FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 16085/90)

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. 16085/90) 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 12 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 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 7 December 1999 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 1927 and lives in Nicosia.

I. THE APPLICANT'S HOUSE AND PROPERTIES

8. The applicant claimed that until 1974 she had been permanently residing in a house she owned at 33, 28th October Street, Kyrenia (northern Cyprus). She also owned a garden at Kazafani and three fields with trees at Karmi (in the locality known as "Horteri Chomatovounos"), all in the District of Kyrenia.

9. According to the applicant, her house had a surface-area of 190 square metres, with three large drawing rooms, a spacious dining room and kitchen, four bedrooms, two bathrooms, a storeroom and verandas. It was surrounded by a 753 sq. m garden and furnished mainly with period antiques and luxury items.

10. In support of her claim to ownership, the applicant produced copies of the relevant certificates of ownership of Turkish-occupied immovable properties issued by the Republic of Cyprus. According to these documents, the applicant's properties were registered as follows:

(a) Kyrenia/Pano Kyrenia, plot no. 45, sheet/plan 12/21.1.12, registration no. C1703, house with garden;

(b) Kyrenia/Kazafani, plot no. 95/1/1, sheet/plan 12/22W2, garden/orchard; area: 2,351 sq. m;

(c) Kyrenia/Karmi, plot no. 222, sheet/plan 12/27E2, field; area: 3,138 sq. m;

(d) Kyrenia/Karmi, plot no. 282, sheet/plan 12/27E2, field; area: 1,650 sq. m;

(e) Kyrenia/Karmi, plot no. 291/1, sheet/plan 12/27E2, field; area: 2,264 sq. m.

11. Since the 1974 Turkish intervention, the applicant has been deprived of her properties, which were located in the area under the occupation and control of the Turkish military authorities, who prevented her from having access to and using her properties.

II. THE DEMONSTRATION OF 19 JULY 1989

12. 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

13. According to an affidavit sworn by the applicant at Nicosia District Court on 10 April 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. The applicant and other women had planned to gather in the grounds of the Ayios Kassianos School and to stage a sit-in in protest against the occupation of the northern part of the island. They also asked the Bishop of Kitium to conduct a service in the St. George's Chapel, which was located near the school.

14. When the applicant arrived, the school grounds were filled with a group of mostly young women, who were singing. The applicant stood near a water tank. She noticed the presence of UN soldiers and Turkish policemen armed with batons.

15. The UN officers invited the demonstrators to leave the premises. However, within a matter of seconds, the Turkish policemen had rushed towards them. Some of the women were grabbed by their clothes and hit with guns and batons. The applicant herself was hit and pushed. She received what she described as a "terrible blow in the right leg

beneath the tibia". She realised she had been hit with a sharp object, namely a bayonet wielded by a Turkish soldier. Her leg started to bleed profusely and she felt herself drifting into unconsciousness. She shouted: "Help, help, please, I am losing my leg". Some demonstrators put her on a stretcher and she was taken by ambulance to Nicosia General Hospital.

16. At the hospital, her wound was stitched internally and externally. She was told to take ten days' absolute rest. For the next six months, the applicant suffered considerable pain in her leg. She could not walk or even put weight on the leg and was forced to use crutches. She experienced pain with changes in the weather. She continued to have problems climbing stairs and the scar on her leg remained visible.

17. As many years had passed since the demonstration, three of the witnesses who saw the wound being inflicted (two friends and the editor of a local newspaper) had already died. However, an affidavit sworn by a witness, Mrs O[redacted] corroborated her version of events.

18. In support of her claim of ill-treatment, the applicant produced a medical certificate issued on 27 March 2000 by Doctor[redacted], a specialist orthopaedic surgeon practising in Nicosia, which reads as follows:

> "The [applicant] was injured on 19.7.1989 by Turks following an attack on women near Ayios Kassianos in Nicosia in the Ayios Kassianos Primary School. The findings of the examination were:
>
> Injury to the right lower limb of the upper third of the tibia with an open wound about 9cm long. The wound was caused with a sharp object.
>
> Treatment of the patient and its course:
>
> 1. Surgical cleaning of the wound;
>
> 2. Stitching up of the wound;
>
> 3. Pharmaceutical treatment;
>
> 4. Regular dressing of the wound;
>
> 5. Complete rest in bed for ten days with leg supported by pillows;
>
> 6. The stitches removed ten days later;
>
> 7. The patient [should walk] with crutches for 1 month;
>
> Present condition:
>
> 1. Evident ugly scar, about 9cm in the upper third of the tibia, transversal;
>
> 2. Loss of feeling in the area of the wound."

B. The Government's version of events

19. The Government alleged that the applicant had participated in a violent demonstration with the aim of inflaming 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.

20. 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.

C. The UN Secretary General's report

21. 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."

III. RELEVANT DOMESTIC LAW

A. The Cypriot Criminal Code

22. 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."

23. 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.

24. 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."

25. 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

26. 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

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

"... Any person who enters a prohibited military area without authorization, 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."

28. 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. PRELIMINARY ISSUE

29. In its decision on the admissibility of the application, the Court stated that in the light of its findings in the case of *Loizidou v. Turkey* ((merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), the alleged violations of Articles 3, 11 and 14 of the Convention and Article 1 of Protocol No. 1 were imputable to Turkey. As a result, the application could not be rejected as incompatible *ratione personae* with the provisions of the Convention or of its Protocols.

30. The Court sees no reasons to depart from this finding. It will therefore proceed on the assumption that Turkey is responsible for the acts complained of, even if performed by the authorities of the "Turkish Republic of Northern Cyprus" (the "TRNC").

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

31. 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."

32. The Government disputed this claim.

A. Arguments of the parties

1. The Government

33. The Government pointed out that the "TRNC" had in fact taken action to expropriate the properties claimed by the applicant. It would be unrealistic not to give any effect to the "TRNC's" acts, which had to be assumed to have been legally valid under the Convention.

34. Challenging the conclusions reached by the Court in the *Loizidou v. Turkey* judgment ((merits), cited above), the Government asserted that the applicant's inability to gain access to her property had depended on a number of factors, such as the cease-fire arrangements, the agreement for the relocation of the populations, the unmanning agreement, the status of the UN buffer zone and the agreed principles of bi-communality and bi-zonality for an eventual settlement of the Cyprus problem. Moreover, the aim of the demonstration of 19 July 1989 had been to make political propaganda and the applicant had not genuinely intended to go to the property.

35. Even assuming that a question could arise under Article 1 of Protocol No. 1, the Government argued that the interference with the applicant's property rights had been justified under this provision. In particular, owing to the relocation of the populations, it had been necessary to facilitate the rehabilitation of Turkish-Cypriot refugees and to renovate and put to better use abandoned Greek-Cypriot property. The exercise of the

right of property had had to be restricted or limited, as there was a public interest in not undermining the inter-communal talks. The status of the UN buffer zone had also rendered it necessary to regulate the right of access to possessions until a settlement of the political problem was achieved.

36. In the light of all the above, the Government submitted that it would have been unrealistic to grant individual applicants a right of access to property and consequent property rights in isolation from the political situation. The issues of property and compensation could only be settled through negotiations.

2. The applicant

37. The applicant stressed that she was the owner of the properties described in paragraph 10 above, as evidenced by the relevant certificates of ownership that had been issued by the Republic of Cyprus. The respondent Government had failed to produce the full, original records from the Land Office, which they had illegally detained since 1974.

38. The applicant argued that the interference with her property rights could not be justified under Article 1 of Protocol No. 1, as it had not been in accordance with the law or with the principle of proportionality. She relied on the findings of the Court in the case of *Loizidou* ((merits), cited above).

3. The third-party intervener

39. The Government of Cyprus submitted that Turkey should be held responsible for the acts complained of by the applicant, as it had overall control over northern Cyprus. The inter-communal talks could not provide a justification for a continuing violation of the right of property. The aims invoked by the respondent Government could not be comprised in the notion of "general interest" and in any event the means employed were wholly disproportionate.

B. The Court's assessment

40. The Court notes, firstly, that the documents submitted by the applicant (see paragraph 10 above) provide prima facie evidence that she had title to the properties at issue. As the respondent Government have failed to produce convincing evidence to rebut this, the Court considers that these properties were "possessions" of the applicant within the meaning of Article 1 of Protocol No. 1.

41. The Court observes that in the case of *Loizidou v. Turkey* ((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."

42. 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."

43. 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).

44. 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 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.

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

45. 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 1 of Protocol No. 1. She alleged that this discrimination had been based on her national origin and religious beliefs.

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."

46. The Court recalls that in the case of *Alexandrou v. Turkey* (no. 16162/90, §§ 38-39, 20 January 2009) 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

47. The applicant complained about the treatment administered to her during the demonstration of 19 July 1989.

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."

48. The Government disputed her claim.

A. Arguments of the parties

1. The Government

49. Relying on their version of the events (see paragraphs 19-20 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.

50. In any event, the applicant's allegation that she had been "assaulted and severely beaten up by Turkish military personnel" lacked any factual basis. The applicant's version of events was not credible and was self-contradictory: she had never been arrested and the alleged bruises on her leg could not have been inflicted by blows from a blunt instrument, such as a club or a stick, but were consistent with a wound caused by a sharp object, such as barbed wire.

51. Given the importance of preserving the integrity of the UN buffer zone from unauthorised entry or activities by civilians, the fact that the applicant was prevented from violating the zone and the cease-fire line could not, in itself, constitute a breach of Article 3 of the Convention.

2. The applicant

52. The applicant considered that her case had been proven beyond reasonable doubt and that the treatment administered to her was entirely unjustified. Having regard to its physical and mental effects, as well as to her sex and age, it could be described as degrading and grossly humiliating.

53. The demonstration had been peaceful and the demonstrators were women. The applicant had been attacked and brutally beaten without justification. Not only had the use of force been unnecessary, she had not been given any assistance and had been left helpless. It had only been with the help of a journalist and other demonstrators that she had been taken to Nicosia General Hospital.

3. The third-party intervener

54. The Government of Cyprus alleged that the findings of the Commission in the case of *Chrysostomos and Papachrysostomou* (cited above) could not survive in the light

of the *Loizidou* judgment (cited above). Turkey was responsible for the acts of the "TRNC" police when they made an incursion into the buffer zone.

55. The attack on the applicant by a Turkish soldier with a fixed bayonet had been made without justification and had reached the minimum level of severity to come within the notion of "degrading treatment". This treatment could also be qualified as "torture", having regard to the intensity of the suffering inflicted and to the intention to punish a demonstrator and/or to intimidate other demonstrators.

B. The Court's assessment

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

57. As to the application of these principles to the present case, the Court observes that it is undisputed that the applicant was involved in a physical confrontation with the Turkish or Turkish-Cypriot forces 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, §§ 113-115). 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 the acts complained of took place.

58. It further observes that the applicant submitted that she was hit and pushed. She also alleged that a Turkish soldier hit her on the leg with a bayonet, causing a deep wound in her upper tibia (see paragraph 15 above). The applicant's version of events is corroborated by a sworn affidavit of an eye-witness (see paragraph 17 above) and by the medical certificate signed by Dr [redacted] (see paragraph 18 above). Even though issued in March 2000, which is more than ten years after the events of 19 July 1989, this certificate reconstructs the history of the treatment administered to the applicant at Nicosia General Hospital after the demonstration. It states that she had suffered an open wound about 9 cm long on the upper third of her tibia and that this injury was likely to have been caused by a sharp object. Stitches were applied and she had had to use crutches for one month. In 2000 the patient still had a scar and had lost feeling in the area of the wound.

59. The Court considers that it has been established that the applicant's injury was caused by the Turkish or Turkish-Cypriot police. Moreover, a serious traumatic episode such as the wound suffered by the applicant is not consistent with a minor physical confrontation between her and the police officers. There is nothing to show that the applicant, who was not arrested, had offered resistance to the police in the execution of their duties to the extent that it had been necessary to inflict a wound with a sharp object. It follows that the respondent State's agents used excessive force against the applicant, which had not been rendered strictly necessary by the state of heightened tension surrounding the demonstration of 19 July 1989 and/or by the applicant's own behaviour.

60. Having regard to its physical and mental effects and to the applicant's sex, the Court considers that the treatment inflicted on the applicant by the Turkish police

amounted to “inhuman” and “degrading” treatment within the meaning of Article 3 of the Convention.

61. It follows that there has been a violation of this provision.

V. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

62. 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.”

A. Arguments of the parties

1. The Government

63. The Government disputed this claim, observing that given its violent character, the demonstration was clearly outside the scope of Article 11 of the Convention and constituted an unlawful assembly. Knives and other cutting instruments had been found in the possession of some of the arrested demonstrators. The Government referred on this point to sections 70, 71, 80 and 82 of the Cyprus Criminal Code, which was applicable in the “TRNC” (see paragraphs 22-25 above) and recalled that according to Chapter 155 of the Criminal Procedure Law (see paragraph 26 above), the police had the power to arrest persons involved in violent demonstrations. Moreover, it was an offence under the laws of the “TRNC” to violate the borders of the State.

64. In view of the above, the Government 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. There was no justification for the demonstrators, including the applicant, violating the UN buffer zone.

2. The applicant

65. The applicant alleged that the Turkish-Cypriot police had violently suppressed her right to freedom of peaceful assembly. This interference was not prescribed by the laws of the Republic of Cyprus and a protest sit-in could not have posed a threat to Turkey's national security. In any event, the brutal police intervention was entirely disproportionate.

3. The third-party intervener

66. The Government of Cyprus observed that the interference by the Turkish police with the peaceful assembly which was taking place in the buffer zone had not been prescribed by law, was unnecessary and grossly disproportionate in relation to any

conduct by the applicant or any claimed public-order issue which could have arisen. The laws of the Republic of Cyprus, applicable to the area where the demonstration took place, did not permit such an interference. The respondent Government could not alter the legal system in the occupied territory and had not invoked any Turkish law that could have provided a legal basis for its agents' behaviour.

67. The Government of Cyprus finally observed that the UN buffer zone was not within the lawful jurisdiction of the Turkish forces and their incursion into that zone was contrary to the ceasefire arrangements.

B. The Court's assessment

68. The Court notes that the applicant and other women clashed with Turkish-Cypriot police while demonstrating in or in the vicinity of the Ayios Kassianos school in Nicosia. The demonstration was dispersed and some of the demonstrators 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).

69. This interference had a legal basis, namely sections 70 and 71 of the Cypriot Criminal Code (see paragraphs 22-23 above) and section 14 of the Criminal Procedure Law (see paragraph 26 above), and was thus "prescribed by law" within the meaning of Article 11 § 2 of the Convention. In this respect, the Court recalls that in the case of *Foka v. Turkey* (no. 28940/95, §§ 82-84, 24 June 2008) 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*, cited above, §§ 14, 61, 90).

70. There remain the questions whether the interference pursued a legitimate aim and was necessary in a democratic society.

71. 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.

72. 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, §§ 109-110). 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 21 above).

73. 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).

74. 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).

75. The Court further observes that, as stated in the UN Secretary General's report of 7 December 1989 (see paragraph 21 above), the demonstrators had forced their way into the UN buffer zone. According to the “TRNC” authorities, they also entered “TRNC” territory, thus committing offences punishable under the “TRNC” laws (see paragraphs 27-28 above). In this respect, the Court notes that it does not have at its disposal any element capable of casting doubt upon the respondent Government's statement that the area entered by some of the demonstrators 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).

76. 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.

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. In her just satisfaction claims of April 2000, the applicant requested 289,746 Cypriot pounds (CYP – approximately 495,060 euros (EUR)) for pecuniary damage. She relied on an expert's report 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 date 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 report contained a description of Kyrenia, Kazaphani and Karmi, where the applicant's properties were located.

80. The starting point of the valuation report was the rental value of the applicant's properties in 1974, calculated on the basis of a percentage (varying from 6% to 4%) of their market value. This sum was subsequently adjusted upwards according to an average annual rental increase of 12% (5% for the house described in paragraph 10 (a) above). Compound interest for delayed payment was applied at a rate of 8% per annum.

81. According to the expert, the 1974 values of the applicant's properties were as follows:

- property described in paragraph 10 (a) above: market value CYP 26,500 (approximately EUR 45,277); rental value CYP 1,325 (approximately EUR 2,263);
- property described in paragraph 10 (b) above: market value CYP 9,404 (approximately EUR 16,067); rental value CYP 564 (approximately EUR 963);
- property described in paragraph 10 (c) above: market value CYP 3,138 (approximately EUR 5,361); rental value CYP 188 (approximately EUR 321);
- property described in paragraph 10 (d) above: market value CYP 1,650 (approximately EUR 2,819); rental value CYP 99 (approximately EUR 169);
- property described in paragraph 10 (e) above: market value CYP 2,264 (approximately EUR 3,868); rental value CYP 136 (approximately EUR 232).

82. In a letter of 28 January 2008 the applicant observed that it had been a considerable time since she had presented her claims for just satisfaction and that the claim for pecuniary losses needed to be updated according to the increase in the market value of land in Cyprus (between 10 and 15% per annum).

83. In her just satisfaction claims of April 2000, the applicant also claimed CYP 40,000 (approximately EUR 68,344) in respect of non-pecuniary damage. She stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou* case ((just satisfaction), 28 July 1998, *Reports* 1998-IV) whilst, taking into account, however, the fact that the period for which the damage was claimed in the instant case was longer and there had also been a violation of Article 14 of the Convention. She also claimed CYP 20,000 (approximately EUR 34,172) in respect of the moral damage suffered for the loss of her home and CYP 40,000 (approximately EUR 68,344) for the “violations of Articles 3, 10 and 11” of the Convention.

84. The total sum claimed for non-pecuniary damage was thus CYP 100,000 (approximately EUR 170,860).

(b) The Government

85. Following a request from the Court, on 15 September 2008 the Government filed comments on the applicant's claims for just satisfaction. They observed that the applicant's properties were “fields” and that very little rent could be obtained from fields in Cyprus. In any event, the alleged 1974 market value of the properties was exorbitant, highly excessive and speculative; it was not based on any real data which could be used to make a comparison and made insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international. The report submitted by the applicant had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

86. As an annual increase in the value of the properties had been applied, it would be unfair to add compound interest for delays in payment. Moreover, the applicant's calculations had made no allowance for outgoings such as tax liabilities, expenses and costs for repairing the properties.

87. Finally, the Government considered that the sum claimed in respect of non-pecuniary damage (CYP 40 000) was highly excessive, as it was the double the amount that had been awarded in the *Loizidou* case ((just satisfaction), cited above).

(c) The third-party intervener

88. The Government of Cyprus fully supported the applicant's claims for just satisfaction.

2. The Court's assessment

89. The Court observes that it has found a violation of Article 3 of the Convention on account of the treatment inflicted on the applicant by the Turkish police (see paragraphs 56-61 above) and considers that an award should be made under that head, bearing in mind the seriousness of the damage sustained, which cannot be compensated for solely by a finding of a violation. Making an assessment on an equitable basis, the Court awards EUR 5,000 to the applicant, plus any tax that may be chargeable on this amount.

90. As far as the violation of Article 1 of Protocol No. 1 to the Convention is concerned, the Court considers that in the circumstances of the case 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

91. In her just satisfaction claims of April 2000, the applicant sought CYP 4,000 (approximately EUR 6,834) for the costs and expenses incurred before the Court. This sum included the cost of the expert report assessing the value of her properties.

92. The Government did not comment on this point.

93. 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. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

2. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

3. *Holds* by six votes to one that there has been a violation of Article 3 of the Convention;

4. *Holds* unanimously that there has been no violation of Article 11 of the Convention;

5. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of the non-pecuniary damage related to the violation of Article 3 of the Convention;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Holds* unanimously that the question of the application of Article 41 in respect of the violation of Article 1 of Protocol No. 1 to the Convention and of the costs and expenses is not ready for decision;
   accordingly,
   (a) *reserves* the said question;
   (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 opinion of Judge Karakaş is annexed to this judgment.

N.B.
F.A.

PARTLY DISSENTING OPINION OF JUDGE KARAKAŞ

In the instant case I disagree with the majority's conclusion that there has been a violation of Article 3 of the Convention. In finding a breach of this provision, the majority found it established that a Turkish or Turkish-Cypriot police officer hit the applicant on the leg with a bayonet, causing a deep wound in her upper tibia, during a violent demonstration that took place on 19 July 1989. It considered that the applicant's version of events was corroborated by:

- an affidavit sworn by a witness, Ms [redacted], *many years after the demonstration* (see paragraph 17) and;
- the medical certificate issued by Dr [redacted] on 27 March 2000, almost *eleven years after the alleged incident* (see paragraph 18).

When the Court is presented with conflicting accounts as to the circumstances of a case it reaches its decision on the basis of the available evidence submitted by the parties (see *Kakoulli and Others v. Turkey*, no. 38595/97, § 102, 22 November 2005). In assessing the evidence before it, the standard of proof adopted by the Court is that of "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25); such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

In this connection I should like to point out that there was no independent and impartial eyewitness to confirm the applicant's version of events. In previous similar cases where the applicants alleged that they had been assaulted by Turkish soldiers or police officers, their allegations were supported by independent reports or eyewitness statements given by United Nations personnel (see in this respect, *Kakoulli and Others*, cited above, §§ 37-49; *Isaak v. Turkey*, no. 44587/98, §§ 28-33, 24 June 2008; and *Solomou and Others v. Turkey*, no. 36832/97, §§ 16-20, 24 June 2008). The only witness statement submitted to the Court was that of Ms [redacted], who allegedly took part in the same demonstration. Moreover, Ms [redacted] statements were obtained *many years after the demonstration* (emphasis added). Bearing in mind that the passage of time takes a toll on witnesses' capacity to recall events in detail and with accuracy (see *Ipek v. Turkey*, no. 25760/94, § 116, 17 February 2004), it is doubtful whether she would have been able to recollect incidents which occurred many years previously.

Furthermore, the applicant failed to furnish the Court with any other evidence in support of her allegations, such as independent reports, photographs or video footage of the incident. Again, in the above-mentioned cases, the applicants' allegations were backed up by such evidence (see *Kakoulli and Others*, §§ 51-57; *Isaak*, §§ 42-58; and *Solomou and Others*, §§ 28-36, all cited above) and the Court relied on that evidence in the establishment of the facts of those cases.

It is undisputed that the applicant was involved in a demonstration which gave rise to an extremely tense situation. In the case of *Chrysostomos and Papachysostomou v. Turkey* (nos. 15299/89 and 15300/89, Commission's report of 8 June 1993, DR 86, p. 4), 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, §§ 113-115). In the instant case, moreover, the applicant was at no point arrested or detained.

Under these circumstances, it has not been established that the applicant's injury was deliberately caused by the Turkish or Turkish-Cypriot police. Moreover, there is nothing to show that the police used excessive force when they were confronted in the course of their duties with resistance to arrest by the demonstrators (see *Protopapa v. Turkey*, no. 16084/90, § 48, 6 July 2009).

As regards the medical report submitted by the applicant, I would like to stress that Dr [redacted] pathology findings were based on the applicant's allegations and her version of events which had taken place almost *eleven years previously*. In this connection I would point out that in the case of *Mehmet Sahin and Others v. Turkey* (no. 5881/02, § 30, 30 September 2008), in which one of the applicants alleged that he had suffered ill-treatment at the hands of the gendarmes and furnished the Court with two reports obtained from the Human Rights Foundation of Diyarbakır almost four months and two years after his release from custody, the Court attached considerable weight to the passage of time and dismissed the applicant's complaints of ill-treatment.

In view of the above, I consider that the evidence before the Court does not enable it to find beyond reasonable doubt that the applicant was subjected to ill-treatment by the Turkish or Turkish-Cypriot police.