

EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 15318/89

Titina Loizidou

against Turkey

REPORT OF THE COMMISSION

(adopted on 8 July 1993)

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I.	INTRODUCTION	
1.	The following is an outline of the case, as submitted to the European Commission of Human Rights, and of the procedure before the Commission.	
A.	The application	
2.	The applicant is a Cypriot citizen born in 1949 and residing at Nicosia. She is represented by Mr. Achileas Demetriades, a lawyer practising in Nicosia.	
3.	The application is directed against Turkey. The respondent Government were initially represented by their Agent, Prof. S. Bilge, and subsequently by their Acting Agent, Mr. S. Özmen, both of the Ministry of Foreign Affairs. They are now represented by their Agent, Prof. B. Çağlar.	
4.	The application concerns the applicant's deprivation of liberty on 19 March 1989, and access to her property, in the northern part of Cyprus. The applicant alleged violations of Article 3 and Article 5 of the Convention and a continuing violation of Article 8 of the Convention and Article 1 of Protocol No. 1. She claims that all acts complained of were carried out by Turkish military forces stationed in the northern part of Cyprus or by forces acting under their authority.	
B.	The proceedings	
5.	The application was introduced on 22 July and registered on 31 July 1989.	
6.	On 9 November 1989 the Commission ordered the joinder of the present application and of Applications No. 15299/89 (Metropolitan Chrysostomos v. Turkey) and No. 15300/89 (Archimandrite Papachrysostomou v. Turkey). It further decided to bring the applications to the notice of the respondent Government and to invite them to submit written observations on the applications. The	

Government's observations were filed on 28 February 1990. The applicant's observations in reply were filed on 11 May 1990.

7. On 5 October 1990 the Commission decided to invite the parties to a hearing.

8. The applicant filed further written submissions on 18 December 1990.

9. At the hearing on 11 January 1991 the respondent Government were represented by Prof. S. Bilge as Agent, Prof. H. Golsong and Prof. E. Lauterpacht as Counsel and by Mr. M. Özmen and Dr. D. Akçay, both of the Ministry of Foreign Affairs, and Mr. D. Bethlehem, Barrister, as Experts. The applicant was represented by Mr. Demetriades and Prof. I. Brownlie, Q.C. and Mrs. Joanna Loizidou, Barrister, as Counsel. The applicant was also present.

10. On 4 March 1991 the Commission declared inadmissible the applicant's complaints of continuing violations of Article 8 of the Convention and Article 1 of Protocol No. 1 alleged to have occurred before 29 January 1987. The remainder of the application was declared admissible.

11. The respondent Government were then invited to submit their observations on the merits of the application. Under cover of a letter of 7 May 1991 they submitted a memorandum requesting the Commission "to re-open the proceedings on the admissibility" of the application and "to find that (it) is inadmissible". The applicant's comments on this request were filed on 24 May 1991.

12. On 30 May 1991 the Commission found no legal basis for the respondent Government's request. It invited the Government to submit their observations on the merits, including their evidence, no later than 29 July 1991. At the Government's request this time-limit was subsequently extended to 30 September 1991.

13. In a letter transmitted on 25 September 1991, the respondent Government informed the Commission that they would not participate in any further proceedings concerning the present application.

14. On 16 October 1991 the Commission adopted an Interim Report on the present state of the proceedings in which it requested the Committee of Ministers to urge Turkey, as a High Contracting Party to the Convention, to meet its obligations and accordingly to participate in the Commission's examination of the merits of the present application, as required by Article 28 para. 1.

15. On 19 December 1991 the Committee of Ministers adopted Resolution DH (91) 41, in which it urged Turkey, as a High Contracting Party to the Convention, to meet its obligations and accordingly to participate in the Commission's examination of the merits of the present application as required by Article 28 para. 1.

16. On 14 January 1992 the Commission decided to take oral evidence of the applicant at a hearing of witnesses before delegated members of the Commission in the presence of the parties in Strasbourg; and to invite the parties to file, within a time-limit of six weeks, such further observations as they wished to make.

17. On 9 April 1992 the Commission appointed its Delegation for the hearing of witnesses. It decided to include in the list of witnesses to be examined the person proposed in the applicant's submissions of 24 March 1992. Further submissions in writing were filed by the respondent Government on 20 May and by the applicant on 5 June 1992.

18. At the hearing on 9 and 10 June 1992 the Delegation (MM. Frowein, Busuttil and Pellonpää) heard the applicant and the witness proposed by her.

19. On 7 July 1992 the Commission decided to hold a hearing on the merits of the applications. Further submissions in writing were filed by the applicant on 28 September and by the respondent Government on 1 October 1992.

20. At the hearing on 4 December 1992 the applicant was represented by Mr. Demetriades, Prof. Brownlie and Mrs. J. Loizidou. The respondent Government were represented by Prof. B. Çağlar as Agent, Mr. Özmen, Dr. Akçay, Prof. Golsong and Mr. A. Sait as Counsel, and Mrs. G. Erönen, Mr. O. Örek and Mrs. I. Tokcan as Experts. During the hearing the parties were given the opportunity to make supplementary submissions under Article 8 of the Convention with regard to the applicant's complaint concerning her arrest. At the end of the hearing the Commission accepted, as further written submission, a "Note d'Audience" filed by the respondent Government shortly before the hearing and invited the parties to file, before 31 January 1993, such final submissions in writing as they might wish to make.

21. On 7 December 1992 the Commission decided to disjoin the present application from Applications Nos. 15299/89 and 15300/89 (cf. para. 6 above). The applicant's final submissions were dated 28 January and those of the Government 29 January 1993.

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

C. The present Report

23. The present Report has been drawn up by the Commission in pursuance of Article 31 para. 1 of the Convention and after deliberations and votes in plenary session, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Sir Basil HALL
MM. C.L. ROZAKIS
M.P. PELLONPÄÄ

24. The text of this Report was adopted on 8 July 1993 and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

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

- i) to establish the facts, and
- ii) to state an opinion as to whether the facts found disclose

a breach by the State concerned of its obligations under the Convention.

26. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as Appendix II.

27. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular circumstances of the case

28. The applicant grew up in Kyrenia in northern Cyprus. In 1972 she married and moved with her husband to Nicosia.

1. Possessions

29. The applicant states that she is the owner of plots of land Nos. 4609, 4610, 4618, 4619, 4748, 4884, 5002, 5004, 5386 and 5390 in Kyrenia in northern Cyprus. Before 20 July 1974 work had commenced on plot No. 5390 for the construction of a home for the applicant. She has been prevented in the past, and is still prevented, by Turkish forces from returning to, and peacefully enjoying, the said properties.

30. The respondent Government state that, after 15 July 1974, there was an agreement for exchange of Turkish and Greek Cypriots. Turks living in the south were allowed to come to the north of the island and the Greeks living in the north were allowed to go to the south. The properties of the communities concerned were taken over by the administrative authorities on both sides. The question of Greek Cypriot properties in the north and Turkish Cypriot properties in the south is a matter discussed within the framework of the intercommunal talks. The applicant has not been residing in the "Turkish Republic of Northern Cyprus". Her allegation that she went there to claim her property is false.

2. Deprivation of liberty

31. The applicant states that she participated in each of the four marches organised by the "Women Walk Home" movement. The last demonstration was on 19 March 1989 at the location of Lymbia. The applicant, leading a group of some fifty participants in the march, advanced towards the Church of the Holy Cross (Stavros) in the Turkish-occupied part of Cyprus. They passed the United Nations' guard post, but further on unarmed Turkish soldiers tried to prevent them from continuing. The group persisted, but when they reached the churchyard the soldiers surrounded them and they were unable to move any further up the hill.

32. The applicant further states that the Turkish army was gradually replaced by members of the Turkish Cypriot police force, who advanced wearing helmets and carrying shield and clubs. The applicant was pushed down the hill and two policemen took hold of her. She was carried round to the west side of the hill and deposited on the ground with other women. A Turkish officer who was in charge of the situation asked them if they needed anything. Two United Nations' officers were also there to reassure the women that they would make all the necessary arrangements for their release. The women sat there for about two hours, while negotiations took place between the United Nations' representatives, the Turkish army, and the police.

33. Eventually, the group was split up and the applicant was put into

an ambulance with six or seven other women. They were escorted by two Turkish Cypriot policewomen and a United Nations' officer. The ambulance took them first to the village of Lourougina, where a great many Turkish Cypriots and settlers (identifiable by their clothes) were demonstrating - apparently a pre-arranged counter-demonstration. They were held up in a traffic jam, with some of these people banging on the ambulance and gesticulating at the women to go away. The applicant felt insulted and she felt that her life was under threat. The ambulance stopped at the Lourougina police station at the north entrance of the village. Turkish commandos in blue berets were lined up there.

34. The car went back to Nicosia. Near the Ledra Palace they waited for a further two hours or more. Before their release they passed one by one before a United Nations' doctor, who asked if anyone had been injured. The applicant had nothing to report on that score. She was released around midnight, having been detained for more than ten hours.

35. The respondent Government state that on 19 March 1989 the women's "Return" movement of the Greek Community of Nicosia organised an anti-Turkish demonstration. About 1,000 women got into about 80 busses and departed from the town centre. About 15 of these busses went to Lymbia, near the Turkish village of Akincilar in the "Turkish Republic of Northern Cyprus". From Lymbia the demonstrators after violating the buffer-zone marched into the territory of the "Turkish Republic of Northern Cyprus". They were warned by loud speakers to leave the area but refused. Upon this refusal 29 persons including the applicant were arrested. They were brought by Turkish Cypriot police, accompanied by Australian police serving with UNFICYP, to Nicosia where they were handed over to U.N. officials and taken over to the Greek Cypriot Area.

3. Responsibility of Turkey

36. The applicant claims that the acts complained of were carried out by Turkish military forces stationed in the northern part of Cyprus or by forces acting under their authority.

37. The respondent Government do not find it established that Turkish officials have exercised any control over the issue of property which Greek Cypriots left behind in Northern Cyprus, the administration of such property and their possible future disposition, or that Turkish troops which may have been involved in the border incident of 19 March 1989 have acted outside the instructions of the constitutional authorities of the "Turkish Republic of Northern Cyprus".

B. The evidence before the Commission

1. Evidence concerning the applicant's possessions

38. The applicant has submitted copies of certificates of registration of immovable property.

2. Evidence concerning the demonstration of 19 March 1989

a) The report of the Secretary General of the United Nations

39. In his report of 31 May 1989 - Security Council document S/20663 - on the United Nations Operation in Cyprus (for the period 1 December 1988 - 31 May 1989) the Secretary-General of the United Nations referred to the demonstration on 19 March 1989 in the following terms (at para. 11):

"11. In March 1989, considerable tension occurred over the well-publicized plans of a Greek Cypriot women's group to organize a large demonstration with the announced intention of crossing the Turkish forces cease-fire line. In this connection it is relevant

to recall that, following violent demonstrations in the United Nations buffer-zone in November 1988, the Government of Cyprus had given assurances that it would in future do whatever was necessary to ensure respect for the buffer-zone ... Accordingly, UNFICYP asked the Government to take effective action to prevent any demonstrators from entering the buffer-zone, bearing in mind that such entry would lead to a situation that might be difficult to control. The demonstration took place on 19 March 1989. An estimated 2,000 crossed the buffer-zone at Lymbia and some managed to cross the Turkish forces' line. A smaller group crossed that line at Akhna. At Lymbia, a large number of Turkish Cypriot women arrived shortly after the Greek Cypriots and mounted a counter demonstration, remaining however on their side of the line. Unarmed Turkish soldiers opposed the demonstrators and, thanks largely to the manner in which they and the Turkish Cypriot police dealt with the situation, the demonstration passed without serious incident. Altogether, 54 demonstrators were arrested by Turkish Cypriot police in the two locations; they were released to UNFICYP later the same day."

b) Witnesses

aa The applicant

40. The applicant, when heard as a witness, stated that she participated in the march organised by the organisation "Women Walk Home" on 19 March 1989. From Nicosia the demonstrators drove to the village Lymbia. In their march they passed by a United Nations post and walked up towards the top of a hill, where they were stopped by unarmed Turkish soldiers. The demonstrators sat down. After some time the Turkish soldiers were replaced by Turkish Cypriot policemen. The policemen arrested the applicant and other women. The applicant had no injuries. There was no physical violence. The applicant felt insecure. A Turkish officer asked her whether she needed anything. The police wanted to know the names of the arrested persons. The women preferred to hand a list with the names to a sergeant of the United Nations for security reasons. The women waited for two or three hours. Then they were put in a car. They were altogether 32 women. Turkish Cypriot civilians insulted them. As the women were driven away the applicant saw Turkish soldiers.

bb Witness proposed by the applicant

41. Witness A. Moysseos, referring to photographs he had taken of the incident on 19 March 1989, stated that violence was used to arrest the women.

cc Other evidence

42. The applicant has submitted maps, photographs and other documents.

C. The relevant domestic law

1. Procedural law

43. Criminal Procedure Law, Chapter 155, Section 14 (legislation enacted in Cyprus under British rule and still in force today) 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 ..."

2. Substantive law relied on by the respondent Government

44. Aliens and Immigration Law (1952), Section 12

"(1) No person shall enter or leave the Colony except through an approved port.

(2) A person entering the Colony by sea shall not disembark without the consent of the immigration officer ...

(3) Every person entering the Colony as a passenger by air shall forthwith present himself in person to the nearest immigration officer.

...

(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."

45. Prohibited Military Areas Decree of 1979

(translation)

"Section 3: Definitions

a. Prohibited military areas:

(1) Military area No. 1:

This area is situated between the frontier (contact line) and the line picked out by the markings placed at a distance of 500 metres from the frontier (contact line).
..."

"Section 9

... Any persons 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."

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

46. The Commission has declared admissible the applicant's complaints concerning her arrest and detention on 19 March 1989 and access to her property. In its decision on the admissibility (see below p. 36) the Commission noted the applicant's claim that the acts complained of "were carried out by Turkish military forces stationed in the northern part of Cyprus or by forces acting under their authority".

B. Points at issue

47. The Commission considers that the issues now to be determined are:

1. with regard to the applicant's arrest and detention:

a) whether there has been a violation of Article 3

(Art. 3) of the Convention;

b) whether there has been a violation of Article 8 (Art. 8) of the Convention, as regards the applicant's private life;

c) whether there has been a violation of Article 5 para. 1 (Art. 5-1) of the Convention;

2. with regard to access to property:

a) whether there has been a violation of Article 8 (Art. 8) of the Convention, as regards the applicant's home;

b) whether there has been a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention.

C. Arrest and detention

1. Imputability

48. The applicant claims that her arrest and detention on 19 March 1989 were carried out by Turkish military forces stationed in the northern part of Cyprus or by forces acting under their authority.

49. The respondent Government do not deny that Turkish troops were involved in that incident.

50. The Commission, having regard to the report of the Secretary-General of the United Nations (para. 39 above), finds it established that Turkish soldiers were involved in the applicant's arrest and detention.

51. It follows that the applicant's arrest and detention on 19 March 1989 are imputable to Turkey.

2. Articles 3 and 8 (Art. 3,8) of the Convention

52. With regard to her treatment during her arrest and detention the applicant alleges a breach of Article 3 (Art. 3) of the Convention which provides as follows:

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

53. The Commission has considered the applicant's complaint concerning her treatment during her arrest and detention also under Article 8 (Art. 8) of the Convention (cf. para. 20 above), which provides 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."

54. In the present case the Commission is confronted with different versions as regards the events on 19 March 1989.

a) The character of the demonstration

55. The Commission notes the descriptions of the events given in the submissions by the applicant (see paras. 31 - 34 above) and by the respondent Government (see para. 35 above).

56. The Commission further notes the evidence given by the applicant (see para. 40 above) and the photographs submitted by her (cf. paras. 41 and 42 above).

57. The Commission attaches particular weight to the evidence contained in the report of the Secretary-General of the United Nations. He stated that "considerable tension occurred over the well-publicized plans of a Greek Cypriot women's group to organize a large demonstration with the announced intention of crossing the Turkish forces cease-fire line" and he described the demonstration as follows: "An estimated 2,000 crossed the buffer-zone at Lymbia and some managed to cross the Turkish forces' line. A smaller group crossed that line at Akhna. At Lymbia, a large number of Turkish Cypriot women arrived shortly after the Greek Cypriots and mounted a counter demonstration, remaining however on their side of the line. Unarmed Turkish soldiers opposed the demonstrators and, thanks largely to the manner in which they and the Turkish Cypriot police dealt with the situation, the demonstration passed without serious incident" (see para. 39 above).

58. In the light of the above evidence the Commission finds that the demonstration constituted a serious threat to peace and public order on the demarcation line in Cyprus.

b) The treatment of the applicant - evaluation of the evidence

59. The applicant submits that her arrest and detention constituted degrading treatment, in particular because of the way she was seized and brought to Nicosia under escort, a prisoner in her own country. She felt that her life was threatened and she was insulted by the crowd while she was in the ambulance.

60. The respondent Government state that the applicant was treated properly.

61. The Commission notes the applicant's description of the circumstances of her arrest and her detention (paras. 31 ff. and 40 above) and the evidence given by a witness proposed by her (see para. 41 above).

62. The Commission observes that the applicant passed before a United Nations' doctor and did not claim to have suffered any injuries. Moreover, two United Nations officers were present during her arrest and she was accompanied by a United Nations officer when transported in the ambulance.

c) Application of Article 3 (Art. 3) of the Convention to the facts established

63. The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 39, para. 100, with further references).

64. The Commission does not find that the treatment to which the

applicant was subjected during her arrest and detention attained a level of severity which was sufficient to bring it within the ambit of Article 3 (Art. 3).

Conclusion

65. The Commission concludes unanimously that there has been no violation of Article 3 (Art. 3) of the Convention.

d) Application of Article 8 (Art. 8) of the Convention to the facts established

66. The Commission observes that, as deprivations of liberty, arrest and detention primarily fall to be considered under Article 5 (Art. 5) of the Convention.

67. With regard to Article 8 (Art. 8) the Commission recalls that a person's "private life" includes his or her physical integrity (cf. e.g. Eur. Court H.R., X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, para. 22; No. 8239/78, Dec. 4.12.78, D.R. 16 p. 184 at p. 189; No. 8278/78, Dec. 13.12.79, D.R. 18 p. 154; No. 10435/83, Dec. 10.12.84, D.R. 40 p. 251).

68. The Commission has therefore examined whether the treatment to which the applicant was subjected during her arrest and detention constituted an "interference" with her right, under Article 8 (Art. 8), to respect for her private life, which was not justified under para. 2 of that Article (Art. 8-2).

69. The Commission considers that arrest and detention may affect the physical integrity, and thus the private life, of the arrested person, However, not every act or measure which may be said to affect adversely the physical or moral integrity of a person necessarily gives rise to an interference with the right to respect for private life (cf. Eur. Court H.R., Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, para. 36).

70. The Commission has found above (at para. 64) that the treatment to which the applicant was subjected during her arrest and detention did not attain a level of severity which was sufficient to bring it within the ambit of Article 3 (Art. 3).

71. Even assuming, under Article 8 (Art. 8) of the Convention, that the applicant's arrest interfered with her private life, the Commission does not find that this interference exceeded the limits of what in the circumstances could reasonably be considered as "necessary", in the interest of public safety and for the prevention of disorder, within the meaning of second paragraph of this article.

Conclusion

72. The Commission concludes by eleven votes to two that there has been no violation of Article 8 (Art. 8) of the Convention, as regards the applicant's private life.

3. Article 5 para. 1 (Art. 5-1) of the Convention

73. Article 5 para. 1 (Art. 5-1) of the Convention provides 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:

...

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;

...

f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

74. The applicant submits that she was not arrested and detained "in accordance with a procedure prescribed by law" and that none of the grounds of lawful arrest and detention envisaged in para. 1 of Article 5 (Art. 5-1) were present. In particular, there was no reasonable suspicion of an offence in the normal sense having been committed nor any necessity to prevent the commission of such an offence or to prevent subsequent flight. The alleged offence was of an artificial character relating to the "frontiers" of an illegal entity. The Turkish armed forces and their agents had no authority to arrest and detain the applicant.

75. The respondent Government submit that Article 5 para. 1 (Art. 5-1) was complied with. When arresting the applicant on the territory of the "Turkish Republic of Northern Cyprus", the police acted under the relevant provisions of domestic law (cf. paras. 43 ff. above). The authorities used the powers conferred on them in the context of international arrangements concerning the buffer-zone in Cyprus. In the respondent Government's view the Commission is not required to examine the validity or legitimacy of the legal system of the "Turkish Republic of Northern Cyprus" but only the question whether an effective legal system exists in that area. The arrest and detention of the applicant were justified under Article 5 para. 1 (Art. 5-1).

a) Deprivation of liberty "in accordance with a procedure prescribed by law"

76. The Commission has examined whether the applicant was deprived of her liberty "in accordance with a procedure prescribed by law", as required by Article 5 para. 1 (Art. 5-1). It recalls that, on the question whether an arrest is "lawful", including whether it complies with "a procedure prescribed by law", the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. However, it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 (Art. 5), namely to protect individuals from arbitrariness (see Eur. Court H.R., Wassink judgment of 27 September 1990, Series A no. 185-A, p. 11, para. 24, with further references).

77. As regards domestic law in Cyprus, the Commission notes that, under Chapter 155, Section 14, para. 1, sub-paras. b and c of the Criminal Procedure Law (cf. para. 43 above), any 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.

78. The Commission further notes that the applicant, having crossed the buffer-zone, was arrested in northern Cyprus by Turkish Cypriot policemen (cf. paras. 39 f. above).

79. Having regard to the above elements, the Commission finds that the arrest and detention of the applicant in Cyprus, by police officers acting under Chapter 155, Section 14 of the Criminal Procedure Law,

took place "in accordance with a procedure prescribed by law", as required by Article 5 para. 1 (Art. 5-1) of the Convention.

- b) Justification of the arrest and detention under Article 5 para. 1 (f) (Art. 5-1-f) of the Convention

80. Article 5 para. 1 (f) (Art. 5-1-f) of the Convention permits the lawful arrest and detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

81. The applicant argues that she was arrested when crossing the "frontiers" of an illegal entity.

82. The Commission finds that it is not in this connection required to examine the status of the "Turkish Republic of Northern Cyprus". It notes that the demonstration on 19 March 1989, in the course of which the applicant was arrested in northern Cyprus, constituted a violation of the arrangements concerning the respect of the buffer-zone in Cyprus (cf. para. 39 above). The provisions under which the applicant was arrested and detained (see paras. 43 - 45 above) served to protect this very area. This cannot be considered as arbitrary.

83. The Commission therefore finds that the applicant's arrest and detention were justified under Article 5 para. 1 (f) (Art. 5-1-f), as applied to the regime created in Cyprus by international agreements concerning the buffer-zone.

- c) Other issues under Article 5 para. 1 (Art. 5-1)

84. In view of its above finding the Commission does not consider it necessary to examine whether the applicant's arrest and detention were also justified under Article 5 para. 1 (c) (Art. 5-1-c).

- d) Conclusion

85. The Commission concludes by nine votes to four that there has been no violation of Article 5 para. 1 (Art. 5-1) of the Convention.

- D. Access to property

- 1. Article 8 (Art. 8) of the Convention

- a) Interference with home

86. Article 8 para. 1 (Art. 8-1) of the Convention provides that everyone has the right to respect for his home.

87. The applicant states that she intended to develop the property her father had given her in Kyrenia and return there to live. Construction had begun on plot No. 5390 and one of the flats was intended for her family. She submits that the continuous prevention of her return to this flat which would eventually become a home constitutes a continuous violation of Article 8 (Art. 8).

88. The Commission notes that the applicant left Kyrenia in 1972 and moved to Nicosia, her present residence. Since 1972 her home has not been in Kyrenia. The fact that she is prevented from returning to Kyrenia does therefore not affect her right to respect for her home within the meaning of Article 8 (Art. 8) (cf. the decision on admissibility, below p. 62, para. 69).

- b) Conclusion

89. The Commission concludes by nine votes to four that there has been no violation of Article 8 (Art. 8) of the Convention, as regards the applicant's home.

2. Article 1 of Protocol No. 1 (P1-1)

90. Article 1 of Protocol No. 1 (P1-1) to the Convention provides:

"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."

91. The applicant submits that Turkey, through the use of its armed forces and by the continued occupation and control of part of Cyprus and by prohibiting the applicant on a number of occasions from gaining access to the said part of Cyprus and consequently to the property in question, has affected the rights of the applicant as property owner and in particular her right to peaceful enjoyment of her possessions, contrary to Article 1 of Protocol No. 1 (P1-1), thus constituting a continuing violation of the said Article.

92. The Commission recalls that it has declared inadmissible the applicant's complaint of a continuing violation of Article 1 of Protocol No. 1 (P1-1) alleged to have occurred before 29 January 1987 (cf. decision on admissibility, below p. 62).

93. The Commission notes that the applicant has since that date been prevented from gaining access to the north of Cyprus.

94. The Commission finds it established that this is due to the presence of Turkish forces in Cyprus who exercise an overall control in the border area.

95. The Commission therefore finds that the refusal of access to property in the north of Cyprus, of which the applicant complains, is imputable to Turkey.

96. The Commission must consequently examine whether this complaint raises an issue under Article 1 of Protocol No. 1 (P1-1).

97. The Commission considers that a distinction must be made between claims concerning the peaceful enjoyment of one's possessions and claims of freedom of movement. It notes that the applicant, who was arrested after having crossed the buffer-zone in Cyprus in the course of a demonstration, claims the right freely to move on the island of Cyprus, irrespective of the buffer-zone and its control, and bases this claim on the statement that she owns property in the north of Cyprus.

98. The Commission acknowledges that limitations of the freedom of movement - whether resulting from a person's deprivation of liberty or from the status of a particular area - may indirectly affect other matters, such as access to property. But this does not mean that a deprivation of liberty, or restriction of access to a certain area, interferes directly with the right protected by Article 1 of Protocol No. 1 (P1-1). In other words, the right to the peaceful enjoyment of one's possessions does not include, as a corollary, the right to freedom of movement (cf. *mutatis mutandis* Nos. 7671/76 etc.,

15 Foreign students v. the United Kingdom, Dec. 19.5.77, D.R. 9 p. 185 at pp. 186 f.)

99. The Commission therefore finds that the applicant's claim of free access to the north of Cyprus, which has been examined above (at paras. 81 ff.) under Article 5 (Art. 5) of the Convention, cannot be based on her alleged ownership of property in the northern part of the Island.

100. It follows that it discloses no issue under Article 1 of Protocol No. 1 (P1-1).

Conclusion

101. The Commission concludes by eight votes to five that there has been no violation of Article 1 of Protocol No. 1 (P1-1) to the Convention.

E. Recapitulation

102. The Commission concludes unanimously that there has been no violation of Article 3 (Art. 3) of the Convention (para. 65 above).

103. The Commission concludes by eleven votes to two that there has been no violation of Article 8 (Art. 8) of the Convention, as regards the applicant's private life (para. 72 above).

104. The Commission concludes by nine votes to four that there has been no violation of Article 5 para. 1 (Art. 5-1) of the Convention (para. 85 above).

105. The Commission concludes by nine votes to four that there has been no violation of Article 8 (Art. 8) of the Convention, as regards the applicant's home (para. 89 above).

106. The Commission concludes by eight votes to five that there has been no violation of Article 1 of Protocol No. 1 (P1-1) to the Convention (para. 101 above).

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)

(Or. English)

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF MM. NØRGAARD, JÖRUNDSSON, GÖZÜBÜYÜK, SOYER AND DANELIUS

In their declaration deposited on 28 January 1987, the Government of Turkey recognised the right of individual petition under Article 25 of the Convention, subject to certain conditions. One of these conditions was that the right of petition should extend only to allegations concerning acts and omissions of public authorities in Turkey performed within the boundaries of the territory to which the Constitution of Turkey is applicable. It is clear that this wording was intended to prevent petitions from being lodged in regard to events occurring in the northern part of Cyprus.

The question arises whether this territorial limitation in the Turkish declaration is legally valid. If it should be considered not to be valid, the further question arises as to whether this will affect the validity of the Turkish declaration as a whole.

We first note that, in accordance with a constant practice, a Contracting State is free to make a temporal limitation of its

declaration under Article 25 of the Convention, in particular by excluding its application to acts which occurred before the declaration was made.

Moreover, under Article 63 of the Convention, certain territorial limitations are also expressly provided for. However, Article 63 concerns territories for whose international relations a Contracting State is responsible, and the northern part of Cyprus cannot be regarded as such a territory. Nevertheless, Article 63 shows that, when making a declaration under Article 25, a Contracting State may, in some circumstances, make a distinction between different territories.

If a State may exclude the application of Article 25 to a territory referred to in Article 63, there would seem to be no specific reason why it should not be allowed to exclude the application of the right of individual petition to a territory having even looser constitutional ties with the State's main territory. If this was not permitted, the result might in some circumstances be that the State would refrain altogether from recognising the right of individual petition, which would not serve the cause of human rights.

We consider that the territorial limitation in the Turkish declaration, insofar as it excludes the northern part of Cyprus, cannot be considered incompatible with the object and purpose of the Convention and that it should therefore be regarded as having legal effect.

In these circumstances, it is not necessary to examine what the legal consequences would have been if the territorial limitation had been held not to be legally valid.

It follows that in our view the Commission is not competent to deal with the applicant's complaints of violations of the Convention in Cyprus. For these reasons, we have voted against any finding of a violation of the Convention in the present case.

(Or. English)

PARTIALLY CONCURRING, PARTIALLY DISSENTING OPINION
OF MR. C.L. ROZAKIS

In my partially concurring and partially dissenting opinion to the opinion of the Commission in the cases of Metropolitan Chrysostomos and Archimandrite Papachrysostomou against Turkey (Nos. 15299/89 and 15300/89), I referred to a number of issues on which I disagree with the majority of the Commission. The approaches that I have expressed there remain the same, insofar as they are pertinent to the present case.

In the case of Titina Loizidou there is, however, one more element on which I disagree with the majority of the Commission: that of the access of the applicant to her property; mainly from the angle of the first article of the First Protocol to the Convention. The applicant complains that "Turkey through the use of its armed forces and by the continued occupation and control of part of Cyprus and by prohibiting the applicant on a number of occasions from gaining access to the said part of Cyprus and consequently to the property in question, has affected the rights of the applicant as property owner" [peaceful enjoyment of her possessions] (para. 91 of the Commission's Report).

The answer to the complaint of the applicant on the part of the Commission does not satisfy, in my view, her expectation for an overall determination of her case. The Commission contents itself with dealing with only one aspect of her complaints: in paras. 97, 98 and 99 it

considers that what she asks is not actually a request for the enjoyment of her possessions - which comes under the protection of the First Protocol - but a request for moving freely in the occupied territory of Cyprus, where her possessions lie. And since the "right to peaceful enjoyment of one's possessions does not include, as a corollary the right to freedom of movement ... the applicant's claim of free access to the north of Cyprus cannot be based on her alleged ownership of property in the northern part of the island."

I think that the Commission interprets in a very narrow way the meaning of the word "access" to the applicant's property. Under the influence of the previous cases (Nos. 15299 -15300) and because of the participation of the present applicant in the March manifestations, it considers that the notion of "access", as used by the applicant, is solely referring to a physical contact between the applicant and her possessions.

Yet, to my mind, the notion of "access", when referring to the enjoyment of possessions (and when referring to the very wording of the expressed complaint of our applicant) is a wider one than the mere freedom of movement which may allow the establishment of a physical contact. It actually covers all the elements constitutive of the right to enjoyment of possessions; i. e. the possibility to repair an immovable good; or the possibility to usefully exploit the possession; or the possibility to exchange a possession through the free acquisition of another one, etc. Under these circumstances, it becomes clear that the occupation by Turkey of the northern part of Cyprus actually prevents, in a continuing manner, the free enjoyment of possessions, the access to their many uses, and attributes, for the applicant.

I must also concede that even a narrow interpretation of the term "access" could not have led me so easily to the conclusion that no issue arises under the First Protocol to the Convention. There are circumstances where the absence of physical contact of a person with his or her possessions may amount to a deprivation of possessions; this is particularly true in cases where the use of a possession is the main constitutive element for the enjoyment of the possession; but also in other cases where the optimal exploitation of a possession requires physical presence of the person who owns it.

I then wonder whether, under the circumstances of the present case, when the applicant has for a long time been unable both to have any physical contact with her possessions and to freely make use of them, she cannot effectively claim to be a victim of continuous violation of her rights, under the Protocol. I conclude, in answering my own dilemma, that in either way I see a violation of Article 1 of the First Protocol.

(Or. English)

PARTIALLY DISSENTING OPINION OF MR. M.P. PELLONPÄÄ

While I share the opinion of the majority of the Commission in other respects, I disagree in so far as concerns the complaints based on Article 5 of the Convention and Article 1 of Protocol No.1.

The majority seem to consider that the applicant's right protected by Article 1 of Protocol No. 1 has been interfered with only "indirectly", and that therefore the case discloses no issue under Article 1 of Protocol 1 (paras. 98, 100). This finding appears to be based on the view that the applicant in reality complains only about the lack of free access to her property, i.e., denial of freedom of movement.

In agreement with what is said by Mr. Rozakis in his Dissenting Opinion I consider this to be an unduly narrow construction of the applicant's complaint made under Article 1 of Protocol No. 1. In her application form the applicant submitted that:

"Turkey through the use of the T.M.F. and by the continued occupation and or control of the said part of Cyprus and by prohibiting the Applicant access to the said part of Cyprus and consequently to her property in question, has gradually and with the passing of time over the last 15 years, affected the rights of the Applicant as property owner and in particular her right to peaceful enjoyment of her possessions contrary to Article 1 of protocol 1 of the Convention (see SPORRONG ...) thus constituting a continuing violation of the said Article."

In her observations on the merits submitted in December 1992 the applicant specified that:

"In the particular case of violations of Article 1 of Protocol 1 of the Convention, the object of the Application is for the Applicant to be restored to the peaceful enjoyment of her possessions in the area occupied by Turkey and, in particular, her immovable property situated in Kyrenia. In addition the Applicant seeks compensation for the deprivation of the use and enjoyment of her property for the period between July 20, 1974 up to this day."

To me it is clear that the applicant's complaint is not limited to the access aspect but concerns an alleged denial of various aspects of the right guaranteed by Article 1 of Protocol No. 1.

Since 1974 all the essential elements of the applicant's rights as the owner of the property, including access to the property, have been interfered with. This interference was not for the purpose of controlling the use of the property within the meaning of the second paragraph of Article 1 of Protocol No.1. Nor was the applicant's property formally expropriated before the acceptance by Turkey of the right of individual petition in such a way as to remove the interference from the Commission's competence *ratione temporis*. According to the respondent Government, "the question of Greek properties in the north and Turkish Cypriot properties in the south is a matter of discussion within the framework of the intercommunal talks" (para. 30 of the Commission's report). Thus the unsettled nature of the property issue - and the continuing nature of the interference - is conceded by the Government.

Under these circumstances the denial of access to the property and denial of its enjoyment amount to a continuing violation of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, Case of Papamichalopoulos and Others v. Greece, Eur. Court H.R., judgment of 24 June 1993). This violation is attributable to Turkey, as there are no circumstances which would break the chain of causation between the original interference by Turkey and the present situation. I refer to the considerations put forward in my Partially Concurring, Partially Dissenting Opinion in *Chrysostomos and Papachrysostomou v. Turkey* (Nos. 15299/89 and 15300/89).

I also consider that Article 5 of the Convention has been violated. I doubt whether the arrest and detention on the basis of the rules relied on in the main opinion of the Commission fulfilled the requirement of foreseeability and therefore took place "in accordance with a procedure prescribed by law". In all the circumstances of the case, including the length of the deprivation of liberty, I conclude that the applicant's "right to liberty and security of person",

guaranteed by para. 1 of Article 5, was violated.

APPENDIX I

HISTORY OF PROCEEDINGS

Date	Item
2 July 1989	Introduction of the application
31 July 1989	Registration of the application
Examination of Admissibility	
7 September 1989	Commission considers state of proceedings
7 October 1989	Commission considers state of proceedings
9 November 1989	Commission's decisions: - to join the present application and Applications No. 15299/89 (Metropolitan Chrysostomos v. Turkey), and No. 15300/89 (Archimandrite Papachrysostomou v. Turkey); - to invite the Government to submit observations on the admissibility and merits of the applications
28 February 1990	Government's observations
11 May 1990	Applicants' observations in reply
5 October 1990	Commission's decision to hold an oral hearing
18 December 1990	Further written submissions by the applicant
11 January 1991	Oral hearing on admissibility and merits
11 and 12 January 1991	Commission's deliberations
4 March 1991	Commission's further deliberations and decision to declare the application partly admissible and partly inadmissible
7 March 1991	Commission approves text of decision on admissibility
7 March 1991	Decision on admissibility communicated to the parties
Examination of the merits	
7 March 1991	Commission invites Government to submit observations on the merits
7 May 1991	Government's requests to re-open

	proceedings on admissibility and to declare the applications inadmissible
24 May 1991	Applicant's comments on the Government's requests
30 May 1991	Commission finds no legal basis for the requests, invites Government again to submit observations on merits
6 July 1991	Commission grants Government's request for extension of time-limit
25 September 1991	Government refuse to participate in further proceedings
8 October 1991	Commission's deliberations
16 October 1991	Commission's further deliberations and adoption of Interim Report to the Committee of Ministers
17 October 1991	Commission's deliberations
19 December 1991	Committee of Ministers adopts Resolution DH (91) 41
14 January 1992	Commission's decisions: <ul style="list-style-type: none"> - to take oral evidence; - to invite parties to file observations
28 February 1992	Government's observations
24 March 1992	Submissions by applicant
9 April 1992	Commission's decisions: <ul style="list-style-type: none"> - appointment of Delegation for hearing of witnesses; - list of witnesses to be examined
29 April 1992	Government propose further witness
19 May 1992	Commission's deliberations
20 May 1992	Further submissions by Government
5 June 1992	Further submissions by applicant
9 and 10 June 1992	Hearing of witnesses by Delegation
7 July 1992	Commission's decision to hold oral hearing on the merits of the applications
28 September 1992	Further written submissions by the applicant
1 October 1992	Further written submissions by the Government

20 November 1992	Government submit documentary material
2 December 1992	Communication from Government
3 December 1992	Commission's deliberations
4 December 1992	Oral hearing on the merits. Commission's deliberations
7 December 1992	Commission decides to disjoin the present application from Applications No. 15299/89 (Metropolitan Chrysostomos v. Turkey), and No. 15300/89 (Archimandrite Papachrysostomou v. Turkey);
28 January 1993	Final submissions by applicant
29 January 1993	Government's final submissions
3 April 1993	Commission's consideration of the state of proceedings
29 June 1993	Commission's deliberations on the merits and final vote
8 July 1993	Adoption of the Report