seek a better life. However, the Turkish airline carrier refused to transport them. She did not know the exact reasons for this refusal.

In 1995, she visited a group of about 25 gypsies in Morphou / Güzelyurt. This group was living in shacks on a piece of wasteland allocated to them by the former local mayor. When she saw these people again in June 1997, she found them living in the open air. She was told that their shacks had been destroyed without any prior warning upon the order of the new local city council allegedly for, *inter alia*, reasons of hygiene. Adjacent similar shacks built by other inhabitants of the village had not been removed. She further stated that, in general, the authorities do not make housing available to gypsies whereas it is made available to settlers from the Turkish mainland.

544. **Mrs Lisa Smith.** The witness stated that she had qualified as a solicitor five years ago. For the last three years she had worked at the solicitor's firm Stuart Miller & Co where she was the head of the immigration department. She had dealt with hundreds of asylum cases of which some 25 concerned northern Cyprus. At the moment of testifying she had 13 such cases pending. She had been involved in the preparation of three of the affidavits of Turkish Cypriot asylum-seekers which had been submitted as written evidence by the applicant Government. The persons concerned had given their consent to the use of these affidavits in the present proceedings provided their names were not disclosed. She had chosen the cases from a group which she considered to be strong and genuine cases. She could also speak of other cases concerning persons who had not consented to the use of their affidavits or whose cases had already been terminated.

In general, most asylum requests in the UK were refused, and as regards northern Cypriot cases the refusal rate was nearly 100 % over the last few years, but some cases had been successful on appeal. The high refusal rate could be explained by the generally restrictive asylum practice and lack of credibility in certain cases. Other cases were rejected for lack of objective evidence, and in this respect she observed that there was less human rights material concerning northern Cyprus by reporting bodies such as Amnesty International than was available for other countries. Some cases were also rejected despite the submission of objective evidence, the authorities finding that it did not apply to the particular case. She herself did not take cases of persons whom she did not consider as credible. She could not always be 100% sure, but she would not give evidence to the Commission of cases of which she was not convinced. Her criteria of judging the credibility of her clients were their way of expression, their degree of emotion and recollection of details, and the conformity of the allegations with the general picture she had put together. Upon questioning by the respondent Government she admitted that she was not very familiar with the Turkish Cypriot legal system. However, her clients had told her that constitutional and legal provisions were often disregarded by the authorities.

There was a pattern of persistent harassment of opposition party militants, in particular of three parties which were all legal parties in northern Cyprus, the CTP (Turkish Republican Party), the DMP (Democratic Struggle Party) and the TKP (Communal Liberation Party). They were in opposition to the UBP (National Unity Party) and the DP (Democratic Party) whose activists were responsible for the harassment. There were assaults

and beatings of political activists who tried to distribute leaflets or flyposters about their parties. In particular around the time of election campaigns the activists and their families have been attacked by civilian gangs. There have been threats concerning their children, harassment to ensure that their spouses lose their employment, and in two cases fire-bombing of houses. Her clients believed that this was orchestrated by local members of parliament, local councillors or representatives of the ruling party. However, it was difficult to point to an overt policy against political opponents in view of the very personalised character of the northern Cypriot society. It was useless to report the incidents to the police because the police shrugged their shoulders and told complainants they had to prove their allegations. They gave little assistance and often did not even file a report on the incident.

There was also direct harassment by the police of the political opposition. There were reports of breaking up of demonstrations and the arresting of participants without giving a warning to disperse. Two particular incidents had been described to her in detail where the participant was arrested and detained after the demonstration and then released without charge. There was also a pattern of short episodes of arrest which were repeated frequently. The person concerned was detained for 24 or 48 hours, questioned about political activities, and then released. Many clients have also reported about the use of false charges, often for petty offences such as road traffic offences, which led to short time detention during which the person was questioned not about the road traffic matter but about a political activity or incidents. Detainees were refused permission to contact their relatives or a lawyer. They were subsequently found guilty on fabricated grounds and fined, the fines amounting to quite significant amounts of money over time.

Her clients have also complained about discrimination in employment, in particular State employment. Civilian militants of the ruling party will ensure that a person loses his job if he takes part in opposition political activities. There may be pressure by employers, by threats of dismissal, to vote for the ruling party. It is difficult to be hired with a known record of participation in the opposition. Similarly, there is discrimination in education. Several clients have complained to her that their children found it impossible to gain entry into university despite good performance; again this was difficult to prove, but her clients believed that it was because of their political links.

While her other clients were all local Cypriots, the witness also had some five clients who were Alevi Kurds from northern Cyprus. The Alevi Kurds were settlers who were in conflict with the main settler population who had brought their prejudices against them from the Turkish mainland. The problems had been exacerbated by encouragement on the part of the Turkish Cypriot authorities. In particular a local MP in Magosa (Famagusta) was reported as encouraging hostility against the Alevi Kurds because he was eager to gather the settler vote. He could do so with impunity and also manipulate the local institutions. As a result, there was an atmosphere of deep hostility, leading to incidents of abuse and insult, beating up of schoolchildren, refusal of access to higher education, discrimination in employment and, if they set themselves up in a self-employed capacity, boycott of services and refusal of State credits. Again, the authorities did not provide any assistance, it was impossible to report incidents to the police who would take no action.

545**. Mr Kubilay Lutfi-Emirsoylu.** The witness stated to be a Turkish Cypriot, born in southern Cyprus and residing in northern Cyprus since 1974, where he had been allocated a house formerly occupied by Greek Cypriots. In his opinion settlers from Turkey receive a more favourable treatment from the authorities in northern Cyprus than do Turkish Cypriot

settlers from the south. He illustrated this statement by a personal experience in that a parcel of land, which he had used since 1984 - albeit without any formal permission - and on which he had constructed a building in which he ran a garage business, was allocated to a settler from Turkey despite the fact that his mother-in-law had surrendered her house in Kyrenia with a view to obtain the allocation of this parcel to him. He challenged the allocation decision in judicial proceedings, but in February 1994 the court found against him. He further stated that, like many others, he had encountered difficulties from the side of the police, Turkish soldiers and private persons for publicly criticising the northern Cypriot government and for supporting an unspecified political party during elections. These difficulties included assault by private persons and telephone threats. He further stated that he had been arrested by the police and detained for three days on three occasions, once in connection with having put up slogans and posters for an unspecified political party and twice in connection with the problems relating to his garage. After having lost his business and given the pressure to which he was subjected, he decided to leave Cyprus for the United Kingdom in February 1994.

546**. Mrs Maureen Hutchinson.** She is a British subject and has recently become a citizen of northern Cyprus. For the past seven years she has been living in the village of Hisarköy in northern Cyprus, where she runs a farm together with her husband who is also English. About 200 Turkish Cypriots inhabit the village. Apart from her and her husband, no foreigners live in the village. No settlers from the Turkish mainland are living there. There is a Turkish army presence close to the village. There are some 300 permanent British residents in northern Cyprus of whom some 50 regularly go to St. Andrew's Anglican Church in Kyrenia to whose church council she has been elected and whose parish magazine she sends out all over the world. She is also a member of an environmental group, the Society for International Development, and of the British Residents' Society. Her husband has set up a branch of Hash House Harriers International, a run-walk-jog sports group. She has a subscription to the "Sunday Times" which she collects from the newsagent in Nicosia as well as the "Cyprus Weekly". She can further receive television broadcasts from southern Cyprus, but she cannot go to southern Cyprus as the authorities there would not allow her to cross over. She has heard rumours about difficulties between settlers from Turkey and Turkish Cypriots, but has no personal experience about such problems. She was aware of the fact that a number of Turkish Cypriots had applied for asylum in the United Kingdom, but did not know on what grounds these people had filed such applications.

547**. Mr Michael Moran.** The witness stated to be a British subject. He is a retired university teacher in philosophy and intellectual history. He has lived in northern Cyprus since 1988. Insofar as he had expressed his views about the Cyprus problem in publications in English, he never felt constrained by the authorities in northern Cyprus in expressing his views. He has never come across any member of the Turkish army in the north working in the civil administration. In his opinion, the Turkish army plays no role in the interior security of northern Cyprus. This task is entrusted to the Turkish Cypriot police, which is under the ultimate control of a Turkish army commander. He did, however, deny that the "TRNC" is in fact a Turkish subordinate local administration. He confirmed the presence of many settlers from the Turkish mainland but was unable to give an indication as to their number. They were needed after the events in 1974 as workforce in agriculture. Although he has no personal experiences, he did state that the settlers do not always get along with the Turkish Cypriots, who tend to regard them as foreigners. Personally he has never met any settlers. Although he has never come across situations in which violent coercion was exercised in order to force people to vote in a particular manner, he did acknowledge that on both sides of

the island there are subtle ways of constraining people to vote one way or the other. Insofar as Turkish Cypriots from the north had applied for asylum in the United Kingdom, he considered that they had left Cyprus in order to find better economic conditions. He did not know how many Turkish Cypriots had left the island since 1974. He never had personally experienced any attempts from the side of the authorities of northern Cyprus to coerce or interfere with union activities or non-governmental organisations in the north.

548. **Mr Süleyman Ergüçlü.** The witness is a journalist with about 25 years of experience. He denied any limitation of the freedom of expression in the media in northern Cyprus and only remembered one case dating from before the establishment of the "TNRC" in which a journalist was convicted for having criticised the northern Cyprus judiciary in an article. He was, however, subsequently pardoned. In fact, the North Cyprus Government is regularly criticised in the press for not putting stricter measures on illegal immigration.

He explained that, around 1974, about 30,000 - 40,000 settlers arrived from Turkey upon invitation by the authorities of northern Cyprus in order to answer a shortage of rural workforce felt at that time. These settlers and their descendants have now fully integrated in the northern Cyprus society. There are, however, problems with more recent illegal immigrants. In the absence of an adequate control on the entry from Turkey, about 2,000 - 3,000 unemployed persons from Turkey as well as other countries have entered northern Cyprus as tourists and then simply stayed on. It is this category of persons which causes certain frictions in northern Cyprus. He estimated that, for economic reasons only, several thousand Turkish Cypriots had left Cyprus since 1974. Insofar as these people had applied for asylum in the United Kingdom, they only had done so to improve their chances of obtaining a residence permit by making false allegations. He denied the existence of any political oppression in northern Cyprus.

There are eight daily newspapers in northern Cyprus, four of which (Birlik, Ortam, Yeni Düzen and Yeni Demokrat) are mouthpieces for different political parties. He confirmed that Kutlu Adalı, a critical journalist working for Yeni Düzen had been killed a while ago and that there had been a recent attack on the Ortam office building by unknown perpetrators. The biggest newspaper "Kıbrıs", for which the applicant has worked in the past, is a commercial paper which does not necessarily agree with the authorities in northern Cyprus.

Freedom of association is widely used in northern Cyprus. There are, for instance, two associations for journalists. He was one of the founding members of the second association. It was founded following a conflict with the chairman of the first association. He denied that the founding of this new association had any relation with the wishes of the authorities of northern Cyprus.

549. **Mr Aşık Mene.** The witness stated that he had acted as a spokesman for the "Gurbet" community in northern Cyprus. Discrimination against the Roma in Cyprus dates back to the Ottoman period and continues to exist to date. In his opinion, although officially the "Gurbet" are citizens of northern Cyprus, in practice the vast majority of this community do not get the same chances as other citizens in the field of education, housing and access to the public service or other forms of employment. Only a few members of this community have received a higher education, although its general educational level has slightly improved since 1974. The Roma are not integrated in society. Mostly they live separate from the general population. Some of them live sedentary lives, others lead a wandering existence. In principle

they have access to courts, but in practice this is rather difficult given the costs attached to taking proceedings.

The Roma community has never considered or attempted to create its own specific political organisation. Only in 1994, in connection with an airline carrier's refusal to accept gypsies on board, a provisional Roma committee was set up. It no longer exists. As a spokesman this refusal was one of the issues he took up with the authorities.

He explained that around 1994, like other parts of the population, members of the Roma community began to leave Cyprus, mostly for the United Kingdom, in order to escape worsening living conditions and increasing discrimination against them. At that time there were no visa requirements for residents of northern Cyprus wishing to enter the United Kingdom. This wave of emigration attracted attention in the media and from the British Government. According to the then authorities of northern Cyprus, only gypsies were leaving for the United Kingdom. Even before the British authorities introduced visa requirements for persons from northern Cyprus, the Turkish airline carrier "Istanbul Airlines" publicly declared that it would no longer accept gypsies on flights to the United Kingdom as they would apply for asylum there and thus discredit the authorities and institutions of the "TRNC". Also Cyprus Turkish Airlines introduced a ban, still in force, on accepting Cypriot gypsies on their flights to England if they do not have a British visa. No such ban existed at that time for other residents of northern Cyprus. At some point in time, in response to an increase in asylum seekers, the British authorities did in fact introduce visa requirements, not only for Roma, but also for all residents from northern Cyprus.

He confirmed that he had assisted Mrs Margriet Stuijt in her enquiries about the gypsy community in northern Cyprus. He further confirmed that the former mayor of Morphou (Güzelyurt) had allowed the local gypsy community to construct makeshift homes on a specific location and that these shacks were forcibly taken down without prior warning by the new mayor, whereas similar adjacent shacks built by non-gypsies and used as stables for animals were left untouched and are still intact.

550**. Mr Ayhan Mehmet.** The witness stated to be a Turkish Cypriot. After 1974, the authorities of northern Cyprus obliged him, like all Turkish Cypriots, to adopt a surname in conformity with the practice in Turkey and to hand in his Cypriot passport. A failure to do so was punishable. The reason for this obligation was to render Turkish Cypriots indistinguishable from Turkish settlers. He estimates that 30,000 - 35,000 Turkish Cypriots have left Cyprus in order to escape unemployment, oppression and poverty.

He himself left Cyprus in 1987. His reasons for leaving were pressure felt due to the presence of Turkish soldiers, the arrival of Turkish settlers, financial problems caused by imports of cheap shoes from Turkey which undermined his business as a local shoemaker and threats by his partner's family for not marrying her, which was due to the fact that he was legally still married to a woman he had left.

He further left because he felt he could not freely express his political opinions in northern Cyprus, i.e. his support for the Turkish Republican Party. Members of opposition parties are generally persecuted. Although certain political parties do express their views in certain newspapers, like the Turkish Republican Party in the daily "Yeni Düzen", they cannot do so in full freedom. Indirect measures are taken to make life for opposition parties difficult, like sending men to public meetings to start fights.

Two persons he knew (he gave the identity of one) were beaten up after having attended a public meeting in Girne (Kyrenia) in 1985 for the opposition party to which they belonged. Another friend, Salih Hüseyin Çal, was beaten up during the 1990 election period. He was running as a candidate in the parliamentary elections for the party of Mr Alpay Durduran, who spoke against the authorities and who was the target of three bomb attacks. Mr Çal now lives in southern Cyprus. Mr Durduran still lives in the north. Another friend, Mr Murat Doksandokuz, who belonged to an opposition party in northern Cyprus and who had left for southern Cyprus, attempted to secretly cross to the north. He was caught by the police of northern Cyprus and ill-treated. The police checked him daily. After a couple of weeks he returned to southern Cyprus.

The sister of a gypsy friend, her husband and four children were forcibly evicted from their house in northern Cyprus, which had been left to them by their father who in 1994 had left for southern Cyprus. She further experiences difficulties in finding work. The witness alleges that this is also connected with the fact that this friend, who is living in southern Cyprus, is involved in political activities opposing Mr Denktash.

He stated that many Turkish settlers have been brought to northern Cyprus, mostly at election times to ensure the election of Mr Denktash. To this end they were allocated the best places to live and were provided with household appliances. He further related two incidents from his own experience in which Turkish settlers had been involved. Four or five settlers settled in his village Ortaköy. Most of them settled in villages and later in the area around Nicosia.

After having spent two years in the United Kingdom, he returned to southern Cyprus where he set up a shoe factory with the support of the authorities there. He was not forced to make any anti-Denktash statements before obtaining permission to settle in southern Cyprus. If needed, he receives welfare benefits in southern Cyprus.

Since 1987 he has not returned to northern Cyprus. He feels he cannot go there. He was told by a friend that, because he has publicly criticised Mr Denktash in southern Cyprus, his photograph is posted up at all border checkpoints and in police stations and that he risks being killed if caught by the police in northern Cyprus.

So far his family has not obtained permission to go to the Ledra Palace, where they could meet with him. He has not seen them since 1987 and his requests for a visit filed through the Peace Force have remained unanswered. After having filed numerous unsuccessful requests for permission to go to the Ledra Palace, the partner with whom he used to live in the north and their daughter were killed in Nicosia by the Turkish settler whom she had married in the meantime. This man has subsequently been convicted for these killings but allegedly only received a light sentence. He has not been allowed to visit their graves or to have their remains brought to southern Cyprus. They could not communicate by mail, as there is no mail service between southern and northern Cyprus.

He has a number of friends living in the south in a similar situation caused by their criticisms of Mr Denktash. About 150 Turkish Cypriots currently live in Limassol of whom he knows about 100. He receives news from the northern part via friends visiting the south and via friends in London. Most of those oppose the “Denktash regime”.

Before he left northern Cyprus in 1987, he stated that it was not possible to buy Greek Cypriot newspapers or to listen to Greek Cypriot music. It was not possible to openly watch Greek Cypriot television.

551. **Witness No. 16 proposed by the applicant Government, subsequently identified as Mr. Ibrahim Denizer.** The witness, a Turkish Cypriot, stated that he had been born in northern Cyprus. While doing a traineeship at a primary school in Farmagusta he noticed that gypsy children were not given a chance to speak in class and were to sit in the back rows.

He further stated that members of parties opposing the ruling National Unity Party were subjected to harassment and discrimination, for instance in the field of education and employment. After having joined the New Cyprus Party (chaired by Mr Alpay Durduran), which supports a federal solution to the Cyprus problem, he was placed under police surveillance (mail opened, telephone tapped, search of his house on two occasions). A brother of this party's chairman was arrested and ill-treated in relation to charges of counterfeit money, which the police had previously and openly planted in this person's shop.

He was further expelled from the East Mediterranean University in Farmagusta after having sat his final exams, allegedly for having answered an open exam question in a politically undesirable manner, i.e. reflecting negative views about the influence exerted by Turkey over northern Cyprus. He was subsequently admitted to the Middle East University in Nicosia.

In 1997, pending his studies at the Middle East University, he sent a letter from northern Cyprus to the President of the United States about the Cyprus problem and a letter to a friend in the USA. Shortly afterwards, he was arrested by the police and questioned at the political affairs branch in Farmagusta about the contents of these, apparently intercepted, letters and his reasons for sending them. His interrogators had a Turkish translation of his letter to the US President. Apparently the political affairs branch already had a file on him in which his political activities had been recorded. In the presence of the police, he printed a further copy of this letter from his computer at home and gave them computer diskettes. After the questioning, he was told that he had committed treason and was placed in detention. The next day, he was brought before the court in Farmagusta, where he was informed that he had been arrested for subversive activities and that he was prohibited from leaving the country. After having handed in his passport and identity card to the police, he was released. After his release he received telephone threats from unknown persons telling him that he had betrayed his country. A person working at the court where he had appeared further threatened him in the street.

After about six months the prohibition on travelling was partially lifted and his papers were returned to him on the condition that he would only travel to Turkey for educational purposes. On 24 September 1997, he left Cyprus for the United Kingdom, where he applied for asylum. His mother and two siblings still live in northern Cyprus. At that time, the proceedings against him were still pending. There is still a warrant for his arrest.

About nine days after his arrival in the United Kingdom, his letter to the US President was published in "Kıbrıs". He had not consented to such publication and did not know who transmitted this letter to "Kıbrıs".

552. **Witness No. 17 proposed by the applicant Government.** The witness stated that he had been born in northern Cyprus. He described how in the late seventies the authorities of northern Cyprus obliged all Turkish Cypriots to change their surnames. Otherwise they could not get any identity papers. People were told that a failure to do so was punishable. The reason for this obligation was to render Turkish Cypriots indistinguishable from Turkish settlers.

The witness estimated that, at present, there were about 35,000 - 40,000 Turkish soldiers in northern Cyprus. In his opinion they were very rude towards Turkish Cypriots and he gave a number of examples of such experiences between 1976 and 1990. The same applies to Turkish settlers. In his opinion, Turkish settlers do not integrate with Turkish Cypriots and display enmity towards the latter.

He joined the political organisation Halk-Der as a young person. In 1990, he joined the New Cyprus Party. He became the head of this party's branch in Lefke (northern Nicosia). In 1993 he was elected member of this party's assembly. During his entire political career he experienced harassment, which included arrest and subsequent interrogations, problems with finding employment as a civil servant caused by his political convictions. In his experience, only persons supporting Mr Denktash got jobs in the administration. He then opened a day care centre for children in 1985, which he had to close after more and more parents decided not to bring their children there anymore. In his opinion these parents were advised to do so on grounds of his known political sympathies. He received threats during the 1990 election period. Given these threats, he decided to send his spouse and son to London.

In 1993, shortly after a live television broadcast of a political debate in which Mr Alpay Durduran participated and brought up the subject of the presence of Turkish counter-guerrilla forces in Cyprus, 20 shots were fired at the New Cyprus Party building in Nicosia. Prior to that bombs had twice been planted in the car of the chairman of the New Cyprus Party. Also in the car of Mr Hürrem Tulga, head of the New Cyprus Party branch in Nicosia, a bomb had been planted at some point in time.

After this broadcast, the witness himself received death threats by telephone. He was also told by a friend that his telephone was being tapped. He further had the impression that he was being followed. In 1994, after a policeman he knew insulted and warned him, the witness decided to leave Cyprus for the United Kingdom where he applied for asylum.

He further stated that, although in the New Cyprus Party newspaper "Yeni Çağ" certain criticisms may be expressed, any statement to the effect that Cyprus is occupied by Turkey is absolute taboo.

553. **Witness No. 18 proposed by the applicant Government.** The witness stated that he is one of the founders of the Halk-Der movement in northern Cyprus. As from that moment his activities were placed under surveillance of the authorities of northern Cyprus.

About one-third of northern Cyprus consists of prohibited military areas. Everywhere in northern Cyprus are checkpoints at the entry and exit roads of major towns. They are manned by the Turkish army. The soldiers there are entitled to stop and question anyone about the reasons and destination of the journey. They take down the identity of the persons checked. Certain areas can only be entered with the permission of the Turkish military, like the Maronite village of Koruçam. At some point in time, the applicant's car was damaged by

a Turkish military vehicle driving on the wrong side of the road. He was given to understand that it was better not to seek trouble by filing a complaint, so he did not do so.

He further stated that the Turkish counter-guerrilla force is involved in large-scale monitoring of the population in northern Cyprus. To this end, they recruit Turkish Cypriots (including people he knows personally). After 1974 many Turkish settlers had been brought to Cyprus. In many villages they not only form the majority but are in fact the only inhabitants as in the villages of Yorga, Vasilia, Livera, Ahretou and Avlona (Gayretköy).

In 1977, he was arrested, interrogated and detained after having distributed Halk-Der leaflets in Lefkoşe which had caused a conflict with a group of students from Turkey. He was released after eight days. He was later convicted of breaching the peace and failure to carry his identity card. While doing his military service, friends told him that he was only to be assigned unimportant tasks as the file on him was not very good.

He joined the New Cyprus Party in 1990. Shortly after the founding of that party two consecutive bomb attacks took place on this party's chairman Alpay Durduran. Also a bomb attack on another party member took place. The message thus conveyed was to stop movements which advocate the wish to live together with the Greek Cypriots. In the 1993 parliamentary elections, he stood as a candidate for this party. Shortly after the publication of the candidate list, he started to receive telephone threats at work. Also members of his family were warned about his political activities and told to worry about his well-being. At one point in time he was seriously threatened by two men at his workplace, to the effect that he might be involved in a fatal traffic accident if he would continue with his political activities. At some later point in time, he was in fact involved in a traffic accident. A Turkish settler suddenly drove his lorry onto the road. The applicant was given to understand it was better not to pursue the matter in order not to make enemies. His complaints to the police did not lead to any tangible results. These threats also continued after the elections.

He was also arrested while putting up posters at bill-boards set up for this purpose. He was accused of putting up posters in places where that was not allowed. He was released the next day. He left Cyprus in 1994 for the United Kingdom, where he applied for asylum.

554**. Witness No. 22 proposed by the applicant Government.** The witness was born in 1971 in Mersin (Turkey) and settled with his parents in northern Cyprus in 1981-1982 where he received a northern Cyprus passport. He received a press-card from the Anadolu News Agency in Istanbul in 1991-1992. He does not belong to any political party. After having published an article in the newspaper "Kıbrıs" in which he expressed the view that Greek and Turkish Cypriots should live together and after having made a similar statement during a press conference, he started to be harassed. He received death threats from the "ülkücü" (Grey Wolves). These "ülkücü" are Turkish settlers. His house was stoned in 1996 and his car was burned. Furthermore his telephone was tapped. Most of the time he could hear the sound of a squeaking cassette while talking over the telephone.

At that time he was also running a shop in premises he rented from the State. He had invested in a cold storage system. Because of his political views, the authorities cancelled the lease and forced him to vacate this shop's premises. This forced him to cease this activity. Despite adequate qualifications, his spouse was unable to find employment as a civil servant. Six times the witness was arrested and held for some hours. On at least one occasion he was beaten with a stick. He appeared once before a military court concerning a matter relating to

his military obligations. Its President was a Turkish military commander, the other two judges were Cypriot military commanders. Whilst doing his military service in northern Cyprus, the applicant left Cyprus for the United Kingdom, where in May 1997 he applied for asylum.

555. **Witness No. 24 proposed by the applicant Government.** The witness states to be a gypsy born in 1964 in southern Cyprus. After 1974, like all gypsies, the witness together with the family went to northern Cyprus. Although the witness' father had left property behind in the south, he was never provided with any recognition of this by the authorities in the north, nor was he allocated a house by these authorities. The gypsy community's biggest problems are homelessness, unemployment, lack of education and discrimination. In schools, gypsy children are made to sit in the back rows and are, in general, ignored by teachers. The witness, after having been unable to answer a question in class, was once compared to an animal by a teacher, which the witness found to be deeply insulting. While a secondary school pupil the witness left school, no longer willing to bear the humiliating treatment in school. When, as an adult, the witness sought to enlist his own child in a school, this was refused. The reason given was that the area where the witness lived did not include this school. A neighbour's child, however, was accepted in this school.

After the witness' marriage in 1985, the couple applied for a house. The request was rejected. The witness took up residence in a dilapidated mud-brick house, without water, electricity or a toilet. When houses become too dilapidated, the authorities take them down. This happened in the area where the witness lived (Güzelyurt = Morphou). They forcibly took the one-room wooden shacks down, but the adjacent sheds were left untouched.

The witness as well as the witness' spouse were refused employment in a citrus packaging firm in Güzelyurt after they had declared that they were not members of the party of Mr Denktash, the National Unity Party. The witness and family are members of the Turkish Republican Party and of the trade union attached to this Party. The witness estimates that about 85% of all civil servants are Turkish settlers. The witness knows only one gypsy civil servant. He is a teacher.

The gypsy community also suffers from discriminatory treatment by the police. In 1991, the witness' spouse had been beaten up by a Turkish settler, who had intruded into their house in the middle of the night. When the police arrived at the scene, they took both the spouse and the intruder away. After having clarified the situation, the spouse was released. The witness later found out that the police had released the intruder and that no criminal proceedings had been brought against him. At some point in time one of the neighbours prohibited their children from playing with the witness' child. A conflict arose and the police arrived. The witness was arrested and detained for two days. The witness was only allowed to go to the toilet under humiliating supervision, which the witness refused. The witness was further subjected to humiliating remarks by one of the guards. At some later point in time, after having been released, the witness appeared before a court and was left off with a warning not to quarrel with the neighbours and not to land up with the police again. On another occasion, the police searched the witness' house in Güzelyurt and arrested the witness' spouse. They did not have a search or arrest warrant. The witness was not allowed to visit the spouse and the officers in charge of the detention place refused to inform the witness of the reasons for the spouse's arrest and detention. The spouse was released after four days.

In 1993, the witness left Cyprus for the United Kingdom and applied for asylum.

3) Evaluation of the evidence

556. The Commission first observes that it can only assess the evidence insofar as it relates to issues which have been declared admissible by the Commission in the present application (see para. 571 below).

557. The available evidence mainly consists of the testimony of witnesses heard by the Delegates of the Commission. Witnesses have been proposed by both parties. The Delegates heard all the witnesses proposed by the respondent Government on this aspect of the case while they were not able to hear all the witnesses proposed by the applicant Government who were requested to select a limited number of witnesses to be heard. In these circumstances it would be unfair to draw any conclusions from the fact that there were no more witnesses testifying on behalf of the applicant Government.

558. However, the majority of the Turkish Cypriot witnesses proposed by the applicant Government remained unidentified. While the Commission accepts the subjective reasons which prompted these witnesses not to disclose their identity, it nevertheless must take into account that details of their testimony could not be checked and contested by the respondent Government in the same way as would have been the case with witnesses whose identity had been made known to them beforehand. The Commission must accordingly adopt a cautious approach in evaluating these witnesses' evidence.

559. The Commission finds that, as a whole, all witnesses, including those who remained unidentified, made their depositions in a calm and fair manner which makes it difficult to put into doubt their personal sincerity. However, the perception of certain facts or events by the witnesses on both sides may have been influenced by their respective situation or functions and the strong views which most of them have on the Cyprus question in general. In the Commission's opinion it cannot be said that any of the witnesses showed a total lack of credibility in particular as regards the account which they gave of their own personal stories. The Commission will therefore base its evaluation mostly on the common points which have emerged from the various witnesses' testimony as a whole.

560. The evidence shows that the society of northern Cyprus is not homogeneous. In particular there seems to persist a cultural difference between the original Turkish Cypriot population and immigrants from Turkey most of whom arrived in Cyprus soon after the events of 1974, but who still continue to come to the country in considerable numbers. There is rivalry between the two groups in many respects, in particular in the areas of commerce and employment, which occasionally leads to social conflict. It seems to be the policy of the authorities to favour full integration of the immigrants which is resented by at least some of the Turkish Cypriots, including some of their political organisations and part of the press which have been able to publish adverse comments on the immigration policy.

561. It is not contested between the parties that there is also an important emigration movement from northern Cyprus, mainly to the UK. Different reasons are invoked for this, but it is clear that the generally bad economic situation in the "TRNC", an entity not recognised by the international community and whose economy depends to a large extent on support by Turkey, has contributed to this movement. It has been admitted by witnesses on both sides, including witness Mrs. Smith who acts as counsel in many asylum cases, that

certain requests for asylum are not genuine, but based upon fabricated stories. However, this does not exclude that there may also be cases where Turkish Cypriots leave their country out of true fear of political persecution. Witness Smith considered that the cases of several of her clients were in this category and referred to at least one case where upon appeal asylum was granted in the UK despite the latter's very restrictive asylum practice.

562. However, the result of asylum proceedings in other countries cannot be decisive for the Commission's evaluation. As regards the allegations of persecution of political opponents in northern Cyprus it must focus its attention primarily on the situation in northern Cyprus itself, as it presented itself during the period under consideration in the present case. In this context, the Commission notes that many of the incidents described by the witnesses heard by its Delegates occurred prior to the relevant date (cf. para. 130 above). Some of the witnesses (Mr. Lutfi-Emirsoylu, Mr Ayhan Mehmet and witness No. 24) in fact left northern Cyprus before that date. However, there are also several cases in which complaints are made in relation to facts which took place during the period under consideration.

563. In this respect, the Commission considers it convenient to distinguish between cases in which the main reason of the alleged political persecution is the opinion of the persons concerned and those cases in which the main reason is the fact that the persons concerned belong to an ethnical minority, i.e. the Turkish Cypriot gypsy community.

564. As regards the political opponents, the respondent Government have pleaded that those witnesses who claimed to have been subjected to harassment and detention because of their political views are not representative of the Turkish Cypriot society, that they all belong to one and the same political party and that they hold extremist views. The respondent Government, however, did not go beyond this characterisation of the witnesses concerned, in particular they did not comment on the measures which the witnesses said had been applied to them nor did they purport to provide any sort of justification of such measures. On the other hand the respondent Government submitted that there existed a multi-party democracy in the "TRNC", that all political parties could freely campaign for their views, and that there existed effective remedies in the "TRNC" courts for individual Turkish Cypriots whose rights had been violated.

565. The Commission notes from the evidence of the witnesses concerned (in particular Mrs. Smith, Mr. Denizer and witnesses Nos. 17, 18 and 22) that to a great extent the alleged harassment was not effected by the official Turkish Cypriot authorities, but by "civil gangs" or "activists of political parties". According to them discrimination was practised by private employers or other private persons. Mrs Smith also stated that in relation to such occurrences, including those in the public sector, responsibility was difficult to spot because of the "personalised character of the Turkish Cypriot society". It has not been shown that in relation to any of these facts proceedings had been brought in the courts or that there were legal or factual obstacles to bringing such proceedings. It is true that several witnesses made the point that complaints to the police were futile and that in some cases complaints actually laid with the police were not acted upon. However, while the Commission has no reason to doubt the correctness of the witnesses' assertion that in the few cases referred to the police the latter failed to act, it does not find it established beyond reasonable doubt that there is in fact a consistent administrative practice of the authorities in the "TRNC" including the courts of refusing any protection to political opponents of the ruling parties in such circumstances.

566. Insofar as it is alleged that the authorities themselves are involved in the harassment of political opponents by dispersing demonstrations and effecting short term arrests without subsequently bringing charges or by bringing fabricated charges, the Commission finds that it is not in possession of sufficient details concerning the incidents concerned which would allow it to form an opinion as to the justification or otherwise of the measures complained of. In any event, according to its understanding of the legal system of the "TRNC" *habeas corpus* proceedings would have been available to the persons concerned before the courts of the "TRNC" which, however, do not seem to have been instituted in any of those cases. As regards the rather spectacular case of witness Denizer, which was also reported in the Turkish Cypriot press, the Commission notes that criminal proceedings were instituted against him for what, according to the "TRNC" legal system, appears to be a serious offence. Nevertheless, he was not kept in detention and even allowed to travel to Turkey from where he could flee to the UK. The Commission notes that the criminal proceedings in question were still pending at the time of the witness' interrogation by the Delegates.

567. As regards the alleged discrimination and degrading treatment of members of the Turkish Cypriot gypsy community, the Commission again does not question the veracity of the witnesses' depositions. It notes that according to the evidence of Mr. Mene, who for some time acted as the spokesman of the gypsy community, the discrimination of this group is mainly a social phenomenon while the State aims, at least formally, to ensure their equal treatment. Reference has been made to some particularly grave incidents, including the pulling down of gypsy shacks in a riverbed near Morphou, and the refusal of airline companies to transport gypsies to the UK without a visa. In these cases the substantial facts are not contested, but no judicial remedies have apparently been taken.

568. As regards the applicant Government's remaining complaints, the Commission has not had before it any evidence of Turkish Cypriot civilians being subjected to the jurisdiction of military courts. Only one witness (No. 22) said that he had been tried by a military court, but this was in a matter relating to his military obligations and it is not clear whether the trial took place during the period under consideration in the present case. As regards the alleged prohibition on the circulation of Greek language newspapers in northern Cyprus, the Commission refers to its finding above (para. 425) according to which this allegation has not been substantiated. As to the alleged denial of the right of Turkish Cypriots to freely associate with Greek Cypriots, the Commission also refers to its above finding (para. 429) according to which there has been no concrete evidence of the establishment of bi-communal associations having been prevented during the period under consideration. However, according to the relevant UN documents obstacles have been placed in the way of bi-communal meetings during that period, in particular by the refusal of the participation of Turkish Cypriots in bi-communal events in southern Cyprus. Finally, as regards the alleged failure of the Turkish Cypriot authorities to allow Turkish Cypriots to return to their properties in southern Cyprus, no concrete instances have been mentioned of any persons who wished to do so during the period under consideration.

D. Opinion of the Commission

1) Scope of the Commission's examination

569. The Commission recalls application No. 8007/77, where it had before it complaints by the applicant Government about continuous violations of the rights of Turkish Cypriots living in northern Cyprus, including systematic acts of violence, threats, insults and other oppressive acts by Turkish settlers encouraged and countenanced by the presence of Turkish troops, and prevention of any return by Turkish Cypriots to their homes and properties in the Government-controlled area. It was alleged that these acts constituted continuous violations of Articles 3, 5, 6 and 8 of the Convention and of Article 1 of Protocol No. 1 (1983 Report, D.R. 72, p. 49, para. 163). The respondent Government qualified these allegations as propaganda (*ibid*. para. 164). The Commission, having regard to the material before it, found that it did not have sufficient available evidence enabling it to come to any conclusion regarding this complaint (*ibid*. p. 50, para. 165).

570. In view of this finding, the applicant Government have now submitted extensive evidence on the situation of Turkish Cypriots in northern Cyprus which they claim is sufficient to establish violations of the Convention in several respects. The Commission notes, however, that the original complaints submitted by the applicant Government in the present application differ somewhat from those in the previous application and that they were considerably expanded at the merits stage of the proceedings (cf. para. 519 above). The Commission is therefore required to determine to which extent it can deal with the applicant Government's complaints as developed after the admissibility decision (cf. para. 520 above).

571. In this respect, the Commission refers to its considerations above (para. 216) according to which the scope of its examination of the merits is circumscribed by the facts or aggregate of facts covered by the admissibility decision without the Commission being bound by their initial legal qualification. On this basis the Commission now finds in relation to the issues under consideration here that it cannot entertain most of the additional complaints set out in para. 519 above as they are in no way covered by the admissibility decision. The Commission will, however, include in its examination those aspects of the present situation of Turkish Cypriots in northern Cyprus which may be regarded as being inherently covered by the admissibility decision, as described in the mandate to the Commission's Delegates concerning the scope of their investigations (para. 521 above). This means in particular that the Commission will deal with various aspects of the alleged treatment of political opponents (ill-treatment, actual detention, harassment and interference with family life, restriction of their freedom of expression and assembly) which initially had been put before it only as a matter of their "security of person" under Article 5 of the Convention. The Commission will then deal with the allegations concerning the Turkish Cypriot gypsy community (including the allegation of discrimination which had already been mentioned at the admissibility stage) and finally with the remaining complaints.

2) Complaints relating to political opponents

572. The applicant Government complain of administrative practices directed against Turkish Cypriots who are political opponents of the ruling parties in northern Cyprus and which allegedly subject them to inhuman or degrading treatment (Article 3 of the Convention), interfere with their security of person (Article 5), their private and family life (Article 8), and their freedom of expression (Article 10) and assembly (Article 11). The

respondent Government, without making specific submissions concerning the particular complaints, in substance deny these allegations.

573. The Commission has found credible indications that prior to and during the period under consideration certain activists of opposition political parties have in fact experienced difficulties in connection with their political activities. It cannot exclude that in individual cases their rights under the above Convention Articles have in fact been interfered with. However, many of the interferences have been the acts of private persons against which no remedies were taken by the persons concerned in the courts of the "TRNC". In cases where the persons concerned were - sometimes repeatedly - subjected to short periods of actual detention, they did not make use of *habeas corpus* proceedings. Likewise, they did not introduce court remedies against allegedly unlawful other acts of the "TRNC" police or administrative authorities. The Commission considers that it has not been shown beyond reasonable doubt that all of these remedies would have been ineffective and that there is accordingly an administrative practice by the "TRNC" authorities including the courts of refusing any legal protection to the persons concerned. The Commission recalls in this context that in case of doubt as to the effectiveness of particular remedies the victims of alleged violations of violations of the Convention are required to make use of these remedies.

Conclusion

574. The Commission concludes, by 19 votes to one, that there has been no violation of the rights of Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10 and 11 of the Convention by reason of failure to protect their rights under these provisions.

3) Complaints concerning the Turkish Cypriot gypsy community

575. The applicant Government complain that the Turkish Cypriot gypsy community is severely discriminated against by administrative practices in the fields of education, housing, employment, transport and property allocation. They also refer to cases of unjustified detention and ill-treatment and allege violations of Articles 3 (inhuman or degrading treatment), 5 (security of person), 8 (interference with home and private and family life) and 14 of the Convention (discrimination in the enjoyment of Convention rights) as well as of Articles 1 (peaceful enjoyment of possessions) and 2 of Protocol No. 1 (right to education). The respondent Government deny these allegations.

576. The Commission has found indications that in fact many members of the gypsy community of northern Cyprus live in very poor conditions and experience difficulties of the sort alleged by the applicant Government. However, most of the incidents reported by the witnesses occurred prior to the period under consideration in the present case. It is true that during that period there have been individual cases of hardships such as the demolition of the houses of a gypsy community near Morphou upon order of the local authorities, the refusal of airline companies to transport gypsies without a visa, and humiliation of gypsy children in school. However, it appears that in all these cases available domestic remedies have not been exhausted. Moreover, the Commission does not find it established beyond reasonable doubt that there is a deliberate practice of the authorities in northern Cyprus to discriminate against gypsies or to withhold protection against social discrimination. The Commission further observes that the applicant Government's complaints under Articles 1

and 2 of Protocol No. 1 cannot be entertained since they were only introduced at the merits stage of the proceedings and are not in substance covered by the admissibility decision.

Conclusion

577. The Commission concludes, by 13 votes to 7, that there has been no violation of the rights of members of the Turkish Cypriot gypsy community under Articles 3, 5, 8 and 14 of the Convention by reason of failure to protect their rights under these Articles.

4) The remaining complaints

a) Article 6 of the Convention[12]

578. The applicant Government complain under Article 6 of the Convention that the military courts in northern Cyprus, which are also competent for certain matters concerning civilians, are not independent and impartial as required by this provision. The respondent Government have not made any specific submissions in relation to this complaint. In the context of their submissions on the legal system of the "TRNC" they have, however, provided certain information on the organisation of the military courts in northern Cyprus (cf. para. 110 above).

579. In the light of this information, the Commission notes that military officers appointed by the Security Forces Command (first instance) or the Security Forces Commander (second instance) are members of those courts alongside with civilian judges. In view of this composition of the courts in question the Commission has doubts as to their conformity with the requirements of Article 6 (cf. Eur. Court HR, Incal judgment of 9 June 1998, Reports 1998- IV, pp. 1571 - 1573, paras. 65 - 73). However, it has not been established that during the period under consideration in the present case any proceedings, and in particular proceedings against civilians, in fact took place before these courts. The Commission therefore considers that it has not been established that during this period there has been a violation of Article 6 in this respect.

580. The Commission notes that after the decision on admissibility the applicant Government have submitted additional complaints under Article 6. They allege in essence that excessive immunity is being granted from civil jurisdiction of the "TRNC" courts, the members of the Turkish military forces being liable only in military courts of the Republic of Turkey. Furthermore it is alleged that Turkish Cypriot civilians are being actively discouraged from bringing civil lawsuits against members of the military forces and the police. However, the Commission cannot entertain these complaints which are beyond the scope of the admissibility decision.

Conclusion

581. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 6 of the Convention in that Turkish Cypriot civilians living in northern Cyprus were tried by military courts lacking independence and impartiality.

[12] For the relevant text of Article 6, see para. 440 above.

b) Article 10 of the Convention[13]

582. The applicant Government complain of a violation of Article 10 of the Convention in that the right to receive information of Turkish Cypriots living in northern Cyprus was interfered with by a prohibition on the circulation of Greek language newspapers. The respondent Government deny the existence of such restrictions.

583. The Commission refers to its finding above (para. 457) according to which the existence of restrictions on the circulation of Greek language newspapers in northern Cyprus has not been substantiated.

584. The Commission notes that at the merits stage of the proceedings the applicant Government have invoked Art. 10 also in other respects, claiming in particular a chilling effect on the press by oppressive measures taken against critical Turkish Cypriot journalists, such as the murder of Mr Adali, allegedly instigated or tolerated by the authorities. These complaints, however, are not covered by the admissibility decision. In particular the murder of Mr Adali is a distinct fact which occurred after the date of that decision and which therefore is outside the scope of the present case. Insofar as it is alleged that there has also been an interference with the freedom of expression of political opponents to the regime in northern Cyprus, the Commission refers to its findings in para. 573 above.

Conclusion

585. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 10 of the Convention by virtue of restrictions on the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek language press.

c) Article 11 of the Convention[14]

586. The applicant Government complain of a violation of Article 11 of the Convention by reason of restrictions on the right of Turkish Cypriots living in northern Cyprus to freely associate themselves with Greek Cypriots and others from the Government-controlled area. The respondent Government in essence contest this allegation.

587. The Commission refers to its observations above concerning similar complaints relating to Greek Cypriots living in northern Cyprus (cf. para. 463). Nothing has been brought to its attention to the effect that during the period under consideration there have been attempts by Turkish Cypriots living in northern Cyprus to establish associations with Greek Cypriots in the northern or southern parts of Cyprus which were prevented by the authorities. The Commission therefore considers this complaint as being unsubstantiated.

588. The Commission notes that at the merits stage of the proceedings the applicant Government also submitted complaints in relation to restrictions of the right to freedom of assembly of Turkish Cypriots living in northern Cyprus. In particular it has been alleged that

[13] For the text of Article 10, see para. 456 above.
[14] For the text of Article 11, see para. 462 above.

there have been impediments to their participation in bi-communal events. The Commission notes that the relevant UN documents in fact mention such impediments which were placed in the way of intercommunal meetings as from the second half of the year 1996. However, this relates to distinct facts which occurred after the date of the admissibility decision in the present case and which therefore are not covered by it. The Commission accordingly cannot entertain this complaint.

Conclusion

589. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 11 of the Convention by interference with the right to freedom of association of Turkish Cypriots living in northern Cyprus.

d) Article 1 of Protocol No 1[15]

590. The applicant Government complain that there is a continuing violation of Article 1 of Protocol No. 1 by reason of failure to allow Turkish Cypriots living in northern Cyprus to return to their properties in the southern part of Cyprus. They further complain about a continuous infringement of Turkish Cypriots' right to enjoy their possessions by reason of criminal conduct which the authorities allegedly condone. The respondent Government deny these allegations, claiming in particular that it is an unrealistic assumption that any Turkish Cypriots living in the northern part of the island actually wish to return to southern Cyprus and that they would be allowed by the authorities of the applicant Government to claim back their property there. They have also submitted that in the "TRNC" effective remedies are generally available to Turkish Cypriots.

591. The question whether there is interference by the respondent Government with Turkish Cypriot property rights in southern Cyprus is not symmetrical to the similar issue raised in respect of displaced Greek Cypriots (cf. paras. 311-322 above). The measures taken by the authorities of the applicant Government for the administration of Turkish Cypriot property in the south (which the respondent Government claim are analogous to those applied to Greek Cypriot property in the north) are not in issue here. However, the Commission notes that due to the land allocation system operated in northern Cyprus, Turkish Cypriots living there have generally transferred their claims to property in southern Cyprus to the "TRNC" in return for property which they received in the north. It is alleged that this was done under compulsion and that for the purposes of the Convention the persons concerned must therefore still be regarded as the legal owners of the property left behind in southern Cyprus. If that should be true, the measures taken by the northern Cypriot authorities would not have validly deprived the Turkish Cypriot owners of the control of their properties in the south and as the applicant Government do not recognise the legal validity of their transactions with the northern authorities such control could also effectively be exercised by them if they wished to so. The only impediment for which the respondent Government could be held responsible in this respect is interference with their access to the property situated in southern Cyprus, insofar as the freedom of movement of Turkish Cypriots to the south is restricted. Assuming that the impossibility of access to property as a consequence of restrictions on freedom of movement might bring those restrictions within the scope of Article 1 of Protocol No. 1 (cf. Loizidou v. Turkey (merits) judgment of 18 December 1996, *loc. cit.*), the Commission notes that in any event no cases have been brought to its attention where during the period under consideration

[15] For the text of Article 1 of Protocol No. 1, see para. 310 above.

in the present application Turkish Cypriots living in northern Cyprus made attempts to accede to their property in southern Cyprus and were prevented from doing so. The Commission therefore finds that the above complaint is unsubstantiated.

592. As regards the further complaint of unlawful interference with the property of Turkish Cypriots living in northern Cyprus by private persons, the Commission notes that although this complaint was not expressly mentioned in the admissibility decision, it has already been submitted at the admissibility stage of the proceedings. However, the Commission considers that sufficient remedies exist in northern Cyprus in this respect. In any event it does not consider it established that there exists an administrative practice by the authorities of systematically condoning such interferences.

Conclusion

593. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 1 of Protocol No. 1 by reason of failure to secure enjoyment of their possessions to Turkish Cypriots living in northern Cyprus.

e) Article 13 of the Convention[16]

594. The applicant Government complain that there is a violation of Article 13 of the Convention in that there are no relevant or sufficient remedies available to the Turkish Cypriots living in northern Cyprus as regards the interference with their above Convention rights. The respondent Government claim that effective remedies are generally available to Turkish Cypriots in northern Cyprus.

595. The Commission recalls the information which the respondent Government have provided on the legal system of the "TRNC" (cf. paras. 106 - 111 above). It considers that generally speaking the remedies provided by this legal system appear sufficient to provide redress against any alleged violation of Convention rights. In particular, in its examination of the various complaints raised in the present application in relation to the rights of Turkish Cypriots it has found unsubstantiated the allegation that there exist administrative practices of withholding legal protection from certain groups of persons. Moreover, the special considerations which have prompted the Commission to find that no effective remedies exist in northern Cyprus for certain complaints of Greek Cypriots (para. 505 above) do not apply in the case of Turkish Cypriots. It follows that this complaint must be rejected.

Conclusion

596. The Commission concludes, by 19 votes to one, that during the period under consideration there has been no violation of Article 13 of the Convention by reason of failure to secure effective remedies to Turkish Cypriots living in northern Cyprus.

[16] For the text of Article 13, see para. 325 above.

RECAPITULATION OF CONCLUSIONS

A. General and preliminary considerations

597. The Commission concludes, unanimously, that the applicant Government have *locus standi* to bring an application under Article 24 of the Convention against the respondent Government (para. 73).

598. The Commission concludes, unanimously, that the applicant Government have a legitimate legal interest to have the merits of the present application examined by the Commission (para. 87).

599. The Commission concludes, unanimously, that the facts complained of in the present application fall within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent Government's responsibility under the Convention (para. 103).

600. The Commission concludes, by 19 votes to one, that for the purposes of former Article 26 of the Convention remedies available in northern Cyprus are to be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of those remedies is to be considered in the specific circumstances where it arises (para. 128).

601. The Commission concludes, unanimously, that no further issue arises as to the respect of the six months time-limit, as laid down in former Article 26 of the Convention (para. 131).

B. Greek Cypriot missing persons

602. The Commission concludes, unanimously, that there has been no breach of Article 4 of the Convention (para. 196).

603. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 5 of the Convention by virtue of actual detention of missing Greek Cypriot persons (para. 212).

604. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 5 of the Convention by virtue of a lack of effective investigation by the authorities of the respondent State into the fate of missing Greek Cypriot persons in respect of whom there is an arguable claim that they were in Turkish custody at the time when they disappeared (para. 213).

605. The Commission concludes, unanimously, that it has power to examine the question of the missing Greek Cypriot persons in the light of Article 2 of the Convention, that this provision is applicable and that it has been violated by virtue of a lack of effective investigation by the authorities of the respondent State (para. 225).

606. The Commission concludes, unanimously, that there has been a continuing violation of Article 3 of the Convention in respect of the missing persons' relatives (para. 236).

607. The Commission concludes, unanimously, that it is not necessary to examine whether Articles 8 and/or 10 of the Convention have been violated in respect of the missing persons' relatives (para. 237).

C. Home and property of displaced persons

608. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 8 of the Convention by the refusal to allow the return of any Greek Cypriot displaced persons to their homes in northern Cyprus (para. 272).

609. The Commission concludes, unanimously, that it is not necessary to examine whether there has been a further violation of Article 8 of the Convention by the change of the demographic and cultural environment of the displaced persons' homes in northern Cyprus (para. 273).

610. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 1 of Protocol No 1 by virtue of the fact that Greek Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights (para. 322).

611. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention by reason of failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1 (para. 328).

612. The Commission concludes, by 19 votes to one, that there has been a violation of Article 14, in conjunction with Article 8 of the Convention and Article 1 of Protocol No 1, by virtue of discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for their homes and to the peaceful enjoyment of their possessions (para. 336).

613. The Commission concludes, unanimously, that it is not necessary to examine whether this discrimination also constituted inhuman or degrading treatment within the meaning of Article 3 of the Convention (para. 337).

D. Living conditions of Greek Cypriots in northern Cyprus

614. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 2 of the Convention by virtue of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus (para. 435).

615. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 5 of the Convention in respect of Greek Cypriots living in northern Cyprus (para. 438).

616. The Commission concludes, by 17 votes to three, that during the period under consideration there has been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus (para. 448).

617. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus (para. 454).

618. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in that schoolbooks destined for use in their primary schools were subject to excessive measures of censorship (para. 460).

619. The Commission concludes, unanimously, that during the period under consideration there has been no violation of the right to freedom of association under Article 11 of the Convention in respect of Greek Cypriots living in northern Cyprus (para. 466).

620. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that in case of their death inheritance rights of persons living in southern Cyprus were not recognised (para. 472).

621. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 1 of Protocol No. 1 by failure to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons (para. 473).

622. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that no appropriate secondary school facilities were available to them (para. 479).

623. The Commission concludes, unanimously, that during the period under consideration there has been a violation of the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention (para. 490).

624. The Commission concludes, unanimously, that during the period under consideration there has been no violation of the right of Greek Cypriots living in northern Cyprus to respect for their correspondence, as guaranteed by Article 8 of the Convention (para. 491).

625. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment (para. 499).

626. The Commission concludes, unanimously, that it is not necessary to examine whether during the period under consideration there has been a violation of Article 14 of the Convention in respect of Greek Cypriots living in northern Cyprus (para. 502).

627. The Commission concludes, by 18 votes to two, that there has been no violation of Article 13 of the Convention in respect of interferences by private persons with the rights of

Greek Cypriots living in northern Cyprus under Articles 8 of the Convention and Article 1 of Protocol No. 1 (para. 506).

628. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1 (para. 507).

E. The right of displaced Greek Cypriots to hold free elections

629. The Commission concludes, unanimously, that there has been no violation of the displaced Greek Cypriots' right to hold free elections as guaranteed by Article 3 of Protocol No. 1 (para. 515).

F. Complaints relating to Turkish Cypriots

630. The Commission concludes, by 19 votes to one, that there has been no violation of the rights of Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10 and 11 of the Convention by reason of failure to protect their rights under these provisions (para. 574).

631. The Commission concludes, by 13 votes to 7, that there has been no violation of the rights of members of the Turkish Cypriot gypsy community under Articles 3, 5, 8 and 14 of the Convention by reason of failure to protect their rights under these Articles (para. 577).

632. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 6 of the Convention in that Turkish Cypriot civilians living in northern Cyprus were tried by military courts lacking independence and impartiality (para. 581).

633. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 10 of the Convention by virtue of restrictions on the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek language press (para. 585).

634. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 11 of the Convention by interference with the right to freedom of association of Turkish Cypriots living in northern Cyprus (para. 589).

635. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 1 of Protocol No. 1 by reason of failure to secure enjoyment of their possessions to Turkish Cypriots living in northern Cyprus (para. 593).

636. The Commission concludes, by 19 votes to one, that during the period under consideration there has been no violation of Article 13 of the Convention by reason of failure to secure effective remedies to Turkish Cypriots living in northern Cyprus (para. 596).

M.-T. SCHOEPFER
Secretary to the Commission

S. TRECHSEL
President of the Commission

**PARTLY DISSENTING OPINION OF MR S. TRECHSEL
ON ARTICLE 14 OF THE CONVENTION
(In relation to para. 336 of the Report)**

Contrary to the opinion of the majority of the Commission I am of the opinion that Article 14 does not apply at all in a case where a violation of the Convention has already been found. In fact, the Commission is called upon to make a choice between two alternatives: either a particular guarantee of the Convention has been violated or not. If one of the guarantees set out in the substantive provisions of the Convention or the Protocols is found to have been violated, there is no room for an additional finding according to which the violation is aggravated by an element of discrimination.

I concede that discrimination in itself could constitute a wrong, amounting to the violation of a human right. As the Commission held in the present case, the pattern of behaviour of the Turkish Cypriot authorities in Cyprus, by discrimination, violated the right under Article 3 of the Convention of the whole Greek Cypriot community in the northern area of the country. However, Article 14 prohibits discrimination only in connection with "the enjoyment of the rights and freedoms set forth" in the Convention. This wording is to be read in the sense that only where an unreasonable differentiation is made between individuals both enjoying, though to a varying degree, the rights and freedoms set forth in the Convention, can there be discrimination. Such might be the case, for instance, in a discriminate interference with one of the rights set forth in Articles 8-11 in circumstances covered by paragraph 2 of these Articles. As soon as there has been a violation of the Convention, however, the very concept of discrimination/reasonable differentiation becomes meaningless.

PARTLY DISSENTING OPINION OF MR E. BUSUTTIL

I demur from the conclusion reached by the majority in paragraph 448 of the Report that there has been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus.

Article 6 demands that courts be "established by law" in order to satisfy the requirements of the Convention. The crucial question here, therefore, is whether the courts in northern Cyprus are courts "established by law", having regard to the precarious international law status of the TRNC.

To my mind, the reference to law in the phrase "established by law" cannot be simply a reference to domestic law, particularly in an inter-State application of this type. The lawfulness of the judicial system in question must necessarily be compatible with the principles of general international law as also, in the instant case, with the specific treaty obligations incurred by Turkey at the time of the creation of the independent State of Cyprus in 1960.

The term "law" in Article 6 must be read in conjunction with the bold affirmation of the Contracting States in the Preamble that the Rule of law is part and parcel of their common heritage. And if this is so, it appears to me impossible to distinguish between the Rule of law as a domestic concept and the Rule of law as a common international concept in a European setting. The two merge inevitably into one indivisible concept.

The majority in paragraph 444 place reliance on the Constitution of the TRNC as the established law in northern Cyprus, but the European Court in its Merits judgment in the Loizidou Case has stated that "the international community considers that the Republic of Cyprus is the sole legitimate Government of the island and has consistently refused to accept the legitimacy of the TRNC as a State within the meaning of International law" (para. 56).

To me this can only mean that the legal and judicial systems established by the TRNC, and presently in force in northern Cyprus, emanate from an unlawful regime which is incapable of generating legality. While taking into account the view expressed by the I.C.J. in its Advisory Opinion in the Namibia case to the effect that International law recognises the legitimacy of certain legal requirements and transactions, for instance, the registration of births, deaths and marriages the effects of which can be ignored only to the detriment of the inhabitants of the territory concerned, it is a matter of considerable doubt if this limited exception can apply generally to the establishment in such territory of a judiciary which is called upon to operate in a "legal" environment which is itself detrimental to the inhabitants in that a number of their fundamental rights have already been found by the majority in the present Report to have been violated.

PARTLY DISSENTING OPINION OF MR C.L. ROZAKIS

While I agree with most of the findings and conclusions of the Commission with regard to the complaints of the applicant Government, I find myself unable to agree with five of its conclusions; namely a) that during the period under consideration there has been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus; b) that there has been no violation of Article 13 of the Convention in respect of interferences by private persons with the rights under Article 8 of the Convention and Article 1 of Protocol No. 1 of Greek Cypriots living in northern Cyprus; c) that there has been no violation of the rights under Articles 3, 5, 8, 10 and 11 of the Convention of Turkish Cypriots who are opponents of the regime in northern Cyprus by reason of failure to protect their rights under those provisions; d) that there has been no violation of Article 13 of the Convention by reason of failure to secure effective remedies to Turkish Cypriots living in northern Cyprus; and e) finally, that there has been no violation of the rights of the Turkish Cypriot gypsy community under Article 8 of the Convention by reason of failure to protect their rights under that Article. With regard to the last complaint I have joined in the dissenting opinion of Mrs J. Liddy, with whose reasoning I fully agree.

The point of departure for my dissent with regard to the first four conclusions reached by the Commission and referred to above is that I am unable to agree that the means of recourse offered by Turkey can be considered effective for Greek Cypriots living in the northern part of Cyprus or Turkish Cypriots living in the same area who oppose the regime; they are ineffective because in the eyes of those two categories of the local population they lack independence and impartiality.

In explaining my preference for a finding of violation with regard to the above-mentioned complaints, I would start by acknowledging my agreement with the Commission (which has in this respect followed the case-law of the European Court of Human Rights, engendered by the Loizidou case) that Turkey is responsible under the Convention for all the matters complained of in this interstate application, since they all fall within its jurisdiction within the meaning of Article 1 of the Convention. I also agree with its finding that "the Convention is an instrument which is intended to protect rights that are practical and effective..." and that it "must in principle take into account, for the purposes of former Article 26, any effective remedies which Turkey's subordinate local administration in northern Cyprus holds available for victims of alleged violations of the Convention" (para. 125 of the Report). My interpretation of that sentence, and the reason which led me to vote for the finding in question, is that in circumstances of military occupation which lasts for a considerable period of time the occupying power has the obligation either to allow the unimpeded operation of the existing institutions serving the population of the occupied territory or to take measures, in situations where the normal functioning of such bodies cannot practically be assured, to establish similar institutions to serve the interests of the people living there. It goes without saying that, regardless of whether the occupying State opts for the first or the second alternative – according to the circumstances – it remains, in the eyes of international law and the European Convention on Human Rights, responsible for the acts or omissions of such authorities. It must also be added that the fact that a State occupying the territory of another State establishes a local administration to deal with the exercise of power in that territory may by no means lead to a legitimisation, under international law, of the act of forcible retention of the territory of another State.

Hence, I accept that the authorities in the northern part of Cyprus (what the Commission calls "the subordinate local administration of Turkey") are, as a *fictio juris*, Turkish authorities. No distinction may be made between the Turkish authorities operating on the Turkish mainland and those operating in the occupied territory of the Republic of Cyprus. For this reason the means of recourse provided by the latter may be considered, for the purposes of Articles 6 and 13 of the Convention, as "local remedies" of Turkey.

Yet the fact that the Commission has accepted that the means of recourse offered by the subordinate local authorities in northern Cyprus are Turkish domestic remedies does not make them automatically effective or – as a consequence – subject to exhaustion before an application is placed in the Strasbourg system. A number of preconditions must be satisfied before a local remedy reaches the level of being assessed as effective. The requirement that the remedy must be established by law is one of them; another, on which I rely to found my dissent, is the requirement of independence and objective impartiality – mainly on the part of the judiciary, in the circumstances of the case.

The Commission, in dealing (paras. 439 onwards) with the applicant Government's complaint under Article 6 of the Convention, the *omnibus* provision regarding the issue of recourse, examined both whether the tribunals in the northern part of Cyprus, when dealing with the civil rights of Greek Cypriots, were "established by law" and whether they could be considered as independent and impartial. On both counts the Commission found that the requirements of Article 6 were satisfied.

I have my doubts whether in the circumstances of this case we may accept that the requirement of Article 6 to secure that a tribunal be established by law is satisfied, and I share these doubts with my other dissenting colleagues; however, I consider that – despite the Commission's downgrading of this issue – the main problem here is whether we may conclude that the local tribunals can be regarded as independent and objectively impartial.

Indeed, if one reads the Commission's Report in its entirety, one realises that the Commission itself concludes, on the basis of forceful reasoning, that there have been violations of Convention rights which are closely intertwined with the essence of the independence and impartiality of the courts. The Commission, concludes, for instance, that there have been violations of Article 1 of Protocol No. 1 by virtue of the fact that Greek Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property (para. 322); of Article 13 by reason of the failure to provide Greek Cypriots not residing in northern Cyprus with any means of challenging interferences with their rights under Article 8 and Article 1 of Protocol No. 1 (para. 328); of Article 8 and Article 1 of Protocol No. 1 by virtue of discrimination against Greek Cypriots not living in northern Cyprus as regards their right to respect for their homes and to the peaceful enjoyment of their possessions (para. 336); of Article 9 in respect of Greek Cypriots living in northern Cyprus (para. 454); of Article 10 in respect of Greek Cypriots living in northern Cyprus in that schoolbooks for use in their primary schools were subjected to excessive censorship measures (para. 460); of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in the case of their permanent departure from that territory and that in the case of their death, inheritance rights of persons living in southern Cyprus were not recognised (para. 472); of Article 8 in respect of the same group with regard to respect for their private life and their home (para. 490); and, finally, of Article 3 in that the Greek

Cypriots living in northern Cyprus have been subjected to discrimination amounting to degrading treatment (para. 499).

The Commission's reasoning in finding violations is specifically developed, in respect of each complaint, in the respective paragraphs that I have referred to. The passages on the violation of Article 3, however, summarise with admirable precision the grounds upon which that finding rests:

> "497. With regard to the facts of the present case, the Commission has found above that during the period under consideration there has been interference with the rights of Greek Cypriots living in northern Cyprus under several provisions of the Convention. In particular it has found (para. 489 above) that the general living conditions of Greek Cypriots living in northern Cyprus are such that there is an aggravated interference with their right to respect for their private and family life and for their home. The Commission notes that also during the period under consideration in the present case all these interferences concerned exclusively Greek Cypriots living in northern Cyprus and were imposed on them for the very reason that they belonged to this class of persons. In these circumstances the treatment complained of was clearly discriminatory against them on the basis of their "ethnic origin, race and religion". While the predominant factor here is ethnic discrimination, the Commission considers that the principle stated in the East African Asians' case in relation to racial discrimination based on colour is applicable in the same manner.
>
> 498. ... In the present case the Commission notes that the general living conditions of Greek Cypriots resident in northern Cyprus were imposed on them in pursuit of an acknowledged policy aiming at the separation of the ethnic groups in the island in the framework of a bi-communal and bi-zonal arrangement. This policy has led to the confinement of the Greek Cypriot population still living in northern Cyprus (other than Maronites) within a small area of the Karpas peninsula. There is a steady decrease of their numbers as a result of specific measures which prevent the renewal of the population. Moreover, their property is confiscated if they die or leave the area. As it was noted in the UN humanitarian review (cf. para. 387 above), the restrictions imposed on them have the effect of ensuring that 'inexorably with the passage of time, those communities (will) cease to exist in the northern part of the island'. The Commission considers that despite recent improvements in certain respects the hardships to which the Greek Cypriots living in the Karpas area of northern Cyprus were subjected during the period under consideration still affected their daily life to such an extent that it is justified to conclude that the discriminatory treatment complained of attained a level of severity which constitutes an affront to their human dignity."

I wonder whether the position taken by the Commission in finding violations on all the grounds I have referred to, and which are recapitulated in its reasoning concerning the violation of Article 3, can be easily reconciled with the view that, despite those findings, the courts in northern Cyprus are independent and objectively impartial when they deal with the cases of Greek Cypriots. In other words, the question arises to what extent Greek Cypriots can really believe that, in the hostile environment in which they live, under a policy tending towards complete national separation, the only authority which remains outside this well-

orchestrated policy is the judiciary. The legislative authority is discriminating, the executive authority is discriminating; and yet the judicial authority, composed of persons from the same national bodies, remains the sole guarantor of the protection of a small minority threatened with extinction. I think that such a proposition is unrealistic and not at all consonant with the other findings of the Commission. For these reasons, I believe that the courts in northern Cyprus cannot be considered independent from the other authorities there and that they lack objective impartiality insofar as Greek Cypriots are concerned – a belief which, after all, seems to be shared by the individuals concerned, who do not make real use of the remedies provided by those courts.

For the same reasons, I believe that Article 13 has been violated in respect of interferences by private persons with the rights under Article 8 of the Convention and Article 1 of Protocol No. 1 of Greek Cypriots living in northern Cyprus.

With regard to the Turkish Cypriot opponents of the regime, I have the same misgivings concerning the protection of their rights by the local administration, in view of the particular political situation prevailing in northern Cyprus and the desire of the current regime to achieve its goal of ethnic separation in the area. It seems that views opposing that aim are not very welcome to the regime. Hence, since the Commission's findings of non-violation of the substantive Articles relied on are based mainly on the argument that the opponents of the regime could have aired their grievances through the remedies available to them in northern Cyprus, I am also obliged to dissent from those findings. The same, of course, applies with regard to Article 13 in respect of Turkish Cypriots who oppose the regime.

PARTLY DISSENTING OPINION OF MRS J. LIDDY JOINED BY MR S. TRECHSEL, MRS G.J. THUNE, MM C.L. ROZAKIS, D. ŠVÁBY, G. RESS AND A. PERENIČ

As to Article 8 (para. 577 of the Report)

The applicant Government's complaints under this heading include a complaint of interference with the homes and private and family lives of the Turkish Cypriot gypsy community. They refer to the demolition of the houses of a gypsy community near Morphou upon the order of the local authorities. There was witness evidence that this had been done without any prior warning allegedly for reasons of hygiene. Adjacent similar shacks of other inhabitants of the village had not been removed. The gypsies ended up living in the open air.

The respondent Government have not pointed to any remedy that would compel the authorities to provide adequate alternative accommodation for the gypsies prior to the demolition of their shacks or that, after the event, would have been realistically available and effective in providing alternative accommodation speedily.

In Buckley v. United Kingdom, judgment of 25 September 1996 (Series A vol. 1996-IV, paras. 76, 77, 80, 81, 83 and 84) the Court took into account a number of factors relevant to the need to respect the traditional lifestyle of gypsies before concluding that the refusal of planning permission to a gypsy to live in a caravan was a justified interference with the applicant's right to respect for her home. It stated that the interests of the community were to be balanced against the applicant's right to respect for her home, a right which was pertinent to her and her children's personal security and well-being. The Court's task was to determine whether the decision-making process was fair and afforded due respect to the interests safeguarded to the individual and whether the reasons relied on to justify the interference were relevant and sufficient. In the Buckley case the applicant had been able to make representations to the authorities and her special needs as a gypsy following a traditional lifestyle were taken into account. She was twice given the opportunity to apply for a pitch on an official caravan site not far away. In the event she was merely fined for failing to remove her unauthorised caravan and was not forcibly evicted. The Court concluded that proper regard was had to her predicament both under the terms of the regulatory framework, which contained adequate procedural safeguards protecting her interest under Article 8, and by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of her case.

In the present case there is no indication that adequate procedural safeguards were in place prior to the demolition without notice of the gypsies' homes near Morphou. Moreover, it has not been shown that the authorities had proper regard to the gypsies' predicament when exercising their discretion to demolish their shacks but not the adjacent villagers' shacks. It is not established that the reasons relied upon were relevant and sufficient, and in particular, whether they took into account the availability or otherwise of alternative accommodation.

In these circumstances there has been a violation of Article 8 by reason of the demolition of the homes of the Turkish Cypriot gypsy community.

PARTLY DISSENTING OPINION OF MR I. CABRAL BARRETO
(Translation)

In the Report that we have just adopted there are two points where, with regret, I cannot concur with the opinion of the majority of the Commission.

1. The first point concerns the question whether Article 6 of the Convention has been violated with regard to the Greek Cypriots living in northern Cyprus. Despite the quality of the organisation of the judiciary, one can doubt the independence and impartiality of the courts, from the subjective point of view, if one looks at the conclusion at which the Commission arrived concerning the living conditions of the Greek Cypriots (violation of Article 3 of Convention).

The crucial point for me, however, is to determine whether or not the judicial system in place has been "established by law".

In a system such as that of the Convention, where the rule of law is the overriding principle, it appears to me difficult to argue that the requisite "law" is merely that of the internal legal order. To my mind, compliance with both the internal and the international legal order is necessary in order to meet the requirements of Article 6. This does not mean, however, that decisions of the national courts, insofar as they benefit the Greek Cypriots, must be called in question.

2. The other point concerns Article 13 of the Convention and is related to the first: the domestic remedies available in northern Cyprus to the Greek Cypriots living there do not meet the requirements of Article 13 for the same reasons as those set out above.