



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 28940/95
by Eleni FOKA
against Turkey

The European Court of Human Rights (Third Section), sitting on 9 November 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr E. MYJER, *judges*,

Mr M. HAKKI, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 7 July 1995,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Eleni Foka, is a Cypriot national of Greek-Cypriot origin, born in 1947 and living in Nicosia. She was represented before the Court by Mr C. Triantafyllides, a lawyer practising in Nicosia, and by

Mr C. Greenwood, professor at the Law Department of the London School of Economics. The Government were represented by their agent Mr Z.M. Necatigil.

The applicant was at the material time living alone in her family house in the village of Ayia Triada, Yialloussa, in the Karpas region of northern Cyprus. She was the teacher of the Greek-Cypriot elementary school situated in that village.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Applicant's version of the facts

In December 1994 the applicant visited her family that lived in southern Cyprus to spend the Christmas holidays with them. On 13 January 1995 she was transported by a Red Cross bus with other enclaved Greek-Cypriots to the "Ledra Palace" crossing point in Nicosia. From there they were going to be taken to Ayia Triada by a bus driven by a Turkish settler.

At the barricade, which was guarded by Turkish and/ or "Turkish Republic of Northern Cyprus" ("TRNC") police and customs officers, the applicant and the other five or six enclaved Greek-Cypriot women who were on the bus with her were searched. When the customs officers asked to search the applicant again, she refused, claiming that she had already been searched and nothing had been found. She was then taken to a small room near the barricade and was told that she would be searched by police officers. The applicant continued to refuse to submit to another search. The officials then tried to force the applicant into a small private car. She resisted and started shouting. The officials shut her mouth with their hands and started hitting her on her arms and feet in order to force her into the car. They pushed her in the car headfirst and then took hold of her legs. They managed to put her in the car with her legs upwards/feet pointing towards the roof.

She was subsequently taken to a building that appeared to be a police station. There her bag was thoroughly searched and, whenever she tried to see what the officers were doing, she was hit on the head and shoulders by a person whom she was able to identify from the discussions held among the officials present as a member of the Turkish secret service. Then the applicant was taken to an adjacent room where she was interrogated and mocked. When the interrogation was over, they returned her bag to her empty. The officials also kept part of her money – 120 Cyprus pounds (CYP) out of the CYP 300 she had on her.

Afterwards, they took her in the same car to the bus that would have transported her to Ayia Triada. As she did not feel well, she asked to be allowed to return to southern Cyprus. However, they started to hit her once

again and forced her into the bus. One of the women on the bus told the officers to “let her go for you will kill her”.

Upon her return to Ayia Triada, the applicant asked to be taken to a female Turkish-Cypriot doctor in nearby Yialoussa but her request was refused. The next day a Greek-Cypriot took the applicant to the above-mentioned doctor. The doctor offered her medical treatment but refused to certify the existence of bruises on her body.

During the nights that followed stones were thrown at her house.

On 18 January 1995 the applicant was visited at the school of Ayia Triada by representatives of the “Doctors of the World”, to whom she showed the bruises she had on her legs, hands and head. A week later, a representative of the United Nations Force in Cyprus (UNFICYP) visited the applicant and reported that she had bruises and blood effusions on her shinbones and thighs. On 20 January 1995 a medical officer of UNFICYP was denied permission to visit the applicant. The officer was eventually granted the permission on 30 January 1995. Consequently, the medical officer visited the applicant and examined her on 31 January 1995. The applicant appended a “note to the file” in this respect by the Humanitarian Branch of the Headquarters of UNFICYP dated 13 February 1995. This note stated as follows:

“On 18.1.95 the Humanitarian Branch was informed by the Office of the Presidential Commissioner for Humanitarian Affairs that E.Ph. was ill treated and arrested by TkCyp Police when crossing to the north on 13.1.95 after a week’s stay in the south and that a team of the “Doctors of the World” has visited her in Ay. Trias on 18.1.95 to question her about her mistreatment.

On the same day Hum. O. sector 4 and the interpreter visited E. Ph in the school as requested by CHO. She stated that she was beaten by hand from TCPE in the office at Ledra ChPt. And another office somewhere in Nicosia on the head, neck and back. She said that on 18.1.95 about 12:00 Hrs a team of 4 persons (2 male doctors, 1 lawyer and one official from a presidential palace not nearer described) has been visiting her. She gave the same statement to them as NWP and showed bruises and blood effusions on shin bones and things as she did to NWP. The team of the “doctors of the world” left her after 30 minutes and they used the English language only while speaking to Mrs E. Ph. NWP then proceeded to Yialusha Pol station for further clarification. All TCPE officers however were very reluctant in answering NWP questions and very reserved. On 20 January 1995 afternoon UN Personnel from the LP in Leonarisso has been sent to TCPE Yialusha to inform that SHO accompanied by Medical Officers Sec 4 intends to visti E. Ph again in order to have her injuries examined. However permission was not granted at that stage. CHO tasked AUSTCIVPOL to investigate and liaise with TKCYP police at NIC HQ in order to get permission for the medical exam. ‘Clearance’ was granted on 30.1.95 and the message relayed to Hum Cell Sector 4 to set up the examination on the following day which was then carried out successfully. See Med. Rep. SMO Sec 4 dated 31.1.95 plus attached note of SHO (4).

Investigation on the confiscated items is still ongoing by AUSTCIVPOL.”

The applicant claimed that she had been under the constant surveillance of the local police and subjected to further harassment, including threats that she would be forcibly expelled from northern Cyprus or killed.

In a letter dated 10 August 2000 the applicant's lawyer informed the Court that in May 1997 the applicant had had to seek urgent medical treatment in southern Cyprus. However, the applicant had then not been allowed by the Turkish military and the "TRNC" authorities to return to her home and property in Ayia Triada and had therefore been living in Nicosia ever since.

B. Government's version of the facts

On 16 December 1994 the applicant, along with two other teachers of the Karpas elementary school and nine students, crossed over to southern Cyprus via the "Ledra Palace" checkpoint. Two days later the group flew to Greece on an excursion organised by the Greek-Cypriot and/or Greek authorities for a few days in order to take part in various anti-Turkish campaigns that received considerable publicity.

On 13 January 1995 at about 12.30 p.m., the applicant, who was returning from southern to northern Cyprus, was subjected to routine police and immigration control by Turkish-Cypriot officials at the Ledra Palace checkpoint. When the officers asked the applicant if she had anything to declare she responded negatively. When they requested the applicant to give her handbag for search purposes, she refused to do so, preventing the officers from executing their duties and committing an offence under "TRNC" laws (section 177 of the Customs and Excise Law, no. 37 of 1983).

When a female police officer arrived, the applicant continued to resist. She was then requested to accompany the officials to the Lefkoşa police headquarters (Saray Önü) for further examination. She once again resisted and started kicking about and shouting that she did not recognise any legal authority in northern Cyprus. Subsequently, she was led to a police car. She resisted entry into the car and stated that she wanted to return to southern Cyprus. She was then driven to police headquarters. The Turkish Cypriot police used only force that was reasonable and necessary. The applicant may have caused injury to herself in an effort to resist the body search and being taken to the police station. This was not evident however as she was wearing thick dark stockings.

Once at the police headquarters, the applicant continued to act irrationally, resisting the police officers and pushing them away. Eventually, a female police officer searched her handbag. She found six silver necklaces and four gold crosses, items that were subject to customs duty and that the applicant had refused to declare. The applicant accepted to pay the equivalent of 9,000,000 Turkish Lira as customs duty and/or penalty.

Furthermore, various other items were found in her bag, such as books and brochures. It was considered that these contained anti-Turkish, racist and defamatory material liable to incite racial hatred and aggravate inter-communal relations. Thereafter, the authorities attempted to carry out a body search that the applicant resisted. The applicant attacked the female customs officer who called for police assistance. During the body search, radio-cassettes were found hidden inside the applicant's clothing. The authorities kept all the items for the purposes of further examination. The applicant was detained only for a transitory period to enable completion of the search under more appropriate circumstances and to calm her down. She was not under arrest during this period and was offered refreshments, which she refused to take.

Having paid the penalty, the applicant returned to her village by the bus with other Greek Cypriots.

On 15 January 1995 the applicant visited the health centre of Rizokarpasso ("Dipkarpaz") and asked for a medical report to certify that she had been beaten. The doctor on duty, not being a private practitioner, offered to examine the applicant if the latter would lodge a complaint with the police. The doctor would then examine the applicant and write up her findings on the form supplied by the police. However, the applicant failed to complain to any Turkish-Cypriot authority and did not visit any doctor before or after 15 January 1995. On 31 January 1995 she was examined by a United Nations' doctor in the presence of a Turkish-Cypriot doctor at the health centre in Rizokarpasso. The Government appended a UN medical report of a routine interview with/examination of the applicant by a UN medical officer in the presence of a local doctor on 31 January 1995. The report identified "scratches on the back, on the right lower limb" of the applicant.

The four so-called "Doctors of the World", a US, a Swedish and two French citizens, had entered the "TRNC" as tourists intending to go to Kyrenia but upon entry, contrary to their declaration to the "TRNC" authorities, they hired a car and apparently visited the area in question.

On 25 January 1995 the books, brochures and photos that had been taken from the applicant on 13 January 1995, were returned to her in the presence of the Greek-Cypriot representative of the village. However, the Turkish-Cypriot authorities kept three cassettes, two pocket books, a diary and a post-card, which they considered as likely to provoke racial hatred and anti-Turkish enmity. The cassettes that had been recorded in Greece, contained songs and poems dedicated to the so-called Pontus Greeks who allegedly lived in the Black Sea region of Turkey, to the EOKA movement ("National Organisation of Cypriot Fighters") and to those killed in terrorist activities carried out against the British. The other articles contained propaganda as well as a map of Cyprus showing the border area marked in blood.

In March 1997, when the applicant retired from her teaching post, arrangements were made between the Greek-Cypriot and Turkish-Cypriot authorities to replace her as teacher. The applicant has been living in southern Cyprus ever since.

As from 23 April 2003 new measures had been adopted by the authorities of the “Turkish Republic of Northern Cyprus” (“TRNC”) regarding crossings from northern to southern Cyprus and *vice versa* through specified checkpoints. Greek Cypriots now had free access to the north and Turkish Cypriots to the south upon presentation of a piece of identity.

COMPLAINTS

1. The applicant complained that she had been subjected to inhuman and degrading treatment in breach of Article 3 of the Convention

2. She also maintained that she had been deprived of her liberty and security in breach of Article 5 of the Convention.

3. The applicant further complained of disrespect for her private life and interference with her home contrary to Article 8 of the Convention.

4. Finally, the applicant complained that she had been persecuted because of her ethnic origin and religious beliefs and her opposition to the Turkish military occupation of the northern part of Cyprus, in breach of Articles 9 and 10 of the Convention and also, Article 14 of the Convention taken in conjunction with Articles 3, 5 and 8.

THE LAW

The applicant complained under Articles 3, 5, 8, 9, 10 and 14 of the Convention of a violation by the Turkish and/or “TRNC” authorities of the rights guaranteed by these provisions.

A. The Government’s objections

1. As to jurisdiction ratione loci

(a) The parties’ submissions

(i) The Government

The Government disputed Turkey’s liability under the Convention for the violations alleged in the application. They claimed that the acts complained of had been imputable to the “TRNC”, an independent and sovereign State

established by the Turkish Cypriot community in the exercise of its right to self-determination. In particular, Turkey had no jurisdiction over and/or responsibility for the acts of the authorities of the “TRNC”, including those of the “TRNC” police and/or customs authorities. In support of their arguments the Government relied on the Commission’s decision in the *Chrysostomos and Papachrysostomou v. Turkey* case (nos. 15299/89 and 15300/89, Commission’s report of 8 June 1993, Decisions and Reports (DR) 86, p. 4, §§ 164-165, 169).

(ii) *The applicant*

The applicant disputed these submissions, relying essentially on the reasons given by the Court for rejecting similar objections raised by Turkey in its judgments in the case of *Loizidou v. Turkey* (preliminary objections and merits) (judgments of 23 March 1995, Series A no. 310, pp. 23-24, §§ 62-64 and 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2216, §§ 52-57) and of the Commission’s decision in the case of *Cyprus v. Turkey* (no. 25781/94, Commission decision of 28 June 1996, (DR) 86-A, p. 104). She asserted that due to Turkey’s effective control of northern Cyprus, Turkey was responsible under the Convention for all acts and policies of the “TRNC”.

(b) **The Court’s assessment**

The Court recalls that in the case of *Loizidou* (merits) it dismissed the Government’s preliminary objections as to Turkey’s alleged lack of jurisdiction in northern Cyprus and responsibility for the acts in respect of which the complaints were made (§§ 39-47 and 49-57, cited above). More precisely, the Court considered in that judgment and in connection with that particular applicant’s plight:

“52. As regards the question of imputability, the Court recalls in the first place that in its above-mentioned *Loizidou v. Turkey* judgment (Preliminary Objections) (pp. 23-24, § 62) it stressed that under its established case-law the concept of ‘jurisdiction’ under Article 1 of the Convention is not restricted to the national territory of the Contracting States. Accordingly, the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory. Of particular significance to the present case the Court held, in conformity with the relevant principles of international law governing State responsibility, that the responsibility of a Contracting Party could also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration...

56. ... It is not necessary to determine whether, as the applicant and the Government of Cyprus have suggested, Turkey actually exercises detailed control over the policies and actions of the authorities of the ‘TRNC’. It is obvious from the large number of troops engaged in active duties in northern Cyprus (see paragraph 16 above) that her

army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the ‘TRNC’... Those affected by such policies or actions therefore come within the ‘jurisdiction’ of Turkey for the purposes of Article 1 of the Convention. Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus.”

The above findings were confirmed by the Court in its judgment of 10 May 2001 in the case of *Cyprus v. Turkey* ([GC], no. 25781/94, §§ 75-81, ECHR 2001-IV). Furthermore, the Court recalls that in its latter judgment it considered that Turkey’s responsibility was not limited to property issues such as those considered in the *Loizidou* case but extended to also securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified. Thus, violations of those rights are imputable to Turkey (*Cyprus v. Turkey*, cited above, § 77; see also *Demades v. Turkey*, no. 16219/90, §§ 29-37 and 44-46, 31 July 2003, *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, no. 16163/90, §§ 28-31, 31 July 2003, and *Xenides-Arestis v. Turkey* (dec.), no. 46347/99, 14 March 2005).

In the light of the above, the Court considers that the Government’s plea on inadmissibility on the ground of jurisdiction *ratione loci* must be dismissed.

2. *As to exhaustion of domestic remedies*

(a) **The parties’ submissions**

(i) *The Government*

The Government maintained that the application should be declared inadmissible for non-exhaustion of domestic remedies as required by Article 35 § 1 of the Convention. In this respect and referring to the Commission’s decision in the case of *Chrysostomos and Papachrysostomou* (cited above), they submitted that there were effective and adequate remedies available within the judicial and administrative system of the “TRNC”.

The Constitution of the “TRNC” incorporated provisions for human rights drawn from the 1960 Cypriot Constitution and the European Convention on Human Rights, which formed part of the laws of the “TRNC”. Article 152 of the Constitution provided for judicial review of administrative action on the grounds of unconstitutionality, illegality, excess and/or abuse of power. Under this provision, the High Administrative Court had exclusive jurisdiction to adjudicate finally on a complaint that a decision, act or omission of any organ, authority or person exercising any executive or administrative authority was contrary to any of the provisions of the Constitution, or of any law or subsidiary legislation thereunder, or exceeded or abused the powers vested in such organ or authority or person.

Furthermore, the Government referred to Articles 148 and 147 that provided for the institution of proceedings for annulment of legislation and subsidiary legislation and judicial review of legislation by way of reference to the Supreme Constitutional Court respectively.

According to the Government, the applicant could have brought civil proceedings against the police and/or customs officers for damages for ill-treatment, if that was the case. In this regard, they maintained that the Civil Wrongs Law (Cap. 148) that codified the English common law of torts was applicable in the “TRNC”. They further submitted that the applicant could have challenged the legality of the search and imposition of customs duty through civil or administrative proceedings.

In addition, the Government contended that the applicant could have submitted a complaint to the Attorney-General of the “TRNC” about the matter. Under the Constitution the Attorney-General was an independent officer of the State and if the applicant had complained to him, he could have, if he had thought fit, initiated action for an independent investigation of the complaint addressed to him irrespective of the views of the Police (Section 4 of Cap 155). Under the law pertaining to the organisation and the function of his Office (Law 72/1991), the Attorney-General was empowered to give directions for the investigation of any offence to the police or to a member of his office.

Moreover, the applicant could have instituted proceedings in the competent Turkish-Cypriot court to vindicate her rights. In this connection, the Government referred to a number of civil cases instituted by Greek Cypriots living in the Karpas area in the “TRNC” courts and certain of the judgments given thereby. One of these cases concerned child custody and the remainder unlawful occupation of and/or trespass to Greek-Cypriot property in northern Cyprus. The Government noted that in certain of the latter cases the Attorney-General had been sued as a co-defendant because the occupation of the property in question had occurred as a result of wrongful allocation by, or authorisation or consent of state organs.

Finally, concerning the applicant’s allegations as to stones being thrown at her house following the events, the Government submitted that the applicant had not complained to the Turkish-Cypriot authorities at the material time. If she had done so, the police would have carried out an investigation and, in the event that there had been sufficient *prima facie* evidence, they would have instituted criminal proceedings against the offender or offenders. In this connection the Government noted that following a complaint by the applicant in 1977 about a break-in and theft carried out at the school where she had been teaching, the authorities had arrested, tried and imprisoned the offenders. They appended the court’s records concerning the case.

(ii) The applicant

Although the applicant accepted that she had not brought any proceedings before the “TRNC” courts, she maintained that in view of the fact that there were no effective remedies available to her she had not failed to comply with the requirements of Article 35 § 1 of the Convention.

The applicant contended that in view of the illegality of the “TRNC” courts in international law they could not be considered as courts that had been properly constituted for the purposes of Article 35 § 1 of the Convention. The Court should follow the reasoning it adopted in the case of *Loizidou v. Turkey (merits)*, cited above, § 44) when denying legal validity to Article 159 of the “TRNC Constitution” concerning the forfeiture of properties of Greek Cypriots. The applicant stated that the only courts entitled to exercise judicial authority in northern Cyprus were those of the Republic of Cyprus or courts established with the consent of the Republic.

In the light of the above, the applicant submitted that to require her to bring proceedings before the “TRNC” courts would result in substituting the institutions of the Republic of Cyprus with those of the “TRNC”. Even the Court of Justice of the European Communities had refused to take such a step in the far less controversial field of granting health certificates and certificates of origin of agricultural produce (*R v. Ministry of Agriculture, ex parte Anastasiou*, case C-432/92 100 ILR 258; [1994] 1 ECR 3087). It would also have involved a degree of recognition by the applicant of the legitimacy of those courts and thus the “TRNC” itself, placing the applicant in an impossible position and in direct conflict with her status and duties as a citizen of the Republic of Cyprus.

In any event, the applicant submitted that the “TRNC” courts did not provide a remedy that was effective and available to the applicant. Firstly, since both Turkey and the “TRNC” maintained that they were separate independent states, the “TRNC” courts would approach any case concerning the violation of rights in northern Cyprus in a wholly artificial way and irrespective of any decisions of the Court. Secondly, the applicant had belonged to a very small community of enclaved persons residing in the Karpas area, whose membership had been considerably reduced over the years and that had been subjected to continuous harassment. As the Commission had held in its decision in the case of *Cyprus v. Turkey* (cited above), attacks upon members of the community and their homes had gone unpunished and there had been considerable official harassment. The cases brought by the Karpas Greek Cypriots before the courts of “TRNC” and to which the Government referred involved the determination of private rights and were not cases brought against the “TRNC” or the respondent Government, challenging the essence of the latter’s policies in northern Cyprus. Indeed, in its abovementioned decision, the Commission held that with regard to challenges to the land legislation and policies of the “TRNC”, its courts did not offer members of the Karpas community an effective

remedy. The same was applicable in the present case since it challenged “TRNC” laws and policies regarding “inflammatory material” and the searching of Karpas residents returning to the north of Cyprus from the south.

Finally, the acts complained of in this application had not been isolated incidents but part of a consistent administrative practice aimed against the members of the Karpas community, rendering proceedings futile or ineffective. In this connection the applicant alleged that following the lodging of the present application, she had been subjected to further harassment, including threats that she would not be permitted to continue residing and teaching in Karpas.

(b) The Court’s assessment

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. However, there is no obligation under Article 35 § 1 to have recourse to remedies which are inadequate or ineffective. In addition, according to the “generally recognised rules of international law”, there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal; one such reason being the failure of the national authorities to undertake an investigation or offer assistance in response to serious allegations of misconduct or infliction of harm by State agents (see *Akdivar and Others*, cited above, §§ 65-69, and *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 907, § 65).

It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicant has not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant’s complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above., p. 1211, § 68, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 77, § 35).

The application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each case. This means, amongst other things, that the

Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicant (see *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports 1997-VIII*, p. 2707, § 58).

In the particular context of northern Cyprus and the “TRNC”, the Court firstly reiterates the general principle referred to in its judgments in the cases of *Loizidou v. Turkey* (cited above, § 45) and *Cyprus v. Turkey* (cited above, §§ 89-102 and §§ 237) that international law recognises the legitimacy of legal arrangements and transactions in certain situations akin to those existing in the “TRNC” and that the question of the effectiveness of these remedies provided therein had to be considered in the specific circumstances where it arose, on a case by case basis (see *Xenides-Arestis*, cited above).

In addition, within the framework of Article 13 of the Convention, the Court concluded that it had not been shown on the evidence that during the period under consideration there had been an administrative practice on the part of the “TRNC” authorities firstly, of condoning acts of criminality against the homes and property of the enclaved Greek-Cypriot population (Articles 8 of the Convention and 1 of Protocol No. 1) and secondly, of denying aggrieved persons access to a court to assert rights in this connection (see *Cyprus v. Turkey*, cited above, § 324). The Court, however, found that there had been a violation of Article 13 of the Convention in respect of interferences by the “TRNC” authorities with the rights of the enclaved under Articles 3, 8, 9 and 10 of the Convention and 1 and 2 of Protocol No. 1. This included restrictions on the movement of the enclaved to and from the south, surveillance effected by the authorities and discriminatory treatment on the basis of ethnic origin, race and religion (see *Cyprus v. Turkey*, cited above, §§ 282-301, 304-311). The Court found that interferences with the rights of the enclaved resulted from an administrative practice of violating the rights at issue and that no remedies, or no effective remedies, were available in the “TRNC” in this respect (see *Cyprus v. Turkey*, cited above, § 324).

The Court notes that the Government outlined several remedies which they claim the applicant could have resorted to. The Government refer, firstly, to a number of constitutional and legal provisions with emphasis on the judicial review of administrative acts, decisions and omissions of any organ, authority or person exercising administrative/executive power; secondly, the possibility of institution of civil proceedings against the police and/or customs officers for damages for ill-treatment; thirdly, the possibility of institution of civil or administrative proceedings challenging the legality of the search the applicant complained of and the imposition of customs duty; fourthly, the lodging of a complaint to the Attorney-General and finally, bringing proceedings before the “TRNC” courts.

However, the Court considers that the Government's assertions are very general and cannot suffice to justify the objection they have raised. The Government do not pinpoint a specific remedy but propose an array of different remedies that they argue the applicant could have turned to. Further, the Government have not shown that any of the remedies cited would have afforded redress in any way whatsoever to the applicant for her complaints. The Court does not consider that a remedy before the administrative courts can be regarded as adequate and sufficient, since it is not satisfied that a determination can be made in the course of such proceedings concerning the complaints raised by the applicant. As regards the other possible remedies cited by the Government, although they all seem feasible in theory, the Court observes that the applicant's grievances in the instant case relate to alleged interferences of her rights by the "TRNC" authorities and not by private persons. In this connection, the Court observes that the examples of domestic case-law presented by the Government in support of their submissions involved actions by Greek-Cypriot enclaved persons before the "TRNC" courts in respect of interferences of their rights solely by private persons; this being the case also with regard to the theft that occurred in 1977 at the school where the applicant taught. The Government have not provided any convincing submissions, including any case-law, demonstrating the effectiveness of such remedies as against acts of the "TRNC" authorities, especially in view of the nature of the applicant's complaints.

The Court reiterates that it is not for the Convention bodies to cure of their own motion any shortcomings or lack of precision in the respondent Government's arguments (see *Stran Greek Refineries and Stratis Andreadis*, cited above).

Admittedly, the Court in the instant case is addressing an individual's claims concerning alleged violations of the Convention by the Government. However, these need to be considered in the context of the overall prevailing situation and living conditions of the enclaved persons in northern Cyprus at the time in question, in particular, *vis-à-vis* the "TRNC" authorities (see *Cyprus v. Turkey*, cited above).

In light of all the above, the Court considers the application cannot be rejected for failure to exhaust domestic remedies. The Court thus dismisses the Government's objection on this point.

B. Merits

The applicant complained that she had been subjected to ill-treatment in breach of Article 3 of the Convention and that she had been deprived of her liberty and security in breach of Article 5 of the Convention. The applicant further complained of disrespect for her private life and interference with her home contrary to Article 8 of the Convention. Finally, the applicant

complained that she had been persecuted because of her ethnic origin and religious beliefs and her opposition to the Turkish military occupation of the northern part of Cyprus, in breach of Articles 9 and 10 of the Convention and also, Article 14 of the Convention taken in conjunction with Articles 3, 5 and 8.

The aforementioned provisions in so far as relevant read as follows:

Article 3

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

Article 5

“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:

...

(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”

Article 8

“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.”

Article 9

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

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

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Article 14

“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.”

1. The parties' submissions

(a) The Government

The Government submitted that the “TRNC” authorities had not used any force over the applicant other than that which had been proper and necessary in the circumstances. They had acted in accordance with the law and within the powers afforded to them. The applicant had not been subjected to any inhuman or degrading treatment but merely to usual police and customs control by “TRNC” officials. If she had not objected to the search of her handbag and she had not resisted in a violent and provocative manner, no incident would have occurred. By resisting she had in fact committed an offence under “TRNC” laws (section 177 of the Customs and Excise Law, no. 37 of 1983). Furthermore, the alleged “bruises” or “scratches” on the applicant had not been inflicted by the Turkish–Cypriot police and/or customs officers. One possibility was that these had been inflicted unintentionally whilst she had been resisting the police. This however had not been evident at the time since the applicant had been wearing dark stockings. Otherwise, the alleged injuries had been sustained under other circumstances unknown to the Turkish Cypriot authorities. Furthermore, the Government pointed out that the applicant’s statements referred to in the report of the “Doctors of the World” concerning her alleged ill-treatment contradicted the complaints made in her application before the Court.

The applicant’s “detention”, resulting from her conduct, had only been for a short while and had been so temporary and transient that it had not amounted to a “deprivation of liberty” or affect the “security of her person”. The applicant had not been under arrest during this period but had merely been requested to accompany the police to the police station which is in the vicinity of the checkpoint. She had resisted however and had to be led into a police car and then driven to police headquarters. The applicant had been kept only to enable completion of the search under more appropriate circumstances and to calm her down.

In the alternative, the Government submitted that her “detention” had been justified under domestic law in order to secure the “fulfilment of any obligation prescribed by law” and “to prevent her effecting an unauthorised entry” as provided in Article 5 § 1 (f) of the Convention. In this connection, the Government noted that under section 14 (1) (c) of the Criminal Procedure Law (Cap. 155) which was applicable to both northern and southern Cyprus, any police officer could, without a warrant, “arrest” any person who obstructed the officer in the execution of his duty. Section 9 of the same law provided that if the person to be arrested forcibly resisted or attempted to escape, the police officer or other persons carrying out the arrest might use all necessary means to effect the arrest. Further, under section 10, whenever a person was “arrested”, the police officer making the arrest might search such person using such force as may be reasonably necessary for such purpose.

In view of the temporary and transient nature of the “detention”, there had been no interference with the applicant’s right to her private life or home. Further, the applicant stated that she had wanted to return to Cyprus when she had been resisting entry into the police car and not subsequently, as she claimed, when she had been taken to the bus to be transported back to Ayia Triada.

Alternatively, the Government claimed that under the circumstances, any interference by the authorities had been in accordance with the law as is necessary in the interests of national security, public safety, and for the prevention of disorder or crime, under Article 8 § 2 of the Convention. The authorities had not transgressed the principles of reasonableness and proportionality.

Furthermore, the Government submitted that the applicant had not been persecuted because of her ethnic origin and /or her religious beliefs and/or her opposition to the Turkish military. The incident complained of had happened because of her provocative and irrational conduct. Thus, there had been no discrimination on the part of the “TRNC” authorities in relation to her complaints or in relation to the enjoyment of her Convention rights. The applicant was very well known for her anti-Turkish activities that were carried out at the instigation and with the support of the Greek-Cypriot Government and received publicity. She was a protagonist for the “cause of the enclaved”. She was a lonely person who could not socialise even with her own community in her village. According to the Government, the allegations made in the application were imaginary, unsubstantiated and put forward with the aim of acquiring political advantage and humiliating Turkey and the Turkish-Cypriot authorities. In this connection, the Government referred to a number of newspaper reports in the Cyprus mail dated 6 and 8 March 1994 and 28 May 1996. They also submitted a statement that had been made by a representative of the enclaved Greek-Cypriot community to the Turkish-Cypriot police on 3 March 1994, denying

that the applicant had been under threat for her life and to the effect that she was not a normal person.

Moreover, the Government stated that the applicant had been inventing stories that her life was threatened and that she would be expelled from northern Cyprus. The applicant had been living in southern Cyprus ever since her retirement in March 1997 following arrangements made between the Greek-Cypriot and Turkish-Cypriot authorities to replace her.

Finally, the Government noted that the material that had been seized from the applicant had been likely to promote racist and anti-Turkish propaganda and promote ill-will between the two communities on the island. It had not affected the applicant's rights under these provisions and in any event, such a limitation had been prescribed by law and justified under the second paragraph of both provisions. With regard to Article 9 § 2, the interference had been justified as being necessary in a democratic society in the interests of public safety and for the protection of public order and, as regards Article 10 § 2, for the safeguarding of national security, territorial integrity or public safety.

(b) The applicant

The applicant disputed the Government's arguments that her search and arrest had been justified to enforce "TRNC" customs legislation and pointed out in this regard that she had not been crossing an international border.

The manner of the applicant's arrest, detention and treatment had been humiliating and grossly disproportionate to any threat to public order or any other legitimate concerns that might have existed.

The Government's accusations concerning the applicant's character were both inaccurate and wholly irrelevant to the issues before the Court. The statement put forward by the Government, as a "witness statement", was unconnected with the events complained of in the present application and was taken approximately two years earlier. Instead, the Government should have submitted statements from the police and customs authorities who it admitted had arrested, detained and searched the applicant. The applicant also stated that she had not wished to identify the women on the bus with her since they had also been enclaved persons living with her in Ayia Triada and therefore too frightened to give witness statements

The applicant also observed that the Government had not put forward any evidence or argument as to why the materials that had been confiscated from the applicant or the other materials she had been carrying at the time might have reasonably be thought to increase racial hatred. She disputed the Government's submissions to this effect in particular in view of the fact that there were only approximately 500 Greek Cypriots left in the Karpas peninsula of whom half were over seventy years of age and many of the remaining were very young children.

The applicant considered that the treatment she had received formed part of a more general plan elaborated by the Turkish Cypriots and the Turks and which aimed at dissuading her from teaching at the Greek-Cypriot Elementary School of Ayia Triada and, in general, evicting all the enclaved Greek Cypriots from the Karpas region.

Finally, the applicant alleged that, following the lodging of the present application, she had been subjected to further harassment by the authorities, including threats that she would not be permitted to continue residing and teaching in northern Cyprus.

2. The Court's assessment

The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court by a majority

Declares the application admissible, without prejudging the merits of the case.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President