

FOURTH SECTION

CASE OF ██████████ v. TURKEY

*(Application no. 16094/90)*

JUDGMENT  
(merits)

STRASBOURG

22 September 2009

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.  
It may be subject to editorial revision.*

**In the case of [REDACTED] v. Turkey,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,  
Giovanni Bonello,  
David Thór Björgvinsson,  
Ján Šikuta,  
Päivi Hirvelä,  
Ledi Bianku,  
Işıl Karakaş, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 September 2009,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 16094/90) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mrs [REDACTED] (“the applicant”), on 16 January 1990.

2. The applicant was represented by Mr L. Clerides and Mr C. Clerides, two lawyers practising in Nicosia. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged, in particular, that the Turkish occupation of the northern part of Cyprus had deprived her of her home and properties and that she had been subjected to treatment contrary to the Convention during a demonstration.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. By a decision of 26 September 2002 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Government of Cyprus, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

## THE FACTS

7. The applicant was born in 1933 and lives in Limassol.

### I. PROPERTY ISSUES

8. The applicant claimed that in 1952, when she was 19 years' old, she had permanently settled in Famagusta (northern Cyprus), where she got married and had two sons. She had her home and other immovable property there. In order to substantiate her claim to ownership, the applicant produced an “affirmation of ownership of Turkish-occupied immovable property” issued by the Republic of Cyprus, according to which her properties could be described as follows:

- Famagusta, Chrysi Akti, plot no. 778, block C, sheet/plan 33/21.1.IV, description: buildings with house, yard and shop on ground floor and house on the first floor; use: residence; area of the houses: 115 m<sup>2</sup> each; share:  $\frac{3}{4}$ .

9. The applicant submitted that the property described above had been transferred to her by way of gift from her husband, Mr [REDACTED] on 28 June 2000 (Declaration of transfer no. D-971). The latter had acquired it on 8 July 1994 by way of gift (Declaration of transfer no. D-1044) from his mother, who had become the owner of the whole property in 1971. The applicant produced a copy of the two above-mentioned declarations of transfer.

10. The applicant also claimed to have a “possession” within the meaning of Article 1 of Protocol No. 1 with regard to the following property:

- Kato Dherynia, provisional no. 19, D/959; description: building site under subdivision; share: whole.

11. In particular, the applicant declared that she had entered into a contract to purchase the site on 24 December 1971 and had paid the purchase price in monthly instalments. The sale price was CYP 2,750 (approximately EUR 4,613) and the applicant had given a lump-sum of CYP 200 (approximately EUR 341) as an advance payment. The remaining sum of CYP 2,550 should have been paid as follows: CYP 500 on 31 January 1972, plus 48 monthly instalments of not less than CYP 45 (approximately EUR 76). All the instalments had been paid off, with the final one being paid on 2 July 1974. In accordance with the contract, the transfer was to be effected on payment of the full sale price. However, the applicant's title to the land was not registered owing to the Turkish intervention. The applicant produced the contract of sale and copies of the receipts of payment.

12. The applicant submitted that since the 1974 Turkish intervention she had been deprived of her property rights, since her property was located in the area that was under the occupation and control of the Turkish military authorities. She had made an attempt to return to her home and property on 19 July 1989, but had not been allowed to do so by the Turkish military authorities. They had prevented her from having access to and using her house and properties.

## II. THE DEMONSTRATION OF 19 JULY 1989

13. On 19 July 1989, the applicant joined an anti-Turkish demonstration in the Ayios Kassianos area in Nicosia in which the applicants in the *Chrysostomos and Papachrysostomou v. Turkey* and *Loizidou v. Turkey* cases (see below) also took part.

### A. The applicant's version of events

14. According to an affidavit sworn by the applicant before the Nicosia District Court on 4 August 2000, the demonstration of 19 July 1989 was peaceful and was held on the

fifteenth anniversary of the Turkish intervention in Cyprus, in support of the missing persons and to protest against human rights violations.

15. The applicant and other women had gathered in the Ayios Georgios church, where a service was in progress. While she was in the chapel, she heard cries coming from outside and at the same time saw Turkish policemen entering the church, indiscriminately grasping women, beating them and pulling them out.

16. A policeman had seized the applicant by one hand and twisted the other backwards. He started to push her out of the church and to hit her fiercely with a baton and with his knee in the lower part of her head and on the back of her neck as well as on other parts of her body. She felt electricity passing through her body and realised that the baton was electric. The applicant and other women were forcefully dragged into the area controlled by the authorities of the “Turkish Republic of Northern Cyprus” (the “TRNC”).

17. She was then arrested and taken by bus to the so-called “Pavlidis Garage”. During the journey she was subjected to assaults, beatings and gestures of a sexual nature by the officers who had detained her. The crowd outside the garage was swearing, shouting abuse and threats and throwing stones at the garage, some of which came through the roof. Some of the Turkish policemen threatened to open the doors and let the crowd lynch the detainees. At the garage there were also two UN men who merely acted as observers. One of the women detainees (Mrs [REDACTED] – see application no. 16078/90) was seriously beaten. At about midnight the applicant was interrogated. Her interrogation took place in Greek. The applicant lied when asked for details concerning the members of her family. She was told to sign a statement in Turkish but did not do so as she did not understand Turkish and considered that signing the statement would have been tantamount to recognising the “TRNC”. On the morning of 20 July 1989 she was given some food and water and then taken to court where she was remanded in custody for forty-eight hours. At the hearing, an interpreter explained the procedure to the accused. The applicant understood that she was accused of having violated the borders of the “TRNC”.

18. She was subsequently transferred to a prison outside Nicosia, where she was kept in a cell with another two women. Since there were not enough mattresses she and the other detainees in her cell took turns to lie down; however, she could not sleep due to the severe pain from the blows she had received. During the night the applicant and the other detainees were harassed by the guards and told that the long-term prisoners would rape them. The toilets and showers were filthy and had no doors so the guards could see the detainees bathing. Essential means of hygiene were lacking. At night, the guards continually picked out individual detainees for checks.

19. At around midnight on 21 July 1989, the applicant was taken to court. She had no legal representation and the quality of the interpretation was poor; the applicant felt that the interpreter was not translating all of what was being said. The judge asked whether the accused wanted legal representation; they replied that they would only accept as defence counsel a lawyer registered with the bar association of the Republic of Cyprus. As a result, they were not assisted by a lawyer. One of the accused spoke on behalf of the others.

20. Some prosecution witnesses were interrogated. They lied about the basic facts surrounding the demonstration and the circumstances of the arrest and the accused tried

to protest. However, they were told to stay quiet if they did not want to be handed over to the vociferous crowd that had gathered outside the courtroom.

21. At around midnight on 22 July 1989 the court sentenced the applicant to three days' imprisonment and to a fine of 50 Cyprus pounds (CYP) – approximately 85 euros (EUR) – with five additional days in prison in default of payment within 24 hours. She was brought back to prison where she was given some personal hygiene items that had been sent by the Red Cross.

22. On 24 July 1989 the applicant was released. At the time of her release she was examined by UN doctors, who took some notes, and then transferred to southern Cyprus. On 28 July 1989 she made a statement to Limassol police and was also examined by a Government doctor at Limassol Hospital. The applicant produced a medical report issued on that same day by Dr. [REDACTED], a medical officer. This document reads as follows:

“On 28.7.1989 and at approximately 23.00 hours I was requested by the Limassol District Police to examine Mrs [REDACTED] from Famagusta and presently living at [REDACTED] Street in Limassol.

Mrs [REDACTED] alleges that on 19.7.1989 she was hit (kicks, fists and use of police baton) on various parts of her body by Turkish pseudo-policemen in the area of Ayios Kassianos in Nicosia.

At the examination the following were found:

1. Multiple and extensive bruises on various parts of the body, particularly obvious and serious in the areas of the right buttock and the posterior surface of the left hip.
2. Haematoma and swelling on the left elbow joint.
3. Pain at various parts of the body particularly in the region of the ribs (both sides), the neck, the left elbow, both buttocks, the coccyx and the waist.

X-ray examination was requested.”

23. The applicant alleged that she continued to suffer from the effects of the beatings inflicted on her.

#### **B. The Government's version of events**

24. The Government alleged that the applicant had participated in a violent demonstration with the aim of enflaming anti-Turkish sentiment. The demonstrators, supported by the Greek-Cypriot administration, were demanding that the “Green Line” in Nicosia should be dismantled. Some carried Greek flags, clubs, knives and wire-cutters. They were acting in a provocative manner and shouting abuse. The demonstrators were warned in Greek and English that unless they dispersed they would be arrested in accordance with the laws of the “TRNC”. The applicant was arrested by the Turkish-Cypriot police after crossing the UN buffer zone and entering the area under Turkish-Cypriot control. The Turkish-Cypriot police intervened in the face of the manifest inability of the Greek-Cypriot authorities and the UN Force in Cyprus to contain the incursion and its possible consequences.

25. No force was used against demonstrators who did not intrude into the “TRNC” border area and, in the case of demonstrators who were arrested for violating the border, no more force was used than was reasonably necessary in the circumstances in order to arrest and detain the persons concerned. No one was ill-treated. It was possible that some of the demonstrators had hurt themselves in the confusion or in attempting to scale

barbed wire or other fencing. Had the Turkish police, or anyone else, assaulted or beaten any of the demonstrators, the UN Secretary General would no doubt have referred to this in his report to the Security Council.

26. The applicant was charged, tried, found guilty and sentenced to a short term of imprisonment. She pleaded not guilty, but did not give evidence and declined to use the available judicial remedies. She was asked if she required assistance from a lawyer registered in the "TRNC", but refused and did not ask for legal representation. Interpretation services were provided at the trial by qualified interpreters. All the proceedings were translated into Greek.

### **C. The UN Secretary General's report**

27. In his report of 7 December 1989 on the UN operations in Cyprus, the UN Secretary General stated, *inter alia*:

"A serious situation, however, arose in July as a result of a demonstration by Greek Cypriots in Nicosia. The details are as follows:

(a) In the evening of 19 July, some 1,000 Greek Cypriot demonstrators, mostly women, forced their way into the UN buffer zone in the Ayios Kassianos area of Nicosia. The demonstrators broke through a wire barrier maintained by UNFICYP and destroyed an UNFICYP observation post. They then broke through the line formed by UNFICYP soldiers and entered a former school complex where UNFICYP reinforcements regrouped to prevent them from proceeding further. A short while later, Turkish-Cypriot police and security forces elements forced their way into the area and apprehended 111 persons, 101 of them women;

(b) The Ayios Kassianos school complex is situated in the UN buffer zone. However, the Turkish forces claim it to be on their side of the cease-fire line. Under working arrangements with UNFICYP, the Turkish-Cypriot security forces have patrolled the school grounds for several years within specific restrictions. This patrolling ceased altogether as part of the unmanning agreement implemented last May;

(c) In the afternoon of 21 July, some 300 Greek Cypriots gathered at the main entrance to the UN protected area in Nicosia, in which the UN headquarters is located, to protest the continuing detention by the Turkish-Cypriot authorities of those apprehended at Ayios Kassianos. The demonstrators, whose number fluctuated between 200 and 2,000, blocked all UN traffic through this entrance until 30 July, when the Turkish-Cypriot authorities released the last two detainees;

(d) The events described above created considerable tension in the island and intensive efforts were made, both at the UN headquarters and at Nicosia, to contain and resolve the situation. On 21 July, I expressed my concern at the events that have taken place and stressed that it was vital that all parties keep in mind the purpose of the UN buffer zone as well as their responsibility to ensure that that area was not violated. I also urged the Turkish-Cypriot authorities to release without delay all those who had been detained. On 24 July, the President of the Security Council announced that he had conveyed to the representatives of all the parties, on behalf of the members of the Council, the Council's deep concern at the tense situation created by the incidents of 19 July. He also stressed the need strictly to respect the UN buffer zone and appealed for the immediate release of all persons still detained. He asked all concerned to show maximum restraint and to take urgent steps that would bring about a relaxation of tension and contribute to the creation of an atmosphere favourable to the negotiations."

### **D. Photographs of the demonstration**

28. The applicant produced 21 photographs taken at different times during the demonstration on 19 July 1989. Photographs 1 to 7 were intended to show that, notwithstanding the deployment of the Turkish-Cypriot police, the demonstration was peaceful. In photographs 8 to 10 members of the Turkish-Cypriot police are seen

breaking up the UNFICYP cordon. The final set of photographs shows members of the Turkish-Cypriot police using force to arrest some of the women demonstrators.

### III. RELEVANT DOMESTIC LAW

#### A. The Cypriot Criminal Code

29. Section 70 of the Cypriot Criminal Code reads as follows:

“Where five or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace they are an unlawful assembly.

It is immaterial that the original assembly was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

When an unlawful assembly has begun to execute the purpose, whether of a public or of a private nature, for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.”

30. According to section 71 of the Criminal Code, any person who takes part in an unlawful assembly is guilty of a misdemeanour and liable to imprisonment for one year.

31. Section 80 of the Criminal Code provides:

“Any person who carries in public without lawful occasion any offensive arm or weapon in such a manner as to cause terror to any person is guilty of a misdemeanour, and is liable to imprisonment for two years, and his arms or weapons shall be forfeited.”

32. According to section 82 of the Criminal Code, it is an offence to carry a knife outside the home.

#### B. Police officers' powers of arrest

33. The relevant part of Chapter 155, section 14 of the Criminal Procedure Law states:

"(1) Any officer may, without warrant, arrest any person -

...

(b) who commits in his presence any offence punishable with imprisonment;

(c) who obstructs a police officer, while in the execution of his duty ..."

#### C. Offence of illegal entry into “TRNC” territory

34. Section 9 of Law No. 5/72 states:

"... Any person who enters a prohibited military area without authorisation, or by stealth, or fraudulently, shall be tried by a military court in accordance with the Military Offences Act; those found guilty shall be punished."

35. Subsections 12 (1) and (5) of the Aliens and Immigration Law read as follows:

“1. No person shall enter or leave the Colony except through an approved port.

...

5. Any person who contravenes or fails to observe any of the provisions of subsections (1), (2), (3) or (4) of this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

36. The applicant complained that since 1974, Turkey had prevented her from exercising her right to the peaceful enjoyment of her possessions.

She invoked Article 1 of Protocol No. 1, which 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.”

37. The Government disputed this claim.

#### A. The Government's preliminary objections

38. The Government raised preliminary objections of inadmissibility for non-exhaustion of domestic remedies and lack of victim status. The Court observes that these objections are identical to those raised in the case of *Alexandrou v. Turkey* (no. 16162/90, §§ 11-22, 20 January 2009), and should be dismissed for the same reasons.

#### B. The merits

##### 1. *Arguments of the parties*

##### (a) The Government

39. The Government submitted that the receipts produced by the applicant showed the payment made for the purchase of building land in Kato Derynia. There was no evidence, however, that the property in question had been transferred to the applicant, and even assuming that it had, there was no evidence that she was still its owner. It would be unlikely that the transfer could have been done after the Turkish intervention, as the applicant would not have been able to access the land in view of the political situation on the island. Moreover, the applicant had acquired the properties described in paragraph 8 above only on 28 June 2000 and could not therefore have an interest in them under Article 1 of Protocol No. 1.

40. In the Government's view, the aim of the demonstration of 19 July 1989 had been to make political propaganda. The applicant had not genuinely intended to go to her alleged property, which she knew to be inaccessible in the existing political situation. In any event, even assuming that a question could arise under Article 1 of Protocol No. 1,

the control of the use of property by the “TRNC” authorities had been justified in the general interest.

## 2. *The applicant*

41. The applicant, who essentially adopted the observations submitted by the Government of Cyprus (see below), stressed that she was the rightful owner of the properties at issue. She had been the “possessor” of the building land described in paragraph 10 above since the date she made the advance payment of CYP 200 and had been the beneficial owner since the payment of the last instalment on 2 July 1974 (see paragraph 11 above). As from that date she had had a claim against the company which had sold the building land to her and had been entitled to possession as the purchaser of the land. She argued that Article 1 of Protocol No. 1 did not only protect registered rights but all types of property rights.

### **B. The third-party intervener**

42. According to the Government of Cyprus, purchase of property was sufficient to give rise to a “claim” that would constitute a “possession” under Article 1 of Protocol No. 1 (see *Pressos Compania Naviera S.A. and others v. Belgium*, 20 November 1995, §§ 31-32, Series A no. 332). In any event, it was the duty of the respondent Government to prove that the applicant did not own the relevant land and buildings.

### **C. The Court's assessment**

43. The Court first observes that the Government did not contest the applicant's statement that in 1974 her husband's mother was the owner of the property described in paragraph 8 above. They stressed, however, that the property had been acquired by the applicant only in 2000, that is, after the Turkish intervention of 1974.

44. The Court notes that the applicant has produced written proof that her husband acquired the property at issue from his mother and that he subsequently transferred it to her by way of gift on 28 June 2000 (see paragraph 9 above). Together with the other documents submitted by the applicant (see paragraph 8 above), this material provides *prima facie* evidence that, from June 2000 onwards, she had title to the property in question, which had previously belonged to her husband's family. As held by the Court in the *Loizidou v. Turkey* case ((merits), 18 December 1996, §§ 44 and 46, *Reports of Judgments and Decisions* 1996-VI), the latter could not be deemed to have lost title to his property by virtue of subsequent acts of expropriation of the “TRNC” authorities.

45. As to the building land described in paragraph 10 above, the applicant has produced written proof that she had entered into a contract to purchase it and that, by 2 July 1974, she had paid the whole price agreed with the seller. She had therefore had a legitimate and lawful expectation of becoming the registered owner of the land.

46. In view of the above, and having regard to the fact that the respondent Government have failed to produce convincing evidence in rebuttal, the Court considers that the applicant had a “possession” within the meaning of Article 1 of Protocol No. 1 in relation to the properties described in paragraphs 8 and 10 above.

47. The Court further observes that in the case of *Loizidou* ((merits), cited above, §§ 63-64), it reasoned as follows:

“63. ... as a consequence of the fact that the applicant has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy, her property. The continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1. Such an interference cannot, in the exceptional circumstances of the present case to which the applicant and the Cypriot Government have referred, 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 a 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 such circumstances, the Court concludes that there has been and continues to be a breach of Article 1 of Protocol No. 1.”

48. In the case of *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001-IV) the Court confirmed the above conclusions (§§ 187 and 189):

“187. The Court is persuaded that both its reasoning and its conclusion in the *Loizidou* judgment (*merits*) apply with equal force to displaced Greek Cypriots who, like Mrs Loizidou, are unable to have access to their property in northern Cyprus by reason of the restrictions placed by the 'TRNC' authorities on their physical access to that property. The continuing and total denial of access to their property is a clear interference with the right of the displaced Greek Cypriots to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1.

...

189. .. 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.”

49. The Court sees no reason in the instant case to depart from the conclusions which it reached in the *Loizidou* and *Cyprus v. Turkey* cases (*op. cit.*; see also *Demades v. Turkey* (*merits*), no. 16219/90, § 46, 31 July 2003).

50. Accordingly, it concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that from the dates referred to in paragraphs 44 and 45 above the applicant was denied access to and the control, use and enjoyment of her properties as well as any compensation for the interference with her property rights.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

51. The applicant submitted that in 1974 she had her home in Famagusta. As she had been unable to return there, she was the victim of a violation of Article 8 of the Convention.

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.”

52. The Government disputed this claim.

53. The Government of Cyprus submitted that the applicant had been driven from her home by the Turkish invasion and had been consistently refused the right to return ever since, in violation of Article 8 of the Convention. This interference could not be justified under the second paragraph of this provision.

54. The Court observes that the applicant was not the owner of the house where she was allegedly residing at the time of the Turkish invasion. This house was belonging to her husband's mother and was transferred to the applicant only on 28 June 2000, which is approximately twenty-six years after the Turkish invasion (see paragraph 9 above). Under these circumstances, the Court is not convinced that a separate issue may arise under Article 8 of the Convention. It therefore considers that it is not necessary to examine whether there has been a continuing violation of this provision.

### III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

55. The applicant complained of a violation under Article 14 of the Convention on account of discriminatory treatment against her in the enjoyment of her rights under Article 8 of the Convention and Article 1 of Protocol No. 1. She alleged that this discrimination had been based on her national origin.

Article 14 of the Convention reads as follows:

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

56. The Court recalls that in the *Alexandrou* case (cited above, §§ 38-39) it found that it was not necessary to carry out a separate examination of the complaint under Article 14 of the Convention. The Court does not see any reason to depart from that approach in the present case (see also, *mutatis mutandis*, *Eugenia Michaelidou Ltd and Michael Tymvios v. Turkey*, no. 16163/90, §§ 37-38, 31 July 2003).

### IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

57. The applicant complained about the treatment administered to her during both the demonstration of 19 July 1989 and the proceedings against her in the “TRNC”.

She invoked Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

58. The Government disputed her claim.

## **A. Arguments of the parties**

### *1. The Government*

59. Relying on their version of the events (see paragraphs 24-26 above), the Government submitted that this part of the application should be determined on the basis of the Commission's findings in the case of *Chrysostomos and Papachrysostomou v. Turkey* (applications nos. 15299/89 and 15300/89, Commission's report of 8 June 1993, Decisions and Reports (DR) 86, p. 4), as the factual and legal bases of the present application were the same as in that pilot case. They argued that the third-party intervener should be considered estopped from challenging the Commission's findings.

### *2. The applicant*

60. The applicant essentially adopted the observations submitted by the Government of Cyprus (see below).

## **B. The third-party intervener's arguments**

61. The Government of Cyprus submitted that the findings of the Commission in the case of *Chrysostomos and Papachrysostomou* (cited above) were not applicable to the present case. Whether the treatment suffered by the applicant violated Article 3 had to be examined and determined in light of the facts of the case and on the basis of the evidence provided.

62. The treatment endured by the applicant during her arrest and subsequent imprisonment and trial had been of a very severe nature, including *inter alia* physical violence and punishment, exposure to violent and abusive crowds, inhuman and degrading conditions of detention (including solitary confinement and sleep deprivation) and humiliating and frightening treatment in court. Whether such treatment was viewed cumulatively or separately, it had caused severe physical and psychological suffering amounting to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

## **C. The Court's assessment**

63. The general principles concerning the prohibition of torture and of inhuman or degrading treatment are set out in *Prototapa v. Turkey*, no. 16084/90, §§ 39-45, 24 February 2009.

64. As to the application of these principles to the present case, the Court observes that it is undisputed that the applicant was arrested during a demonstration which gave rise to an extremely tense situation. It will be recalled that in the case of *Chrysostomos and Papachrysostomou*, the Commission found that a number of demonstrators had resisted arrest, that the police forces had broken their resistance and that in that context there was a high risk that the demonstrators would be treated roughly, and even suffer injuries, in the course of the arrest operation (see the Commission's report, cited above, §§ 113-15). The Court does not see any reason to depart from these findings and will take due account of the state of heightened tension at the time of the applicant's arrest.

65. It further observes that the applicant submitted that in the course of her arrest she was seized by one hand, pushed and beaten all over her body (in particular on the lower part of her head and on the back of her neck) with an electric baton. She moreover

alleged that her hand had been twisted forcefully (see paragraph 16 above). However, the Court has at its disposal little evidence to corroborate the applicant's version of events. According to the medical certificate issued on 28 July 1989, four days after the applicant's release, medical examination disclosed "multiple and extensive bruises on various parts of the body" and "haematoma and swelling on the left elbow joint". The patient declared she was suffering pain in different regions of her body (see paragraph 22 above). X-rays were requested, but their result is not known by the Court.

66. The Court considers that it has not been established that the applicant's injuries were deliberately caused by the Turkish or Turkish-Cypriot police. In any event, having regard to the fact that no evidence of a serious traumatic episode has been produced by the applicant, it cannot be ruled out that the bruises and the haematoma described in the certificate of 28 July 1989 are consistent with a minor physical confrontation between her and the police officers. There is nothing to show that the police used excessive force when, as they alleged, they were confronted in the course of their duties with resistance to arrest by the demonstrators, including the applicant (see, *mutatis mutandis*, *Protopapa*, cited above, §§ 47-48).

67. The applicant's remaining allegations, concerning the conditions of her detention at the "Pavlidis garage" and at the prison outside Nicosia, are unsubstantiated. Nor has it been proved that the applicant's injuries required immediate medical assistance. The Court considers, moreover, that the degree of intimidation which the applicant might have felt while being deprived of her liberty did not attain the minimum level of severity required to come within the scope of Article 3 (see *Protopapa*, cited above, § 49).

68. Under these circumstances, the Court cannot consider it established beyond reasonable doubt that the applicant was subjected to treatment contrary to Article 3 or that the authorities had recourse to physical force which had not been rendered strictly necessary by the applicant's own behaviour (see, *mutatis mutandis*, *Foka v. Turkey*, no. 28940/95, § 62, 24 June 2008).

69. It follows that there has been no violation of Article 3 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

70. The applicant alleged that her deprivation of liberty had been contrary to Article 5 of the Convention which, in so far as relevant, reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

..."

71. The Government disputed this claim.

## **A. Arguments of the parties**

### *1. The Government*

72. The Government submitted that, given its violent character, the demonstration constituted an unlawful assembly. The Government referred, on this point, to sections 70, 71, 80 and 82 of the Cypriot Criminal Code, which was applicable in the “TRNC” (see paragraphs 29-32 above) and noted that under Chapter 155 of the Criminal Procedure Law (see paragraph 33 above), the police had power to arrest persons involved in violent demonstrations.

### *2. The applicant*

73. The applicant essentially adopted the observations submitted by the Government of Cyprus (see below).

## **B. The third-party intervener's arguments**

74. The Government of Cyprus observed that during the applicant's initial arrest, subsequent detention and prison sentence following the court conviction, the applicant was denied her liberty in circumstances which did not follow a procedure prescribed by law and which were not lawful under Article 5 § 1 (a) and (c) of the Convention. Moreover, the authorities' failure to inform the applicant of all the reasons for her arrest constituted a violation of Article 5 § 2.

## **C. The Court's assessment**

75. It is not disputed that the applicant, who was arrested and remanded in custody by the “TRNC” Nicosia District Court, was deprived of her liberty within the meaning of Article 5 § 1 of the Convention.

76. As to the question of compliance with the requirements of Article 5 § 1, the Court reiterates that this provision requires in the first place that the detention be “lawful”, which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Benham v. the United Kingdom*, 10 June 1996, §§ 40 and 42, *Reports* 1996-III).

77. The Court further notes that in the case of *Foka v. Turkey* (cited above, §§ 82-84) it held that the “TRNC” was exercising *de facto* authority over northern Cyprus and that the responsibility of Turkey for the acts of the “TRNC” was inconsistent with the applicant's view that the measures adopted by it should always be regarded as lacking a “lawful” basis in terms of the Convention. The Court therefore concluded that when, as in the *Foka* case, an act of the “TRNC” authorities was in compliance with laws in force within the territory of northern Cyprus, it should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention. It does not see any reason to depart, in the instant case, from that finding, which is not in any way inconsistent with the view adopted by the international community regarding the establishment of the “TRNC” or the fact that the Government of the Republic of Cyprus remains the sole

legitimate government of Cyprus (see *Cyprus v. Turkey* [GC], no. 25781/94, §§ 14, 61 and 90, ECHR 2001–IV).

78. In the present case, it is not disputed that the applicant took part in a demonstration which the authorities of the “TRNC” regarded as potentially an “unlawful assembly” within the meaning of section 70 of the Cyprus Criminal Code (see paragraph 29 above). Taking part in an unlawful assembly is an offence under section 71 of the Cypriot Criminal Code and is punishable by up to one year's imprisonment (see paragraph 30 above). It is also an offence under the “TRNC” laws to enter “TRNC” territory without permission and/or other than through an approved port (see paragraphs 34-35 above). The Court further notes that according to Chapter 155, section 14 of the Criminal Procedure Law, a police officer may, without warrant, arrest any person who commits in his presence any offence punishable with imprisonment or who obstructs a police officer while in the execution of his duty (see paragraph 33 above – see also *Protopapa*, cited above, § 61, and *Chrysostomos and Papachrysostomou*, Commission's report, cited above, § 147).

79. As the police officers who effected the arrest had grounds for believing that the applicant was committing offences punishable by imprisonment, the Court is of the opinion that she was deprived of her liberty in accordance with a procedure prescribed by law “for the purpose of bringing [her] before the competent legal authority on reasonable suspicion of having committed an offence”, within the meaning of Article 5 § 1 (c) of the Convention (see *Protopapa*, cited above, § 62).

80. Moreover, there is no evidence that the deprivation of liberty served any other illegitimate aim or was arbitrary. Indeed, on 20 July 1989, the day after her arrest, the applicant was brought before the “TRNC” Nicosia District Court and remanded for trial in relation to the offence of illegal entry into “TRNC” territory (see paragraph 17 above).

81. After 22 July 1989, the date on which the “TRNC” Nicosia District Court delivered its judgment (see paragraph 21 above), the applicant's deprivation of liberty should be regarded as the “lawful detention of a person after conviction by a competent court”, within the meaning of Article 5 § 1 (a) of the Convention.

82. Finally, it is to be observed that the applicant was interrogated on the day of her arrest by an official who spoke Greek (see paragraph 17 above). In the Court's view, it should have been apparent to the applicant that she was being questioned about trespassing in the UN buffer zone and her allegedly illegal entry into the territory of the “TRNC” (see, *mutatis mutandis*, *Murray and Others v. the United Kingdom*, Series A no. 300-A, § 77, 28 October 1994). Moreover, during the court hearing on the following morning an interpreter explained in Greek that the suspects were accused of having violated the borders of the “TRNC” (see paragraph 17 above). The Court therefore finds that the reasons for her arrest were sufficiently brought to her attention during her interview and during the court's hearing of 20 July 1989 (see, *mutatis mutandis*, *Protopapa*, cited above, § 65).

83. Accordingly, there has been no violation of Article 5 §§ 1 and 2 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

84. The applicant complained of a lack of fairness at her trial by the “TRNC” Nicosia District Court.

She invoked Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

85. The Government disputed this claim.

#### **A. Arguments of the parties**

##### *1. The Government*

86. The Government stated that:

(i) the applicant had been tried by an impartial and independent court;

(ii) all the cases before the court, including the applicant's, were divided into groups so as to ensure a speedy trial and help the accused in their defence;

(iii) the applicant had not asked for more time to prepare her defence, and had declined legal representation;

(iv) the court had advised the applicant and helped her to understand her rights and the procedure;

(v) everything at the trial had been interpreted during the proceedings by qualified translators and interpreters in order to ensure that the defence was not prejudiced and the accused were fully informed of the charges against them; the trial judge replaced a translator when the latter started to have a conversation with the accused;

(vi) the judge, an English-educated lawyer, was only involved in the judicial proceedings and not in the decision to prosecute or in the acts relating to the applicant's arrest;

(vii) in passing sentence the court had taken all the circumstances of the case into consideration; in particular, being fair and understanding the mental state of the accused, the judge had not punished them for contempt of court when they behaved in a disrespectful manner and one of them said that the trial was a “circus”.

87. The Government challenged the third-party intervener's arguments as being of a political nature. They considered that the allegations of a lack of fairness, independence and impartiality of the judiciary in the “TRNC” were without any foundation whatsoever.

On the contrary, previous cases decided by the “TRNC” courts showed that they respected human rights and the Convention principles.

## 2. *The applicant*

88. The applicant essentially adopted the observations submitted by the Government of Cyprus (see below).

### **B. The third-party intervener's arguments**

89. The Government of Cyprus submitted that the instant application was an exceptional case in which the applicant had been denied each and all of the basic fair-trial guarantees provided for in Article 6 of the Convention. The violations of her rights included *inter alia* a failure to inform the applicant promptly, in a language that she understood, of the nature and cause of the accusation against her, to provide her with adequate time and facilities to find a lawyer of her own choosing and to prepare her defence, to allow the cross-examination of witnesses and to provide the applicant with proper interpretation and a transcript of the trial. Lastly, there was proof beyond reasonable doubt that the “court” which tried the applicant was neither impartial nor fair.

### **C. The Court's assessment**

90. The relevant general principles enshrined in Article 6 of the Convention are set out in *Protopapa*, cited above, §§ 77-82.

91. As to the application of these principles to the present case, the Court observes that the applicant was remanded for trial before the “TRNC” Nicosia District Court. An interpreter was present at the hearings on 20 and 21 July 1989. Even if the Court has no information on which to assess the quality of the interpretation provided, it observes that it is apparent from the applicant's own version of the events that she understood the charges against her and the statements made by the witnesses at the trial. In any event, it does not appear that she challenged the quality of the interpretation before the trial judge, requested the replacement of the interpreter or asked for clarification concerning the nature and cause of the accusation.

92. The Court furthermore notes that the accused were offered the opportunity of using the services of a member of the local Bar Association. However, they chose not to avail themselves of this right.

93. The Court considers that the applicant was undoubtedly capable of realising the consequences of her decision not to make use of the procedural rights which were offered to her. Furthermore, it does not appear that the dispute raised any questions of public interest preventing the aforementioned procedural guarantees from being waived (see, *mutatis mutandis*, *Hermi v. Italy* [GC], no. 18114/02, § 79, 10 October 2006, and *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000).

94. The Court also emphasises that the accused did not request an adjournment of the trial or a translation of the written documents pertaining to the procedure in order to acquaint themselves with the case-file and to prepare their defence. There is nothing to suggest that such requests would have been rejected. The same applies to the possibility, which was not taken up by the accused, of lodging an appeal or an appeal on points of law against the “TRNC” Nicosia District Court's judgment.

95. Finally, the Court cannot accept, as such, the allegation that the “TRNC” courts as a whole were not impartial and/or independent or that the applicant's trial and conviction were influenced by political aims (see, *mutatis mutandis*, *Cyprus v. Turkey*, cited above, §§ 231-240).

96. In the light of the above, and taking account in particular of the conduct of the accused, the Court considers that the criminal proceedings against the applicant, considered as a whole, were not unfair or otherwise contrary to the provisions of the Convention.

97. It follows that there has been no violation of Article 6 of the Convention.

## VII. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

98. The applicant submitted that she had been convicted in respect of acts which did not constitute a criminal offence.

She invoked Article 7 of the Convention, which reads as follows:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

99. The Government disputed this claim. They alleged that the applicant had been charged with violating the borders of the “TRNC” and her conviction was based on the evidence of eye-witnesses. She should have known that by violating the UN buffer zone and the cease-fire line she would provoke a response by the UN or Turkish-Cypriot forces.

100. The Government of Cyprus submitted that the applicant had been wrongly tried for acts which did not amount to offences under national or international law, and which in any event failed to meet the standards of foreseeability and accessibility required by the Convention (see *G. v. France*, 27 September 1995, Series A no. 325-B), in violation of Article 7 of the Convention.

101. The relevant general principles enshrined in Article 7 of the Convention are set out in *Protopapa*, cited above, §§ 93-95.

102. As to the application of these principles to the present case, the Court notes that the applicant was convicted for having entered the territory of the “TRNC” without permission and other than through an approved port. These offences are defined in Law no. 5/72 and subsections 12(1) and (5) of the Aliens and Immigration Law (see paragraphs 34-35 above).

103. It is not disputed that these texts were in force when the offences were committed and were accessible to the applicant. The Court furthermore finds that they described with sufficient clarity the acts which would have made her criminally liable, thus satisfying the requirement of foreseeability. There is nothing to suggest that they were interpreted extensively or by way of analogy; the penalty imposed (three days' imprisonment and a fine of CYP 50 – see paragraph 21 above) was within the maximum provided for by the law in force at the time the offence was committed.

104. It follows that there has been no violation of Article 7 of the Convention.

### VIII. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

105. The applicant complained of a violation of her right to freedom of peaceful assembly.

She invoked Article 11 of the Convention, which 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.”

106. The Government disputed this claim, observing that given its violent character, the demonstration was clearly outside the scope of Article 11 of the Convention. They considered that the “TRNC” police had intervened in the interests of national security and/or public safety and for the prevention of disorder and crime.

107. The Government of Cyprus submitted that the applicant's right to demonstrate under Article 11 of the Convention had been interfered with in an aggravated and serious manner. The acts of the respondent Government were a deliberate and provocative attempt to disrupt a lawful demonstration in an area which was subject to UN patrols and not even within the claimed jurisdiction of the “TRNC”. The interference with the applicant's rights was not prescribed by law and was an excessive and disproportionate response to a peaceful and lawful demonstration. The respondent Government had not identified any legitimate aim that they were seeking to serve by assaulting the applicant.

108. The Court notes that the applicant and other women clashed with Turkish-Cypriot police while demonstrating in or in the vicinity of the Ayios Georgios church in Nicosia. The demonstration was dispersed and some of the demonstrators, including the applicant, were arrested. Under these circumstances, the Court considers that there has been an interference with the applicant's right of assembly (see *Protopapa*, cited above, § 104).

109. This interference had a legal basis, namely sections 70 and 71 of the Cypriot Criminal Code (see paragraphs 29-30 above) and section 14 of the Criminal Procedure Law (see paragraph 33 above), and was thus “prescribed by law” within the meaning of Article 11 § 2 of the Convention. In this respect, the Court recalls its finding that when, as in the *Foka* case, an act of the “TRNC” authorities was in compliance with laws in force within the territory of northern Cyprus, it should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention (see paragraph 77 above). There remain the questions whether the interference pursued a legitimate aim and was necessary in a democratic society.

110. The Government submitted that the interference pursued legitimate aims, including the protection of national security and/or public safety and the prevention of disorder and crime.

111. The Court notes that in the case of *Chrysostomos and Papachrysostomou*, the Commission found that the demonstration on 19 July 1989 was violent, that it had broken through the UN defence lines and constituted a serious threat to peace and public order on the demarcation line in Cyprus (see Commission's report, cited above, §§ 109-10). The Court sees no reason to depart from these findings, which were based on the UN Secretary General's report, on a video film and on photographs submitted by the respondent Government before the Commission. It emphasises that in his report, the UN Secretary General stated that the demonstrators had “forced their way into the UN buffer zone in the Ayios Kassianos area of Nicosia”, that they had broken “through a wire barrier maintained by UNFICYP and destroyed an UNFICYP observation post” before breaking “through the line formed by UNFICYP soldiers” and entering “a former school complex” (see paragraph 27 above).

112. The Court refers, firstly, to the fundamental principles underlying its judgments relating to Article 11 (see *Djavit An v. Turkey*, no. 20652/92, §§ 56-57, ECHR 2003-III; *Piermont v. France*, 27 April 1995, §§ 76-77, Series A no. 314; and *Plattform “Ärzte für das Leben” v. Austria*, 21 June 1988, § 32, Series A no. 139). It is clear from this case-law that the authorities have a duty to take appropriate measures with regard to demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see *Oya Ataman v. Turkey*, no. 74552/01, § 35, 5 December 2006). However, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (see *Plattform “Ärzte für das Leben”*, cited above, § 34).

113. While an unlawful situation does not, in itself, justify an infringement of freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III (extracts)), interferences with the right guaranteed by Article 11 of the Convention are in principle justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others where, as in the instant case, demonstrators engage in acts of violence (see, *a contrario*, *Bukta and Others v. Hungary*, no. 25691/04, § 37, 17 July 2007, and *Oya Ataman*, cited above, §§ 41-42).

114. The Court further observes that, as stated in the UN Secretary General's report of 7 December 1989 (see paragraph 27 above), the demonstrators had forced their way into the UN buffer zone. According to the “TRNC” authorities, they also entered into “TRNC” territory, thus committing offences punishable under the “TRNC” laws (see paragraphs 34-35 and 78 above). In this respect, the Court notes that it does not have at its disposal any element capable of casting doubt upon the “TRNC” authorities' finding that the area where the accused had entered was “TRNC” territory. In the Court's view, the intervention of the Turkish and/or Turkish-Cypriot forces was not due to the political nature of the demonstration but was provoked by its violent character and by the violation of the “TRNC” borders by some of the demonstrators (see *Protopapa*, cited above, § 110).

115. In these conditions and having regard to the wide margin of appreciation left to the States in this sphere (see *Plattform “Ärzte für das Leben”*, cited above, § 34), the Court holds that the interference with the applicant's right to freedom of assembly was not, in the light of all the circumstances of the case, disproportionate for the purposes of Article 11 § 2.

116. Consequently, there has been no violation of Article 11 of the Convention.

## IX. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

117. The applicant alleged that she had not had at her disposal a domestic effective remedy to redress the violations of her fundamental rights.

She invoked Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] 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.”

118. The Government disputed this claim. In their observations of 10 January 2003, they noted that the applicant, who had failed to use the domestic remedies available within the legal system of the “TRNC”, could not complain of a violation of Article 13 of the Convention.

119. The Government of Cyprus submitted that, contrary to Article 13 of the Convention, no effective remedies had at any time been available to the applicant in respect of any of her complaints. Alternatively, the institutions established by the “TRNC” were incapable of constituting effective domestic remedies within the national legal system of Turkey.

120. Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

121. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be “effective” in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term “effective” is also considered to mean that the remedy must be adequate and accessible (see *Vidas v. Croatia*, no. 40383/04, § 34, 3 July 2008, and *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII).

122. It is also to be recalled that in its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 14, 16, 90 and 102) the Court held that for the purposes of Article 35 § 1, with which Article 13 has a close affinity (see *Kudła*, cited above, § 152), remedies available in the “TRNC” may be regarded as “domestic remedies” of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises.

123. In the present case, it does not appear that the applicant attempted to make use of the remedies which might have been available to her in the “TRNC” with regard to the circumstances of her arrest, her subsequent detention and her trial (see *Protopapa*, cited above, § 121, *mutatis mutandis*, *Chrysostomos and Papachrysostomou*, Commission's report cited above, § 174). In particular, she refused the services of a lawyer practising in the “TRNC”, made little or no use of the procedural safeguards provided by the “TRNC” Nicosia District Court, did not lodge an appeal against her conviction and did not file with the local authorities a formal complaint about the ill-treatment she allegedly suffered at the hands of the Turkish-Cypriot police. In the Court's view, there is no evidence that,

had the applicant made use of all or part of them, these domestic remedies would have been ineffective.

124. Under these circumstances, no breach of Article 13 of the Convention can be found.

#### X. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 5, 6 AND 7

125. The applicant alleged that she had been discriminated against on the grounds of her ethnic origin and religious beliefs in the enjoyment of the rights guaranteed by Articles 5, 6 and 7 of the Convention.

She invoked Article 14 of the Convention, which reads as follows:

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

126. The Government disputed this claim.

127. The Government of Cyprus submitted that the applicant had been arrested, beaten and prosecuted by the authorities solely because of her nationality and ethnic origin. That differential treatment was a clear violation of Article 14 of the Convention.

128. The Court's case-law establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory (see *Unal Tekeli v. Turkey*, no. 29865/96, § 49, 16 November 2004).

129. In the present case the applicant failed to prove that she had been treated differently from other persons – namely, from Cypriots of Turkish origin – who were in a comparable situation. The Court also refers to its conclusion that the applicant's fundamental rights under Articles 3, 5, 6, 7, 11 and 13 of the Convention have not been infringed (see *Protopapa*, cited above, § 127, and, *mutatis mutandis*, *Manitaras v. Turkey* (dec.), no. 54591/00, 3 June 2008).

130. It follows that there has been no violation of Article 14 of the Convention read in conjunction with Articles 5, 6 and 7 of the Convention.

#### XI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

##### **A. Pecuniary and non-pecuniary damage**

##### *1. The parties' submissions*

##### **(a) The applicant**

132. In her just satisfaction claims of December 2002, the applicant requested CYP 81,899 (approximately EUR 139,932) for pecuniary damage. She relied on an expert's report (provided by the Department of Lands and Surveys of the Republic of Cyprus) assessing the value of her losses which included the loss of annual rent collected or expected to be collected from renting out her properties, plus interest from the date on which such rents were due until the day of payment. The rent claimed was for the period dating back to January 1987, when the respondent Government accepted the right of individual petition, until 2000. The applicant did not claim compensation for any purported expropriation since she was still the legal owner of the properties. The valuation contained a description of the town of Famagusta and of the Kato Dherynia village, where the applicant's properties were situated.

133. The starting point of the valuation was the annual rental value of the applicant's share in the properties in 1974 (CYP 357 – approximately EUR 610), calculated on the basis of a percentage (varying between 4% and 6%) of the market value of the properties (CYP 15,685 – approximately EUR 26,799). This sum was subsequently adjusted upwards according to an average annual rental increase of 5.5%. Compound interest for delayed payment was applied at a rate of 8% per annum.

134. In a letter of 28 January 2008 the applicant observed that a long period had passed since her first claims for just satisfaction and that the claim for pecuniary loss needed to be updated according to data concerning the increase of market value of land in Cyprus. The average increase in this respect was 10% to 15% per annum.

135. In her just satisfaction claims of December 2002, the applicant further claimed CYP 80,000 (approximately 136,688 EUR) in respect of non-pecuniary damage for the violations of her rights under Articles 8 of the Convention and 1 of Protocol No. 1. She further claimed CYP 60,000 (approximately EUR 102,516) in respect of the moral damage suffered for the other violations.

**(b) The Government**

136. In reply to the applicant's just satisfaction claims of December 2002, the Government submitted that the issue of reciprocal compensation for Greek-Cypriot property left in the north of the island and Turkish-Cypriot property left in the south was very complex and should be settled through negotiations between the two sides under the auspices of the UN, rather than by adjudication by the European Court of Human Rights, acting as a first-instance tribunal and relying on the reports produced by the applicant side only. They referred, on this point, to the UN plan entitled “Basis for agreement on a comprehensive settlement of the Cyprus problem”, in its revised version of 10 December 2002.

137. Challenging the conclusions reached by the Court in the *Loizidou* case ((just satisfaction), 28 July 1998, *Reports* 1998-IV), the Government considered that in cases such as the present one, no award should be made by the Court under Article 41 of the Convention. They underlined that the applicant's inability to have access to her properties depended on the political situation in Cyprus and, in particular, on the existence of the UN recognized cease-fire lines. If Greek-Cypriots were allowed to go to the north and claim their properties, chaos would explode on the island; furthermore, any award made by the Court would undermine the negotiations between the two parties.

138. Moreover, Turkey had no access to the lands office records of the “TRNC”, which were outside its jurisdiction and control. It was therefore not in a position to have sufficient knowledge about the possession and/or ownership of the alleged properties in 1974 or to know their market values and reasonable rents at the relevant time. The estimations put forward by the applicant were speculative and hypothetical, as they were not based on real data and did not take into consideration the volatility of the property market and its susceptibility to be influenced by the domestic situation in Cyprus. During the last 28 years, the landscape in Cyprus had considerably changed and so had the status of the applicant's property.

139. It was also to be noted that in the present application the estimations had not been provided by an independent expert, but by the Department of Lands and Surveys of the Republic of Cyprus, that is to say by a branch of an interested party which had intervened in the proceedings before the Court. In any event, Turkey could not be held liable in international law for the acts of the “TRNC” expropriating the applicant's properties, as it could not legislate to make reparation for these acts. The Government invited the Court to examine whether, as stated in Article 41 of the Convention, “the internal law of the High Contracting Party concerned” allowed “reparation to be made”.

140. Finally, the Government did not comment on the applicant's submissions under the head of non-pecuniary damage.

### *3. The Court's assessment*

141. The Court first notes that the Government's submission that doubts might rise as to the applicant's title of ownership over the properties at issue (see paragraph 138 above) is, in substance, an objection of incompatibility *ratione materiae* with the provisions of Article 1 of Protocol No. 1. Such an objection should have been raised before the application was declared admissible or, at the latest, in the context of the parties' observations on the merits. In any event, the Court cannot but confirm its finding that the applicant had a “possession” over the properties claimed in the present application within the meaning of Article 1 of Protocol No. 1 (see paragraph 46 above).

142. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of pecuniary and non-pecuniary damage is not ready for decision. It observes, in particular, that the parties have failed to provide reliable and objective data pertaining to the prices of land and real estate in Cyprus at the date of the Turkish intervention. This failure renders it difficult for the Court to assess whether the estimate furnished by the applicant of the 1974 market value of her properties is reasonable. The question must accordingly be reserved and the subsequent procedure fixed with due regard to any agreement which might be reached between the respondent Government and the applicant (Rule 75 § 1 of the Rules of Court).

#### **B. Costs and expenses**

143. In her just satisfaction claims of December 2002, the applicant sought CYP 7,200 (approximately EUR 12,302) for the costs and expenses incurred before the Court.

144. The Government did not comment on this point.

145. In the circumstances of the case, the Court considers that the question of the application of Article 41 in respect of costs and expenses is not ready for decision. The question must accordingly be reserved and the subsequent procedure fixed with due

regard to any agreement which might be reached between the respondent Government and the applicant.

## FOR THESE REASONS, THE COURT

1. *Dismisses* by six votes to one the Government's preliminary objections;
2. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 8 of the Convention and of Article 14 of the Convention read in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1;
4. *Holds* unanimously that there has been no violation of Article 3 of the Convention;
5. *Holds* unanimously that there has been no violation of Article 5 of the Convention;
6. *Holds* unanimously that there has been no violation of Article 6 of the Convention;
7. *Holds* unanimously that there has been no violation of Article 7 of the Convention;
8. *Holds* unanimously that there has been no violation of Article 11 of the Convention;
9. *Holds* unanimously that there has been no violation of Article 13 of the Convention;
10. *Holds* unanimously that there has been no violation of Article 14 of the Convention read in conjunction with Articles 5, 6 and 7;
11. *Holds* unanimously that the question of the application of Article 41 is not ready for decision;  
accordingly,
  - (a) *reserves* the said question in whole;
  - (b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
  - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Nicolas Bratza  
Deputy Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judge Bratza and Karakaş are annexed to this judgment.

N.B.  
F.A.

## CONCURRING OPINION OF JUDGE BRATZA

In the case of *Protopapa v. Turkey* (no. 16084/90, 24 February 2009), I voted with the other members of the Chamber in relation to all of the Convention complaints of the applicant save that under Article 13 which, for the reasons explained in my Partly Dissenting Opinion, I found had been violated.

The applicant's complaint under Article 13 in the present case is substantially the same as that of the applicant in the *Protopapa* case. While I continue to entertain the doubts which I expressed in that case as to whether there were any remedies which could be regarded as practical or effective and which offered the applicant any realistic prospects of success, in deference to the majority opinion in the *Protopapa* judgment, which has now become final, I have joined the other members of the Chamber in finding no violation of Article 13.

## PARTLY DISSENTING OPINION OF JUDGE KARAKAŞ

Unlike the majority, I consider that the objection of non-exhaustion of domestic remedies raised by the Government should not have been rejected. Consequently, I cannot agree with the finding of a violation of Article 1 of Protocol No. 1 of the Convention, for the same reasons as mentioned in my dissenting opinion in the case of *Alexandrou v. Turkey* (no. 16162/90, 20 January 2009).

I voted with the majority concerning the finding of no violation of Articles 3, 5, 6, 7, 11, 13 and 14 read in conjunction with Articles 5, 6 and 7 of the Convention.

██████████ v. TURKEY JUDGMENT (MERITS)

██████████ v. TURKEY JUDGMENT (MERITS)

██████████ v. TURKEY JUDGMENT (MERITS) – SEPARATE OPINIONS

██████████ v. TURKEY JUDGMENT (MERITS) – SEPARATE OPINIONS