FOURTH SECTION

CASE OF [redacted] v. TURKEY

(Application no. 16082/90)

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 v. Turkey,

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

Nicolas Bratza, *President,*
Giovanni Bonello,
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
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. 16082/90) 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, Mr ("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 him of his properties and that he 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 1964 and lives in Larnaca.

I. HOME AND PROPERTY ISSUES

8. The applicant claimed that his home had been in the village of Marathovounos in the District of Famagusta (northern Cyprus). His family had owned considerable immovable property in northern Cyprus and was one of the wealthiest families in the village. The applicant's parents had intended to transfer to him a quarter share in their immovable properties when he reached the age of 18. However, because of the 1974 Turkish intervention this did not happen. The applicant considered that, even though the formal registration process was not completed, he had been the "beneficial owner" of the said share in the properties from the age of 18.

9. The properties listed below were all transferred to the applicant by way of gift from his parents on 6 August 1996 (declarations of transfer nos. D-1534, D-1535, D-1537 and D-1538):

(a) Famagusta, Marathovounos, Rashies, plot no. 149, sheet/plan: 22/24; description: house (area: approximately 250 square metres) and yard (ground floor); use: residence; area 2,339 sq. m; share: ¼;

(b) Famagusta, Marathovounos, plot no. 223, sheet/plan: 22/24; description: field; area 2,161 sq. m; share: ¼;

(c) Famagusta, Marathovounos, plot no. 170, sheet/plan: 22/24; description: field; area 1,339 sq. m; share: ¼;

(d) Famagusta, Marathovounos, Rashies, plot no. 188, sheet/plan: 22/24; description: field; area 2,190 sq. m; share: ¼;

(e) Famagusta, Marathovounos, plot no. 303/1/1, sheet/plan: 22/24.V.1; description: field; area 276 sq. m; share: ¼;

(f) Famagusta, Marathovounos, Xylogefyro, plot no. 130, sheet/plan: 23/26; description: field; area 26,127 sq. m; share: ¼;

(g) Famagusta, Marathovounos, Landes, plot no. 406, sheet/plan: 22/32; description: field; area 4,925 sq. m; share: ¼;

(h) Famagusta, Marathovounos, Paneloporta, plot no. 274, sheet/plan: 22/32; description: field; area 4,076 sq. m; share: ¼;

(i) Famagusta, Marathovounos, Paneloporta, plot no. 275, sheet/plan: 22/32; description: field; area 4,413 sq. m; share: ¼;

(j) Famagusta, Marathovounos, Pallourokampos, plot no. 403, sheet/plan: 22/31; description: field; area 9,382 sq. m; share: ¼;

(k) Famagusta, Angastina, plot no. 439/1, sheet/plan: 22/31; description: field; area 7,055 sq. m; share: ¼;

(l) Famagusta, Angastina, plot no. 439/2, sheet/plan: 22/31; description: field; area 974 sq. m; share: ¼;

(m) Famagusta, Marathovounos, Parraka, plot nos. 330/2/1, 330/3, 335/1, sheet/plan: 22/7; description: field; area 8,758 sq. m; share: ¼;

(n) Famagusta, Marathovounos, Tzaetika, plot no. 135, sheet/plan: 22/16; description: field; area 3,145 sq. m; share: ¼;

(o) Famagusta, Marathovounos, Hepipis, plot no. 236, sheet/plan: 22/16; description: field; area 2,703 sq. m; share: ¼;

(p) Famagusta, Marathovounos, Vitsada Road, plot no. 269, sheet/plan: 22/16; description: field; area 2,325 sq. m; share: ¼;

(q) Famagusta, Marathovounos, Tzaetika, plot no. 246/1, sheet/plan: 22/16; description: field; area 1,994 sq. m; share: ¼;

(r) Famagusta, Marathovounos, Tzaetika, plot no. 246/2, sheet/plan: 22/16; description: field; area 1,918 sq. m; share: ¼.

10. The properties listed below were all transferred to the applicant by way of gift from his parents on 12 January 2000 (declaration of transfer no. D-36):

(a) Famagusta, Marathovounos, plot no. 321, sheet/plan: 22/24.V.1; description: house and yard (ground floor); area 1,238 sq. m; share: ¼;

(b) Famagusta, Marathovounos, Limni, plot no. 147, sheet/plan: 22/32; description: field; area 1,370 sq. m; share: ¼;

(c) Famagusta, Marathovounos, Limni, plot no. 140/1, sheet/plan: 22/32; description: field; area 11,050 sq. m; share: ¼;

(d) Famagusta, Marathovounos, Mazeri, plot no. 180/1, sheet/plan: 23/17; description: field; area 13,500 sq. m; share: 1/8;

(e) Famagusta, Marathovounos, Toumpa, plot no. 34, sheet/plan: 23/17; description: field; area 17,827 sq. m; share: 1/32.

11. The properties listed below were all transferred to the applicant by way of gift from his parents on 13 January 2000 (declarations of transfer nos. D-45 and D-46):

(a) Famagusta, Marathovounos, Trachonas, plot no. 805, sheet/plan: 22/24; description: field; area 11,542 sq; m; share: 1/8;

(b) Famagusta, Angastina, Angoulos, plot no. 267, sheet/plan: 22/30; description: field; area 13,925 sq. m; share: 1/16;

(c) Famagusta, Angastina, Angoulos, plot no. 152, sheet/plan: 22/38; description: field; area 3,295 sq. m; share: 1/16.

12. In order to substantiate his claim to ownership, the applicant produced the relevant certificates of ownership of Turkish-occupied immovable property issued by the Republic of Cyprus.

13. The applicant alleged that since the 1974 Turkish intervention he had been deprived of his property rights, as his property was located in the area that was under the occupation and control of the Turkish military authorities. They had prevented him from having access to and from using his properties.

II. THE DEMONSTRATION OF 19 JULY 1989

14. 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

15. According to an affidavit sworn by the applicant before the "TRNC" Nicosia District Court on 7 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.

16. The applicant heard about the demonstration from the local radio and press. During the afternoon of 19 July 1989 the radio announced that Turkish soldiers and policemen had started to cruelly beat the demonstrators. The applicant, a nursing officer, decided to go to the area where the events were taking place. He took with him a special bag containing first-aid equipment and wore an armband marked with the Red Cross sign.

17. The applicant told UN officers that he was a nurse and they informed him that they needed his help for a woman who had received an injury to the head and was lying on the ground. While he was trying to attend to the woman, the applicant was beaten with clubs about the head and body by Turkish military personnel and/or other personnel acting under Turkish control. Despite his attempts to explain that he was a nurse, they continued to hit him. He felt a powerful blow to the head and started bleeding. He was led away at gunpoint through an angry crowd that shouted abuse and threats and was then taken by bus to the so-called "Pavlides Garage". The crowd had encircled the bus and was hitting it with sticks and throwing stones at the arrested persons.

18. At the garage a body search was carried out and all the applicant's personal effects were taken. The crowd was shouting and throwing stones at the garage, some of which came through the roof. Some hours later he was taken to hospital where he had stitches to his head. He was then taken back to the garage. He was still bleeding and his clothes were soaked with blood. Sometime after midnight he was interrogated by a Greek-speaking officer. The applicant declared that he had joined the demonstration voluntarily for humanitarian reasons. He was told to sign a statement in Turkish but refused as he did not understand Turkish and signing would have been tantamount to recognising the "Turkish Republic of Northern Cyprus" (the "TRNC").

19. In the morning of 20 July 1989 he was taken to Seray Police Station and put in a cell that was dark, damp and dirty. While at the station he was beaten and threatened.

20. On 20 July 1989 he was given back his personal effects and taken to court, where an interpreter explained the charges to the accused. The applicant understood that he was accused of having violated the borders of the "TRNC". He informed the judge that he had attended the demonstration only in order to offer humanitarian aid as a member of the Red Cross. The court remained completely indifferent to what he said.

21. He was remanded in custody for two days and then taken to Ortakeuy Prison where all his personal effects were taken away again. He was blindfolded and led to another area of the prison where he was interrogated and punched. The interrogation was aimed solely at eliciting military information and the applicant lied about certain details. He was forced to wash the blood from his clothes before appearing in court the next day. After the interrogation he was taken to the central prison.

22. On 21 July 1989 he was taken to court. Foreign journalists and UN officers were present in the courtroom. The accused 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. One of the accused (the Bishop of Kitium) spoke on behalf of the others and said that they would agree to be defended only by a Greek-Cypriot or UN lawyer. The judge replied that she could only appoint a lawyer registered with the "TRNC" bar association. The accused pleaded not guilty and stated that they did not recognise the legitimacy of the "TRNC" or its tribunals. Four witnesses were called by the prosecution. The Bishop of Kitium put some questions to the first witness. However, the judge refused to allow some of the questions and the Bishop accordingly declined to cross-examine any other witness. The prosecution witnesses lied about basic facts surrounding the demonstration and the arrest of the accused. One of the persons present in the courtroom spoke briefly to the Bishop, who became frightened as a result. After the trial the applicant and his co-accused were taken back to prison. Their pictures were taken.

23. On 22 July 1989 the applicant was again taken to court. A hostile crowd gathered outside the courtroom. The applicant was sentenced to three days' imprisonment and a fine of 50 Cyprus pounds (CYP) – approximately 85 euros (EUR) – with five additional days in prison in default of payment within 24 hours. This decision was translated into Greek and the accused stated that they would not pay the fine. An angry crowd had assembled within the precinct of the court and was shouting, swearing and making obscene gestures at the accused. The applicant had the impression that the crowd's presence and actions were being orchestrated and controlled by the police.

24. From 24 until 28 July 1989 the applicant went on a hunger strike to protest about the prison director's refusal to give the Bishop of Kitium church vestments and holy vessels with which to celebrate mass. He was put in an isolation cell as punishment but continued his strike notwithstanding the pressure exerted by the prison staff.

25. On 28 July 1989 the applicant was released and taken back to southern Cyprus.

26. On 29 July 1989 he went to the police headquarters in Nicosia and made a complaint about his arrest and ill-treatment. He was referred to Nicosia General Hospital, where he was examined by a doctor.

27. In support of his claim of ill-treatment, the applicant produced a medical certificate issued on 29 July 1989 by Dr [redacted], a medical officer at Nicosia Hospital. This document reads as follows:

> "I have examined today 29.7.89 [redacted] and found a head injury (left frontal bone). Four stitches. B.P. = 120/80. Removal of stitches and cleaning of wound was recommended. He complains about mild pain in the epigastrium and nausea. Treatment was provided and urine culture was recommended for old nephritis."

B. The Government's version of events

28. 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.

29. 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.

30. The applicant was charged, tried, found guilty and sentenced to a short term of imprisonment. He pleaded not guilty, but did not give evidence and declined to use the available judicial remedies. He was asked if he 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

31. 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

32. 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 show members of the Turkish-Cypriot police using force to arrest some of the demonstrators.

E. Documents pertaining to the applicant's trial

33. The English translation of the “TRNC” Nicosia District Court's judgment of 22 July 1989 indicates that the applicant, together with 9 other men, was charged with

two offences: entering “TRNC” territory without permission (contrary to sections 2, 8 and 9 of Law no. 5/72 – see paragraph 40 below) and entering “TRNC” territory other than through an approved port (contrary to subsections 12(1) and (5) of the Aliens and Immigration Law – see paragraph 41 below).

34. The judgment was given in the presence of the accused and of an interpreter. The trial judge noted the following:

(i) the accused did not accept the charges against them and stated that they did not wish to use the services of a lawyer registered in the “TRNC”;

(ii) the public prosecutor called five witnesses, whose statements were translated into Greek for the accuseds' benefit;

(iii) the witnesses (mainly police officers on duty at the time of the demonstration) declared that the accused had illegally crossed the “TRNC” border, shouted abuse at the Turkish-Cypriot forces and resisted arrest by pulling and pushing; knives and other cutting objects had been found in the bags of some of the demonstrators who had been arrested;

(iv) the accused had been told that they could cross-examine witnesses in turn and, if they so wished, choose one of their number to cross-examine the witnesses on behalf of all the accused; during the hearing of evidence, one of the accused put a few questions to one of the prosecution witnesses;

(v) the applicant had stated that he considered the Cypriot coast to be the border and for that reason did not accept that he had violated the border; before the District Court gave its sentence, the Bishop of Kitium, speaking on behalf of all the accused, had made a statement saying that their struggle had been peaceful, that their aim was to have Greek-Cypriots and Turkish-Cypriots living together in peace, that they had not been carrying weapons and that they had asked for UN protection;

(vi) relying on statements by the prosecution witnesses, which were not undermined by the statements made by some of the accused, the District Court came to the conclusion that the accused had crossed the borders of the “TRNC” at an unapproved entry point and without permission and had resisted by various means the UN and Turkish forces which had tried to stop them;

(vii) the prosecution had proved its case beyond reasonable doubt, so that the accused were guilty on both counts;

(viii) in deciding on the sentence, the District Court had taken into account the seriousness of the offence, and the fact that the accused had shown no remorse and continued to deny the validity of the “TRNC”.

III. RELEVANT DOMESTIC LAW

A. The Cypriot Criminal Code

35. 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."

36. 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.

37. 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."

38. 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

39. 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

40. 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."

41. 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

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

He 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."

43. The Government disputed this claim.

A. The Government's preliminary objections

44. 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.

A. The merits

1. Arguments of the parties

(a) The Government

45. The Government submitted that the Turkish-Cypriot authorities had no information regarding the transfers that had allegedly been effected in the applicant's favour by his parents at the Greek-Cypriot Land Office. In any event, the transfers had been made several years after the 1974 Turkish intervention, as well as after the recognition, by Turkey, of the right of individual petition (20 January 1987) and the introduction of the present application (1990). Therefore, the applicant could not claim to have been in "possession" of the relevant properties "at any material time" and should have known that he could not enjoy them because of the political situation on the island. Nor could he claim to have inherited a right under the Convention from his parents.

46. 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 his alleged property, which he knew was inaccessible in view of 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.

(b) The applicant

47. The applicant argued that he had submitted sufficient proof of ownership. He alleged that, notwithstanding the fact that the formal registration process had not been completed, from the age of 18 he had been the "beneficial owner" of a share in his parents' properties.

2. The third-party intervener

48. The Government of Cyprus submitted that it was the duty of the respondent Government to prove that the applicant did not own the relevant properties.

C. The Court's assessment

49. The Court observes, firstly, that the Government did not contest the applicant's statement that in 1974 his parents were the owners of the properties described in paragraphs 9, 10 and 11 above. They have stressed, however, that these properties were acquired by the applicant only in 1996 and 2000, that is, after the 1974 Turkish intervention, as well as after the recognition, by Turkey, of the right of individual petition.

50. The Court notes that the applicant has produced written proof that his parents transferred the properties at issue to him by way of gift on 6 August 1996, and on 12 and 13 January 2000 (see paragraphs 9, 10 and 11 above). Together with the other documents submitted by the applicant (see paragraph 12 above), this material provides prima facie evidence that, from the above mentioned dates onwards, he had title to a share in the properties in question, which had previously belonged to his parents. 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 their properties by virtue of subsequent acts of expropriation by the "TRNC" authorities. The respondent Government failed to produce convincing evidence to rebut this.

51. The Court cannot accept the applicant's argument (see paragraphs 8 and 47 above) that, in view of his parents' stated intentions, he had been the "beneficial owner" of a share in their properties from the age of 18. Such an intention was not stated in any official document produced by the applicant and cannot, in any case, create a legitimate expectation of becoming the registered owner of the properties.

52. In view of the above, the Court considers that, from 6 August 1996, 12 and 13 January 2000 respectively, the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1 in relation to the properties described in paragraphs 9, 10 and 11 above.

53. The Court 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.”

54. 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.”

55. 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).

56. 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 paragraph 52 above the applicant was denied access to and the control, use and enjoyment of his properties as well as any compensation for the interference with his property rights.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

57. The applicant submitted that in 1974 his home had been in Marathovounos (northern Cyprus). As he had been unable to return there, he 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.”

58. The Government disputed this claim.

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

60. The Court notes that the Government failed to produce any evidence capable of casting doubt upon the applicant's statement that, at the time of the Turkish invasion, he was regularly residing in Marathovounos and that the house was treated by him and his family as a home.

61. Accordingly, the Court considers that in the circumstances of the present case, the applicant's parents' house qualified as "home" within the meaning of Article 8 of the Convention at the time when the acts complained of took place.

62. The Court observes that the present case differs from the *Loizidou* case ((merits), cited above) since, unlike Mrs Loizidou, the applicant actually had a home in northern Cyprus.

63. The Court notes that since 1974 the applicant has been unable to gain access to and to use that home. In this connection it points out that, in its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 172-175), it concluded that the complete denial of the right of Greek-Cypriot displaced persons to respect for their homes in northern Cyprus since 1974 constituted a continuing violation of Article 8 of the Convention. The Court reasoned as follows:

> "172. The Court observes that the official policy of the 'TRNC' authorities to deny the right of the displaced persons to return to their homes is reinforced by the very tight restrictions operated by the same authorities on visits to the north by Greek Cypriots living in the south. Accordingly, not only are displaced persons unable to apply to the authorities to reoccupy the homes which they left behind, they are physically prevented from even visiting them.
>
> 173. The Court further notes that the situation impugned by the applicant Government has obtained since the events of 1974 in northern Cyprus. It would appear that it has never been reflected in 'legislation' and is enforced as a matter of policy in furtherance of a bi-zonal arrangement designed, it is claimed, to minimise the risk of conflict which the intermingling of the Greek and Turkish-Cypriot communities in the north might engender. That bi-zonal arrangement is being pursued within the framework of the inter-communal talks sponsored by the United Nations Secretary-General...
>
> 174. The Court would make the following observations in this connection: firstly, the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8 § 2 of the Convention (see paragraph 173 above); secondly, the inter-communal talks cannot be invoked in order to legitimate a violation of the Convention; thirdly, the violation at issue has endured as a matter of policy since 1974 and must be considered continuing.
>
> 175. In view of these considerations, the Court concludes that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus."

64. The Court sees no reason in the instant case to depart from the above reasoning and findings (see also *Demades* (merits), cited above, §§ 36-37).

65. Accordingly, it concludes that there has been a continuing violation of Article 8 of the Convention by reason of the complete denial of the right of the applicant to respect for his home.

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

66. The applicant complained of a violation under Article 14 of the Convention on account of discriminatory treatment against him in the enjoyment of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1. He alleged that this discrimination had been based on his 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.”

67. 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

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

He 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.”

69. The Government disputed his claim.

A. Arguments of the parties

1. The Government

70. Relying on their version of the events (see paragraphs 28-30 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

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

3. The third-party intervener

72. 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.

73. The treatment endured by the applicant during his 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.

B. The Court's assessment

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

75. As to the application of these principles to the present case, the Court observes that it is undisputed that the applicant had 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 when the acts complained of took place.

76. It further observes that the applicant submitted that he had received a powerful blow to the head by a Turkish or Turkish-Cypriot police officer when, wearing a Red Cross armband, he had tried to come to the assistance of an injured woman (see paragraphs 16-17 above). The applicant's version of events is corroborated by a medical certificate issued by Dr. [redacted] on 29 July 1989, immediately after the applicant's release by the "TRNC" authorities, which states that the applicant had suffered an injury to the left frontal bone of the head that had required four stitches (see paragraph 27 above).

77. The Court observes that the Government have failed to produce any evidence capable of casting doubt on the applicant's statement that his injury was caused by the Turkish or Turkish-Cypriot police and that he had joined the demonstration in his capacity as a nursing officer with the aim of giving first-aid to the injured. Moreover, a serious traumatic episode such as the wound suffered by the applicant is not consistent with a minor physical confrontation between him and the police. There is nothing to show that the applicant had offered any resistance to the police or obstructed them in any way, let alone to an extent that could have justified inflicting such an injury to his head. It follows that the respondent State's agents have 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.

78. Having regard to the physical and mental effects of the treatment complained of, the Court considers that the latter can be qualified as "inhuman" or "degrading" within the meaning of Article 3 of the Convention.

79. It follows that there has been a violation of this provision. This conclusion dispenses the Court from examining whether the treatment administered to the applicant during his detention in the "TRNC" also infringed Article 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

80. The applicant alleged that his 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.
>
> ...”

81. The Government disputed this claim.

A. Arguments of the parties

1. The Government

82. The Government submitted that given its violent character, the demonstration constituted an unlawful assembly. They referred, on this point, to sections 70, 71, 80 and 82 of the Cypriot Criminal Code, which was applicable in the “TRNC” (see paragraphs 35-38 above) and noted that under Chapter 155 of the Criminal Procedure Law (see paragraph 39 above), the police had power to arrest persons involved in violent demonstrations.

2. The applicant

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

3. The third-party intervener

84. 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 his 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.

B. The Court's assessment

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

86. 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).

87. 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*, cited above, §§ 14, 61 and 90).

88. 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 being an "unlawful assembly" within the meaning of section 70 of the Cyprus Criminal Code (see paragraph 35 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 36 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 40-41 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 39 above – see also *Protopapa*, cited above, § 61, and *Chrysostomos and Papachrysostomou*, Commission's report, cited above, § 147).

89. 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 he was deprived of his liberty in accordance with a procedure prescribed by law "for the purpose of bringing him 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).

90. 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 his 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 paragraphs 20-21 above).

91. After 22 July 1989, the date on which the "TRNC" Nicosia District Court delivered its judgment (see paragraph 23 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.

92. Finally, it is to be observed that the applicant was interrogated on the day after his arrest by an official who spoke Greek (see paragraph 18 above). In the Court's view, it should have been apparent to the applicant that he was being questioned about trespassing in the UN buffer zone and his 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, on the same day, during the court hearing, an interpreter explained the charges to the accused (see paragraph 20 above). The Court therefore finds that the reasons for his arrest were sufficiently brought to his attention during his interview and during the court's hearing of 20 July 1989 (see, *mutatis mutandis*, *Protopapa*, cited above, § 65).

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

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

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

He 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.”

95. The Government disputed this claim.

A. Arguments of the parties

1. The Government

96. 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, had been 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 his defence, and had declined legal representation;

(iv) the court had advised the applicant and helped him to understand his 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.

97. 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

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

3. The third-party intervener

99. 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 his rights included *inter alia* a failure to inform the applicant promptly, in a language that he understood, of the nature and cause of the accusation against him, to provide him with adequate time and facilities to find a lawyer of his own choosing and to prepare his 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.

B. The Court's assessment

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

101. 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 he understood the charges against him and the statements made by the witnesses at the trial. In any event, it does not appear that he 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.

102. The Court furthermore notes that the accused were offered the opportunity of using the services of a member of the local Bar Association, of calling defence witnesses and of cross-examining the prosecution witnesses in turn, appointing, if they so wished, one of their number to act on behalf of the others. However, with the exception of the

Bishop of Kitium, who put some questions to one of the prosecution witnesses (see paragraphs 22 and 34 (iv) above), they chose not to avail themselves of any of these rights.

103. The Court considers that the applicant was undoubtedly capable of realising the consequences of his decision not to make use of any of the procedural rights which were offered to him. 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).

104. 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.

105. 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).

106. 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.

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

VII. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

108. The applicant submitted that he 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."

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

110. 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.

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

112. 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 40-41 above).

113. 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 him 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 23 above) was within the maximum provided for by the law in force at the time the offence was committed.

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

VIII. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

115. The applicant complained of a violation of his right to freedom of peaceful assembly.

He 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."

116. 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.

117. 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.

118. The Court notes that the applicant and other persons 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, 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).

119. This interference had a legal basis, namely sections 70 and 71 of the Cypriot Criminal Code (see paragraphs 35-36 above) and section 14 of the Criminal Procedure Law (see paragraph 39 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 87 above). There remain the questions whether the interference pursued a legitimate aim and was necessary in a democratic society.

120. 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.

121. 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 31 above).

122. 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).

123. 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).

124. The Court further observes that, as stated in the UN Secretary General's report of 7 December 1989 (see paragraph 31 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 40-41 and 88 above). In this respect, the Court notes that it does not have at its disposal any element capable of casting doubt upon the statements given by some witnesses at trial according to which the area where the accused had entered was "TRNC" territory (see paragraph 34 (iii) above). 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).

125. 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.

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

IX. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

127. The applicant alleged that he had not had at his disposal a domestic effective remedy to redress the violations of his fundamental rights.

He 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."

128. 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.

129. 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 his complaints. Alternatively, the institutions established by the "TRNC" were incapable of constituting effective domestic remedies within the national legal system of Turkey.

130. 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).

131. 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).

132. 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 *Kudla*, 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.

133. In the present case, it does not appear that the applicant attempted to make use of the remedies which might have been available to him in the "TRNC" with regard to the circumstances of his arrest, his subsequent detention and his trial (see *Protopapa*, cited above, § 121, *mutatis mutandis*, *Chrysostomos and Papachrysostomou*, Commission's report cited above, § 174). In particular, he 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 his conviction and did not file with the local authorities a formal complaint about the ill-treatment he 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.

134. 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

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

He 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."

136. The Government disputed this claim.

137. 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).

138. In the present case the applicant failed to prove that he 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).

139. 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

140. 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

141. In his just satisfaction claims of December 2002, the applicant requested CYP 52,563 (approximately EUR 89,809) for pecuniary damage. He relied on an expert's report (provided by the Department of Lands and Surveys of the Republic of Cyprus) assessing the value of his losses which included the loss of annual rent collected or expected to be collected from renting out his properties, plus interest from the date on which such rents were due until the date of payment. The rents claimed were 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 he was still the legal owner of the properties. The valuation report contained a description of the villages of Marathovounos and Angastina, where the applicant's properties were situated.

142. The starting point of the valuation report was the annual rental value of the applicant's share in the properties in 1974 (a total of CYP 8,851.75 – approximately EUR 14,611), calculated on the basis of a percentage (4 to 6 percent) of the market value of the properties with residential use and on the basis of an average rental value of CYP 4 or 5 per decare for agricultural lands (a total of CYP 508 – approximately EUR 868). This sum was subsequently adjusted upwards according to an average annual rental increase of 12% for ground rents and building leases, 7% for agricultural land and 5% for residential/commercial premises. Compound interest for delayed payment was applied at a rate of 8% per annum.

143. In a letter of 28 January 2008 the applicant observed that a long period had passed since his 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 the land in Cyprus. The average increase in this respect was 10% to 15% per annum.

144. In his 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 violation of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1. He also claimed CYP 60,000 (approximately EUR 102,516) for the other violations. The total sum claimed for non-pecuniary damage was thus CYP 140,000 (approximately EUR 239,204).

(b) The Government

145. 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.

146. Challenging the conclusions reached by the Court in the *Loizidou* judgment ((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 his 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.

147. 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.

148. It was also to be noted that in the present application the estimations were not 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".

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

3. The Court's assessment

150. 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 147 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, from 6 August 1996, 12 and 13 January 2000 respectively, 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 52 above).

151. The Court further 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 or Turkish-Cypriot police (see paragraphs 74-79 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 3,000 to the applicant, plus any tax that may be chargeable on this amount.

152. As far as the violations of Article 1 of Protocol No. 1 and of Article 8 of the Convention are concerned, the Court considers that in the circumstances of the case the question of the application of Article 41 in respect of pecuniary and/or 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 his 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

153. In his just satisfaction claims of December 2002, the applicant sought CYP 7,200 (approximately EUR 12,302) for costs and expenses.

154. The Government did not comment on this point.

155. 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* by six votes to one that there has been a violation of Article 8 of the Convention;

4. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 14 of the Convention read in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1;

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

6. *Holds* unanimously that there has been no violation of Article 5 of the Convention;

7. *Holds* unanimously that there has been no violation of Article 6 of the Convention;

8. *Holds* unanimously that there has been no violation of Article 7 of the Convention;

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

10. *Holds* unanimously that there has been no violation of Article 13 of the Convention;

11. *Holds* unanimously that there has been no violation of Article 14 of the Convention read in conjunction with Articles 5, 6 and 7 of the Convention;

12. *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 3,000 (three 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;

13. *Holds* unanimously that the question of the application of Article 41 in respect of the violations of Article 1 of Protocol No. 1 and of Article 8 of 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 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 violations of Article 1 of Protocol No. 1 and Article 8 of the Convention, for the same reasons as those mentioned in my dissenting opinion in the case of *Gavriel v. Turkey* (no. 41355/98, 20 January 2009).

I voted also against the finding of a violation of Article 3 of the Convention. The majority found it established that the applicant had suffered injury as a result of a powerful blow to the head by a Turkish or Turkish-Cypriot police officer. In reaching this conclusion, it relied on the applicant's account of events and a medical report obtained by him ten days after the alleged incident.

In my view there is no evidence, other than the applicant's account of events, that the alleged ill-treatment was inflicted by a Turkish or Turkish-Cypriot police officer. Nor is there any 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 v. Turkey*, no. 38595/97, §§ 37-49, 22 November 2005; *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).

Furthermore, the applicant failed to furnish the Court with any other evidence in support of his 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.

As regards the medical report submitted by the applicant, I consider that, given the lapse of ten days between the alleged incident and the date of the report, it is not possible to establish a causal link. Accordingly, the evidence before the Court does not enable it to hold beyond reasonable doubt that the applicant was subject to ill-treatment by the Turkish or Turkish-Cypriot police.

v. TURKEY JUDGMENT (MERITS)

v. TURKEY JUDGMENT (MERITS) – SEPARATE OPINIONS