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COUR EUROPÉENNE DES DROITS DE L'HOMME

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2001-IV

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In the absence of any indication to the contrary the cited text is a judgment on the merits delivered by a Chamber of the Court. Any variation from that is added in brackets after the name of the case: "(dec.)" for a decision on admissibility, "(preliminary objections)" for a judgment concerning only preliminary objections, "(just satisfaction)" for a judgment concerning only just satisfaction, "(revision)" for a judgment concerning revision, "(interpretation)" for a judgment concerning interpretation, "(striking out)" for a judgment striking the case out, or "(friendly settlement)" for a judgment concerning a friendly settlement. "[GC]" is added if the judgment or decision has been given by the Grand Chamber of the Court.

Examples

Judgment on the merits delivered by a Chamber
Campbell v. Ireland, no. 45678/98, § 24, ECHR 1999-II

Judgment on the merits delivered by the Grand Chamber
Campbell v. Ireland [GC], no. 45678/98, § 24, ECHR 1999-II

Decision on admissibility delivered by a Chamber
Campbell v. Ireland (dec.), no. 45678/98, ECHR 1999-II

Decision on admissibility delivered by the Grand Chamber
Campbell v. Ireland (dec.) [GC], no. 45678/98, ECHR 1999-II

Judgment on preliminary objections delivered by a Chamber
Campbell v. Ireland (preliminary objections), no. 45678/98, § 15, ECHR 1999-II

Judgment on just satisfaction delivered by a Chamber
Campbell v. Ireland (just satisfaction), no. 45678/98, § 15, ECHR 1999-II

Judgment on revision delivered by a Chamber
Campbell v. Ireland (revision), no. 45678/98, § 15, ECHR 1999-II

Judgment on interpretation delivered by a Chamber
Campbell v. Ireland (interpretation), no. 45678/98, § 15, ECHR 1999-II

Judgment striking the case out delivered by a Chamber
Campbell v. Ireland (striking out), no. 45678/98, § 15, ECHR 1999-II

Judgment on a friendly settlement delivered by a Chamber
Campbell v. Ireland (friendly settlement), no. 45678/98, § 15, ECHR 1999-II

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Sauf mention particulière, le texte cité est celui d'un arrêt sur le fond rendu par une chambre de la Cour. L'on ajoute après le nom de l'affaire « (déc.) » pour une décision sur la recevabilité, « (exceptions préliminaires) » pour un arrêt ne portant que sur des exceptions préliminaires, « (satisfaction équitable) » pour un arrêt ne portant que sur la satisfaction équitable, « (révision) » pour un arrêt de révision, « (interprétation) » pour un arrêt d'interprétation, « (radiation) » pour un arrêt rayant l'affaire du rôle, « (règlement amiable) » pour un arrêt sur un règlement amiable, et « [GC] » si l'arrêt ou la décision ont été rendus par la Grande Chambre de la Cour.

Exemples

Arrêt rendu par une chambre sur le fond
Dupont c. France, n° 45678/98, § 24, CEDH 1999-II

Arrêt rendu par la Grande Chambre sur le fond
Dupont c. France [GC], n° 45678/98, § 24, CEDH 1999-II

Décision rendue par une chambre sur la recevabilité
Dupont c. France (déc.), n° 45678/98, CEDH 1999-II

Décision rendue par la Grande Chambre sur la recevabilité
Dupont c. France (déc.) [GC], n° 45678/98, CEDH 1999-II

Arrêt rendu par une chambre sur des exceptions préliminaires
Dupont c. France (exceptions préliminaires), n° 45678/98, § 15, CEDH 1999-II

Arrêt rendu par une chambre sur la satisfaction équitable
Dupont c. France (satisfaction équitable), n° 45678/98, § 15, CEDH 1999-II

Arrêt de révision rendu par une chambre
Dupont c. France (révision), n° 45678/98, § 15, CEDH 1999-II

Arrêt d'interprétation rendu par une chambre
Dupont c. France (interprétation), n° 45678/98, § 15, CEDH 1999-II

Arrêt rendu par une chambre rayant l'affaire du rôle
Dupont c. France (radiation), n° 45678/98, § 15, CEDH 1999-II

Arrêt rendu par une chambre sur un règlement amiable
Dupont c. France (règlement amiable), n° 45678/98, § 15, CEDH 1999-II

Contents/Table des matières

CYPRUS v. TURKEY
(Application no. 25781/94)

GRAND CHAMBER

JUDGMENT OF 10 MAY 2001

Disappearances following Turkish invasion of Cyprus in 1974 and effectiveness of investigations into missing persons
Denial of displaced person's access to and use of homes and property in northern Cyprus
Alleged restrictions on rights and freedoms of Greek Cypriots in northern Cyprus

In the case of Cyprus v. Turkey,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr J.-P. COSTA,
Mr L. FERRARI BRAVO,
Mr L. CAFLISCH,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANŢÎRU,
Mr E. LEVITS,
Mr A. KOVLER,
Mr K. FUAD, ad hoc *judge in respect of Turkey*,
Mr S. MARCUS-HELMONS, ad hoc *judge in respect of Cyprus*,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 20 to 22 September 2000 and on 21 March 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by the Government of the Republic of Cyprus ("the applicant Government") on 30 August 1999 and by the European Commission of Human Rights ("the Commission") on 11 September 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 25781/94) against the Republic of Turkey lodged with the Commission under former Article 24 of the Convention by the applicant Government on 22 November 1994.

3. The applicant Government alleged, with respect to the situation that has existed in Cyprus since the start of Turkey's military operations in northern Cyprus in July 1974, that the Government of Turkey ("the respondent Government") have continued to violate the Convention notwithstanding the adoption by the Commission of reports under

former Article 31 of the Convention on 10 July 1976 and 4 October 1983 and the adoption by the Committee of Ministers of the Council of Europe of resolutions thereon. The applicant Government relied in particular on Articles 1 to 11 and 13 of the Convention as well as Articles 14, 17 and 18 taken in conjunction with the aforementioned provisions. They further relied on Articles 1, 2 and 3 of Protocol No. 1.

These complaints variously refer to the following matters: Greek-Cypriot missing persons and their relatives; the home and property of displaced persons; the right of displaced Greek Cypriots to hold free elections; the living conditions of Greek Cypriots in northern Cyprus; and the situation of Turkish Cypriots and the Gypsy community living in northern Cyprus.

4. The application was declared admissible by the Commission on 28 June 1996. Having concluded that there was no basis on which a friendly settlement could be secured, it drew up and adopted a report on 4 June 1999 in which it established the facts and expressed an opinion as to whether the facts as found gave rise to the breaches alleged by the applicant Government[1].

5. Before the Court the applicant Government were represented by their Agent, Mr A. Markides, Attorney-General of the Republic of Cyprus. The respondent Government were represented by their Agent, Mr Z. Necatigil.

6. On 20 September 1999 a panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court).

7. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 (former version) taken in conjunction with Rules 28 and 29.

8. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the Grand Chamber (Rule 28). The respondent Government accordingly appointed Mr S. Dayıoğlu to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1). Following a challenge by the applicant Government to the participation of Mr Dayıoğlu, the Grand Chamber, on 8 December 1999, noted that Mr Dayıoğlu had communicated to the President his intention to withdraw from the case (Rule 28 §§ 3 and 4). The respondent Government subsequently appointed Mrs N. Ferdi to sit as an *ad hoc* judge.

Also on 8 December 1999, the Grand Chamber considered objections raised by the respondent Government to the participation of

1. *Note by the Registry*. Extracts of the Commission's report and the five partly dissenting opinions attached to it are reproduced as an annex to this judgment.

Mr L. Loucaides, the judge elected in respect of Cyprus. Having examined the objections, the Grand Chamber decided on the same date to request Mr Loucaides to withdraw from the case (Rule 28 § 4). The applicant Government subsequently appointed Mr L. Hamilton to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

On 29 March 2000, following objections raised by the applicant Government to the participation of Mrs Ferdi, the Grand Chamber decided that she was prevented from taking part in the consideration of the case (Rule 28 § 4). The respondent Government subsequently appointed Mr K. Fuad to sit as *ad hoc* judge.

Following the death of Mr Hamilton on 29 November 2000, the Agent of the applicant Government notified the Registrar on 13 December 2000 that his Government had appointed Mr S. Marcus-Helmons to sit as *ad hoc* judge in his place.

9. The procedure to be followed in the case was determined by the President in consultation with the Agents and other representatives of the parties at a meeting held on 24 October 1999 (Rule 58 § 1). On 24 November 1999 the Grand Chamber approved the President's proposals concerning the substantive and organisational arrangements for the written and oral procedure.

10. In pursuance of those arrangements, the applicant Government filed their memorial within the time-limit (31 March 2000) fixed by the President. By a letter dated 24 April 2000, and following the expiry of the time-limit, the Agent of the respondent Government requested leave to submit his memorial before 24 July 2000. On 3 May 2000 the President, having consulted the Grand Chamber, agreed to extend the time-limit for the submission by the respondent Government of their memorial to 5 June 2000, it being pointed out that if the respondent Government failed to submit their memorial before the expiry of the new time-limit, they would be considered to have waived their right to submit a memorial.

Following the failure of the respondent Government to comply with the new time-limit, the President, by a letter dated 16 June 2000, informed the Agents of both Governments through the Registrar that the written pleadings were now closed. A copy of the applicant Government's memorial was sent to the Agent of the respondent Government for information purposes only. The President further informed the Agents in the same letter that, with a view to the hearing, a preparatory meeting with the Agents of both parties would be held on 7 September 2000.

11. On 7 September 2000 the President met with the Agent and other representatives of the applicant Government in order to finalise arrangements for the hearing. The respondent Government, although invited, did not attend the meeting.

12. The hearing took place in public in the Human Rights Building, Strasbourg, on 20 September 2000 (Rule 59 § 2). The respondent

Government did not notify the Court of the names of their representatives in advance of the hearing and were not present at the hearing. In the absence of sufficient cause for the failure of the respondent Government to appear, the Grand Chamber decided to proceed with the hearing, being satisfied that such a course was consistent with the proper administration of justice (Rule 64).

The President informed the Chairman of the Committee of Ministers of this decision in a letter dated 21 September 2000.

There appeared before the Court:

(a) *for the applicant Government*
Mr A. MARKIDES, Attorney-General
of the Republic of Cyprus, *Agent*,
Mr I. BROWNLIE QC,
Mr D. PANNICK QC,
Ms C. PALLEY, Barrister-at-Law,
Mr M. SHAW, Barrister-at-Law,
Mrs S.M. JOANNIDES, Senior Counsel
of the Republic of Cyprus,
Mr P. POLYVIOU, Barrister-at-Law,
Mr P. SAINI, Barrister-at-Law, *Counsel*,
Mr N. EMILIOU, Consultant, *Adviser*;

(b) *for the respondent Government*
The respondent Government did not appear.

The Court heard addresses by Mr Markides, Mr Brownlie, Mr Shaw, Mr Pannick and Mr Polyviou.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

A. General context

13. The complaints raised in this application arise out of the Turkish military operations in northern Cyprus in July and August 1974 and the continuing division of the territory of Cyprus. At the time of the Court's consideration of the merits in *Loizidou v. Turkey* in 1996, the Turkish military presence at the material time was described in the following terms:

"16. Turkish armed forces of more than 30,000 personnel are stationed throughout the whole of the occupied area of northern Cyprus, which is constantly patrolled and has checkpoints on all main lines of communication. The army's headquarters are in Kyrenia. The 28th Infantry Division is based in Asha (Assia) with its sector covering Famagusta to the Mia Milia suburb of Nicosia and with about 14,500 personnel. The 39th Infantry Division, with about 15,500 personnel, is based at Myrtou village, and its sector ranges from Yerolakkos village to Lefka. TOURDYK (Turkish Forces in Cyprus under the Treaty of Guarantee) is stationed at Orta Keuy village near Nicosia, with a sector running from Nicosia International Airport to the Pedhieos River. A Turkish naval command and outpost are based at Famagusta and Kyrenia respectively. Turkish airforce personnel are based at Lefkoniko, Krini and other airfields. The Turkish airforce is stationed on the Turkish mainland at Adana.

17. The Turkish forces and all civilians entering military areas are subject to Turkish military courts, as stipulated so far as concerns 'TRNC citizens' by the Prohibited Military Areas Decree of 1979 (section 9) and Article 156 of the Constitution of the 'TRNC'." (*Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2223, §§ 16-17)

14. A major development in the continuing division of Cyprus occurred in November 1983 with the proclamation of the establishment of the "Turkish Republic of Northern Cyprus" ("TRNC") and the subsequent enactment of the "TRNC Constitution" on 7 May 1985.

This development was condemned by the international community. On 18 November 1983 the United Nations Security Council adopted Resolution 541 (1983) declaring the proclamation of the establishment of the "TRNC" legally invalid and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus. A similar call was made by the Security Council on 11 May 1984 in its Resolution 550 (1984). In November 1983 the Committee of Ministers of the Council of Europe decided that it continued to regard the government of the Republic of Cyprus as the sole legitimate government of Cyprus and called for respect for the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus.

15. According to the respondent Government, the "TRNC" is a democratic and constitutional State which is politically independent of all other sovereign States including Turkey, and the administration in northern Cyprus has been set up by the Turkish-Cypriot people in the exercise of its right to self-determination and not by Turkey. Notwithstanding this view, only the Cypriot government is recognised internationally as the government of the Republic of Cyprus in the context of diplomatic and treaty relations and the working of international organisations.

16. The United Nations Peacekeeping Force in Cyprus (UNFICYP) maintains a buffer-zone. A number of political initiatives have been taken at the level of the United Nations aimed at settling the Cyprus problem on the basis of institutional arrangements acceptable to both sides. To this

end, inter-communal talks have been sponsored by the Secretary-General of the United Nations acting under the direction of the Security Council. In this connection, the respondent Government maintain that the Turkish-Cypriot authorities in northern Cyprus have pursued the talks on the basis of what they consider to be already agreed principles of bi-zonality and bi-communality within the framework of a federal Constitution. Support for this basis of negotiation is found in the UN Secretary-General's Set of Ideas of 15 July 1992 and the UN Security Council resolutions of 26 August 1992 and 25 November 1992 confirming that a federal solution sought by both sides will be "bi-communal" and "bi-zonal".

Furthermore, and of relevance to the instant application, in 1981 the United Nations Committee on Missing Persons (CMP) was set up to "look into cases of persons reported missing in the inter-communal fighting as well as in the events of July 1974 and afterwards" and "to draw up comprehensive lists of missing persons of both communities, specifying as appropriate whether they are still alive or dead, and in the latter case approximate times of death". The CMP has not yet completed its investigations.

B. The previous inter-State applications

17. The events of July and August 1974 and their aftermath gave rise to three previous applications by the applicant Government against the respondent State under former Article 24 of the Convention. The first (no. 6780/74) and second (no. 6950/75) applications were joined by the Commission and led to the adoption on 10 July 1976 of a report under former Article 31 of the Convention ("the 1976 report") in which the Commission expressed the opinion that the respondent State had violated Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1. On 20 January 1979 the Committee of Ministers of the Council of Europe in turn adopted, with reference to an earlier decision of 21 October 1977, Resolution DH (79) 1 in which it expressed, *inter alia*, the conviction that "the enduring protection of human rights in Cyprus can only be brought about through the re-establishment of peace and confidence between the two communities; and that inter-communal talks constitute the appropriate framework for reaching a solution of the dispute". In its resolution the Committee of Ministers strongly urged the parties to resume the talks under the auspices of the Secretary-General of the United Nations in order to agree upon solutions on all aspects of the dispute (see paragraph 16 above). The Committee of Ministers viewed this decision as completing its consideration of the case.

The third application (no. 8007/77) lodged by the applicant Government was the subject of a further report under former Article 31

adopted by the Commission on 4 October 1983 ("the 1983 report"). In that report the Commission expressed the opinion that the respondent State was in breach of its obligations under Articles 5 and 8 of the Convention and Article 1 of Protocol No. 1. On 2 April 1992 the Committee of Ministers adopted Resolution DH (92) 12 in respect of the Commission's 1983 report. In its resolution the Committee of Ministers limited itself to a decision to make the 1983 report public and stated that its consideration of the case was thereby completed.

C. The instant application

18. The instant application is the first to have been referred to the Court. In their memorial, the applicant Government requested the Court to "decide and declare that the respondent State is responsible for continuing violations and other violations of Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 17 and 18 of the Convention and of Articles 1 and 2 of Protocol No. 1".

These allegations covered four broad categories of complaints: alleged violations of the rights of Greek-Cypriot missing persons and their relatives; alleged violations of the home and property rights of displaced persons; alleged violations of the rights of enclaved Greek Cypriots in northern Cyprus; alleged violations of the rights of Turkish Cypriots and the Gypsy community in northern Cyprus.

D. The Commission's findings of fact in the instant application

19. The Court considers it appropriate at this stage to summarise the Commission's findings of fact in respect of the various violations of the Convention alleged by the applicant Government as well as the essential arguments advanced by both parties and the documentary and other evidence relied on by the Commission.

1. Alleged violations of the rights of Greek-Cypriot missing persons and their relatives

20. The applicant Government essentially claimed in their application that about 1,491 Greek Cypriots were still missing twenty years after the end of hostilities. These persons were last seen alive in Turkish custody and their fate has never been accounted for by the respondent State.

21. The respondent Government maintained in reply that there was no proof that any of the missing persons were still alive or were being kept in custody. In their principal submission, the issues raised by the applicant Government should continue to be pursued within the

framework of the United Nations Committee on Missing Persons (see paragraph 16 above) rather than under the Convention.

22. The Commission proceeded on the understanding that its task was not to establish what actually happened to the Greek-Cypriot persons who went missing following the Turkish military operations conducted in northern Cyprus in July and August 1974. Rather, it saw its task as one of determining whether or not the alleged failure of the respondent State to clarify the facts surrounding the disappearances constituted a continuing violation of the Convention.

23. To that end, the Commission had particular regard to its earlier findings in its 1976 and 1983 reports. It recalled that in its 1976 report it had stated that it was widely accepted that a considerable number of Cypriots were still missing as a result of the armed conflict in Cyprus and that a number of persons declared to be missing were identified as Greek Cypriots taken prisoner by the Turkish army. This finding, in the Commission's opinion at the time, created a presumption of Turkish responsibility for the fate of persons shown to be in Turkish custody. While noting that killings of Greek-Cypriot civilians had occurred on a large scale, the Commission also considered at the time of its 1976 report that it was unable to ascertain whether, and under what circumstances, Greek-Cypriot prisoners declared to be missing had been deprived of their life.

24. In the present case, the Commission further recalled that in its 1983 report it found it established that there were sufficient indications in an indefinite number of cases that missing Greek Cypriots had been in Turkish custody in 1974 and that this finding once again created a presumption of Turkish responsibility for the fate of these persons.

25. The Commission found that the evidence submitted to it in the instant case confirmed its earlier findings that certain of the missing persons were last seen in Turkish or Turkish-Cypriot custody. In this connection, the Commission had regard to the following: a statement by Mr Denktaş, "President of the TRNC", broadcast on 1 March 1996, in which he admitted that forty-two Greek-Cypriot prisoners were handed over to Turkish-Cypriot fighters who killed them and that in order to prevent further such killings prisoners were subsequently transferred to Turkey; the broadcast statement of Mr Yalçın Küçük, a former Turkish officer who had served in the Turkish army at the time and participated in the 1974 military operation in Cyprus, in which he suggested that the Turkish army had engaged in widespread killings of, *inter alia*, civilians in so-called cleaning-up operations; the Dillon Report submitted to the United States Congress in May 1998 indicating, *inter alia*, that Turkish and Turkish-Cypriot soldiers rounded up Greek-Cypriot civilians in the village of Asha on 18 August 1974 and took away males over the age of 15, most of whom were reportedly killed by Turkish-Cypriot fighters; the

written statements of witnesses tending to corroborate the Commission's earlier findings that many persons now missing were taken into custody by Turkish soldiers or Turkish-Cypriot paramilitaries.

26. The Commission concluded that, notwithstanding evidence of the killing of Greek-Cypriot prisoners and civilians, there was no proof that any of the missing persons were killed in circumstances for which the respondent State could be held responsible; nor did the Commission find any evidence to the effect that any of the persons taken into custody were still being detained or kept in servitude by the respondent State. On the other hand, the Commission found it established that the facts surrounding the fate of the missing persons had not been clarified by the authorities and brought to the notice of the victims' relatives.

27. The Commission further concluded that its examination of the applicant Government's complaints in the instant application was not precluded by the ongoing work of the CMP. It noted in this connection that the scope of the investigation being conducted by the CMP was limited to determining whether or not any of the missing persons on its list were dead or alive; nor was the CMP empowered to make findings either on the cause of death or on the issue of responsibility for any deaths so established. Furthermore, the territorial jurisdiction of the CMP was limited to the island of Cyprus, thus excluding investigations in Turkey where some of the disappearances were claimed to have occurred. The Commission also observed that persons who might be responsible for violations of the Convention were promised impunity and that it was doubtful whether the CMP's investigation could extend to actions by the Turkish army or Turkish officials on Cypriot territory.

2. Alleged violations of the rights of the displaced persons to respect for their home and property

28. The Commission established the facts under this heading against the background of the applicant Government's principal submission that over 211,000 displaced Greek Cypriots and their children continued to be prevented as a matter of policy from returning to their homes in northern Cyprus and from having access to their property there for any purpose. The applicant Government submitted that the presence of the Turkish army together with "TRNC"-imposed border restrictions ensured that the return of displaced persons was rendered physically impossible and, as a corollary, that their cross-border family visits were gravely impeded. What started as a gradual and continuing process of illegality over the years had now resulted in the transfer of the property left behind by the displaced persons to the "TRNC" authorities without payment of compensation and its re-assignment, together with "title deeds", to State bodies, Turkish Cypriots and settlers from Turkey.

29. The respondent Government maintained before the Commission that the question of the Varosha district of Famagusta along with the issues of freedom of movement, freedom of settlement and the right of property could only be resolved within the framework of the inter-communal talks (see paragraph 16 above) and on the basis of the principles agreed on by both sides for the conduct of those talks. Until an overall solution to the Cyprus question, acceptable to both sides, was found, and having regard to security considerations, there could be no question of a right of the displaced persons to return. The respondent Government further submitted that the regulation of property abandoned by displaced persons, as with restrictions on cross-border movement, fell within the exclusive jurisdiction of the "TRNC" authorities.

30. The Commission found that it was common knowledge that with the exception of a few hundred Maronites living in the Kormakiti area and Greek Cypriots living in the Karpas peninsula, the whole Greek-Cypriot population which before 1974 resided in the northern part of Cyprus had left that area, the large majority of these people now living in southern Cyprus. The reality of this situation was not contested by the respondent Government.

31. The Commission noted with reference to its earlier findings in its 1976 and 1983 reports that there was no essential change in the situation obtaining at the time of the introduction of the instant application. Accordingly, and this was not disputed by the respondent Government either, displaced Greek Cypriots had no possibility of returning to their homes in northern Cyprus and were physically prevented from crossing into the northern part on account of the fact that it was sealed off by the Turkish army. The arrangements introduced by the "TRNC" authorities in 1998 to allow Greek Cypriots and Maronites to cross into northern Cyprus for the purposes of family visits or, as regards Greek Cypriots, visits to the Apostolos Andreas Monastery, did not affect this conclusion.

32. Nor did the respondent Government dispute the fact that Greek-Cypriot owners of property in northern Cyprus continued to be prevented from having access to, controlling, using and enjoying their property. As to the fate of that property, the Commission found it established that up until 1989 there was an administrative practice of the Turkish-Cypriot authorities to leave the official Land Register unaffected and to register separately the "abandoned" property and its allocation. The beneficiaries of allocations were issued with "possessory certificates" but not "deeds of title" to the properties concerned. However, as from June 1989 the practice changed and thereafter "title deeds" were issued and the relevant entries concerning the change of ownership were made in the Land Register. The Commission found it established that, at least since June 1989, the Turkish-Cypriot authorities no longer recognised any ownership rights of Greek Cypriots in respect of their properties in

northern Cyprus. The Commission found confirmation for this finding in the provisions of "Article 159 § 1 (b) of the TRNC Constitution" of 7 May 1985 and "Law no. 52/1995" purporting to give effect to that provision.

33. Although the respondent Government pointed out in their submissions to the Commission that the issue of the right of displaced Greek Cypriots to return to their homes was a matter to be determined within the framework of the inter-communal talks sponsored by the Secretary-General of the United Nations (see paragraph 16 above), the Commission found that there had been no significant progress in recent years in the discussion of issues such as freedom of settlement, payment of compensation to Greek Cypriots for the interference with their property rights, or restitution of Greek-Cypriot property in the Varosha district.

3. Alleged violations arising out of the living conditions of Greek Cypriots in northern Cyprus

34. The applicant Government adduced evidence in support of their complaint that the dwindling number of Greek Cypriots living in the Karpas peninsula of northern Cyprus were subjected to continuing oppressive treatment which amounted to a complete denial of their rights and a negation of their human dignity. In addition to the harassment and intimidation which they suffered at the hands of Turkish settlers, and which has gone unpunished, the enclaved Greek Cypriots laboured under restrictions which violated many of the substantive rights contained in the Convention. The continuous daily interferences with their rights could not be redressed at the local level on account of the absence of effective remedies before the "TRNC" courts. Similar but less extensive restrictions applied to the Maronite population living in the Kormakiti area of northern Cyprus.

35. The respondent Government maintained before the Commission that effective judicial remedies were available to all Greek Cypriots living in northern Cyprus. However, they claimed that the applicant Government actively discouraged them from taking proceedings in the "TRNC". The respondent Government further submitted that the evidence before the Commission did not provide any basis of fact for the allegations made.

36. The Commission established the facts under this heading with reference to materials submitted by both Governments. These materials included, *inter alia*, written statements of persons affected by the restrictions alleged by the applicant Government; press reports dealing with the situation in northern Cyprus; case-law of the "TRNC" courts on the availability of remedies in the "TRNC"; "TRNC legislation" and decisions of the "TRNC Council of Ministers" on entry and exit arrangements at the Ledra Palace check-point. The Commission also had

regard to United Nations documents concerning the living conditions of enclaved Greek Cypriots and especially to the UN Secretary-General's progress reports of 10 December 1995 and 9 March 1998 on the humanitarian review carried out by UNFICYP in 1994-95 concerning the living conditions of Karpas Greek Cypriots, the so-called "Karpas Brief".

37. Furthermore, the Commission's delegates heard the evidence of fourteen witnesses on the situation of Greek Cypriots and Maronites living in northern Cyprus. These witnesses comprised two persons who were closely associated with the preparation of the "Karpas Brief" as well as persons proposed by both Governments. The delegates also visited, on 23 and 24 February 1998, a number of localities in northern Cyprus, including Greek-Cypriot villages in the Karpas area, and heard statements from officials and other persons encountered during these visits.

38. The Commission considered the above-mentioned "Karpas Brief" an accurate description of the situation of the enclaved Greek-Cypriot and Maronite populations at about the time of the introduction of the instant application and that the proposals for remedial action recommended by UNFICYP following the humanitarian review reflected the real needs of these groups in the face of administrative practices which actually existed at the material time. Although the Commission noted that there had been a considerable improvement in the overall situation of the enclaved populations, as evidenced by the UN Secretary-General's progress reports on the "Karpas Brief" recommendations, there still remained a number of severe restrictions. These restrictions were not laid down in any "TRNC legislation" and were in the nature of administrative practices.

39. The Commission further found that there existed a functioning court system in the "TRNC" which was in principle accessible to Greek Cypriots living in northern Cyprus. It appeared that at least in cases of trespass to property or personal injury there had been some successful actions brought by Greek-Cypriot litigants before the civil and criminal courts. However, in view of the scarcity of cases brought by Greek Cypriots, the Commission was led to conclude that the effectiveness of the judicial system for resident Greek Cypriots had not really been tested.

40. In a further conclusion, the Commission found that there was no evidence of continuing wrongful allocation of properties of resident Greek Cypriots to other persons during the period under consideration. However, the Commission did find it established that there was a continuing practice of the "TRNC" authorities to allocate to Turkish Cypriots or immigrants the property of Greek Cypriots who had died or left northern Cyprus.

41. In the absence of legal proceedings before the "TRNC" courts, the Commission noted that it had not been tested whether or not Greek Cypriots or Maronites living in northern Cyprus were in fact considered as citizens enjoying the protection of the "TRNC Constitution". It did

however find it established that, in so far as the groups at issue complained of administrative practices such as restrictions on their freedom of movement or on family visits which were based on decisions of the "TRNC Council of Ministers", any legal challenge to these restrictions would be futile given that such decisions were not open to review by the courts.

42. Although the Commission found no evidence of cases of actual detention of members of the enclaved population, it was satisfied that there was clear evidence that restrictions on movement and family visits continued to be applied to Greek Cypriots and Maronites notwithstanding recent improvements. It further observed that an exit visa was still necessary for transfers to medical facilities in the south, although no fees were levied in urgent cases. There was no evidence to confirm the allegation that the processing of applications for movement was delayed in certain cases with the result that the health or life of patients was endangered; nor was there any indication of a deliberate practice of delaying the processing of such applications.

43. The Commission found it established that there were restrictions on the freedom of movement of Greek-Cypriot and Maronite schoolchildren attending schools in the south. Until the entry into force of the decision of the "TRNC Council of Ministers" of 11 February 1998, they were not allowed to return permanently to the north after having attained the age of 16 in the case of males and 18 in the case of females. The age-limit of 16 years was still maintained for Greek-Cypriot male students. Up to the age-limit, certain restrictions applied to the visits of students to their parents in the north, which were gradually relaxed. However, even today such visits are subject to a visa requirement and a reduced "entry fee".

44. As to educational facilities, the Commission held that, although there was a system of primary-school education for the children of Greek Cypriots living in northern Cyprus, there were no secondary schools for them. The vast majority of schoolchildren went to the south for their secondary education and the restriction on the return of Greek-Cypriot and Maronite schoolchildren to the north after the completion of their studies had led to the separation of many families. Furthermore, school textbooks for use in the Greek-Cypriot primary school were subjected to a "vetting" procedure in the context of confidence-building measures suggested by UNFICYP. The procedure was cumbersome and a relatively high number of school-books were being objected to by the Turkish-Cypriot administration.

45. Aside from school-books, the Commission found no evidence of any restrictions being applied during the period under consideration to the importation, circulation or possession of other types of books; nor was there evidence of restrictions on the circulation of newspapers published

in southern Cyprus. However, there was no regular distribution system for the Greek-Cypriot press in the Karpas area and no direct post-and-telecommunications links between the north and south of the island. It was further noted that the enclaved population was able to receive Greek-Cypriot radio and television.

46. The Commission did not find any conclusive evidence that letters destined for Greek Cypriots were opened by the "TRNC" police or that their telephones were tapped.

47. As to alleged restrictions on religious worship, the Commission found that the main problem for Greek Cypriots in this connection stemmed from the fact that there was only one priest for the whole Karpas area and that the Turkish-Cypriot authorities were not favourable to the appointment of additional priests from the south. The Commission delegates were unable to confirm during their visit to the Karpas area whether access to the Apostolos Andreas Monastery was free at any time for Karpas Greek Cypriots. It appeared to be the case that on important religious festivals (which occur three times a year) Greek Cypriots from the south are also allowed to visit the monastery.

48. Concerning alleged restrictions on the freedom of association of the enclaved population, the Commission observed that the relevant "TRNC" law on associations only covered the creation of associations by Turkish Cypriots.

4. Alleged violations of the rights of Turkish Cypriots and the Turkish-Cypriot Gypsy community in northern Cyprus

49. The applicant Government contended before the Commission that Turkish Cypriots living in northern Cyprus, especially political dissidents and the Gypsy community, were the victims of an administrative practice of violation of their Convention rights. They adduced evidence in support of their claim that these groups were victims of arbitrary arrest and detention, police misconduct, discrimination and ill-treatment, and interferences of various kinds with other Convention rights such as, *inter alia*, the right to a fair trial, the right to respect for private and family life, the right to freedom of expression, the right to freedom of association, the right of property and the right to education.

50. The respondent Government essentially maintained that the above allegations were unsubstantiated on the evidence and pointed to the availability of effective remedies in the "TRNC" to aggrieved persons.

51. The Commission's investigation into the applicant Government's allegations was based mainly on the oral evidence of thirteen witnesses who testified before the Commission's delegates on the situation of Turkish Cypriots and the Gypsy community living in northern Cyprus. The witnesses were proposed by both parties. Their evidence was taken

by the delegates in Strasbourg, Cyprus and London between November 1997 and April 1998.

52. The Commission found that there existed rivalry and social conflict between the original Turkish Cypriots and immigrants from Turkey who continued to arrive in considerable numbers. Some of the original Turkish Cypriots and their political groups and media resented the "TRNC" policy of full integration for the settlers.

53. Furthermore, while there was a significant incidence of emigration from the "TRNC" for economic reasons, it could not be excluded that there were also cases of Turkish Cypriots having fled the "TRNC" out of fear of political persecution. The Commission considered that there was no reason to doubt the correctness of witnesses' assertions that in a few cases complaints of harassment or discrimination by private groups of or against political opponents were not followed up by the "TRNC" police. However, it concluded that it was not established beyond reasonable doubt that there was in fact a consistent administrative practice of the "TRNC" authorities, including the courts, of refusing protection to political opponents of the ruling parties. In so far as it was alleged by the applicant Government that the authorities themselves were involved in the harassment of political opponents, the Commission did not have sufficient details concerning the incidents complained of (for example, the dispersing of demonstrations, short-term arrests) which would allow it to form an opinion as to the justification or otherwise of the impugned acts. The Commission noted that, in any event, it did not appear that the remedy of habeas corpus had been used by persons claiming to be victims of arbitrary arrest or detention.

54. Regarding the alleged discrimination against and arbitrary treatment of members of the Turkish-Cypriot Gypsy community, the Commission found that judicial remedies had apparently not been used in respect of particularly grave incidents such as the pulling down of shacks near Morphou and the refusal of airlines to transport Gypsies to the United Kingdom without a visa.

55. In a further conclusion, the Commission observed that there was no evidence before it of Turkish-Cypriot civilians having been subjected to the jurisdiction of military courts during the period under consideration. Furthermore, and with respect to the evidence before it, the Commission considered that it had not been established that, during the period under consideration, there was an official prohibition on the circulation of Greek-language newspapers in northern Cyprus or that the creation of bi-communal associations was prevented. In respect of the alleged refusal of the "TRNC" authorities to allow Turkish Cypriots to return to their properties in southern Cyprus, the Commission observed that no concrete instances were referred to it of any persons who had wished to do so during the period under consideration.

THE LAW

I. PRELIMINARY ISSUES

56. The Court observes that, in the proceedings before the Commission, the respondent Government raised several objections to the admissibility of the application. The Commission, at the admissibility stage of the proceedings, considered these objections under the following heads: (1) alleged lack of jurisdiction and responsibility of the respondent State in respect of the acts complained of; (2) alleged identity of the present application with the previous applications introduced by the applicant Government; (3) alleged abuse of process by the applicant Government; (4) alleged special agreement between the respective Governments to settle the dispute by means of other international procedures; (5) alleged failure of aggrieved persons concerned by the application to exhaust domestic remedies; and (6) alleged failure by the applicant Government to comply with the six-month rule.

57. The Court further observes that the Commission, in its admissibility decision of 28 June 1996, rejected the respondent Government's challenges under the third and fourth heads and decided to reserve to the merits stage the issues raised under the remaining heads.

58. The Court notes that on account of the respondent Government's failure to participate in the written and oral proceedings before it (see paragraphs 11 and 12 above), the objections which Turkey relied on before the Commission have not been re-submitted by her for consideration. Although it is open to the Court in these circumstances, in application of Rule 55 of the Rules of Court, to refuse to entertain the respondent Government's pleas of inadmissibility, it nevertheless considers it appropriate to examine them in the form of preliminary issues. It observes in this connection that the applicant Government have devoted a substantial part of their written and oral pleadings to these issues, including their relevance to the merits of their various allegations.

Issues reserved by the Commission to the merits stage

1. As to the applicant Government's locus standi

59. In the proceedings before the Commission, the respondent Government claimed that the applicant Government were not the lawful government of the Republic of Cyprus. Referring to it as the "Greek-Cypriot administration", they maintained that the applicant Government lacked standing to bring the instant application.

60. The applicant Government refuted this assertion with reference, *inter alia*, to the Court's conclusions in *Loizidou v. Turkey* (preliminary

objections) (judgment of 23 March 1995, Series A no. 310) and to the reaction of the international community to the proclamation of the establishment of the "TRNC" in 1983, in particular the two resolutions adopted by the United Nations Security Council and the resolution of the Council of Europe's Committee of Ministers condemning this move in the strongest possible terms (see paragraph 14 above).

61. The Court, like the Commission, finds that the respondent Government's claim cannot be sustained. In line with *Loizidou* (merits), cited above, it notes that it is evident from international practice and the condemnatory tone of the resolutions adopted by the United Nations Security Council and the Council of Europe's Committee of Ministers that the international community does not recognise the "TRNC" as a State under international law. The Court reiterates the conclusion it reached in *Loizidou* (merits) that the Republic of Cyprus has remained the sole legitimate government of Cyprus and on that account their *locus standi* as the government of a High Contracting Party cannot be in doubt (judgment cited above, p. 2231, § 44; see also *Loizidou* (preliminary objections), cited above, p. 18, § 40).

62. The Court concludes that the applicant Government have *locus standi* to bring an application under former Article 24 (current Article 33) of the Convention against the respondent State.

2. As to the applicant Government's legal interest in bringing the application

63. The respondent Government pleaded before the Commission that Resolutions DH (79) 1 and DH (92) 12 adopted by the Committee of Ministers on the previous inter-State applications (see paragraph 17 above) were *res judicata* of the complaints raised in the instant application which, they maintained, were essentially the same as those which were settled by the aforementioned decisions of the Committee of Ministers.

64. In their reply, the applicant Government stated that neither of the above-mentioned resolutions precluded the Court's examination of the complaints raised in the instant application. In the first place, the Committee of Ministers never took any formal decision on the findings contained in either of the Commission's reports under former Article 31. Secondly, the application currently before the Court was to be distinguished from the earlier applications in that it set out new violations of the Convention, raised complaints which were not the subject of any definitive finding by the Commission in its earlier reports and was, moreover, premised on the notion of continuing violations of Convention rights.

65. The Commission agreed with the applicant Government's reasoning and rejected the respondent Government's challenge under this head.

66. The Court, like the Commission, accepts the force of the applicant Government's reasoning. It would add that this is the first occasion on which it has been seised of the complaints raised by the applicant Government in the context of an inter-State application, it being observed that, as regards the previous applications, it was not open to the parties or to the Commission to refer them to the Court under former Article 45 of the Convention read in conjunction with former Article 48. It notes in this connection that Turkey only accepted the compulsory jurisdiction of the Court by its declaration of 22 January 1990 (see *Mitap and Müftüoğlu v. Turkey*, judgment of 25 March 1996, *Reports* 1996-II, p. 408, § 17).

67. Without prejudice to the question of whether and in what circumstances the Court has jurisdiction to examine a case which was the subject of a decision taken by the Committee of Ministers pursuant to former Article 32 of the Convention, it must be noted that, in respect of the previous inter-State applications, neither Resolution DH (79) 1 nor Resolution DH (92) 12 resulted in a "decision" within the meaning of Article 32 § 1. This is clear from the terms of these texts. Indeed, it is to be further observed that the respondent Government accepted in their pleadings on their preliminary objections in *Loizidou* that the Committee of Ministers did not endorse the Commission's findings in the previous inter-State cases (see *Loizidou* (preliminary objections), cited above, pp. 21-22, § 56).

68. The Court accordingly concludes that the applicant Government have a legitimate legal interest in having the merits of the instant application examined by the Court.

3. As to the respondent State's responsibility under the Convention in respect of the alleged violations

69. The respondent Government disputed Turkey's liability under the Convention for the allegations set out in the application. In their submissions to the Commission, the respondent Government claimed that the acts and omissions complained of were imputable exclusively to the "Turkish Republic of Northern Cyprus" (the "TRNC"), an independent State established by the Turkish-Cypriot community in the exercise of its right to self-determination and possessing exclusive control and authority over the territory north of the United Nations buffer-zone. The respondent Government averred in this connection that the Court, in *Loizidou* (preliminary objections and merits), had erroneously concluded that the "TRNC" was a subordinate local administration whose acts and omissions engaged the responsibility of Turkey under Article 1 of the Convention.

70. As in the proceedings before the Commission, the applicant Government contended before the Court that the "TRNC" was an illegal entity under international law since it owed its existence to the respondent State's unlawful act of invasion of the northern part of Cyprus in 1974 and to its continuing unlawful occupation of that part of Cyprus ever since. The respondent State's attempt to reinforce the division of Cyprus through the proclamation of the establishment of the "TRNC" in 1983 was vigorously condemned by the international community, as evidenced by the adoption by the United Nations Security Council of Resolutions 541 (1983) and 550 (1984) and by the Council of Europe's Committee of Ministers of its resolution of 24 November 1983 (see paragraph 14 above).

71. The applicant Government stressed that even if Turkey had no legal title in international law to northern Cyprus, Turkey did have legal responsibility for that area in Convention terms, given that she exercised overall military and economic control over the area. This overall and, in addition, exclusive control of the occupied area was confirmed by irrefutable evidence of Turkey's power to dictate the course of events in the occupied area. In the applicant Government's submission, a Contracting State to the Convention could not, by way of delegation of powers to a subordinate and unlawful administration, avoid its responsibility for breaches of the Convention, indeed of international law in general. To hold otherwise would, in the present context of northern Cyprus, give rise to a grave lacuna in the system of human rights protection and, indeed, render the Convention system there inoperative.

72. The applicant Government requested the Court to find, like the Commission, that the judgments in *Loizidou* (preliminary objections and merits) defeated the respondent Government's arguments since they confirmed that, as long as the Republic of Cyprus was unlawfully prevented from exercising its rightful jurisdiction in northern Cyprus, Turkey had "jurisdiction" within the meaning of Article 1 of the Convention and was, accordingly, accountable for violations of the Convention committed in that area.

73. In a further submission, the applicant Government requested the Court to rule that the respondent State was not only accountable under the Convention for the acts and omissions of public authorities operating in the "TRNC", but also for those of private individuals. By way of anticipation of their more detailed submissions on the merits, the applicant Government claimed at this stage that Greek Cypriots living in northern Cyprus were racially harassed by Turkish settlers with the connivance and knowledge of the "TRNC" authorities for whose acts Turkey was responsible.

74. The Commission rejected the respondent Government's arguments. With particular reference to paragraph 56 (pp. 2235-36) of

Loizidou (merits), it concluded that Turkey's responsibility under the Convention had now to be considered to extend to all acts of the "TRNC" and that that responsibility covered the entire range of complaints set out in the instant application, irrespective of whether they related to acts or omissions of the Turkish or Turkish-Cypriot authorities.

75. The Court recalls that in *Loizidou* the respondent State denied that it had jurisdiction in northern Cyprus, relying on arguments similar to those raised before the Commission in the instant case. The Court rejected those arguments in *Loizidou* (merits) with reference to the imputability principles developed in its previous judgment on the respondent State's preliminary objections to the admissibility of the case.

76. More precisely, the Court considered in *Loizidou* (merits) (pp. 2234-36) 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 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 ...
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> ...
>
> 54. It is important for the Court's assessment of the imputability issue that the Turkish Government have acknowledged that the applicant's loss of control of her property stems from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the 'TRNC'... Furthermore, it has not been disputed that the applicant has on several occasions been prevented by Turkish troops from gaining access to her property ...
>
> However, throughout the proceedings the Turkish Government have denied State responsibility for the matters complained of, maintaining that its armed forces are acting exclusively in conjunction with and on behalf of the allegedly independent and autonomous 'TRNC' authorities.
>
> ...
>
> 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 ... 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."

77. It is of course true that in *Loizidou* the Court was addressing an individual's complaint concerning the continuing refusal of the authorities to allow her access to her property. However, it is to be observed that the Court's reasoning is framed in terms of a broad statement of principle as regards Turkey's general responsibility under the Convention for the policies and actions of the "TRNC" authorities. Having effective overall control over northern Cyprus, its responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's "jurisdiction" must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified, and that violations of those rights are imputable to Turkey.

78. In this connection, the Court must have regard to the special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings and its mission, as set out in Article 19 of the Convention, "to ensure the observance of the engagements undertaken by the High Contracting Parties" (see *Loizidou* (preliminary objections), cited above, p. 31, § 93). Having regard to the applicant State's continuing inability to exercise its Convention obligations in northern Cyprus, any other finding would result in a regrettable vacuum in the system of human rights protection in the territory in question by removing from individuals there the benefit of the Convention's fundamental safeguards and their right to call a High Contracting Party to account for violation of their rights in proceedings before the Court.

79. The Court observes that the applicant Government raise the issue of imputability throughout their pleadings on the merits. Having regard to its conclusion on this issue, the Court does not consider it necessary to re-address the matter when examining the substance of the applicant Government's complaints under the Convention.

80. The Court concludes, accordingly, and subject to its subsequent considerations on the issue of private parties (see paragraph 81 below), that the matters complained of in the instant application fall within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State's responsibility under the Convention.

81. As to the applicant Government's further claim that this "jurisdiction" must also be taken to extend to the acts of private parties in northern Cyprus who violate the rights of Greek Cypriots or Turkish Cypriots living there, the Court considers it appropriate to revert to this matter when examining the merits of the specific complaints raised by the applicant Government in this context. It confines itself to noting at this stage that the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention. Any different conclusion would be at variance with the obligation contained in Article 1 of the Convention.

4. As to the requirement to exhaust domestic remedies

82. The respondent Government maintained in the proceedings before the Commission that the "TRNC" had a fully developed system of independent courts which were accessible to every individual. Furthermore, Greek Cypriots and Maronites living in northern Cyprus were regarded as "TRNC" citizens and enjoyed the same rights and remedies as Turkish Cypriots living there. To illustrate their view of the effectiveness of local remedies, the respondent Government drew the Commission's attention to cases in which Greek Cypriots living in the Karpas region of northern Cyprus successfully sued the Attorney-General of the "TRNC" under the Civil Wrongs Law in respect of property matters. The respondent Government claimed in this connection that the applicant Government actively discouraged Greek Cypriots and Maronites living in northern Cyprus from recognising "TRNC" institutions, with the result that they did not seek redress for their grievances through the "TRNC" legal system.

83. The applicant Government, in the proceedings before the Court, maintained their opposition to the above arguments. They stressed that the description given by the respondent Government of the "TRNC"'s constitutional and legal order disregarded the context of total unlawfulness in which the "constitution and laws" were created. The applicant Government reiterated their view that the establishment of the "TRNC" in 1983 and its legal and constitutional apparatus stemmed directly from the aggression waged against the Republic of Cyprus by Turkey in 1974. This aggression continued to manifest itself in the continuing unlawful occupation of northern Cyprus. The applicant Government contended that, having regard to the continuing military occupation and to the fact that the "TRNC" was a subordinate local administration of the respondent State, it was unrealistic to expect that the local administrative or judicial authorities could issue effective

decisions against persons exercising authority with the backing of the occupation army in order to remedy violations of human rights committed in furtherance of the general policies of the regime in the occupied area.

84. The applicant Government stated before the Court that their primary starting-point was that the relevant applicable law in northern Cyprus remained that of the Republic of Cyprus and that it was inappropriate to consider other laws. However if, and only if, the Court were minded to consider such laws, this should not lead to approval of the Commission's findings and reasoning in relation to Articles 6, 13 and former Article 26 of the Convention. They submitted that, contrary to the Commission's view, it was not a necessary corollary of the "TRNC" being considered a subordinate local administration of the respondent State that the remedies available before the "TRNC" had to be regarded as "domestic remedies" of the respondent State for the purposes of former Article 26 of the Convention. The applicant Government pleaded in this connection that even the respondent State did not consider "TRNC" remedies to be remedies provided by Turkey as a Contracting Party. Moreover, given that the local administration was subordinated to and controlled by the respondent State not through the principle of legality and democratic rule but through military control and occupation, "TRNC" courts could not be considered to be "established by law" within the meaning of Article 6 of the Convention. The applicant Government claimed that it would be wrong in such circumstances to expect aggrieved individuals to have recourse to remedies for the purposes of the former Article 26 exhaustion requirement when these remedies did not fulfil the standards of either Article 6 or, it must follow, Article 13 of the Convention.

85. In the applicant Government's submission, the Commission, at paragraphs 123 and 124 of its report, misconstrued the scope of the Advisory Opinion of the International Court of Justice in the Namibia case (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 ICJ Reports 16).

86. The Commission, for its part, recalled that, with the exception of the respondent State, the "TRNC"'s claim to independent statehood was rejected and condemned by the international community. However, it further observed that the fact that the "TRNC" regime existed and exercised *de facto* authority under the overall control of Turkey was not without consequences for the question of whether the remedies which the respondent State claimed were available within the "TRNC system" required to be exhausted by aggrieved individuals as a precondition to the admissibility of their complaints under the Convention. The Commission noted in this respect, and with reference to the above-mentioned Advisory

Opinion of the International Court of Justice in the Namibia case (see paragraph 85 above), that even if the legitimacy of a State were not recognised by the international community, "international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, ... the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory" (loc. cit., p. 56, § 125). On the understanding that the remedies relied on by the respondent State were intended to benefit the entire population of northern Cyprus, and to the extent that such remedies could be considered effective, account must in principle be taken of them for the purposes of former Article 26 of the Convention.

87. In the Commission's conclusion, whether or not a particular remedy could be regarded as effective, and had therefore to be used, had to be determined in relation to the specific complaint at issue. The Commission observed in this regard that, to the extent that the applicant Government alleged that the complaints set out in the application related to administrative practices imputable to the respondent State, proof of the existence of such practices depended on the absence of effective remedies in relation to the acts alleged to constitute the said practices.

88. Having regard to these considerations, the Commission concluded that, for the purposes of former Article 26 of the Convention, remedies available in northern Cyprus were to be regarded as "domestic remedies" of the respondent State and that the question of their effectiveness had to be considered in the specific circumstances where it arose.

89. The Court notes that the Commission avoided making general statements on the validity of the acts of the "TRNC" authorities from the standpoint of international law and confined its considerations to the Convention-specific issue of the application of the exhaustion requirement contained in former Article 26 of the Convention in the context of the "constitutional" and "legal" system established within the "TRNC". The Court endorses this approach. It recalls in this connection that, although in *Loizidou* (merits) the Court refused to attribute legal validity to such provisions as "Article 159 of the TRNC Constitution", it did so with respect to the Convention (p. 2231, § 44). This conclusion was all the more compelling since the Article in question purported to vest in the "TRNC" authorities, irreversibly and without payment of any compensation, the applicant's rights to her land in northern Cyprus. Indeed, the Court in its judgment did not "consider it desirable, let alone necessary, in the present context to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the 'TRNC' " (ibid., p. 2231, § 45).

90. In the Court's opinion, and without in any way calling into question either the view adopted by the international community regarding the establishment of the "TRNC" (see paragraph 14 above) or the fact that

the government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see paragraph 61 above), it cannot be excluded that former Article 26 of the Convention requires that remedies made available to individuals generally in northern Cyprus to enable them to secure redress for violations of their Convention rights have to be tested. The Court, like the Commission, would characterise the developments which have occurred in northern Cyprus since 1974 in terms of the exercise of *de facto* authority by the "TRNC". As it observed in *Loizidou* (merits) with reference to the Advisory Opinion of the International Court of Justice in the Namibia case, international law recognises the legitimacy of certain legal arrangements and transactions in situations such as the one obtaining in the "TRNC", for instance as regards the registration of births, deaths, and marriages, "the effects of which can only be ignored to the detriment of the inhabitants of the [t]erritory" (loc. cit., p. 2231, § 45).

91. The Court disagrees with the applicant Government's criticism of the Commission's reliance on this part of the Advisory Opinion. In its view, and judged solely from the standpoint of the Convention, the Advisory Opinion confirms that where it can be shown that remedies exist to the advantage of individuals and offer them reasonable prospects of success in preventing violations of the Convention, use should be made of such remedies. In reaching this conclusion, the Court considers that this requirement, applied in the context of the "TRNC", is consistent with its earlier statement on the need to avoid in the territory of northern Cyprus the existence of a vacuum in the protection of the human rights guaranteed by the Convention (see paragraph 78 above).

92. It appears evident to the Court, despite the reservations the Greek-Cypriot community in northern Cyprus may harbour regarding the "TRNC" courts, that the absence of such institutions would work to the detriment of the members of that community. Moreover, recognising the effectiveness of those bodies for the limited purpose of protecting the rights of the territory's inhabitants does not, in the Court's view and following the Advisory Opinion of the International Court of Justice, legitimise the "TRNC" in any way.

93. The Court recalls that, in its Advisory Opinion on Namibia, the International Court of Justice stated the following (1971 ICJ Reports, p. 56, § 125):

> "In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory."

94. The Court observes that this passage was included in the Opinion as a result of various arguments made in the course of the proceedings preparatory to its adoption. Thus, the representative of the Netherlands pointed out to the International Court of Justice that the non-recognition of South Africa's illegal rule in Namibia "does not exclude taking into account the fact of exercise of powers in so far as that taking into account is necessary in order to do justice to the legitimate interest of the individual [who] is, in fact, subjected to that power" (Pleadings, vol. II, p. 130). The representative of the United States said that "[i]t would, for example, be a violation of the rights of individuals if a foreign State refused to recognise the right of Namibians to marry in accordance with the laws in force ... or would consider their children to be illegitimate. A contract for the sale of goods also should not be declared invalid merely because it was entered into in accordance with ordinary commercial laws applied to Namibia by South Africa" (Pleadings, vol. II, p. 503). These statements, by logical necessity, must be taken to extend to decisions taken by courts and relating to such everyday relations. The above citations show that, despite having been invited to do so by the Secretary-General of the United Nations, the International Court resolutely rejected the approach refusing any effect to unlawful *de facto* regimes.

95. The Court notes that this rejection was echoed and amplified in the separate opinions of Judges Dillard, de Castro and Onyeama. Judge Dillard (1971 ICJ Reports, pp. 166-67) pointed out that the maxim "*ex injuria jus non oritur*" was not an absolute one and added that "[w]ere it otherwise the general interest in the security of transactions would be too greatly invaded and the cause of minimising needless hardship and friction would be hindered rather than helped". Judge de Castro (ibid., pp. 218-19) drew a distinction between acts of the *de facto* authorities in Namibia relating to acts or transactions "relating to public property, concessions, etc." and "acts and rights of private persons" which "should be regarded as valid (validity of entries in the civil registers and in the Land Registry, validity of marriages, validity of judgments of the civil courts, etc.)". Judge Onyeama said that, although there was an obligation for third States not to recognise the legality of South Africa's presence in Namibia, that duty did not necessarily extend "to refusing to recognise the validity of South Africa's acts on behalf of or concerning Namibia in view of the fact that the administration of South Africa over Namibia (illegal though it is) still constitutes the *de facto* government of the territory".

96. It is to be noted that the International Court's Advisory Opinion, read in conjunction with the pleadings and the explanations given by some of that court's members, shows clearly that, in circumstances similar to those arising in the present case, the obligation to disregard acts of *de facto* entities is far from absolute. Life goes on in the territory concerned

for its inhabitants. That life must be made tolerable and be protected by the *de facto* authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they are discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they are entitled.

97. The Court notes that the view expressed by the International Court of Justice in the context described in the preceding paragraph is by no means an isolated one. It is confirmed both by authoritative writers on the subject of *de facto* entities in international law and by existing practice, particularly judgments of domestic courts on the status of decisions taken by the authorities of *de facto* entities. This is true, in particular, for private-law relationships and acts of organs of *de facto* authorities relating to such relationships. Some State organs have gone further and factually recognised even acts related to public-law situations, for example by granting sovereign immunity to *de facto* entities or by refusing to challenge takings of property by the organs of such entities.

98. For the Court, the conclusion to be drawn is that it cannot simply disregard the judicial organs set up by the "TRNC" in so far as the relationships at issue in the present case are concerned. It is in the very interest of the inhabitants of the "TRNC", including Greek Cypriots, to be able to seek the protection of such organs; and if the "TRNC" authorities had not established them, this could rightly be considered to run counter to the Convention. Accordingly, the inhabitants of the territory may be required to exhaust these remedies, unless their inexistence or ineffectiveness can be proved – a point to be examined on a case-by-case basis.

99. The Court, like the Commission, will thus examine in respect of each of the violations alleged by the applicant Government whether the persons concerned could have availed themselves of effective remedies to secure redress. It will have regard in particular to whether the existence of any remedies is sufficiently certain not only in theory but in practice and whether there are any special circumstances which absolve the persons concerned by the instant application from the obligation to exhaust the remedies which, as alleged by the respondent Government before the Commission, were at their disposal. The Court recalls in this latter respect that the exhaustion rule is inapplicable where an administrative practice, namely a repetition of acts incompatible with the Convention and official tolerance by the State authorities, has been shown to exist and is of such a nature as to make proceedings futile or ineffective (see, *mutatis mutandis*, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 66-67).

100. In view of the above considerations, the Court does not consider it necessary at this stage to examine the applicant Government's broader criticism of the court and administrative system in the "TRNC" under Articles 6 and 13 of the Convention.

101. The Court does wish to add, however, that the applicant Government's reliance on the illegality of the "TRNC" courts seems to contradict the assertion made by that same Government that Turkey is responsible for the violations alleged in northern Cyprus – an assertion which has been accepted by the Court (see paragraphs 75-81 above). It appears indeed difficult to admit that a State is made responsible for the acts occurring in a territory unlawfully occupied and administered by it and to deny that State the opportunity to try to avoid such responsibility by correcting the wrongs imputable to it in its courts. To allow that opportunity to the respondent State in the framework of the present application in no way amounts to an indirect legitimisation of a regime which is unlawful under international law. The same type of contradiction arises between the alleged unlawfulness of the institutions set up by the "TRNC" and the applicant Government's argument, to be examined at a later stage (see, for example paragraphs 318-21 below), that there has been a breach of Article 13 of the Convention: it cannot be asserted, on the one hand, that there has been a violation of that Article because a State has not provided a remedy while asserting, on the other hand, that any such remedy, if provided, would be null and void.

102. The Court concludes accordingly that, for the purposes of former Article 26 (current Article 35 § 1) of the Convention, remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises.

5. As to the six-month rule

103. The Court observes that although the Commission reserved this issue to the merits stage, neither Government submitted any arguments thereon; nor have the applicant Government reverted to the matter in their written or oral pleadings before the Court.

104. The Court, in line with the Commission's approach, confirms that in so far as the applicant Government have alleged continuing violations resulting from administrative practices, it will disregard situations which ended six months before the date on which the application was introduced, namely 22 November 1994. Therefore, and like the Commission, the Court considers that practices which are shown to have ended before 22 May 1994 fall outside the scope of its examination.

II. ESTABLISHMENT OF THE FACTS AND ASSESSMENT OF THE EVIDENCE

105. The Court notes that the Commission had regard to written as well as, in respect of certain categories of complaints, oral evidence in order to clarify and establish the facts underlying the allegations advanced by the applicant Government. As appropriate, the Commission further relied on the findings contained in its 1976 and 1983 reports (see paragraph 17 above) as well as documentary materials obtained of its own motion and, as a principal source, materials submitted by the parties. As to the written evidence of the parties, it observes that the Commission admitted to the case file all written submissions made by both Governments at the admissibility and merits stages up until 14 September 1998. The Commission's strict adherence to this deadline resulted in its decision of 5 March 1999 to reject the respondent Government's request to have admitted to the file an *aide-mémoire* on "measures relating to the living conditions of Greek Cypriots and Maronites in the Turkish Republic of Northern Cyprus". The Court notes that this was the only document excluded by the Commission, all other materials having been admitted in accordance with respect for the requirements of procedural equality between the parties.

106. The Court observes that where it was impossible to guarantee full respect for the principle of equality of arms in the proceedings before the Commission, for example on account of the limited time available to a party to reply fully to the other's submissions, the Commission took this factor into account in its assessment of the evidential value of the material at issue. Although the Court must scrutinise any objections raised by the applicant Government to the Commission's findings of fact and its assessment of the evidence, it notes that, as regards documentary materials, both parties were given a full opportunity to comment on all such materials in their pleadings before the Court, including the above-mentioned *aide-mémoire*, which was admitted to the file by virtue of a procedural decision taken by the Court on 24 November 1999.

107. As regards oral evidence, the Court notes that the Commission appointed three delegates to hear evidence on the Convention issues relating to the general living conditions of the so-called "enclaved" Greek Cypriots and the situation of Turkish Cypriots living in northern Cyprus, in particular political dissidents and members of the Turkish-Cypriot Gypsy minority. Witnesses were heard in Strasbourg on 27 and 28 November 1997, in Nicosia (mostly) on 22 and 23 February 1998, and in London on 22 April 1998. The investigation also involved visits to certain localities (the Ledra Palace crossing-point over the demarcation line, the court building in northern Nicosia and Greek-Cypriot villages in the Karpas area). Oral statements were taken by the delegates from a

number of officials and other persons encountered during the visit to northern Cyprus, including the Karpas peninsula. At the first hearing, ten witnesses proposed by the applicant Government gave evidence, three of whom remained unidentified. At the second hearing, the Commission delegates heard the evidence of twelve witnesses, seven of whom were proposed by the respondent Government and five by the applicant Government (including four unidentified witnesses). At the third hearing in London, the delegates heard five witnesses proposed by the applicant Government, four of whom remained unidentified.

108. The Court observes that the Commission delegates took all necessary steps to ensure that the taking of evidence from unidentified witnesses complied with the fairness requirements of Article 6 of the Convention.

109. It further observes that, in so far as the respondent Government were critical of the arrangements made by the delegates to hear the evidence of the unidentified witnesses proposed by the applicant Government, those arrangements were consistent with the screening procedure requested by the respondent State itself to ensure the security of unnamed witnesses in an earlier and unrelated case (*Sargın and Yağcı v. Turkey*, nos. 14116-14117/88, Commission's report of 17 January 1991, unpublished). In the Court's opinion, the handicaps alleged by the respondent Government in the proceedings before the Commission were sufficiently counterbalanced by the procedures followed by the Commission. It also observes that the Commission, in its assessment of the evidence given by unidentified witnesses, adopted a cautious approach by ascertaining its evidential value with reference to the particular nature of each of the witnesses' testimony, and its findings were not based either solely or to a decisive extent on anonymous witness statements (see *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports* 1997-III, p. 712, §§ 54-55).

110. The applicant Government, in the proceedings before the Court, have not contested the arrangements for hearing the evidence of unidentified witnesses. They have, on the other hand, disputed the limits placed by the delegates on the number of witnesses who could be heard by them. This is particularly true of the Commission's inquiry into their allegations concerning the situation of Turkish Cypriots and members of the Gypsy community in northern Cyprus (see paragraph 338 below). Although the Court must revert to this matter when conducting its own assessment of whether the facts found by the Commission bear out the applicant Government's allegations, it considers it appropriate at this juncture to examine the substance of their criticism. It notes in this regard that the applicant Government were in fact requested by the Commission to select a limited number of witnesses to testify to the claim that the Convention rights of Turkish Cypriots and members of

the Gypsy community in northern Cyprus were being violated by the respondent State. The Court does not consider that the Commission's approach can be criticised from the standpoint of procedural fairness. In the first place, the delegates heard the testimony of five witnesses proposed by the applicant Government and there is no reason to doubt that they were specifically selected in accordance with the applicant Government's perception of the importance of their testimony. Secondly, the effective discharge of the Commission's fact-finding role necessarily obliged it to regulate the procedure for the taking of oral evidence, having regard to constraints of time and to its own assessment of the relevance of additional witness testimony.

111. For these reasons, the Court rejects the applicant Government's criticism in this respect.

112. The Court also observes that, in its assessment of the evidence in relation to the various complaints declared admissible, the Commission applied the standard of proof "beyond reasonable doubt" as enunciated by the Court in *Ireland v. the United Kingdom* (judgment of 18 January 1978, Series A no. 25), it being noted that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (ibid., pp. 64-65, § 161).

113. The Court, for its part, endorses the application of this standard, all the more so since it was first articulated in the context of a previous inter-State case and has, since the date of the adoption of the judgment in that case, become part of the Court's established case-law (for a recent example, see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

Moreover, as regards the establishment of the existence of administrative practices, the Court does not rely on the concept that the burden of proof is borne by one or the other of the two Governments concerned. Rather, it must examine all the material before it, irrespective of its origin (see *Ireland v. the United Kingdom*, cited above, p. 64, § 160).

114. The Court notes, however, that the applicant Government have disputed the appropriateness of applying the above-mentioned standard of proof with respect to their allegations that the violations of the Convention of which they complain result from administrative practices on the part of the respondent State. In their submission, the Commission erred in not having regard to the existence of "substantial evidence" of administrative practices and its reliance on the "beyond reasonable doubt" standard prevented it from reaching the correct conclusion on the facts as regards a number of complaints. For the applicant Government, the standard of proof applied by the Commission is at variance with the approach followed by the Court in *Ireland v. the United Kingdom*, an approach which, they maintain, had already been anticipated in the Commission's decision in the "*Greek case*" (Yearbook 12).

115. The Court recalls, however, that in *Ireland v. the United Kingdom*, it rejected the Irish Government's submission that the "beyond reasonable doubt" standard of proof was an excessively rigid standard for establishing the existence of an administrative practice of violation of Article 3 of the Convention (loc. cit., pp. 64-65, § 161). The "beyond reasonable doubt" standard was applied in that case in order to determine whether the evidence bore out the allegation of a practice of violation. The Court will accordingly assess the facts as found by the Commission with reference to this standard. Furthermore, the Court will apply the definition of an administrative practice incompatible with the Convention set out in *Ireland v. the United Kingdom*, namely an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system (ibid., p. 64, § 159).

116. The Court further recalls that, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. In the context of the instant case, it is incumbent on the respondent Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the aggrieved individuals' complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant Government to establish that the remedy advanced by the respondent Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving the persons concerned from the requirement of exhausting that remedy. One such reason may be constituted by the national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what the authorities have done in response to the scale and seriousness of the matters complained of (see, *mutatis mutandis*, *Akdivar and Others*, cited above, p. 1211, § 68).

117. Having regard to the above considerations, the Court recalls its settled case-law to the effect that under the Convention system prior to the entry into force of Protocol No. 11 to the Convention on 1 November 1998 the establishment and verification of the facts was primarily a matter for the Commission (former Articles 28 § 1 and 31). While the Court is not bound by the Commission's findings of fact and remains free to make its own assessment in the light of all the material before it, it is however only in exceptional circumstances that it will exercise its powers in this area

(see, among many authorities, *Akdivar and Others*, cited above, p. 1214, § 78, and, more recently, *Salman*, cited above, § 89).

118. The Court has already noted that the applicant Government have impugned the findings of the Commission as regards certain of their allegations, considering them to be against the weight of the evidence adduced. The Court proposes to address the applicant Government's challenges when considering the merits of their allegations.

III. ALLEGED VIOLATIONS OF THE RIGHTS OF GREEK-CYPRIOT MISSING PERSONS AND THEIR RELATIVES

A. Greek-Cypriot missing persons

1. As to the facts established by the Commission

119. At the hearing before the Court the applicant Government stated that the number of missing persons was currently 1,485 and that the evidence clearly pointed to the fact that the missing persons were either detained by, or were in the custody of or under the actual authority and responsibility of, the Turkish army or its militia and were last seen in areas which were under the effective control of the respondent State. They maintained, in addition, that the Court should proceed on the assumption that the missing persons were still alive, unless there was evidence to the contrary.

120. The Court notes at the outset that the applicant Government have not contested the facts as found by the Commission (see paragraphs 25-27 above). For its part, it does not see any exceptional circumstances which would lead it to depart from the Commission's findings of fact, bearing in mind the latter's careful analysis of all material evidence, including the findings reached by it in its 1976 and 1983 reports. Like the Commission, the Court does not consider it appropriate to estimate the number of persons who fall into the category of "missing persons". It limits itself to observing that figures are communicated by the applicant Government to the United Nations Committee on Missing Persons (CMP) and revised in accordance with the most recent information which becomes available.

121. Furthermore, the Court shares the Commission's concern to limit its inquiry to ascertaining the extent, if any, to which the authorities of the respondent State have clarified the fate or whereabouts of the missing persons. It is not its task to make findings on the evidence as to whether any of these persons are alive or dead or have been killed in circumstances which engage the liability of the respondent State. Indeed, the applicant Government have requested the Court to proceed on the assumption that

the persons concerned are still alive. The Court will revert to this point in the context of the applicant Government's allegations under Article 2 of the Convention.

122. On the above understanding, the Court will examine the merits of the applicant Government's allegations.

2. As to the merits of the applicant Government's complaints

(a) Article 2 of the Convention

123. The applicant Government requested the Court to find that the facts disclosed a continuing violation of Article 2 from the standpoint of both the procedural and substantive obligations contained in that provision. The relevant part of Article 2 provides:

"1. Everyone's right to life shall be protected by law. ..."

124. In the applicant Government's submission, the alleged procedural violation was committed as a matter of administrative practice, having regard to the continuing failure of the authorities of the respondent State to conduct any investigation whatsoever into the fate of the missing persons. In particular, there was no evidence that the authorities of the respondent State had carried out searches for the dead or wounded, let alone concerned themselves with the burial of the dead. Furthermore, the respondent State, by virtue of the presence of its armed forces, directly continued to prevent investigations in the occupied area to trace those persons who were still missing and continued to refuse to account for their fate.

125. The applicant Government further stressed that the procedural obligation to protect the right to life devolving on the respondent State in application of Article 2 could not be discharged with reference to the ongoing work of the CMP (see paragraph 16 above), having regard to the limited scope of that body's mandate and to the characteristics of an "effective investigation" as defined in the Court's case-law in the context of the Convention provision at issue.

126. From the standpoint of the substantive obligation contained in Article 2, the applicant Government requested the Court to find and declare, in line with the Commission's conclusion, that the respondent State had failed to take the necessary operational measures to protect the right to life of the missing persons, all of whom had disappeared in life-threatening circumstances known to, and indeed, created by, the respondent State.

127. The Commission observed that the missing persons had disappeared in circumstances which were life-threatening, having regard, *inter alia*, to the fact that their disappearance had occurred at a time when there was clear evidence of large-scale killings, including as a result of

criminal acts outside the fighting zones. For the Commission, and with reference to the Court's case-law, the authorities of the respondent State had a positive obligation under Article 2 to conduct effective investigations into the circumstances surrounding the disappearances. Moreover, this obligation had to be seen as a continuing one in view of the consideration that the missing persons might have lost their lives as a result of crimes not subject to limitation.

128. The Commission found accordingly that Article 2 had been violated by virtue of a lack of effective investigation by the authorities of the respondent State and that that failing could not be compensated for by the respondent State's contribution to work undertaken by the CMP.

129. The Court observes that the applicant Government contend first and foremost that the missing persons must be presumed to be still alive unless there is clear evidence to the contrary (see paragraph 119 above). Although the evidence adduced before the Commission confirms a very high incidence of military and civilian deaths during the military operations of July and August 1974, the Court reiterates that it cannot speculate as to whether any of the missing persons have in fact been killed by either the Turkish forces or Turkish-Cypriot paramilitaries into whose hands they may have fallen. It is true that the head of the "TRNC", Mr Denktaş, broadcast a statement on 1 March 1996 admitting that the Turkish army had handed over Greek-Cypriot prisoners to Turkish-Cypriot fighters under Turkish command and that these prisoners had then been killed (see paragraph 25 above). It is equally the case that, in February 1998, Mr Yalçın Küçük, who was a serving Turkish officer in 1974, asserted that the Turkish army had engaged in widespread killings of civilians (see paragraph 25 above). Although all of these statements have given rise to undoubted concern, especially in the minds of the relatives of the missing persons, the Court considers that they are insufficient to establish the respondent State's liability for the deaths of any of the missing persons. It is mere speculation that any of these persons were killed in the circumstances described in these accounts.

130. The Court notes that the evidence given of killings carried out directly by Turkish soldiers or with their connivance relates to a period which is outside the scope of the present application. Indeed, it is to be noted that the Commission was unable to establish on the facts whether any of the missing persons were killed in circumstances for which the respondent State can be held responsible under the substantive limb of Article 2 of the Convention. The Court concludes, therefore, that it cannot accept the applicant Government's allegations that the facts disclose a substantive violation of Article 2 of the Convention in respect of any of the missing persons.

131. For the Court, the applicant Government's allegations must, however, be examined in the context of a Contracting State's procedural

obligation under Article 2 to protect the right to life. It recalls in this connection that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by agents of the State (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105) or by non-State agents (see, *mutatis mutandis*, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, p. 1778, § 82; *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 100; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 103, ECHR 1999-IV).

132. The Court recalls that there is no proof that any of the missing persons have been unlawfully killed. However, in its opinion, and of relevance to the instant case, the above-mentioned procedural obligation also arises upon proof of an arguable claim that an individual, who was last seen in the custody of agents of the State, subsequently disappeared in a context which may be considered life-threatening.

133. Against this background, the Court observes that the evidence bears out the applicant Government's claim that many persons now missing were detained either by Turkish or Turkish-Cypriot forces. Their detention occurred at a time when the conduct of military operations was accompanied by arrests and killings on a large scale. The Commission correctly described the situation as life-threatening. The above-mentioned broadcast statement of Mr Denktaş and the later report of Mr Yalçın Küçük, if not conclusive of the respondent State's liability for the death of missing persons are, at the very least, clear indications of the climate of risk and fear obtaining at the material time and of the real dangers to which detainees were exposed.

134. That the missing persons disappeared against this background cannot be denied. The Court cannot but note that the authorities of the respondent State have never undertaken any investigation into the claims made by the relatives of the missing persons that the latter had disappeared after being detained in circumstances in which there was real cause to fear for their welfare. It must be noted in this connection that there was no official follow-up to Mr Denktaş's alarming statement. No attempt was made to identify the names of the persons who were reportedly released from Turkish custody into the hands of Turkish-Cypriot paramilitaries or to look for the places where the bodies were disposed of. It does not appear either that any official inquiry was made into the claim that Greek-Cypriot prisoners were transferred to Turkey.

135. The Court agrees with the applicant Government that the respondent State's procedural obligation at issue cannot be discharged through its contribution to the investigatory work of the CMP. Like the Commission, the Court notes that, although the CMP's procedures are undoubtedly useful for the humanitarian purpose for which they were established, they are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 of the Convention, especially in view of the narrow scope of that body's investigations (see paragraph 27 above).

136. Having regard to the above considerations, the Court concludes that there has been a continuing violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.

(b) Article 4 of the Convention

137. The applicant Government requested the Court to find and declare that the circumstances of the case also disclosed a breach of Article 4 of the Convention, the relevant part of which states:

"1. No one shall be held in slavery or servitude.

..."

138. The applicant Government contended that, in the absence of any conclusive findings that the missing persons were now dead, it should be presumed that they were still being detained in conditions which, given the length of the period which had elapsed since the events of 1974, should be described as servitude. In the applicant Government's view, this proposition could only be contradicted if the Court were to find it proved that the missing persons were now dead, in which case it should be concluded that the respondent State was in breach of its obligations under Article 2.

139. The Commission found that there had been no breach of Article 4, being of the view that there was nothing in the evidence which could support the assumption that during the relevant period any of the missing persons were still in Turkish custody and were being held in conditions which violated Article 4.

140. The Court agrees with the Commission's finding. It notes in this respect that, like the Commission, it has refused to speculate on the fate or whereabouts of the missing persons. Furthermore, it has accepted the facts as established by the Commission.

141. It follows that no breach of Article 4 of the Convention has been established.

(c) Article 5 of the Convention

142. The applicant Government maintained that Article 5 of the Convention has been breached by the respondent State as a matter of administrative practice. The relevant part of Article 5 provides:

> "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:
>
> ..."

143. According to the applicant Government, the fact that the authorities of the respondent State had failed to carry out a prompt and effective investigation into the well-documented circumstances surrounding the detention and subsequent disappearance of a large but indefinite number of Greek-Cypriot missing persons gave rise to a violation of the procedural obligations inherent in Article 5. The applicant Government reiterated their assertion that the respondent State was presumed responsible for the fate of the missing persons since the evidence clearly established that they were last seen in the control and custody of the Turkish military or their agents.

144. Furthermore, the detention of the missing persons could not be justified with reference to the requirements of Article 5 and was to be considered unlawful. The applicant Government averred in this connection that the respondent State had failed to keep any accurate or reliable records of the persons detained by its authorities and agents or to take any other effective measures which would have served to safeguard against the risk of disappearance.

145. The Commission concluded that the respondent State had failed in its obligation to carry out a prompt and effective investigation in respect of an arguable claim that Greek-Cypriot persons who were detained by Turkish forces or their agents in 1974 disappeared thereafter. For the Commission, a breach of the Article 5 obligation had to be construed as a continuing violation, given that the Commission had already found in its 1983 report on application no. 8007/77 that no information had been provided by the respondent Government on the fate of missing Greek Cypriots who had disappeared in Turkish custody. The Commission stressed that there could be no limitation in time as regards the duty to investigate and inform, especially as it could not be ruled out that the detained persons who had disappeared might have been the victims of the most serious crimes, including war crimes or crimes against humanity.

146. The Commission, on the other hand, found there had been no violation of Article 5 by virtue of actual detention of Greek-Cypriot missing persons. It noted in this regard that there was no evidence to support the assumption that during the period under consideration any

missing Greek Cypriots were still detained by the Turkish or Turkish-Cypriot authorities.

147. The Court stresses at the outset that the unacknowledged detention of an individual is a complete negation of the guarantees of liberty and security of the person contained in Article 5 of the Convention and a most grave violation of that Article. Having assumed control over a given individual, it is incumbent on the authorities to account for his or her whereabouts. It is for this reason that Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1185, § 124).

148. The Court refers to the irrefutable evidence that Greek Cypriots were held by Turkish or Turkish-Cypriot forces. There is no indication of any records having been kept of either the identities of those detained or the dates or location of their detention. From a humanitarian point of view, this failing cannot be excused with reference either to the fighting which took place at the relevant time or to the overall confused and tense state of affairs. Seen in terms of Article 5 of the Convention, the absence of such information has made it impossible to allay the concerns of the relatives of the missing persons about the latter's fate. Notwithstanding the impossibility of naming those who were taken into custody, the respondent State should have made other inquiries with a view to accounting for the disappearances. As noted earlier, there has been no official reaction to new evidence that Greek-Cypriot missing persons were taken into Turkish custody (see paragraph 134 above).

149. The Court has addressed this allegation from the angle of the procedural requirements of Article 5 of the Convention and the obligations devolving on the respondent State as a Contracting Party to the Convention. Like the Commission, and without questioning the value of the humanitarian work being undertaken by the CMP, the Court reiterates that those obligations cannot be discharged with reference to the nature of the CMP's investigation (see paragraph 135 above).

150. The Court concludes that, during the period under consideration, there has been a continuing violation of Article 5 of the Convention by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there is an arguable claim that they were in custody at the time they disappeared.

151. The Court, on the other hand finds, like the Commission, that it has not been established that during the period under consideration any of the Greek-Cypriot missing persons were actually being detained by the Turkish-Cypriot authorities.

(d) Articles 3, 6, 8, 13, 14 and 17 of the Convention

152. The Court observes that, at the merits stage of the proceedings before the Commission, the applicant Government submitted that the facts of the case disclosed violations of the above-mentioned Articles. The Commission concluded that these complaints were outside the scope of its admissibility decision and on that account could not be examined.

153. The Court further observes that the applicant Government have not pursued these complaints either in their memorial or at the public hearing; nor have they sought to dispute the Commission's interpretation of the scope of its admissibility decision. In these circumstances, the Court considers that there is no reason to consider either its jurisdiction to examine these complaints or their merits.

The Court concludes therefore that it is not necessary to examine the applicant Government's complaints under Articles 3, 6, 8, 13, 14 and 17 of the Convention in respect of the Greek-Cypriot missing persons.

B. Greek-Cypriot missing persons' relatives

1. Article 3 of the Convention

154. The applicant Government, for the reasons given by the Commission, requested the Court to rule that the continuing suffering of the families of missing persons constituted not only a continuing but also an aggravated violation of Article 3 of the Convention, which states:

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

155. In the Commission's opinion, the circumstances relied on by the applicant Government disclosed a continuing violation of Article 3 regarding the relatives of the missing persons. For the Commission, in view of the circumstances in which their family members disappeared following a military intervention during which many persons were killed or taken prisoner and where the area was subsequently sealed off and became inaccessible to the relatives, the latter must undoubtedly have suffered most painful uncertainty and anxiety. Furthermore, their mental anguish did not vanish with the passing of time. The Commission found that the treatment to which the relatives of the missing persons were subjected could properly be characterised as inhuman within the meaning of Article 3.

156. The Court recalls that the question whether a family member of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the person concerned a dimension and character distinct from the emotional

distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie (in that context, a certain weight will attach to the parent-child bond), the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court further recalls that the essence of such a violation does not so much lie in the fact of the "disappearance" of the family member but rather in the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 98, ECHR 1999-IV).

157. The Court observes that the authorities of the respondent State have failed to undertake any investigation into the circumstances surrounding the disappearance of the missing persons. In the absence of any information about their fate, the relatives of persons who went missing during the events of July and August 1974 were condemned to live in a prolonged state of acute anxiety which cannot be said to have been erased with the passage of time. The Court does not consider, in the circumstances of this case, that the fact that certain relatives may not have actually witnessed the detention of family members or complained about such to the authorities of the respondent State deprives them of victim status under Article 3. It recalls that the military operation resulted in a considerable loss of life, large-scale arrests and detentions and enforced separation of families. The overall context must still be vivid in the minds of the relatives of persons whose fate has never been accounted for by the authorities. They endure the agony of not knowing whether family members were killed in the conflict or are still in detention or, if detained, have since died. The fact that a very substantial number of Greek Cypriots had to seek refuge in the south coupled with the continuing division of Cyprus must be considered to constitute very serious obstacles to their quest for information. The provision of such information is the responsibility of the authorities of the respondent State. This responsibility has not been discharged. For the Court, the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3.

158. For the above reasons, the Court concludes that, during the period under consideration, there has been a continuing violation of Article 3 of the Convention in respect of the relatives of the Greek-Cypriot missing persons.

2. Articles 8 and 10 of the Convention

159. The applicant Government further submitted in their memorial that the persistent failure of the authorities of the respondent State to account to the families of the missing persons constituted a grave disregard for their right to respect for family life and, in addition, a breach of their right to receive information. In the applicant Government's submission, the responsibility of the respondent State was engaged in respect of Articles 8 and 10 of the Convention, both of which provisions should be considered to have been breached in the circumstances.

160. The Court observes that the Commission was of the view that the applicant Government's complaints under Articles 8 and 10 were in essence directed at the treatment to which the relatives of the missing persons were subjected in their attempts to ascertain the latter's fate. On that understanding, the Commission confined its examination to the issues which such treatment raised from the standpoint of Article 3.

161. The Court agrees with the Commission's approach. In view of its conclusion under Article 3, with its emphasis on the effect which the lack of information had on the families of missing persons, it finds it unnecessary to examine separately the complaints which the applicant Government have formulated in terms of Articles 8 and 10 of the Convention.

IV. ALLEGED VIOLATIONS OF THE RIGHTS OF DISPLACED PERSONS TO RESPECT FOR THEIR HOME AND PROPERTY

A. As to the facts established by the Commission

162. The applicant Government endorsed the facts as found by the Commission (see paragraphs 30-33 above). In respect of those findings they requested the Court to conclude that the facts disclosed violations of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 as well as of Article 14 of the Convention taken in conjunction with these provisions. They further submitted that the facts at issue gave rise to violations of Articles 3, 17 and 18 of the Convention.

163. The Court considers that there are no exceptional circumstances which would lead it to take a different view of the facts established by the Commission (see paragraphs 30-33 above). It notes in this regard that the Commission was able to draw on the findings contained in its 1976 and 1983 reports and took into account the impact of "legislative" and other texts in force in the "TRNC" on the enjoyment of the rights relied on by the applicant Government. It further notes that the respondent Government did not contest the accuracy of several allegations of

fact made by the applicant Government in the proceedings before the Commission (see paragraph 29 above).

164. The Court will accordingly examine the merits of the applicant Government's complaints with reference to the facts established by the Commission.

B. As to the merits of the applicant Government's complaints

1. Article 8 of the Convention

165. The applicant Government maintained that it was an unchallengeable proposition that it was the respondent State's actions which had prevented the displaced Greek Cypriots from returning to their homes, in violation of Article 8 of the Convention, which provides:

> "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."

166. The applicant Government declared that the policy of the respondent State, aimed at the division of Cyprus along racial lines, affected 211,000 displaced Greek Cypriots and their children as well as a number of Maronites, Armenians, Latins and individual citizens of the Republic of Cyprus who had exercised the option under the Constitution to be members of the Greek-Cypriot community. They submitted that the continuing refusal of the "TRNC" authorities to allow the displaced persons to return to the north violated not only the right to respect for their homes but also the right to respect for their family life. In this latter connection, the applicant Government observed that the impugned policy resulted in the separation of families.

167. In a further submission, the applicant Government requested the Court to find that the facts also disclosed a policy of deliberate destruction and manipulation of the human, cultural and natural environment and conditions of life in northern Cyprus. The applicant Government contended that this policy was based on the implantation of massive numbers of settlers from Turkey with the intention and the consequence of eliminating Greek presence and culture in northern Cyprus. In the view of the applicant Government, the notions of "home" and "private life" were broad enough to subsume the concept of sustaining existing cultural relationships within a subsisting cultural environment. Having regard to the destructive changes being wrought to that environment by

the respondent State, it could only be concluded that the rights of the displaced persons to respect for their private life and home were being violated in this sense also.

168. The Commission observed in the first place that the issue of whether the persons concerned by the impugned measures could have been expected to use local remedies to seek redress for their grievances did not have to be examined. In the Commission's opinion, the refusal of the "TRNC" authorities to allow the displaced persons to return to their homes reflected an acknowledged official policy and, accordingly, an administrative practice. In these circumstances there was no Convention requirement to exhaust domestic remedies.

169. As to the merits of the complaints concerning the plight of the displaced persons, the Commission found, with reference to its conclusions in its 1976 and 1983 reports and the findings of fact in the instant case (see paragraphs 30-33 above), that these persons, without exception, continued to be prevented from returning to or even visiting their previous homes in northern Cyprus. In the Commission's opinion, the facts disclosed a continuing violation of Article 8 in this respect, irrespective of the respondent Government's appeal to the public-safety considerations set out in the second paragraph of Article 8. As to the respondent Government's view that the claim of Greek-Cypriot displaced persons to return to the north and to settle in their homes had to be solved in the overall context of the inter-communal talks, the Commission considered that these negotiations, which were still very far from reaching any tangible result on the precise matter at hand, could not be relied on to justify the continuing maintenance of measures contrary to the Convention.

170. Having regard to its Article 8 finding as well as to its conclusions on the applicant Government's complaint under Article 1 of Protocol No. 1 (see paragraph 183 below), the Commission considered that it was not necessary to examine the applicant Government's further allegations concerning the manipulation of the demographic and cultural environment of the displaced persons' homes.

171. The Court notes that in the proceedings before the Commission the respondent Government did not dispute the applicant Government's assertion that it was not possible for displaced Greek Cypriots to return to their homes in the north. It was their contention that this situation would remain unchanged pending agreement on an overall political solution to the Cypriot question. In these circumstances the Court, like the Commission, considers that the issue of whether the aggrieved persons could have been expected to avail themselves of domestic remedies in the "TRNC" does not arise.

172. The Court observes that the official policy of the "TRNC" authorities to deny the right of the displaced persons to return to their

homes is reinforced by the very tight restrictions operated by the same authorities on visits to the north by Greek Cypriots living in the south. Accordingly, not only are displaced persons unable to apply to the authorities to reoccupy the homes which they left behind, they are physically prevented from even visiting them.

173. The Court further notes that the situation impugned by the applicant Government has obtained since the events of 1974 in northern Cyprus. It would appear that it has never been reflected in "legislation" and is enforced as a matter of policy in furtherance of a bi-zonal arrangement designed, it is claimed, to minimise the risk of conflict which the intermingling of the Greek and Turkish-Cypriot communities in the north might engender. That bi-zonal arrangement is being pursued within the framework of the inter-communal talks sponsored by the United Nations Secretary-General (see paragraph 16 above).

174. The Court would make the following observations in this connection: firstly, the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8 § 2 of the Convention (see paragraph 173 above); secondly, the inter-communal talks cannot be relied on in order to legitimate a violation of the Convention; thirdly, the violation at issue has endured as a matter of policy since 1974 and must be considered continuing.

175. In view of these considerations, the Court concludes that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus.

176. As to the applicant Government's further allegation concerning the manipulation of the demographic and cultural environment of the displaced persons' homes, the Court, like the Commission, considers that it is not necessary to examine this complaint in view of its above finding of a continuing violation of Article 8 of the Convention.

177. Furthermore, the Court considers it appropriate to examine the applicant Government's submissions on the issue of family separation (see paragraph 166 above) in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots.

2. *Article 1 of Protocol No. 1*

178. The applicant Government maintained that the respondent State's continuing refusal to permit the return of the displaced persons to northern Cyprus not only prevented them from having access to their property there but also prevented them from using, selling, bequeathing, mortgaging, developing and enjoying it. In their submission, there were continuing violations of all the component aspects of the right to peaceful

enjoyment of possessions guaranteed by Article 1 of Protocol No. 1, which states:

> "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."

179. The applicant Government contended that the respondent State had adopted a systematic and continuing policy of interference with the immovable property of the displaced persons. They stated, *inter alia*, that the properties in question, of which the displaced persons were unlawfully dispossessed following their eviction from the north, were transferred into Turkish possession. Steps were then taken to "legalise" the illegal appropriation of the properties and their allocation to "State" bodies, Turkish Cypriots and settlers from the Turkish mainland. This was effected by means such as the assignment of "title deeds" to their new possessors. No compensation had ever been awarded to the victims of these interferences. Furthermore, specific measures had been taken to develop and exploit commercially land belonging to displaced persons, Church-owned land had been transferred to the Muslim religious trust, and agricultural produce from Greek-Cypriot land was now being exported accompanied by Turkish certificates.

180. In the applicant Government's submission, the continuing violation of property rights clearly engaged the responsibility of the respondent State under the Convention in view of the conclusions reached by the Court in *Loizidou* (merits). Quite apart from that consideration, the applicant Government pointed out that, in so far as the respondent State sought to justify the interferences with the displaced persons' property rights by pleading the derogation contained in Article 1 of Protocol No. 1, the "legal" measures relied on had necessarily to be considered invalid since they emanated from an illegal secessionist entity and could not for that reason be considered to comply with the qualitative requirements inherent in the notion of "provided for by law".

181. The Commission observed that the applicant Government's complaints were essentially directed at the "legislation" and the acknowledged administrative practice of the "TRNC" authorities. On that account, the persons aggrieved were not required to make use of any domestic remedies, it being noted by the Commission that, in any event, it did not appear that any remedies were available to displaced Greek Cypriots deprived of their property in northern Cyprus.

182. As to the merits, the Commission considered that the nature of the alleged interferences with the property rights of displaced Greek Cypriots was in essence the same as the interference of which Mrs Loizidou had complained in her application. Although that application concerned one particular instance of the general administrative practice to which the complaints in the present case relate, the Court's reasoning at paragraphs 63 and 64 of *Loizidou* (merits) (pp. 2237-38) must also apply to the administrative practice as such.

183. The Commission, essentially for the reasons set out by the Court in the above-mentioned judgment, concluded that during the period under consideration there had been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

184. The Court agrees with the Commission's analysis. It observes that the Commission found it established on the evidence that at least since June 1989 the "TRNC" authorities no longer recognised any ownership rights of Greek Cypriots in respect of their properties in northern Cyprus (see paragraph 32 above). This purported deprivation of the property at issue was embodied in a constitutional provision, "Article 159 of the TRNC Constitution", and given practical effect in "Law no. 52/1995". It would appear that the legality of the interference with the displaced persons' property is unassailable before the "TRNC" courts. Accordingly, there is no requirement for the persons concerned to use domestic remedies to secure redress for their complaints.

185. The Court would further observe that the essence of the applicant Government's complaints is not that there has been a formal and unlawful expropriation of the property of the displaced persons but that these persons, because of the continuing denial of access to their property, have lost all control over, as well as possibilities to enjoy, their land. As the Court has noted previously (see paragraphs 172-73 above), the physical exclusion of Greek-Cypriot persons from the territory of northern Cyprus is enforced as a matter of "TRNC" policy or practice. In these circumstances, the exhaustion requirement does not apply.

186. The Court recalls its finding in *Loizidou* (merits) that that particular applicant could not be deemed to have lost title to her property by operation of "Article 159 of the TRNC Constitution", a provision which it held to be invalid for the purposes of the Convention (p. 2231, § 44). This conclusion is unaffected by the operation of "Law no. 52/1995". It adds that, although the latter was not relied on before the Court in *Loizidou*, it cannot be attributed any more legal validity than its parent "Article 159" which it purports to implement.

187. The Court is persuaded that both its reasoning and its conclusion in *Loizidou* (merits) apply with equal force to displaced Greek Cypriots who, like Mrs Loizidou, are unable to have access to their property in northern Cyprus by reason of the restrictions placed by the "TRNC" authorities on their physical access to that property. The continuing and total denial of access to their property is a clear interference with the right of the displaced Greek Cypriots to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1. It further notes that, as regards the purported expropriation, no compensation has been paid to the displaced persons in respect of the interferences which they have suffered and continue to suffer in respect of their property rights.

188. The Court notes that the respondent Government, in the proceedings before the Commission, sought to justify the interference with reference to the inter-communal talks and to the need to rehouse displaced Turkish-Cypriot refugees. However, similar pleas were advanced by the respondent Government in the Loizidou case and were rejected in the judgment on the merits (pp. 2237-38, § 64). The Court sees no reason in the instant case to reconsider those justifications.

189. For the above reasons, the Court concludes that there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

3. Article 13 of the Convention

190. The applicant Government asserted that the manifest failure of the respondent State to provide an effective or indeed any remedy to displaced persons in respect of the violations of Article 8 of the Convention and Article 1 of Protocol No. 1 was in clear breach of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

191. The applicant Government approved in the main the reasoning which led the Commission to find a breach of Article 13.

192. The Commission referred to its finding that the displaced persons' rights under Article 8 of the Convention and Article 1 of Protocol No. 1 were violated as a matter of administrative practice. In so far as these practices were embodied in "legislation" of the "TRNC", the Commission noted that no provision was made to allow Greek Cypriots to contest their physical exclusion from the territory of northern Cyprus. On that account the Commission found that displaced persons had no

remedies to contest interferences with their rights under these Articles and that there was a violation of Article 13 in consequence.

193. The Court notes that in the proceedings before the Commission the respondent Government pleaded that, pending the elaboration of an agreed political solution to the overall Cyprus problem, there could be no question of a right of displaced persons either to return to the homes and properties which they had left in northern Cyprus or to lay claim to any of their immovable property vested in the "TRNC" authorities by virtue of "Article 159 of the TRNC Constitution" and allocated to Turkish Cypriots with full title deeds in accordance with implementing "Law no. 52/1995". The respondent Government did not contend before the Commission that displaced persons could avail themselves of local remedies to contest this policy of interference with their rights. Indeed, the Court considers that it would be at variance with the declared policy to provide for any challenge to its application. The Court further recalls in this connection that, as regards the violations alleged under Article 8 of the Convention and Article 1 of Protocol No. 1, it concluded that no issue arose in respect of the exhaustion requirement. It refers to the reasons supporting those conclusions (see paragraphs 171-75 and 184-89 above).

194. For these reasons, the Court, like the Commission, concludes that there has been a violation of Article 13 of the Convention by reason of the respondent State's failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1.

4. Article 14 of the Convention taken in conjunction with Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1

195. The applicant Government stated that the administrative practices, "legislation" and "constitutional provisions" at issue violated not only the rights guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1 but, being exclusively directed against Greek Cypriots not living in northern Cyprus, also Article 14 of the Convention. Article 14 of the Convention provides:

> "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."

196. Elaborating on their submission, the applicant Government maintained that the aim of the respondent State was to discriminate against Greeks and Greek Cypriots since only these classes of persons were disentitled to acquire immovable property in the "TRNC". Other "aliens" such as British retired persons were not prevented from acquiring immovable property in the "TRNC", including property which

had been "abandoned" by Greek-Cypriot displaced persons. Furthermore, Turks from Turkey not resident in the "TRNC" were not treated as having abandoned their property and were permitted to acquire new property holdings or homes.

197. The applicant Government further submitted that, as a matter of practice, the respondent State failed, on a discriminatory basis, to provide remedies for Greek Cypriots and Greeks in respect of their property rights. In their submission, there was a breach of Article 14 of the Convention taken in conjunction with Article 13.

198. The Commission concluded that the interferences with the rights under Article 8 of the Convention and Article 1 of Protocol No. 1 concerned exclusively Greek Cypriots not residing in northern Cyprus and were imposed on them for the very reason that they belonged to this class of person. There was accordingly a breach of Article 14 taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1. The Commission did not pronounce on the applicant Government's complaint under Article 13 taken in conjunction with Article 14.

199. The Court considers that, in the circumstances of the present case, the applicant Government's complaints under this heading amount in effect to the same complaints, albeit seen from a different angle, as those which the Court has already considered in relation to Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1. It has found that those Articles have been violated. In considers that it is not necessary to examine whether in this case there has been a violation of Article 14 taken in conjunction with those Articles by virtue of the alleged discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for their homes, to the peaceful enjoyment of their possessions and to an effective remedy.

5. Article 3 of the Convention

200. The applicant Government claimed that the treatment to which the displaced persons were subjected amounted to an infringement of Article 3 of the Convention, which provides:

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

201. The applicant Government pleaded that the Court should find a violation of Article 3 since, in their view, treatment especially singling out categories of persons on racial and ethnic grounds, subjecting them to severe hardship, denying them or interfering with their Convention rights, and doing so specifically and publicly, amounted to conduct which was an affront to human dignity to the point of being inhuman treatment.

202. The Commission considered that it was unnecessary to examine whether the discrimination at issue also constituted inhuman or degrading treatment within the meaning of Article 3, having regard to its finding under Article 14.

203. Bearing in mind its own conclusion on the applicant Government's complaints under Article 14 of the Convention (see paragraphs 195 and 199 above) as well as its finding of a violation of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1, the Court, for its part, does not consider it necessary to examine whether the facts alleged also give rise to a breach of Article 3 of the Convention.

6. Articles 17 and 18 of the Convention

204. The applicant Government submitted that the facts of the case disclosed a violation of Articles 17 and 18 of the Convention, which provide:

Article 17

"Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

Article 18

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

205. The applicant Government maintained that Article 17 had been violated since the respondent State limited the rights and freedoms of persons, mainly Greek Cypriots, to a greater extent than was provided for in the Convention. They further submitted that the respondent State applied restrictions to the Convention rights for a purpose other than the one for which they had been prescribed, in violation of Article 18 of the Convention.

206. The Court considers that it is not necessary to examine separately these complaints, having regard to the conclusions which it has reached on the applicant Government's complaints under Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1.

V. ALLEGED VIOLATIONS ARISING OUT OF THE LIVING CONDITIONS OF GREEK CYPRIOTS IN NORTHERN CYPRUS

207. The applicant Government asserted that the living conditions to which the Greek Cypriots who had remained in the north were subjected gave rise to substantial violations of the Convention. They stressed that

these violations were committed as a matter of practice and were directed against a depleted and now largely elderly population living in the Karpas area of northern Cyprus in furtherance of a policy of ethnic cleansing, the success of which could be measured by the fact that from some 20,000 Greek Cypriots living in the Karpas in 1974 only 429 currently remained. Maronites, of whom there were currently 177 still living in northern Cyprus, also laboured under similar, if less severe, restrictions.

208. The applicant Government relied on Articles 2, 3, 5, 6, 8, 9, 10, 11, 13, 14 of the Convention and Articles 1 and 2 of Protocol No. 1.

A. As to the facts established by the Commission

209. By way of a general submission, the applicant Government maintained that the Commission, as regards certain of their complaints, erroneously concluded against the weight of the evidence that there was no violation of the Convention. In the applicant Government's submission, the Commission's findings on matters such as restrictions on the importation of books other than school-books, interference with correspondence and denial of access to medical services were not only at variance with the written and oral evidence of witnesses but also with the clear findings contained in the "Karpas Brief" (see paragraph 36 above) and the reviews of the action taken by the "TRNC" authorities to give effect to the proposals for remedying the suffering which resulted for the Greek-Cypriot and Maronite populations from administrative practices of violating their Convention rights. The applicant Government further claimed that witnesses, whose numbers were regrettably restricted, only had a limited time to recount their experiences to the Commission's delegates. Furthermore, the applicant Government's lawyers were only left with negligible time in which to draw out all the relevant facts following the witnesses' statements.

210. The applicant Government insisted that the Court have regard to these and other shortcomings in the taking of evidence when reviewing the Commission's findings. They further submitted that, regarding the plight of the Maronites living in northern Cyprus, the Court should procure and examine the humanitarian review drawn up on this community. They observed in this connection that the United Nations Secretary-General offered to release the review in the proceedings before the Commission. However, the objection of the respondent Government prevented its being included in the case file.

211. The Court recalls that the Commission established the facts with reference, *inter alia*, to the oral evidence given by witnesses proposed by both sides. It further recalls that it rejected the applicant Government's criticism of the manner in which the delegates heard the evidence and

reaffirms that the hearing of witnesses was organised in a way which respected the principle of procedural equality between both parties (see paragraphs 110-11 above). It is to be noted in addition that, with a view to its establishment of the facts, the Commission made extensive use of documentary materials, including the "Karpas Brief" on the living conditions of the enclaved Greek-Cypriot population in northern Cyprus and the UN Secretary-General's progress reports on the proposals for remedial action formulated in the Brief.

212. The Court observes that the applicant Government accept much of the Commission's findings of fact. Their criticism is directed at certain conclusions which the Commission drew from those facts. For its part, and having regard to the wide-ranging and thorough analysis of the evidence conducted by the Commission, the Court does not consider that there are any exceptional circumstances which would lead it to depart from the facts as established by the Commission. It will, on the other hand, scrutinise carefully whether the facts bear out all of the applicant Government's complaints. It reiterates that it will do so using the "beyond reasonable doubt" standard of proof, including with respect to the alleged existence of an administrative practice of violating the Convention rights relied on (see paragraphs 114-15 above).

213. As to the applicant Government's request that the humanitarian review dealing with the living conditions of the Maronite community in northern Cyprus be obtained, the Court observes that the respondent Government have not signalled that they have lifted their objection to the release of the document. It observes that, in any event, major aspects of the review have been made public and have been included in the case file.

214. The Court notes that the Commission, in its examination of the merits of the applicant Government's complaints, made an overall assessment of the living conditions of Greek Cypriots living in northern Cyprus from the standpoint of Articles 3, 8 and 14 of the Convention. At the same time, the Commission examined the merits of the complaints about the living conditions under the relevant Convention Article (Articles 2, 5, 6, 9, 10 and 11 of the Convention and Articles 1 and 2 of Protocol No. 1), while addressing in the framework of its global assessment the specific complaints raised by the applicant Government under Article 8 concerning interferences with the right of the Karpas Greek Cypriots to respect for their private and family life, their home and their correspondence. Having regard to the fact that the applicant Government's arguments on the latter aspects of Article 8 are interwoven with their broader submissions on the violation of that provision, the Court considers that it is appropriate to discuss those arguments in the context of the living conditions of the Karpas Greek Cypriots seen from the angle of Article 8.

215. The Court will accordingly follow the Commission's approach in this regard.

B. As to the merits of the applicant Government's complaints

1. Article 2 of the Convention

216. The applicant Government maintained that the restrictions on the ability of the enclaved Greek Cypriots and Maronites to receive medical treatment and the failure to provide or to permit receipt of adequate medical services gave rise to a violation of Article 2 of the Convention.

217. In their submission, the respondent State must be considered to have failed, as a matter of administrative practice, to protect the right to life of these communities, having regard to the absence in northern Cyprus of adequate emergency and specialist services and geriatric care. In support of their submission, the applicant Government observed that aged Greek Cypriots were compelled to transfer to the south to obtain appropriate care and attention.

218. The Commission found that there had been no violation of Article 2 by virtue of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus. It considered in this respect that, although there may have been shortcomings in individual cases, in general, access to medical services, including hospitals in the south, was available to them. In view of this conclusion, the Commission did not consider it necessary to examine whether, in relation to this complaint, any domestic remedies which might have been available in the "TRNC" had been exhausted.

219. The Court observes that an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State put an individual's life at risk through the denial of health care which they have undertaken to make available to the population generally. It notes in this connection that Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36). It notes, however, that the Commission was unable to establish on the evidence that the "TRNC" authorities deliberately withheld medical treatment from the population concerned or adopted a practice of delaying the processing of requests of patients to receive medical treatment in the south. It observes that during the period under consideration medical visits were indeed hampered on account of restrictions imposed by the "TRNC" authorities on the movement of the populations concerned and that in certain cases delays did occur. However, it has not been established that the lives of any patients were put at risk on account of delay in individual cases. It is also to be observed that neither the Greek-Cypriot nor the Maronite populations

were prevented from availing themselves of medical services, including hospitals in the north. The applicant Government are critical of the level of health care available in the north. However, the Court does not consider it necessary to examine in this case the extent to which Article 2 of the Convention may impose an obligation on a Contracting State to make available a certain standard of health care.

220. The Court further observes that the difficulties which the Greek-Cypriot and Maronite communities experience in the area of health care essentially stem from the controls imposed on their freedom of movement. Those controls result from an administrative practice which is not amenable to challenge in the "TRNC" courts (see paragraph 41 above). On that account, the Court considers that the issue of non-exhaustion need not be examined.

221. The Court concludes that no violation of Article 2 of the Convention has been established by virtue of an alleged practice of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus.

222. The Court will revert to the applicant Government's complaint in respect of the alleged interference with access to medical facilities in the context of the overall assessment of compliance with Article 8 of the Convention (see paragraphs 281 et seq. below).

2. Article 5 of the Convention

223. The applicant Government maintained that the evidence clearly established that the personal security of the enclaved Greek Cypriots has been violated as a matter of practice. In this respect, the applicant Government relied on Article 5 of the Convention, the relevant part of which reads:

> "1. Everyone has the right to liberty and security of person. ..."

224. In the applicant Government's submission, the Commission was incorrect in its conclusion that this complaint was not borne out by the evidence. The applicant Government asserted that the written and oral testimony of witnesses clearly demonstrated the vulnerability and fear of the enclaved population and the impunity with which those responsible for crimes against the person and property could act. As to the latter point, the applicant Government observed that, although notified of complaints, the police failed to take action and without identification of assailants and suspects civil action, even if remedies were available, was impossible. They stressed that account had to be taken of the fact that the victims of these acts of criminality were aged and that the evidence given by certain witnesses to the Commission's delegates had to be seen against the background of their fear of retaliation.

225. The Commission noted that there were no cases of actual detention of enclaved Greek Cypriots during the period under consideration; nor did it find that the allegations of threats to personal security had been substantiated. In these circumstances, no issue as to the exhaustion of domestic remedies fell to be considered. It concluded that there had been no violation of Article 5.

226. The Court notes that the applicant Government have not claimed that any members of the enclaved Greek-Cypriot population were actually detained during the period under consideration. Their complaint relates to the vulnerability of what is an aged and dwindling population to the threat of aggression and criminality and its overall sense of insecurity. However, the Court considers that these are matters which fall outside the scope of Article 5 of the Convention and are more appropriately addressed in the context of its overall assessment of the living conditions of the Karpas Greek Cypriots seen from the angle of the requirements of Article 8 (see paragraphs 281 et seq. below).

227. For the above reason, the Court concludes that there has been no violation of Article 5 of the Convention.

3. Article 6 of the Convention

228. The applicant Government, referring to their earlier arguments on the issue of domestic remedies raised in the context of the preliminary issues (see paragraphs 83-85 above), claimed that Greek Cypriots in northern Cyprus were denied the right to have their civil rights and obligations determined by independent and impartial courts established by law. They requested the Court to find a violation of Article 6 of the Convention, the relevant parts of which provide:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ..."

229. The applicant Government criticised the Commission's failure to have regard to the essential illegality of the regime under which the "TRNC" courts function. They submitted in this connection that it could not be contended that those courts were "established by law" within the meaning of Article 6 as interpreted in the Court's case-law. Regrettably, the Commission erroneously considered that the "TRNC" courts had a sufficient legal basis within the "constitutional and legal system of the TRNC". Furthermore, the Commission overlooked clear evidence which supported the applicant Government's view that the enclaved Greek-Cypriot population had no faith in the independence and impartiality of the court system and that any rulings which might be given in favour of litigants were rendered meaningless on account of intimidation by Turkish settlers. To this were to be added the facts, firstly, that there

was no system of legal aid which could facilitate the bringing of proceedings and, secondly, the authorities themselves did nothing to prevent intimidation by settlers, with the result that court decisions remained unenforceable. Furthermore, due account had also to be taken of the fact that the possibility of bringing proceedings was frustrated on account of the restrictions imposed on the movement of the enclaved Greek Cypriots and hence on their access to courts. In the applicant Government's submission, these severe impediments to justice were confirmed by the findings in the "Karpas Brief".

230. The Commission found on the facts that Greek Cypriots living in northern Cyprus were not prevented from bringing civil actions before the "TRNC" courts. In the Commission's conclusion, the applicant Government had not made out their claim that there was a practice in the "TRNC" of denying access to a court.

231. As to the applicant Government's claim that "TRNC" courts failed to satisfy the criteria laid down in Article 6, the Commission noted, firstly, that there was nothing in the institutional framework of the "TRNC" legal system which was such as to cast doubt either on the independence and impartiality of the civil courts or the subjective and objective impartiality of judges, and, secondly, those courts functioned on the basis of the domestic law of the "TRNC" notwithstanding the unlawfulness under international law of the "TRNC"'s claim to statehood. The Commission found support for this view in the Advisory Opinion of the International Court of Justice in the Namibia case (see paragraph 86 above). Moreover, in the Commission's opinion due weight had to be given to the fact that the civil courts operating in the "TRNC" were in substance based on the Anglo-Saxon tradition and were not essentially different from the courts operating before the events of 1974 and from those which existed in the southern part of Cyprus.

232. The Commission accordingly concluded that, during the period under consideration, there had been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus.

233. The Court notes that the applicant Government have confined their submissions under this head to the civil limb of Article 6 of the Convention. It recalls in this connection that the first paragraph of Article 6 embodies the right of access to a court or tribunal in respect of disputes over civil rights or obligations which can be said, at least on arguable grounds, to be recognised under domestic law; it does not of itself guarantee any particular content for such rights and obligations in the substantive law of the Contracting State (see, *inter alia*, *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A, no. 102, p. 70, § 192). Furthermore, a court or tribunal is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law

and after proceedings conducted in a prescribed manner. It must also satisfy a series of further requirements – independence, in particular of the executive; impartiality; duration of its members' terms of office; guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 (see, among other authorities, *Belilos v. Switzerland*, judgment of 29 April 1988, Series A no. 132, p. 29, § 64).

234. The Court observes that it is the applicant Government's contention that the enclaved Greek-Cypriot population is prevented, as a matter of administrative practice, from asserting civil claims before the "TRNC" courts. However, this assertion is at variance with the testimony of witnesses heard by the delegates, including witnesses proposed by the applicant Government. It is also contradicted by the written evidence adduced before the Commission. It is clear that Greek Cypriots living in the north have on occasion successfully brought court actions in defence of their property rights (see paragraph 39 above), and they are not barred for reasons of race, language or ethnic origin from using the local courts. The Commission accepted this on the facts and the Court does not dispute the Commission's conclusion. For the Court, the applicant Government are required to show that the courts have been tried and found wanting. Failing this, it is being asked to speculate on the merits of their claim. Admittedly, the number of actions brought by members of the enclaved population is limited. However, that of itself does not corroborate the applicant Government's claim, especially if regard is had to the fact that the population is aged and small in numbers and, for reasons of allegiance, perhaps psychologically disinclined to rely on the jurisdiction of courts set up by the "TRNC".

235. The Court also considers that this conclusion is not affected by the fact that certain matters which may weigh heavily on the daily lives of the enclaved Greek Cypriots are not amenable to challenge in the "TRNC" courts, for example restrictions on their freedom of movement or their right to bequeath property to family members in the south (see paragraphs 40-41 above). However, in the Court's opinion those measures, whether embodied in policy or "legislation", are to be addressed from the standpoint of the effectiveness of remedies within the meaning of Article 13 of the Convention and their compatibility with other relevant substantive provisions of the Convention and its Protocols. The existence of such measures does not improve the applicant Government's case concerning the alleged administrative practice of violating Article 6. It recalls in this connection that the applicability of Article 6 is premised on the existence of an arguable cause of action in domestic law (see *Lithgow and Others*, cited above, p. 70, § 192, and *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, pp. 16-17, § 36).

236. As to the applicant Government's challenge to the very legality of the "TRNC" court system, the Court observes that they advanced similar

arguments in the context of the preliminary issue concerning the requirement to exhaust domestic remedies in respect of the complaints covered by the instant application (see paragraphs 83-85 above). The Court concluded that, notwithstanding the illegality of the "TRNC" under international law, it cannot be excluded that applicants may be required to take their grievances before, *inter alia*, the local courts with a view to seeking redress. It further pointed out in that connection that its primary concern in this respect was to ensure, from the standpoint of the Convention system, that dispute-resolution mechanisms which offer individuals the opportunity of access to justice for the purpose of remedying wrongs or asserting claims are used.

237. The Court observes on the basis of the evidence submitted to the Commission (see paragraph 39 above) that there is a functioning court system in the "TRNC" for the settlement of disputes relating to civil rights and obligations defined in "domestic law" and which is available to the Greek-Cypriot population. As the Commission observed, the court system in its functioning and procedures reflects the judicial and common-law tradition of Cyprus (see paragraph 231 above). In its opinion, having regard to the fact that it is the "TRNC domestic law" which defines the substance of those rights and obligations for the benefit of the population as a whole, it must follow that the domestic courts set up by the "law" of the "TRNC" are the fora for their enforcement. For the Court, and for the purposes of adjudicating on "civil rights and obligations", the local courts can be considered to be "established by law" with reference to the "constitutional and legal basis" on which they operate.

In the Court's opinion, any other conclusion would be to the detriment of the Greek-Cypriot community and would result in a denial of opportunity to individuals from that community to have an adjudication on a cause of action against a private or public body (see paragraph 96 above). It is to be noted in this connection that the evidence confirms that Greek Cypriots have brought successful court actions in defence of their civil rights.

238. The Court would add that its conclusion on this matter in no way amounts to a recognition, implied or otherwise, of the "TRNC"'s claim to statehood (see paragraphs 61, 90 and 92 above).

239. The Court notes that the applicant Government contest the independence and impartiality of the "TRNC" court system from the standpoint of the local Greek-Cypriot population. However, the Commission rejected this claim on the facts (see paragraph 231 above). Having regard to its own assessment of the evidence, the Court accepts that conclusion.

240. For the above reasons, the Court concludes that no violation of Article 6 of the Convention has been established in respect of Greek

Cypriots living in northern Cyprus by reason of an alleged practice of denying them a fair hearing by an independent and impartial tribunal in the determination of their civil rights and obligations.

4. Article 9 of the Convention

241. The applicant Government alleged that the facts disclosed an interference with the enclaved Greek Cypriots' right to manifest their religion, in breach of Article 9 of the Convention which states:

> "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."

242. The applicant Government contended that the interference with the right of the population concerned under Article 9 was reflected in the "TRNC" policy of limiting its freedom of movement and thereby restricting access to places of worship. The applicant Government also condemned the failure of the "TRNC" to appoint further priests to the area. They endorsed the Commission's findings on the facts and its conclusion that there had been a breach of Article 9. They added that a similar breach should be found in respect of the Maronite population living in northern Cyprus on account of the fact that that population also had to contend with restrictions on its right to visit and tend to its holy places in the northern part of Cyprus.

243. The Commission observed that the existence of a number of measures limited the religious life of the enclaved Greek-Cypriot population. It noted in this respect that, at least until recently, restrictions were placed on their access to the Apostolos Andreas Monastery as well as on their ability to travel outside their villages to attend religious ceremonies. In addition, the "TRNC" authorities had not approved the appointment of further priests to the area, there being only one priest for the whole of the Karpas region. For the Commission, these restrictions prevented the organisation of Greek Orthodox religious ceremonies in a normal and regular manner and amounted to a breach of Article 9 of the Convention. In the Commission's view, there existed no effective remedies in respect of the measures complained of.

244. The Commission accordingly concluded that during the period under consideration there had been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus.

245. The Court accepts the facts as found by the Commission, which are not disputed by the applicant Government. It has not been contended by the applicant Government that the "TRNC" authorities have interfered as such with the right of the Greek-Cypriot population to manifest their religion either alone or in the company of others. Indeed, there is no evidence of such interference. However, the restrictions placed on the freedom of movement of that population during the period under consideration considerably curtailed their ability to observe their religious beliefs, in particular their access to places of worship outside their villages and their participation in other aspects of religious life.

246. The Court concludes that there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus.

247. The Court notes that the applicant Government have requested it to make a similar finding in respect of the Maronite community living in northern Cyprus. However, it considers that the evidence before it is insufficient to prove beyond reasonable doubt that members of this community were prejudiced to the same extent as the Greek-Cypriot population in the north in the exercise of their right to freedom of religion. It finds therefore that no violation of Article 9 has been established in respect of the Maronite population living in northern Cyprus.

5. Article 10 of the Convention

248. The applicant Government asserted that the "TRNC" authorities engaged in excessive censorship of school-books, restricted the importation of Greek-language newspapers and books and prevented the circulation of any newspapers or books whose content they disapproved of. In their submission, these acts violated as a matter of administrative practice the right of the enclaved Greek Cypriots to receive and impart information and ideas guaranteed by Article 10 of the Convention, which provides:

> "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."

249. The applicant Government approved the Commission's finding that school-books destined for Greek-Cypriot children in the north were

subject to excessive measures of censorship. However, in their submission the Commission had failed to give due regard to the ample evidence confirming that Greek-language books and newspapers were censored and confiscated by the "TRNC" authorities. The applicant Government stated that it would be stretching credulity to accept that these authorities censored school-books, however innocent their content, but permitted the unrestricted importation of other categories of books. The applicant Government relied on the oral affirmation of certain witnesses heard by the Commission's delegates that books, like newspapers, had to be surreptitiously taken into northern Cyprus for fear of confiscation.

250. The Commission found a violation of Article 10 in so far as the Turkish-Cypriot authorities had, during the period under consideration, censored or rejected the distribution of a considerable number of school-books on the ground that their content was capable of fostering hostility between the ethnic communities in northern Cyprus. The Commission noted that the books which had been censored or rejected concerned subjects such as Greek language, English, history, geography, religion, civics, science, mathematics and music. Even having regard to the possibility that such books contained materials indicating the applicant Government's view of the history and culture of Cyprus, the impugned action failed to comply with the requirements of paragraph 2 of Article 10. In the Commission's view there were no remedies which would have allowed parents or teachers to contest the action taken.

251. On the other hand, the Commission did not find it established on the evidence that restrictions were imposed on the importation of newspapers or Greek-Cypriot or Greek-language books other than school-books, or on the reception of electronic media. As to the absence of a newspaper distribution system in the Karpas area, the Commission observed that it had not been informed of any administrative measures preventing the establishment of such a system.

252. The Court recalls that it has accepted the facts as established by the Commission (see paragraph 212 above). On that understanding, it confirms the Commission's finding that there has been an interference with Article 10 on account of the practice adopted by the "TRNC" authorities of screening the contents of school-books before their distribution. It observes in this regard that, although the vetting procedure was designed to identify material which might pose a risk to inter-communal relations and was carried out in the context of confidence-building measures recommended by UNFICYP (see paragraph 44 above), the reality during the period under consideration was that a large number of school-books, no matter how innocuous their content, were unilaterally censored or rejected by the authorities. It is to be further noted that, in the proceedings before the Commission, the respondent Government failed to provide any justification for this form

of wide-ranging censorship, which, it must be concluded, far exceeded the limits of confidence-building measures and amounted to a denial of the right to freedom of information. It does not appear that any remedies could have been taken to challenge the decisions of the "TRNC" authorities in this regard.

253. The Court notes that the applicant Government consider that the Commission erred in its assessment of the evidence in respect of other categories of Greek-language books as well as newspapers. It has given careful consideration to the matters relied on by the applicant Government. However, the Court does not find that the evidence of individual cases of confiscation at the Ledra Palace check-point adduced before the Commission and highlighted by the applicant Government in their memorial and at the hearing substantiate their allegations with reference to the "beyond reasonable doubt" standard of proof.

254. The Court finds therefore that there has been a violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subjected, during the period under consideration, to excessive measures of censorship.

6. Article 11 of the Convention

255. The applicant Government asserted that their complaint under this head related to their claim that the Karpas Greek Cypriots were victims of interferences with their right to freedom of assembly, in breach of Article 11 of the Convention, which provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

256. The applicant Government contended that the Commission had failed to give due weight to the evidence of the respondent State's long-standing policy of impeding the enclaved population's right to take part in organised or *ad hoc* gatherings. They maintained that the Commission erroneously found that impediments to bi-communal meetings only occurred as from the second half of 1996 and were thus outside the scope of the case. The applicant Government argued that these impediments had in fact been continuing since 1974 on account of the respondent

State's general and restrictive policy in the area of freedom of movement. They maintained that their claim was borne out by the UN Secretary-General's observations on the measures being implemented by the Turkish-Cypriot authorities in respect of Greek Cypriots and Maronites located in the northern part of Cyprus (UN document S/1995/1020, Annex IV, 30 November 1995). By way of an example of restrictions on the right to freedom of assembly during the period under consideration, the applicant Government observed that the Turkish-Cypriot authorities, on 13 November 1994, refused permission for a Greek singer to give a concert in the Karpas region.

257. The applicant Government further complained that the administrative practice at issue also resulted in a violation of Article 8, given that the Greek-Cypriot and Maronite populations were prevented from freely foregathering, meeting or assembling either outside their villages in the "TRNC" or by crossing the cease-fire line to the buffer-zone, or by visiting the free area.

258. The Commission proceeded on the understanding that the applicant Government's essential complaint under Article 11 concerned an alleged violation of the right of the population concerned to freedom of association in the sense of founding or joining associations or taking part in the activities of associations with a minimum organisational structure, to the exclusion of social contacts. The Commission found on the evidence that, during the period under consideration, there was no restriction on any aspect of the right as defined. As to impediments to the participation of enclaved Greek Cypriots in bi-communal events organised by the United Nations, the Commission noted that UN documents mentioned impediments having been placed in the way of inter-communal meetings as from the second half of 1996. However, given that these events were based on distinct facts occurring after the date of the admissibility decision, any complaints based thereon could not be entertained.

259. Having regard to its conclusion that there had been no violation of the right of Greek Cypriots living in northern Cyprus to freedom of association, the Commission considered that it was unnecessary to examine whether any available remedies had been exhausted in respect of the applicant Government's allegations.

260. The Court observes that the matters raised by the applicant Government are essentially issues of fact which have been carefully examined by the Commission in the context of the fact-finding procedure. It observes that on the basis of the evidence analysed the Commission found it impossible to conclude that during the period under consideration there was any interference by the "TRNC" authorities with attempts by Greek Cypriots to establish their own associations or mixed associations with Turkish Cypriots, or interference with the participation

of Greek Cypriots in the activities of associations (see paragraph 258 above). The Court accepts the Commission's finding and would add that the evidence does not allow it to conclude, beyond reasonable doubt, that an administrative practice of violating the right of the enclaved Greek Cypriots to freedom of association existed during the reference period.

261. Like the Commission, the Court also considers that its conclusion does not require it to examine whether any available domestic remedies have been exhausted in relation to these complaints.

262. As to the applicant Government's complaints in respect of an alleged practice of imposing restrictions on Greek Cypriots' participation in bi-communal or inter-communal events during the period under consideration, the Court considers, having regard to the subject matter of the events relied on, that it is more appropriate to consider them from the standpoint of Article 8 of the Convention. It will do so in the context of its global assessment of that Article (see paragraphs 281 et seq. below).

263. The Court concludes that no violation of Article 11 of the Convention has been established by reason of an alleged practice of denying Greek Cypriots living in northern Cyprus the right to freedom of association.

7. Article 1 of Protocol No. 1

264. The applicant Government complained that Greek Cypriots and Maronites living in northern Cyprus were victims of violations of their rights under Article 1 of Protocol No. 1. They contended that the authorities of the respondent State unlawfully interfered with the property of deceased Greek Cypriots and Maronites as well as with the property of such persons who decided to leave permanently the northern part. Furthermore, landowners were denied access to their agricultural land situated outside a three-mile radius of their villages. The applicant Government requested the Court to confirm the Commission's conclusion that Article 1 of Protocol No. 1 had been violated in these respects.

265. In a further submission, the applicant Government pointed to their claim that third parties interfered with the property of the persons concerned, whether situated inside their villages or beyond the three-mile zone and that the "TRNC" authorities acquiesced in or tolerated these interferences. In the applicant Government's view, the evidence adduced before the Commission clearly demonstrated that the local police did not, as a matter of administrative practice, investigate unlawful acts of trespass, burglary and damage to property, contrary to the respondent State's positive obligations under Article 1 of Protocol No. 1. They observed with regret that the Commission had failed to find a violation despite the existence of substantial evidence of an administrative

practice. The applicant Government requested the Court to depart from the Commission's finding on this particular complaint.

266. The Commission accepted on the evidence that there was no indication that during the period under consideration there were any instances of wrongful allocation of Greek-Cypriot property to other persons and that the property of resident Greek Cypriots was not treated as "abandoned property" within the meaning of "Article 159 of the TRNC Constitution" (see paragraph 184 above). It observed in this connection that the local courts had ruled in favour of a number of Greek Cypriots who claimed that their properties had been wrongfully allocated under the applicable domestic "rules". However, the Commission did find it established that Greek Cypriots who decided to resettle in the south were no longer considered legal owners of the property which they left behind. Their situation was accordingly analogous to that of the displaced persons (see paragraph 187 above) and, as with the latter, there were no remedies available to them to contest this state of affairs.

267. The Commission was not persuaded either that heirs living in southern Cyprus would have any real opportunity of making use of remedies before the "TRNC" courts to claim inheritance rights to the property of deceased Greek Cypriots situated in the north. In the Commission's opinion, the respondent Government had not shown to its satisfaction that such property would not be considered "abandoned" in application of the relevant "rules". In any event, the very existence of these "rules" and their application were, for the Commission, incompatible with the letter and spirit of Article 1 of Protocol No. 1.

268. As to the criminal acts of third parties referred to by the applicant Government, the Commission considered that the evidence did not bear out their allegations that the "TRNC" authorities had either participated in or encouraged criminal damage or trespass. It noted that a number of civil and criminal actions had been successfully brought before the courts in respect of complaints arising out of such incidents and that there had been a recent increase in criminal prosecutions.

269. The Court notes from the facts established by the Commission that, as regards ownership of property in the north, the "TRNC" practice is not to make any distinction between displaced Greek-Cypriot owners and Karpas Greek-Cypriot owners who leave the "TRNC" permanently, with the result that the latter's immovable property is deemed to be "abandoned" and liable to reallocation to third parties in the "TRNC".

For the Court, these facts disclose a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions is not secured in case of their permanent departure from that territory.

270. The Court further observes that the evidence taken in respect of this complaint also strongly suggests that the property of Greek Cypriots

in the north cannot be bequeathed by them on death and that it passes to the authorities as "abandoned" property. It notes that the respondent Government contended before the Commission that a court remedy could be used by an heir in order to assert inheritance rights to the property of a deceased Greek-Cypriot relative. The Court, like the Commission, is not persuaded that legal proceedings would hold out any prospect of success, having regard to the respondent Government's view expressed in the proceedings before the Commission that the property of deceased Greek Cypriots devolves to the authorities in accordance with the notion of "abandoned" property. It further notes that heirs living in the south would in fact be prevented from having physical access to any property which they inherited.

Accordingly, Article 1 of Protocol No. 1 has also been breached in this respect, given that the inheritance rights of persons living in southern Cyprus in connection with the property in northern Cyprus of deceased Greek-Cypriot relatives were not recognised.

271. Concerning the applicant Government's allegation of a lack of protection for Greek Cypriots against acts of criminal damage to their property, the Court considers that the evidence adduced does not establish to the required standard that there is an administrative practice on the part of the "TRNC" authorities of condoning such acts or failing to investigate or prevent them. It observes that the Commission carefully studied the oral evidence of witnesses but was unable to conclude that the allegation was substantiated. Having regard to its own assessment of the evidence relied on by the applicant Government, the Court accepts that conclusion. It further observes that the "domestic law" of the "TRNC" provides for civil actions to be brought against trespassers and criminal complaints to be lodged against wrongdoers. The "TRNC" courts have on occasion found in favour of Greek-Cypriot litigants. As noted previously, it has not been established on the evidence that there was, during the period under consideration, an administrative practice of denying individuals from the enclaved population access to a court to vindicate their civil rights (see paragraph 240 above).

272. The Court concludes accordingly that no violation of Article 1 of Protocol No. 1 has been established by reason of an alleged practice of failing to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons.

8. Article 2 of Protocol No. 1

273. The applicant Government averred that the children of Greek Cypriots living in northern Cyprus were denied secondary-education facilities and that Greek-Cypriot parents of children of secondary-school age were in consequence denied the right to ensure their children's

education in conformity with their religious and philosophical convictions. The applicant Government relied on Article 2 of Protocol No. 1, which states:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

274. The applicant Government approved the reasons given by the Commission for finding a violation of the above provision. However, they requested the Court to rule that this provision had also been breached on account of the prevention by the respondent State of appropriate primary-school teaching until the end of 1997. Before that date, the "TRNC" had not permitted the appointment of a primary-school teacher. In the applicant Government's submission this policy interfered with the right of Greek-Cypriot children to a primary education.

275. The Commission, with reference to the principles set out by the Court in the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits) (judgment of 23 July 1968, Series A no. 6), observed that the secondary-education facilities which were formerly available to children of Greek Cypriots had been abolished by the Turkish-Cypriot authorities. Accordingly, the legitimate wish of Greek Cypriots living in northern Cyprus to have their children educated in accordance with their cultural and ethnic tradition, and in particular through the medium of the Greek language, could not be met. The Commission further considered that the total absence of secondary-school facilities for the persons concerned could not be compensated for by the authorities' allowing pupils to attend schools in the south, having regard to the fact that restrictions attached to their return to the north (see paragraph 44 above). In the Commission's conclusion, the practice of the Turkish-Cypriot authorities amounted to a denial of the substance of the right to education and a violation of Article 2 of Protocol No. 1.

276. As to the provision of primary-school education in the Greek language, the Commission considered that the right to education of the population concerned had not been disregarded by the Turkish-Cypriot authorities and that any problems arising out of the vacancy of teaching posts had been resolved.

277. The Court notes that children of Greek-Cypriot parents in northern Cyprus wishing to pursue a secondary education through the medium of the Greek language are obliged to transfer to schools in the south, this facility being unavailable in the "TRNC" ever since the decision of the Turkish-Cypriot authorities to abolish it. Admittedly, it is open to children, on reaching the age of 12, to continue their education at a Turkish or English-language school in the north. In the strict sense,

accordingly, there is no denial of the right to education, which is the primary obligation devolving on a Contracting Party under the first sentence of Article 2 of Protocol No. 1 (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, pp. 25-26, § 52). Moreover, this provision does not specify the language in which education must be conducted in order that the right to education be respected (see the judgment in the "*Belgian linguistic case*", cited above, pp. 30-31, § 3).

278. However, in the Court's opinion, the option available to Greek-Cypriot parents to continue their children's education in the north is unrealistic in view of the fact that the children in question have already received their primary education in a Greek-Cypriot school there. The authorities must no doubt be aware that it is the wish of Greek-Cypriot parents that the schooling of their children be completed through the medium of the Greek language. Having assumed responsibility for the provision of Greek-language primary schooling, the failure of the "TRNC" authorities to make continuing provision for it at the secondary-school level must be considered in effect to be a denial of the substance of the right at issue. It cannot be maintained that the provision of secondary education in the south in keeping with the linguistic tradition of the enclaved Greek Cypriots suffices to fulfil the obligation laid down in Article 2 of Protocol No. 1, having regard to the impact of that option on family life (see paragraph 277 above and paragraph 292 below).

279. The Court notes that the applicant Government raise a further complaint in respect of primary-school education and the attitude of the "TRNC" authorities towards the filling of teaching posts. Like the Commission, it considers that, taken as a whole, the evidence does not disclose the existence of an administrative practice of denying the right to education at primary-school level.

280. Having regard to the above considerations, the Court concludes that there has been a violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them.

C. Overall examination of the living conditions of Greek Cypriots in northern Cyprus

1. Article 8 of the Convention

281. The applicant Government asserted that the respondent State, as a matter of administrative practice, violated in various respects the right of Greek Cypriots living in northern Cyprus to respect for their private life and home. The applicant Government relied on Article 8 of the Convention.

282. The applicant Government requested the Court to confirm the Commission's finding that Article 8 was violated, firstly, on account of the separation of families brought about by continuing restrictions on the right of Greek Cypriots to return to their homes in the north and, secondly, as a result of the effect of the entirety of these restrictions on the enclaved population.

283. In their further submissions, the applicant Government maintained that the Commission had failed to make an express finding that Article 8 had been breached by virtue of the effect which the various restrictions on freedom of movement of the enclaved Greek Cypriots had during the period under consideration on their right to respect for their private life. They highlighted in this connection the restrictions which prevented the enclaved Greek Cypriots from assembling or meeting with other individuals on an informal or *ad hoc* basis or attending bi-communal meetings or other gatherings (see paragraphs 256-57 above). The applicant Government also contended that a further and separate breach of the right to respect for private life should be found in view of the consequences which the restrictions on movement had on the access of enclaved Greek Cypriots to medical treatment (see paragraphs 216-17 above). In this connection, the applicant Government observed that the requirement to obtain permission for medical treatment and the denial of visits by Greek-Cypriot doctors or Maronite doctors of their choice interfered with the right of Greek Cypriots in the north to respect for their private life.

284. The applicant Government further contended that the evidence before the Commission clearly showed that Article 8 had been breached in the following additional respects: interference by the "TRNC" authorities with the right to respect for correspondence by way of searches at the Ledra Palace check-point and confiscation of letters; denial by the same authorities for a lengthy period, and on a discriminatory basis, of the installation of telephones in homes of Greek Cypriots and interception of such calls as they were able to make.

285. The applicant Government reiterated their view that the respondent State, through its policy of colonisation, had engaged in deliberate manipulation of the demographic and cultural environment of the "home" of the Greek Cypriots (see paragraph 167 above). They requested the Court to find a breach of Article 8 on that account.

286. The applicant Government stated in conclusion that the Court should address the Commission's failure to deal individually with each of the above interferences and to find that they gave rise to separate breaches of Article 8.

287. The Commission examined the applicant Government's complaints from a global standpoint while not losing sight of the distinct aspects of that provision (see paragraph 214 above). It found on the facts

that the restrictions imposed by the "TRNC" authorities during the period under consideration on the freedom of movement of Greek Cypriots to and from the south had the effect of gravely interfering with the right of the enclaved Greek Cypriots to respect for their family life. Furthermore, their movement within the Karpas region, including to neighbouring villages or towns, was accompanied by measures of strict and invasive police control. The Commission noted that visitors to their homes were physically accompanied by police officers who, in certain cases, stayed with the visitors inside the host's home. In the Commission's opinion, this administrative practice amounted to a clear interference with the right of the enclaved Greek Cypriots to respect for their private life and home.

288. The Commission observed that no remedies were available to challenge the measures applied to the enclaved population and that they could not be justified in any manner with respect to the provisions of paragraph 2 of Article 8.

289. In view of the above finding, the Commission did not consider it necessary to address the merits of the applicant Government's complaint concerning the alleged effect of the respondent State's colonisation policy on the demographic and cultural environment of the Greek Cypriots' homes.

290. Furthermore, the Commission did not find it established on the evidence that, during the period under consideration, there had been an administrative practice of disregarding the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

291. The Commission noted however that, taken as a whole, the daily life of Greek Cypriots in northern Cyprus was characterised by a multitude of adverse circumstances, which were to a large extent the direct result of the official policy conducted by the respondent State and its subordinate administration. In the Commission's view these adverse factors served to aggravate the breach of the enclaved Greek Cypriots' right to respect for their private and family life and respect for their home.

292. The Court observes in the first place that the facts as found by the Commission confirm that, during the period under consideration, the right of the enclaved Greek Cypriots to family life was seriously impeded on account of the measures imposed by the "TRNC" authorities to limit family reunification. Thus, it was not disputed by the respondent Government in the proceedings before the Commission that Greek Cypriots who permanently left the northern part of Cyprus were not allowed to return, even if they left a family behind (see paragraph 29 above). Although arrangements were introduced by the "TRNC" authorities to facilitate to a limited extent family visits in 1998, the period under consideration for the purposes of the instant application was characterised by severe limitations on the number and duration of

such visits. Furthermore, during the reference period schoolchildren from northern Cyprus attending schools in the south were not allowed to return permanently to the north after having attained the age of 16 in the case of males and 18 in the case of females. It is also to be observed that certain restrictions applied to the visits of those students to their parents in the north (see paragraph 43 above).

293. In the Court's opinion, the imposition of these restrictions during the period under consideration as a matter of policy and in the absence of any legal basis resulted in the enforced separation of families and the denial to the Greek-Cypriot population in the north of the possibility of leading a normal family life. In the absence of any legal basis for these restrictions, the Court does not have to consider whether the interferences at issue can be justified with reference to the provisions of Article 8 § 2 of the Convention. For the same reason, it does not have to consider either whether aggrieved individuals could have been expected to exhaust domestic remedies to challenge what in effect amounts to an administrative practice of interference with the right to respect for family life.

294. As to the alleged interferences with the right of the enclaved Greek Cypriots to respect for their private life and home, the Court notes that the Commission found it established on the evidence that, during the period under consideration, this community was in effect monitored in respect of its contacts and movements (see paragraph 287 above), Greek Cypriots having to account to the authorities for even the most mundane of reasons for moving outside the confines of their villages. The Court further notes that the surveillance effected by the authorities even extended to the physical presence of State agents in the homes of Greek Cypriots on the occasion of social or other visits paid by third parties, including family members.

295. The Court considers that such highly intrusive and invasive acts violated the right of the Greek-Cypriot population in the Karpas region to respect for their private and family life. No legal basis for these acts has been adduced, less so any justification which could attract the coming into play of the provisions of Article 8 § 2 of the Convention. They were carried out as a matter of practice. As such, no question as to the exhaustion of local remedies arises in the circumstances.

296. Having regard to the above considerations, the Court concludes that there has been a violation of the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention.

297. The Court further notes that the applicant Government contest the Commission's finding that it has not been established that during the period under consideration the correspondence of the enclaved Greek Cypriots was intercepted or opened as a matter of administrative

practice. Having regard to its own assessment of the evidence, the Court considers that the applicant Government's challenge to the Commission's conclusion cannot be sustained. It observes that the evidence does bear out that in certain cases persons at the Ledra Palace check-point were searched for letters. However, the evidence before it does not substantiate to the required standard the allegation that such searches were carried out as a matter of administrative practice; nor does it support the view that there was a consistent practice of tapping telephone calls made to and from the homes of Greek Cypriots.

298. In view of the above considerations, the Court concludes that no violation of Article 8 of the Convention has been established by reason of an alleged practice of interference with the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

299. The Court notes that the applicant Government do not dispute the Commission's decision to examine globally the living conditions of Greek Cypriots in northern Cyprus from the standpoint of Article 8. They do, however, request the Court to isolate from that examination a number of alleged specific interferences with the right to respect for private life and to rule separately on their merits (see paragraphs 283-86 above). In the Court's opinion, the matters relied on by the applicant Government in this connection are in reality bound up with their more general allegation that the respondent State pursues a policy which is intended to claim the northern part of Cyprus for Turkish Cypriots and settlers from Turkey to the exclusion of any Greek-Cypriot influence. The applicant Government maintain that this policy is manifested in the harshness of the restrictions imposed on the enclaved Greek-Cypriot population. For the Court, the specific complaints raised by the applicant Government regarding impediments to access to medical treatment and hindrances to participation in bi- or inter-communal events (see paragraphs 216-27, 257 and 283 above) are elements which fall to be considered in the context of an overall analysis of the living conditions of the population concerned from the angle of their impact on the right of its members to respect for private and family life.

300. In this connection, the Court cannot but endorse the Commission's conclusion at paragraph 489 of its report that the restrictions which beset the daily lives of the enclaved Greek Cypriots create a feeling among them "of being compelled to live in a hostile environment in which it is hardly possible to lead a normal private and family life". The Commission noted in support of this conclusion that the adverse circumstances to which the population concerned was subjected included: the absence of normal means of communication (see paragraph 45 above); the unavailability in practice of the Greek-Cypriot press (see paragraph 45 above); the insufficient number of priests (see paragraph 47 above); the difficult choice with which parents and

schoolchildren were faced regarding secondary education (see paragraphs 43-44 above); the restrictions and formalities applied to freedom of movement, including, the Court would add, for the purposes of seeking medical treatment and participation in bi- or inter-communal events; the impossibility of preserving property rights upon departure or on death (see paragraph 40 above).

301. The Court, like the Commission, considers that these restrictions are factors which aggravate the violations which it has found in respect of the right of the enclaved Greek Cypriots to respect for private and family life (see paragraph 296 above). Having regard to that conclusion, the Court is of the view that it is not necessary to examine separately the applicant Government's allegations under Article 8 concerning the implantation of Turkish settlers in northern Cyprus (see paragraph 285 above).

2. Article 3 of the Convention

302. The applicant Government alleged that, as a matter of practice, Greek Cypriots living in the Karpas area of northern Cyprus were subjected to inhuman and degrading treatment, in particular discriminatory treatment amounting to inhuman and degrading treatment.

303. They submitted that the Court should, like the Commission, find that Article 3 has been violated. The applicant Government fully endorsed the Commission's reasoning in this respect.

304. The Commission did not accept the respondent Government's argument that it was prevented from examining whether the totality of the measures impugned by the applicant Government, including those in respect of which it found no breach of the Convention, provided proof of the pursuit of a policy of racial discrimination amounting to a breach of Article 3 of the Convention. The Commission had particular regard in this connection to its report under former Article 31 in *East African Asians v. the United Kingdom* (nos. 4403/70-4419/70 et seq., Commission's report of 14 December 1973, Decisions and Reports 78-A, p. 62). Having regard to the fact that it found the Convention to be violated in several respects, the Commission noted that all the established interferences concerned exclusively Greek Cypriots living in northern Cyprus and were imposed on them for the very reason that they belonged to this class of person. In the Commission's conclusion, the treatment complained of was clearly discriminatory against them on the basis of their "ethnic origin, race and religion". Regardless of recent improvements in their situation, the hardships to which the enclaved Greek Cypriots were subjected during the period under consideration still affected their daily lives and attained a level of severity which constituted an affront to their human dignity.

305. The Court recalls that in *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (judgment of 28 May 1985, Series A no. 94), it accepted the applicants' argument that, irrespective of the relevance of Article 14, a complaint of discriminatory treatment could give rise to a separate issue under Article 3. It concluded on the merits that the difference of treatment complained of in that case did not denote any contempt or lack of respect for the personality of the applicants and that it was not designed to, and did not, humiliate or debase them (p. 42, §§ 90-92).

306. The Court further recalls that the Commission, in its decision in the above-mentioned *East African Asians* case, observed, with respect to an allegation of racial discrimination, that a special importance should be attached to discrimination based on race and that to single out publicly a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special affront to human dignity. In the Commission's opinion, differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question (loc. cit., p. 62, § 207).

307. With these considerations in mind, the Court cannot but observe that the United Nations Secretary-General, in his progress report of 10 December 1995 on the "Karpas Brief" (see paragraph 36 above), stated that the review carried out by UNFICYP of the living conditions of the Karpas Greek Cypriots confirmed that they were the object of very severe restrictions which curtailed the exercise of basic freedoms and had the effect of ensuring that, inexorably, with the passage of time, the community would cease to exist. He made reference to the facts that the Karpas Greek Cypriots were not permitted by the authorities to bequeath immovable property to a relative, even the next-of-kin, unless the latter also lived in the north; there were no secondary-school facilities in the north and Greek-Cypriot children who opted to attend secondary schools in the south were denied the right to reside in the north once they reached the age of 16 in the case of males and 18 in the case of females.

308. The Court notes that the humanitarian review reflected in the "Karpas Brief" covered the years 1994-95, which fall within the period under consideration for the purposes of the complaints contained in the present application. It recalls that the matters raised by the United Nations Secretary-General in his progress report have, from the perspective of the Court's analysis, led it to conclude that there have been violations of the enclaved Greek Cypriots' Convention rights. It further notes that the restrictions on this community's freedom of movement weigh heavily on their enjoyment of their private and family life (see paragraphs 292-93 above) and their right to practise their religion (see paragraph 245 above). The Court has found that Articles 8 and 9 of the Convention have been violated in this respect.

309. For the Court, it is an inescapable conclusion that the interferences at issue were directed at the Karpas Greek-Cypriot community for the very reason that they belonged to this class of person. The treatment to which they were subjected during the period under consideration can only be explained in terms of the features which distinguish them from the Turkish-Cypriot population, namely their ethnic origin, race and religion. The Court would further note that it is the policy of the respondent State to pursue discussions within the framework of the inter-communal talks on the basis of bi-zonal and bi-communal principles (see paragraph 16 above). The respondent State's attachment to these principles must be considered to be reflected in the situation in which the Karpas Greek Cypriots live and are compelled to live: isolated, restricted in their movements, controlled and with no prospect of renewing or developing their community. The conditions under which that population is condemned to live are debasing and violate the very notion of respect for the human dignity of its members.

310. In the Court's opinion, and with reference to the period under consideration, the discriminatory treatment attained a level of severity which amounted to degrading treatment.

311. The Court concludes that there has been a violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment.

3. Article 14 of the Convention taken in conjunction with Article 3

312. The applicant Government stated that, notwithstanding the Commission's conclusion on their complaint under Article 3, a conclusion which they endorsed, the Court should examine separately the discriminatory measures imposed on, and exclusively on, Greek Cypriots living in northern Cyprus from the standpoint of compliance with Article 14 of the Convention. The applicant Government submitted that, since the enclaved Greek Cypriots were the victims of unreasonable and unjustified differences in treatment based on racial and religious grounds, the fundamental principle underlying Article 14 was violated as a matter of practice. They contended that the elements of discrimination included the pattern of restrictions and pressures which made up the policy of ethnic cleansing in the Karpas region; the respondent State's policy of demographic homogeneity; the continuing violations of Greek-Cypriots' property rights as a consequence of the systematic implantation of settlers; the restrictions on the movement of displaced Greek Cypriots as a facet of ethnic exclusiveness; the transfer of possession of the property of displaced Greek Cypriots forced to leave the Karpas region to Turkish

settlers; and the continued deprivation of possessions of Greek Cypriots located within the Turkish-occupied area.

313. The Commission, for its part, did not find it necessary, in view of its finding on the applicant Government's Article 3 complaint, to consider the instant complaints also in the context of the respondent State's obligations under Article 14.

314. The Court agrees with the Commission's conclusion. Having regard to the reasoning which underpins its own finding of a violation of Article 3, it considers that there is no need to pronounce separately on what is in reality a restatement of a complaint which is substantially addressed in that finding.

315. The Court concludes therefore that, in view of its finding under Article 3 of the Convention, it is not necessary to examine whether during the period under consideration there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 in respect of Greek Cypriots living in northern Cyprus.

4. Article 14 of the Convention taken in conjunction with the other relevant Articles

316. The applicant Government requested the Court to find that the respondent State's policies towards the enclaved Greek Cypriots involved violations of Article 14 of the Convention taken in conjunction with the relevant provisions. They submitted that the population concerned was discriminated against in the enjoyment of the rights guaranteed under these provisions on racial, religious and linguistic grounds.

317. The Court considers that, having regard to the particular circumstances of this case, it is not necessary to examine whether during the period under consideration there has been a violation of Article 14 of the Convention taken in conjunction with the other relevant Articles.

D. Alleged violation of Article 13 of the Convention

318. The applicant Government contended that, both as a matter of law and practice, the respondent State failed to provide an effective remedy before a national authority which complied either with Article 6 or other requirements which would bring the remedy into line with the requirements of Article 13.

319. The applicant Government relied on Article 13 of the Convention in support of their allegations that Greek Cypriots living in northern Cyprus were denied any opportunity to contest interferences with their rights, including by private persons acting with the acquiescence or encouragement of the "TRNC" authorities.

320. The applicant Government did not dispute the Commission's finding of a violation of Article 13 with respect to the interferences by the "TRNC" authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

321. However, in the applicant Government's view, the Commission had erred in its conclusions that, in respect of interference by private persons with the rights of the enclaved Greek Cypriots to respect for their home (Article 8) and property (Article 1 of Protocol No. 1), Article 13 had not been violated. The applicant Government emphasised that these conclusions overlooked, firstly, the inadequacies of "TRNC" courts from the standpoint of the requirements of Article 6 of the Convention (see paragraphs 83-85 above) and, secondly, the evidentiary test for establishing the existence of an administrative practice of violation of Convention rights (see paragraph 114 above). As to the latter point, the applicant Government maintained that, rather than examining whether there was "substantial evidence" before it which pointed to a pattern or system of non-investigation of criminal acts against the population concerned, and it clearly did, the Commission had wrongly focused on whether there were effective remedies available to aggrieved persons before the "TRNC" courts. The applicant Government contended that the Commission had failed, in particular, to take account of the fact that there was a failure, imputable to the respondent State, to provide effective remedies through tolerance by the authorities of repeated criminal acts against the homes and property of the Greek-Cypriot population, and that failure could not be condoned on the misconceived assumption that the "TRNC" courts existed as a means of redress.

For this reason, the applicant Government requested the Court to declare that Article 13 of the Convention had also been violated in respect of trespass and damage to property by private persons and interferences by them with the right to respect for the home of Greek Cypriots.

322. The Commission recalled its conclusion in respect of the applicant Government's complaint under Article 6 of the Convention (see paragraphs 230-32 above) as well as its decision to consider the issue of whether an effective remedy within the meaning of former Article 26 could be considered to exist in respect of the different allegations advanced by the applicant Government (see paragraphs 86-88 above). With that in mind, the Commission concluded that there had been no violation of Article 13 in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Articles 8 of the Convention and Article 1 of Protocol No. 1, whereas there had been a violation of Article 13 in respect of interferences by the authorities with their rights under Articles 3, 8, 9, and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

323. The Court agrees with the Commission's conclusion. It recalls that it has analysed, in respect of the various allegations advanced by the applicant Government, whether the persons concerned had available to them remedies which were sufficiently certain not only in theory but also in practice and whether there were any special circumstances which might be considered to absolve them from the requirement to exhaust them (see paragraph 99 above). In so doing, the Court has had regard to the burden of proof and how it is distributed between the parties in respect of the exhaustion rule (see paragraph 116 above). In the absence of the respondent Government in the proceedings before it, the Court has had especial regard to the oral and written evidence adduced in the case and has taken due account of the applicant Government's submissions raising points and evidence on which they disagree with the Commission's findings, including the existence of domestic remedies.

324. Notwithstanding the applicant Government's objections to certain of the Commission's conclusions, the Court is led to reaffirm on the evidence its earlier conclusions, which, it recalls, reflect those of the Commission. These are summarised below.

Firstly, the Court finds that no violation of Article 13 of the Convention has been established in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 of the Convention and Article 1 of Protocol No. 1. It recalls in this respect that it has not been shown on the evidence that during the period under consideration there was an administrative practice on the part of the "TRNC" authorities of condoning criminal acts against the homes and property of the enclaved Greek-Cypriot population; nor has it been shown to the required standard of proof that there was an administrative practice of denying aggrieved persons access to a court to assert rights in this connection. In the proceedings before the Commission, the respondent Government produced evidence in support of their contention that court remedies were available and highlighted the successful claims brought by a number of Greek-Cypriot litigants. While observing that neither Article 6 nor Article 13 of the Convention guarantee a successful outcome to an applicant in court proceedings, the Court considers that the applicant Government have failed to rebut the evidence laid before the Commission that aggrieved Greek Cypriots had access to local courts in order to assert civil claims against wrongdoers.

Secondly, it finds that there has been a violation of Article 13 of the Convention in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1. These interferences resulted from an administrative practice of violating the rights at issue; no remedies, or no effective remedies, were available to aggrieved persons.

VI. ALLEGED VIOLATION OF THE RIGHT OF DISPLACED GREEK CYPRIOTS TO HOLD ELECTIONS

325. The applicant Government, in the proceedings before the Commission, claimed that there was a violation of Article 3 of Protocol No. 1 in that displaced Greek Cypriots were prevented from effectively enjoying the right freely to elect representatives in the Cyprus legislature in respect of the occupied territory. The applicant Government did not pursue this complaint before the Court either in their written or oral submissions.

326. The Court, while noting that the Commission did not find on the merits that the provision in question had been violated, does not consider it necessary to examine the complaint, having regard to the fact that the complaint has not been pursued by the applicant Government.

327. The Court concludes, accordingly, that it is not necessary to examine of its own motion whether the facts disclose a violation of Article 3 of Protocol No. 1.

VII. ALLEGED VIOLATIONS IN RESPECT OF THE RIGHTS OF TURKISH CYPRIOTS, INCLUDING MEMBERS OF THE GYPSY COMMUNITY, LIVING IN NORTHERN CYPRUS

328. The applicant Government pleaded that Turkish Cypriots resident in northern Cyprus who were opponents of the "TRNC" regime, as well as members of the Gypsy community living in the north, were victims of major violations of their Convention rights. These violations, they contended, occurred as a matter of administrative practice. The applicant Government pleaded in addition that there were no effective remedies to secure redress in respect of these violations.

329. The applicant Government relied on Articles 3, 5, 6, 8, 10, 11, 13 and 14 of the Convention and Articles 1 and 2 of Protocol No. 1, distinguishing, as appropriate, between alleged violations of the rights of Turkish Cypriots and those of the Gypsy community.

A. Scope of the complaints before the Court

1. The applicant Government's submissions

330. In the applicant Government's submission, the Commission had incorrectly excluded from the scope of its examination on the merits several major complaints on the ground that they had not been raised in specific form at the admissibility stage of the proceedings and were thus not in substance covered by the admissibility decision. The complaints in

question related, *inter alia*, to: pervasive discrimination against and degrading treatment of the Gypsy community, in breach of Article 3; degrading treatment of Turkish Cypriots, including arrests and detention of political opponents and of those who sought asylum in the United Kingdom because of human rights violations, in breach of Article 3; the conferment of extensive jurisdiction on military courts to try civilians, in breach of Article 6; and violations of the right to respect for private and family life and the home of indigenous Turkish Cypriots through a policy of mass settlement and colonisation by mainland Turks, in breach of Article 8.

331. The applicant Government disputed the Commission's approach to the interpretation of the admissibility decision and in particular its view that the above-mentioned complaints were only expanded on at the merits stage. They asserted that all of the above-mentioned issues had either explicitly or by necessary implication been raised as complaints at the admissibility stage. The applicant Government argued that the evidence which they had adduced at the merits stage did not raise new issues but was relevant to the issues or grounds of complaint already raised. They sought support for this view in their contention that the respondent Government had replied to these complaints in their observations of November 1997 and were given until 27 August 1998 by the Commission to forward further observations following Cyprus's submissions on 1 June 1998. They added that the Commission had itself laid down the scope of the complaints to be considered in the mandate which it had assigned to the delegates on 15 September 1997. The applicant Government insisted that all of their complaints were within the scope of the mandate as defined by the Commission.

2. The Court's response

332. The Court notes that the Commission declared admissible complaints introduced by the applicant Government under Articles 5, 6, 10, 11 and 13 of the Convention and Article 1 of Protocol No. 1. These complaints were made with respect to Turkish Cypriots. The Commission also declared admissible complaints under Articles 3, 5 and 8 of the Convention in relation to the treatment of Turkish-Cypriot Gypsies who had sought asylum in the United Kingdom. The Court observes that in respect of all these complaints the applicant Government relied on specific sets of facts in support of their allegations. At the merits stage the applicant Government advanced further materials which, in their view, were intended to elaborate on the facts initially pleaded in support of the complaints declared admissible. However, in the Commission's opinion the materials had the effect of introducing

new complaints which had not been examined at the admissibility stage. For this reason, the Commission could not entertain what it considered to be "additional complaints". The Court notes that the complaints now raised by the applicant Government fall into this category.

333. The Court finds no reason to depart from the Commission's view of the scope of its admissibility decision. It notes in this respect that the Commission carefully examined the materials submitted by the applicant Government in the post-admissibility phase and was anxious not to exclude any further submissions of fact which could reasonably be considered to be inherently covered by its admissibility decision. It is for this reason that the Commission could properly relate the applicant Government's post-admissibility pleadings on various aspects of the alleged treatment of political opponents to the complaint which it had declared admissible under Article 5 of the Convention relating to violation of the security of their person. In a similar vein, the Court also considers that the Commission was justified in rejecting complaints which it clearly felt were new complaints, for example as regards the effects of the respondent State's policy with respect to settlers on the right of the indigenous Turkish Cypriots to respect for their private life.

334. The Court recalls that the Commission's decision declaring an application admissible determines the scope of the case brought before the Court; it is only within the framework so traced that the Court, once a case is duly referred to it, may take cognisance of all questions of fact or of law arising in the course of the proceedings (see *Ireland v. the United Kingdom*, cited above, p. 63, § 157, and *Philis v. Greece*, judgment of 27 August 1991, Series A no. 209, p. 19, § 56). Accordingly, it is the facts as declared admissible by the Commission which are decisive for the Court's jurisdiction (see, for example, *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, p. 223, § 44). Although the Court is empowered to give a characterisation in law to those facts which is different from that applied in the proceedings before the Commission, its jurisdiction cannot extend to considering the merits of new complaints which have not been pleaded at the admissibility stage of the proceedings with reference to supporting facts (see *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, pp. 277-78, § 63); nor is the Court persuaded by the applicant Government's argument that the grounds set out in their original application were closely connected with the ones pleaded at the merits stage but rejected by the Commission.

335. For these reasons, and having regard to the facts and grounds of complaint advanced by the applicant Government at the admissibility stage, the Court confirms the Commission's view of the scope of its admissibility decision. On that account it will not examine any complaints adjudged by the Commission to fall outside the scope of that decision.

B. Establishment of the facts

1. The applicant Government's submissions

336. The applicant Government maintained that the Commission had applied the wrong legal test in determining whether there existed an administrative practice of violating the Convention. They referred in this connection to the Commission's findings that it had not been proved "beyond reasonable doubt", firstly, that there was a practice by the "TRNC" authorities and the courts of refusing legal protection to political opponents; secondly, that there was a practice of discriminating against the Gypsy community or denying them legal protection; and, thirdly, that there was a practice of condoning interferences by criminal conduct with the property of Turkish Cypriots or denying the latter legal protection.

337. In that connection, the applicant Government submitted that it was sufficient under the Convention to establish proof of a practice with reference to the existence of "substantial evidence", which, as regards these three allegations, there clearly was.

338. As to the Commission's evaluation of the evidence, the applicant Government claimed that the value of certain of the Commission's findings of no violation was undermined on account of the limits placed by the Commission's delegates on the number of witnesses who could be heard and the conclusions which the Commission drew from the credibility of those witnesses who did in fact testify.

2. The Court's response

339. The Court reiterates at the outset its earlier conclusion that limits placed by the Commission's delegates on the number of witnesses who could be heard in support of the applicant Government's case did not undermine the principle of procedural equality (see paragraph 110 above). It is the applicant Government's contention that the delegates, by refusing to allow additional witness testimony, denied themselves the opportunity to be apprised fully of the weight of the evidence against the respondent State. However, in the Court's view, the delegates' decision could properly be justified with reference to their perception of relevance and sufficiency of evidence at the time of the hearing of witnesses. The Court sees no reason to doubt that the delegates would have admitted further witnesses had they considered that additional oral testimony would have contributed to the substantiation of the facts as alleged by the applicant Government. Moreover, it does not appear to the Court that the applicant Government pressed their wish to have further witnesses heard by the delegates. The main protest to the arrangements made by the delegates for hearing witnesses came from the respondent

Government's side (see paragraphs 109-10 above). This must be seen as a relevant consideration to be weighed in the balance.

340. The Court is of course attentive to the fact that, unlike the investigation conducted into the situation of the Karpas Greek Cypriots, the Commission's establishment of the facts in respect of the instant category of complaints could not draw on United Nations factual reviews. The Commission relied heavily on the evidence of the witnesses heard by the delegates. It does not appear to the Court that the Commission can be faulted for adopting a cautious approach to the evaluation of witness testimony, having regard to the nature of the allegations made by the applicant Government's witnesses, the inevitable element of subjectivity which colours the evidence of individuals who are impugning a regime with which they profoundly disagree and the testimony of supporters of that regime. In the Court's opinion, the Commission was correct in its decision to base its evaluation mostly on the common points which emerged from the various witnesses' testimony as a whole.

It does not see any reason to depart from the facts as found by the Commission (see paragraphs 52-55 above).

341. The Court will ascertain whether the facts as found disclose a violation of the rights relied on by the applicant Government. As to the standard of proof, it rejects the applicant Government's submissions in this regard and will apply a standard of proof "beyond reasonable doubt".

C. Merits of the applicant Government's complaints

1. Complaints relating to Turkish-Cypriot political opponents

342. The applicant Government alleged that Turkish Cypriots living in northern Cyprus who were political opponents of the "TRNC" regime were subjected to arbitrary arrest and detention, in violation of their rights under Article 5 of the Convention. In addition, they were assaulted, threatened and harassed by third parties, in violation of Article 8 of the Convention. The applicant Government further alleged, with reference to Article 10 of the Convention, that the authorities failed to protect the right to freedom of expression by tolerating third-party constraints on the exercise of this right. These constraints took the form, for example, of denial of employment to political opponents or threats or assaults by private parties against their person. The applicant Government further contended that, as a result of the "TRNC"'s general policy in the area of freedom of movement, the right of political opponents to freedom of association was violated on account of the interferences with their right to gather with Greek Cypriots and others in Cyprus. Finally, the applicant Government asserted that, in view of the aforementioned

background, it had to be concluded that political opponents of the "TRNC" regime were victims of ill-treatment or degrading treatment in breach of Article 3 of the Convention.

343. The applicant Government averred that there was an administrative practice of violation of the above Convention rights and that this was confirmed by the substantial evidence adduced by the witnesses who were heard by the delegates. They maintained that the oral testimony commonly and consistently established administrative practices of the "TRNC" authorities of refusing to protect the rights of political opponents of the ruling parties, irrespective of whether such interferences were caused by third parties or by the authorities themselves.

344. The applicant Government further stated that the Commission had erred in its conclusion that habeas corpus proceedings ought to have been used by victims of unlawful arrest and detention. That remedy, they submitted, could not be considered effective in cases of brief arrests and detention followed by release, all the more so since detainees had no access to a lawyer. Nor could the possibility of seeking a remedy *ipso facto* prevent the finding of an administrative practice of violation of Convention rights. In the applicant Government's submission, the Commission's focus should have been on the tolerance by the authorities of repeated abuse of the rights of political opponents under Articles 5, 8, 10 and 11 of the Convention. For the applicant Government, the practice which they alleged was based on that state of affairs, not on the non-availability of judicial remedies.

345. The Commission concluded that there had been no violation of the rights relied on by the applicant Government by reason of failure to protect these rights. The Commission observed that it could not be excluded that in individual cases there had been interferences by the authorities with the rights of Turkish Cypriots by reason of their political opposition to the ruling parties in northern Cyprus. However, it also noted that the individuals concerned did not attempt to seek redress for their grievances, for example by making use of the remedy of habeas corpus to challenge the lawfulness of their arrest or detention. For the Commission, it had not been shown beyond reasonable doubt that all of the available remedies would have been ineffective.

346. The Court accepts the Commission's conclusion. Its own assessment of the evidence leads it to believe that there may have been individual cases of interferences with the rights of political opponents. However, it cannot conclude on the strength of that evidence that there existed during the period under consideration an administrative practice of suppressing all dissent directed at the "TRNC" ruling parties or an official policy of acquiescing in interferences by pro-"TRNC" supporters with the rights relied on by the applicant Government. The Court must

have regard to the fact that the complaints of the applicant Government are framed in a vulnerable political context bolstered by a strong Turkish military presence and characterised by social rivalry between Turkish settlers and the indigenous population. Such a context has lead to tension and, regrettably, to acts on the part of the agents of the "TRNC" which violate Convention rights in individual cases. However, the Court considers that neither the evidence adduced by the applicant Government before the Commission nor their criticism of the Commission's evaluation of that evidence can be said to controvert the finding that it has not been shown beyond reasonable doubt that the alleged practice existed during the period under consideration.

347. The Court further notes that the Commission observed that aggrieved individuals did not test the effectiveness of remedies available in the "TRNC" legal system in order to secure redress for their complaints. The Court, for its part, considers that the respondent Government, in their submissions to the Commission, made out a case for the availability of remedies, including the remedy of habeas corpus. It is not persuaded on the evidence before it that it has been shown that these remedies were inadequate and ineffective in respect of the matters complained of or that there existed special circumstances absolving the individuals in question from the requirement to avail themselves of these remedies. In particular, and as previously noted, the evidence does not show to the Court's satisfaction that the "TRNC" authorities have, as a matter of administrative practice, remained totally passive in the face of serious allegations of misconduct or infliction of harm either by State agents or private parties acting with impunity (see, *mutatis mutandis*, *Akdivar and Others*, cited above, p. 1211, § 68; and paragraph 115 above, *in fine*).

348. Having regard to the above considerations, the Court concludes that it has not been established that, during the period under consideration, there has been an administrative practice of violation of the rights of Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10 and 11 of the Convention, including by reason of an alleged practice of failing to protect their rights under these provisions.

2. Complaints relating to the Turkish-Cypriot Gypsy community

349. The applicant Government stated that the Gypsy community living in northern Cyprus was subjected, as a matter of practice, to discriminatory and degrading treatment so extensive that many Gypsies were compelled to seek political asylum in the United Kingdom. The applicant Government relied on Articles 3, 5, 8 and 14 of the Convention.

350. The applicant Government submitted that the Commission had erred in finding that members of the Gypsy community who had experienced hardship had not exhausted domestic remedies. They contended that the evidence heard by the delegates confirmed that Gypsies could not afford litigation and that legal aid was not available to them for civil proceedings. In any event, the allegation at issue concerned a continuing administrative practice of discriminatory and degrading treatment of the Gypsy community, and substantial evidence of such had been adduced. The Commission had wrongly focused on the availability of remedies with reference to the "beyond reasonable doubt" test rather than on the key issue of whether there was substantial evidence of an administrative practice of discriminatory and degrading treatment against the Gypsy community.

351. The Commission observed that individual members of the Gypsy community had experienced hardship during the period under consideration. It referred in this connection to the demolition of the shacks of a Gypsy community near Morphou on the order of the local authority, the refusal of airline companies to transport Gypsies without a visa and humiliation of Gypsy children at school. However, in the Commission's conclusion the aggrieved persons had not exhausted available domestic remedies and it had not been established beyond reasonable doubt that there was a deliberate practice to discriminate against Gypsies or withhold protection against social discrimination. The Commission accordingly found that there had been no violation of Articles 3, 5, 8 and 14 of the Convention.

352. The Court observes that members of the Turkish-Cypriot Gypsy community have suffered hardship at the hands of the "TRNC" authorities. It refers in this respect to the instances identified by the Commission (see paragraph 54 above). However, the Court does not consider that these individual cases bear out the claim that there existed during the period under consideration an administrative practice of violating the rights relied on by the applicant Government. It further observes that it does not appear that any of the members of the Turkish-Cypriot Gypsy community who claim to have suffered at the hands of the "TRNC" authorities sought to make use of remedies before the local courts, for example a claim for damages in respect of the demolition of the Gypsy shacks near Morphou. The Court does not accept the applicant Government's assertion that the unavailability of legal aid in the "TRNC" for the bringing of civil actions exonerated aggrieved individuals from the requirement to use domestic remedies. It notes that there is no Convention obligation as such on a Contracting State to operate a civil legal aid system for the benefit of indigent litigants. What is important for the Court is the fact that it does not appear that any attempt has been made to bring any legal proceedings

whatsoever in respect of the matters alleged by the applicant Government.

353. The Court concludes that it has not been established that, during the period under consideration, there has been a violation as a matter of administrative practice of the rights of members of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8 and 14 of the Convention, including by reason of an alleged practice of failing to protect their rights under these Articles.

3. Alleged violation of Article 6 of the Convention

354. The applicant Government contended that the "TRNC" authorities, as a matter of law and practice, violated Article 6 of the Convention in that civil rights and obligations and criminal charges against persons could not be determined by an independent and impartial tribunal established by law within the meaning of that provision. The applicant Government reiterated in this connection their view as to the illegality of the context in which "TRNC" courts operated (see paragraphs 83-85 above).

355. The applicant Government further submitted that the "TRNC" authorities operated a system of military courts which had jurisdiction to try cases against civilians in respect of matters categorised as military offences. In their view, it followed from the Court's judgment in *Incal v. Turkey* (9 June 1998, *Reports* 1998-IV) that a civilian tried before a military court was denied a fair hearing before an independent and impartial tribunal. The jurisdiction of the military courts in this respect was laid down in "Article 156 of the TRNC Constitution", with the result that their composition could not be challenged. The applicant Government maintained that the Commission should have found a violation of Article 6 on account of the existence of a legislative practice of violation rather than concentrating on the issue as to whether there was evidence of any particular proceedings before military courts involving civilians. They further stressed that, contrary to the Commission's conclusion on this point, the evidence adduced before the Commission provided concrete examples of civilians having been tried and convicted before military courts. This evidence was regrettably overlooked in the Commission's assessment.

356. The Commission did not find it established on the facts that military courts tried any civilians during the period under consideration. On that account, it concluded that there had been no violation of Article 6 of the Convention.

357. The Court considers that it does not have to be satisfied on the evidence that there was an administrative practice of trying civilians before military courts in the "TRNC". It observes that the applicant

Government complain about the existence of a legislative practice of violating Article 6, having regard to the clear terms of "Article 156 of the TRNC Constitution" and the "Prohibited Military Areas Decree" (see paragraph 355 above). It recalls in this connection that in *Ireland v. the United Kingdom*, the Court considered that, unlike individual applicants, a Contracting State was entitled to challenge under the Convention a law *in abstracto* having regard to the fact that former Article 24 (current Article 33) of the Convention enabled any Contracting State to refer to the Commission any alleged breach of the provisions of the Convention and the Protocols thereto by another Contracting State (see *Ireland v. the United Kingdom*, cited above, p. 91, § 240). In the same judgment, the Court found that a "breach" within the meaning of former Article 24 (current Article 33) resulted from the mere existence of a law which introduced, directed or authorised measures incompatible with the rights and freedoms safeguarded. The Court further stated that a breach of this kind might only be found if the law challenged pursuant to former Article 24 (current Article 33) was couched in terms sufficiently clear and precise to make the breach immediately apparent; otherwise, the decision should be arrived at by reference to the manner in which the respondent State interpreted and applied *in concreto* the impugned text or texts (ibid.).

358. For the Court, examination *in abstracto* of the impugned "constitutional provision" and the "Prohibited Military Areas Decree" leads it to conclude that these texts clearly introduced and authorised the trial of civilians by military courts. It considers that there is no reason to doubt that these courts suffer from the same lack of independence and impartiality as was highlighted in *Incal* in respect of the system of National Security Courts established in Turkey by the respondent State (op. cit., pp. 1572-73, §§ 70-72), having regard in particular to the close structural links between the executive power and the military officers serving on the "TRNC" military courts. In the Court's view, civilians in the "TRNC" accused of acts characterised as military offences before such courts could legitimately fear that they lacked independence and impartiality.

359. For the above reasons, the Court finds that there has been a violation of Article 6 of the Convention on account of the legislative practice of authorising the trial of civilians by military courts.

4. Alleged violation of Article 10 of the Convention

360. The applicant Government complained in the proceedings before the Commission that the right of Turkish Cypriots living in northern Cyprus to receive information was violated on account of a prohibition on

the circulation of Greek-language newspapers. The applicant Government did not revert to this complaint in their memorial or at the hearing.

361. The Commission found, with reference to a similar complaint raised in the context of the living conditions of the Karpas Greek Cypriots, that the alleged restrictions on the circulation of Greek-language newspapers in northern Cyprus had not been substantiated.

362. The Court agrees with the Commission's conclusion and notes that it is consistent with the finding reached on the evidence in connection with the alleged breach of Article 10 with respect to the enclaved Greek-Cypriot population (see paragraphs 253-54 above).

363. The Court holds, accordingly, that no violation of Article 10 of the Convention has been established by virtue of alleged restrictions on the right of Turkish Cypriots living in northern Cyprus to receive information through the Greek-language press.

5. Alleged violation of Article 11 of the Convention

364. The applicant Government stated that, as a result of the "TRNC"'s general policy in the area of freedom of movement, there was an administrative practice of interference, dating from 1974, with the right of Turkish Cypriots living in the north to meet or foregather with Greek Cypriots and others in Cyprus, particularly in the United Nations buffer-zone and in the government-controlled area.

365. The applicant Government highlighted several instances of arbitrary restrictions being imposed on persons wishing to attend bi-communal meetings, including sports and music events. They drew attention to their claim that the respondent Government had themselves in their observations on the admissibility and merits of this complaint submitted evidence to the Commission of the administrative practice of imposing from 1994 through to 1996 continuing restrictions on the right of Turkish Cypriots to travel to the south. This period, they recalled, was the period under consideration.

366. The applicant Government acknowledged that the original complaint formulated to the Commission was framed in terms of an administrative practice of interference with the right of Turkish Cypriots living in the north to freedom of association. They requested the Court to examine also the complaint in the terms described above. As to the restrictions on the right to freedom of association, they contended that the evidence heard by the delegates clearly established a violation of this right. They further observed in support of this allegation that "Articles 12 and 71 of the TRNC Constitution" precluded the formation of associations to promote the interests of minorities. In their view, the existence of such a prohibition should in itself be considered a violation of Article 11 of the Convention.

367. The Commission observed that nothing was brought to its attention to the effect that during the period under consideration there had been attempts by Turkish Cypriots living in northern Cyprus to establish associations with Greek Cypriots in the northern or southern parts of Cyprus which were prevented by the authorities. On that account, the Commission found the complaint to be unsubstantiated.

368. As to impediments to participation by Turkish Cypriots in bi-communal events, the Commission noted that, according to relevant United Nations documents, certain restrictions had been placed in the way of inter-communal meetings as from the second half of 1996. In the Commission's opinion, any complaint to that effect related to distinct facts which occurred after the date of the admissibility decision. For that reason, a complaint could not be entertained.

369. The Court recalls that it has accepted the facts as established by the Commission (see paragraphs 339-40 above). It does not consider that, on the basis of the evidence before it, there was, during the period under consideration, an administrative practice of impeding all bi-communal contacts between Turkish Cypriots living in the north and Greek Cypriots in the south. The Court notes that the "TRNC" authorities took a much more rigorous approach to such contacts after the second half of 1996, and indeed prohibited them. However, and as noted by the Commission, alleged violations of Convention rights occurring during that period are outside the scope of the admissibility decision (see paragraph 368 above).

370. As to the alleged interference with the right of Turkish Cypriots living in the north to freedom of association, the Court observes that the Commission found on the evidence that the "TRNC" authorities had not made any attempt to intervene to prevent the creation of bi-communal organisations in the north of Cyprus. In the absence of any concrete evidence to the contrary, and having regard to the requisite standard of proof for establishing the existence of an administrative practice of violating a Convention right, the Court concludes that there has been no violation of Article 11 from this standpoint either.

371. The Court finds, therefore, that it has not been established that there has been a violation, as a matter of administrative practice, of the right to freedom of association or assembly under Article 11 of the Convention in respect of Turkish Cypriots living in northern Cyprus.

6. Alleged violation of Article 1 of Protocol No. 1

372. The applicant Government maintained in the proceedings before the Commission that there was a continuing violation of Article 1 of Protocol No. 1, firstly, on account of the failure of the "TRNC" authorities to allow Turkish Cypriots living in northern Cyprus to return

to their property in the south and, secondly, as a result of the tolerance shown by the same authorities to acts of criminal damage to the property of Turkish Cypriots committed by private parties.

373. The applicant Government stated before the Court that, regarding the second complaint, the Commission wrongly concluded that it had not been established that there existed an administrative practice by the "TRNC" authorities of systematically condoning third-party interferences with the property of Turkish Cypriots. The applicant Government did not revert to the first complaint either in their memorial or at the hearing.

374. The Commission found that no cases were brought to its attention where during the period under consideration Turkish Cypriots living in northern Cyprus made attempts to access their property in the south and were prevented from doing so. The complaint was therefore rejected for want of substantiation. As to the alleged unlawful interference by private persons with the property of Turkish Cypriots living in northern Cyprus, the Commission considered, firstly, that sufficient remedies existed to secure redress against such interferences and, secondly, that it was not established that there existed an administrative practice of condoning the interferences.

375. The Court accepts the Commission's conclusion. It observes in the first place that the applicant Government have not improved the case they sought to make out before the Commission concerning the alleged obstacles placed by the "TRNC" authorities in the way of Turkish Cypriots who wished to return to their homes in the south. No further evidence has been adduced before the Court of Turkish Cypriots living in the north who, during the period under consideration, have been prevented from having access to their property in the south on account of the functioning of "TRNC" restrictions on freedom of movement.

376. Secondly, and as to the alleged attacks by private parties on the property of Turkish Cypriots, the Court considers that the evidence relied on by the applicant Government does not bear out their claim that the "TRNC" authorities tolerate, encourage or in any way acquiesce in this form of criminality. The Court accepts on the evidence that it cannot be excluded that such incidents have occurred. However, that evidence does not substantiate the existence of an administrative practice of violation of Article 1 of Protocol No. 1.

377. In view of the above considerations, the Court concludes that it has not been established that there has been a violation of Article 1 of Protocol No. 1 by reason of the alleged administrative practice of violating that Article, including by reason of failure to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus.

7. Alleged violation of Article 13 of the Convention

378. The applicant Government challenged the Commission's finding that there had been no violation of Article 13 of the Convention by reason of failure to secure effective remedies to Turkish Cypriots living in northern Cyprus. The applicant Government reiterated their view (see paragraphs 83-85 above) that the legal remedies which were claimed to be available did not satisfy the basic requirements of Article 6 and, as a consequence, could not be considered to be "effective" within the meaning of Article 13.

379. Furthermore, the applicant Government reasserted their view (see paragraphs 336-37 above) that the Commission had erroneously relied on the "beyond reasonable doubt" standard in ascertaining whether there was an administrative practice of withholding legal remedies from certain groups of persons. Had it applied the correct standard, namely that of "substantial evidence", it would have been compelled to reach a different conclusion.

380. For the above reasons, the applicant Government requested the Court to depart from the Commission's finding and to rule that the respondent State, as a matter of law and practice, violated Article 13 by reason of its failure to provide an effective remedy before a national authority to the Gypsy community and political opponents of Turkey's policy in Cyprus.

381. The Commission considered that, generally speaking, the remedies provided by the "TRNC" legal system appeared sufficient to provide redress against any alleged violation of Convention rights in respect of the groups at issue and that the applicant Government had not substantiated their allegation concerning the existence of a practice of violating Article 13. It thus concluded that there had been no violation of Article 13 during the period under consideration.

382. The Court recalls that, as regards their allegations concerning political opponents (see paragraphs 342-44 above) and the Gypsy community (see paragraphs 349-50 above), it considered that the applicant Government had not succeeded in refuting the respondent Government's submissions in the proceedings before the Commission that remedies were available to aggrieved individuals within the "TRNC" legal system. The Court was not persuaded that any attempt to make use of a remedy was doomed to failure. On that account, the Court could not accept the applicant Government's allegation that there was an administrative practice of denying remedies to individuals, in breach of Article 13 of the Convention. The evidence before the Court in this connection cannot be said to prove beyond reasonable doubt the existence of any such practice.

383. The Court accordingly concludes that no violation of Article 13 of the Convention has been established by reason of a failure as a matter of

administrative practice to secure effective remedies to Turkish Cypriots living in northern Cyprus.

VIII. ALLEGED VIOLATIONS OF ARTICLES 1, 17, 18 AND FORMER ARTICLE 32 § 4 OF THE CONVENTION

384. The applicant Government requested the Court to find violations of Articles 1, 17, 18 and former Article 32 § 4 of the Convention. Article 1 provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Former Article 32 § 4 of the Convention provides:

> "The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs."

385. The applicant Government contended that, in view of the comprehensive and massive violations of the Convention committed by the respondent State, it would be appropriate in this case for the Court to find a violation of Article 1.

386. The applicant Government further submitted that the facts disclosed that the respondent State in reality controlled Greek-Cypriot property in the north in pursuance of a policy of ethnic cleansing. The respondent State's resettlement programme was also a clear manifestation of this policy. However, the respondent State sought to conceal its real aim with reference to the limitations on rights permitted under Article 8 § 2 or Article 1 of Protocol No. 1. The applicant Government submitted that the respondent State must be considered in the circumstances to have violated Articles 17 and 18 of the Convention.

387. The applicant Government finally submitted that the respondent State had failed to put an end to the violations of the Convention established in the Commission's 1976 report as requested in the Committee of Ministers' decision of 21 October 1977 (see paragraph 17 above). The applicant Government stated that the Court should note any continuing violations of the Convention which it found had continued after that decision. They also submitted that the Court should consider it to be a further aggravating factor that violations of the Convention had continued for more than twenty years and that the respondent State's official policy had directly resulted in violations after the Committee of Ministers' decision.

388. The Court considers that it is unnecessary in the circumstances to examine separately these complaints. It further recalls that, regarding the

applicant Government's complaints under Articles 17 and 18, it reached the same conclusion in the context of similar allegations made with respect to alleged interferences with the rights of Greek-Cypriot displaced persons' property (see paragraph 206 above).

FOR THESE REASONS, THE COURT

I. PRELIMINARY ISSUES

1. *Holds* unanimously that it has jurisdiction to examine the preliminary issues raised in the proceedings before the Commission (paragraphs 56-58);

2. *Holds* unanimously that the applicant Government have *locus standi* to bring the application (paragraph 62);

3. *Holds* unanimously that the applicant Government have a legitimate legal interest in having the merits of the application examined (paragraph 68);

4. *Holds* by sixteen votes to one that the facts complained of in the application fall within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State's responsibility under the Convention (paragraph 80);

5. *Holds* by ten votes to seven that, for the purposes of former Article 26 (current Article 35 § 1) of the Convention, remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of these remedies is to be considered in the specific circumstances where it arises (paragraph 102);

6. *Holds* unanimously that situations which ended more than six months before the date of introduction of the present application (22 May 1994) fall outside the scope of the Court's examination (paragraph 104).

II. ALLEGED VIOLATIONS OF THE RIGHTS OF GREEK-CYPRIOT MISSING PERSONS AND THEIR RELATIVES

1. *Holds* unanimously that there has been no breach of Article 2 of the Convention by reason of an alleged violation of a substantive obligation under that Article in respect of any of the missing persons (paragraph 130).

2. *Holds* by sixteen votes to one that there has been a continuing violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances (paragraph 136);

3. *Holds* unanimously that no breach of Article 4 of the Convention has been established (paragraph 141);

4. *Holds* by sixteen votes to one that there has been a continuing violation of Article 5 of the Convention by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there is an arguable claim that they were in Turkish custody at the time of their disappearance (paragraph 150);

5. *Holds* unanimously that no breach of Article 5 of the Convention has been established by virtue of the alleged actual detention of Greek-Cypriot missing persons (paragraph 151);

6. *Holds* unanimously that it is not necessary to examine the applicant Government's complaints under Articles 3, 6, 8, 13, 14 and 17 of the Convention in respect of the Greek-Cypriot missing persons (paragraph 153);

7. *Holds* by sixteen votes to one that there has been a continuing violation of Article 3 of the Convention in respect of the relatives of the Greek-Cypriot missing persons (paragraph 158);

8. *Holds* unanimously that it is not necessary to examine whether Articles 8 and 10 of the Convention have been violated in respect of the relatives of the Greek-Cypriot missing persons, having regard to the Court's conclusion under Article 3 (paragraph 161).

III. ALLEGED VIOLATIONS OF THE RIGHTS OF DISPLACED PERSONS TO RESPECT FOR THEIR HOME AND PROPERTY

1. *Holds* by sixteen votes to one that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus (paragraph 175);

2. *Holds* unanimously that, having regard to its finding of a continuing violation of Article 8 of the Convention, it is not necessary to examine

whether there has been a further violation of that Article by reason of the alleged manipulation of the demographic and cultural environment of the Greek-Cypriot displaced persons' homes in northern Cyprus (paragraph 176);

3. *Holds* unanimously that the applicant Government's complaint under Article 8 of the Convention concerning the interference with the right to respect for family life on account of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus falls to be considered in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots (paragraph 177);

4. *Holds* by sixteen votes to one that there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights (paragraph 189);

5. *Holds* by sixteen votes to one that there has been a violation of Article 13 of the Convention by reason of the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1 (paragraph 194);

6. *Holds* unanimously that it is not necessary to examine whether in this case there has been a violation of Article 14 of the Convention taken in conjunction with Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1, by virtue of the alleged discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for their homes, to the peaceful enjoyment of their possessions and to an effective remedy (paragraph 199);

7. *Holds* unanimously that it is not necessary to examine whether the alleged discriminatory treatment of Greek-Cypriot displaced persons also gives rise to a breach of Article 3 of the Convention, having regard to its conclusions under Articles 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 (paragraph 203);

8. *Holds* unanimously that it is not necessary to examine separately the applicant Government's complaints under Articles 17 and 18 of the Convention, having regard to its findings under Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 (paragraph 206).

IV. ALLEGED VIOLATIONS ARISING OUT OF THE LIVING CONDITIONS OF GREEK CYPRIOTS IN NORTHERN CYPRUS

1. *Holds* by sixteen votes to one that no violation of Article 2 of the Convention has been established by reason of an alleged practice of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus (paragraph 221);

2. *Holds* by sixteen votes to one that there has been no violation of Article 5 of the Convention (paragraph 227);

3. *Holds* by eleven votes to six that no violation of Article 6 of the Convention has been established in respect of Greek Cypriots living in northern Cyprus by reason of an alleged practice of denying them a fair hearing by an independent and impartial tribunal in the determination of their civil rights and obligations (paragraph 240);

4. *Holds* by sixteen votes to one that there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus (paragraph 246);

5. *Holds* unanimously that no violation of Article 9 of the Convention has been established in respect of Maronites living in northern Cyprus (paragraph 247);

6. *Holds* by sixteen votes to one that there has been a violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subjected to excessive measures of censorship (paragraph 254);

7. *Holds* unanimously that no violation of Article 11 of the Convention has been established by reason of an alleged practice of denying Greek Cypriots living in northern Cyprus the right to freedom of association (paragraph 263);

8. *Holds* unanimously that the applicant Government's complaint under Article 8 of the Convention in respect of an alleged practice of restricting the participation of Greek Cypriots living in northern Cyprus in bi-communal or inter-communal events falls to be considered in the context of the global assessment of whether or not there has been a violation of that Article (paragraph 262);

9. *Holds* by sixteen votes to one that there has been a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised (paragraphs 269-70);

10. *Holds* unanimously that no violation of Article 1 of Protocol No. 1 has been established by virtue of an alleged practice of failing to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons (paragraph 272);

11. *Holds* by sixteen votes to one that there has been a violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them (paragraph 280);

12. *Holds* by sixteen votes to one that, from an overall standpoint, there has been a violation of the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention (paragraphs 296 and 301);

13. *Holds* unanimously that no violation of Article 8 of the Convention has been established by reason of an alleged practice of interference with the right of Greek Cypriots living in northern Cyprus to respect for their correspondence (paragraph 298);

14. *Holds* unanimously that it is not necessary to examine separately the applicant Government's complaint under Article 8 of the Convention concerning the effect of the respondent State's alleged colonisation policy on the demographic and cultural environment of the Greek Cypriots' homes, having regard to its overall assessment of the latter population's living conditions under that Article (paragraph 301);

15. *Holds* by sixteen votes to one that there has been a violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment (paragraph 311);

16. *Holds* unanimously that it is not necessary to examine whether there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 in respect of Greek Cypriots living in northern Cyprus, having regard to its finding under Article 3 (paragraph 315);

17. *Holds* by fourteen votes to three that, having regard to the particular circumstances of this case, it is not necessary to examine whether there has been a breach of Article 14 of the Convention taken in conjunction with the other relevant Articles (paragraph 317);

18. *Holds* by eleven votes to six that no violation of Article 13 of the Convention has been established by reason of the alleged absence of remedies in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 of the Convention and Article 1 of Protocol No. 1 (paragraph 324);

19. *Holds* by sixteen votes to one that there has been a violation of Article 13 of the Convention by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1 (paragraph 324).

V. ALLEGED VIOLATION OF THE RIGHT OF DISPLACED GREEK CYPRIOTS TO HOLD ELECTIONS

Holds unanimously that it is not necessary to examine whether the facts disclose a violation of the right of displaced Greek Cypriots to hold free elections, as guaranteed by Article 3 of Protocol No. 1 (paragraph 327).

VI. ALLEGED VIOLATIONS IN RESPECT OF THE RIGHTS OF TURKISH CYPRIOTS, INCLUDING MEMBERS OF THE GYPSY COMMUNITY, LIVING IN NORTHERN CYPRUS

1. *Holds* unanimously that it declines jurisdiction to examine those aspects of the applicant Government's complaints under Articles 6, 8, 10 and 11 of the Convention in respect of political opponents of the regime in the "TRNC" as well as their complaints under Articles 1 and 2 of Protocol No. 1 in respect of the Turkish-Cypriot Gypsy community, which were held by the Commission not to be within the scope of the case as declared admissible (paragraph 335);

2. *Holds* unanimously that no violation of the rights of Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10 and 11 of the Convention has been established by reason of an alleged administrative practice, including an alleged practice of failing to protect their rights under these Articles (paragraph 348);

3. *Holds* by sixteen votes to one that no violation of the rights of members of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8 and 14 of the Convention has been established by reason of an alleged administrative practice, including an alleged practice of failing to protect their rights under these Articles (paragraph 353);

4. *Holds* by sixteen votes to one that there has been a violation of Article 6 of the Convention on account of the legislative practice of authorising the trial of civilians by military courts (paragraph 359);

5. *Holds* unanimously that no violation of Article 10 of the Convention has been established by reason of an alleged practice of restricting the right of Turkish Cypriots living in northern Cyprus to receive information through the Greek-language press (paragraph 363);

6. *Holds* unanimously that no violation of Article 11 of the Convention has been established by reason of an alleged practice of interference with the right to freedom of association or assembly of Turkish Cypriots living in northern Cyprus (paragraph 371);

7. *Holds* unanimously that no violation of Article 1 of Protocol No. 1 has been established by reason of an alleged administrative practice, including an alleged practice of failing to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus (paragraph 377);

8. *Holds* by eleven votes to six that no violation of Article 13 of the Convention has been established by reason of an alleged practice of failing to secure effective remedies to Turkish Cypriots living in northern Cyprus (paragraph 383).

VII. ALLEGED VIOLATIONS OF OTHER ARTICLES OF THE CONVENTION

Holds unanimously that it is not necessary to examine separately the applicant Government's complaints under Articles 1, 17, 18 and former Article 32 § 4 of the Convention (paragraph 388).

VIII. THE ISSUE OF ARTICLE 41 OF THE CONVENTION

Holds unanimously that the issue of the possible application of Article 41 of the Convention is not ready for decision and *adjourns* consideration thereof.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 May 2001.

Luzius WILDHABER
President

Michele DE SALVIA
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly dissenting opinion of Mrs Palm joined by Mr Jungwiert, Mr Levits, Mr Panţîru, Mr Kovler and Mr Marcus-Helmons;

(b) partly dissenting opinion of Mr Costa;

(c) partly dissenting opinion of Mr Fuad;

(d) partly dissenting opinion of Mr Marcus-Helmons.

L.W.
M. de S.

PARTLY DISSENTING OPINION OF JUDGE PALM JOINED BY JUDGES JUNGWIERT, LEVITS, PANŢÎRU, KOVLER AND MARCUS-HELMONS

While sharing most of the Court's conclusions in this complex case, I feel obliged to record my dissent in respect of one major issue: the significance attached by the Court to the existence of a system of remedies within the "TRNC". I consider the Court's approach to this question to be so misguided that it taints the judgment as a whole. For the reasons developed below, this is especially unfortunate since it was open to the Court to carry out its task by avoiding this particular entanglement in a manner perfectly consonant with its principles and its case-law.

In *Loizidou v. Turkey* (merits) (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), the Court found that Article 159 of the fundamental law was to be considered as invalid against the background of the refusal of the international community to regard the "TRNC" as a State under international law. It did not "consider it desirable, let alone necessary ... to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the 'TRNC'" (p. 2231, §§ 44-45). The Court was obviously concerned to limit its reasoning to what was essential for the decision of the case before it and to avoid straying into areas of particular complexity and delicacy concerning the "legality" of acts of an "outlaw" regime. It is my firm view that the Court should be equally careful in the present case to avoid elaborating a general theory concerning the validity and effectiveness of remedies in the "TRNC", particularly if it is to be built around the minimalist remarks of the International Court of Justice (ICJ) in its Advisory Opinion on Namibia which the Court in *Loizidou* saw fit not to interpret or to explicate any further than necessary.

Such a policy of judicial restraint in this area is supported by three main considerations. In the first place, any consideration of remedies gives rise to the obvious difficulty that the entire court system in the "TRNC" derives its legal authority from constitutional provisions whose validity the Court cannot recognise – for the same reasons that it could not recognise Article 159 in *Loizidou* – without conferring a degree of legitimacy on an entity from which the international community has withheld recognition. An international court should not consider itself free to disregard either the consistent practice of States in this respect or the repeated calls of the international community not to facilitate the entity's assertion of statehood. Secondly, the Court cannot examine the remedies of the "TRNC" in a vacuum, as if it were a normal Contracting

Party, where it can be assumed that courts are "established by law" or that judges are independent and impartial (failing evidence to the contrary). To attribute legal validity to court remedies necessarily involves the Court taking a stand on whether the courts are "established by law" – something the Court should avoid doing if it is to respect the illegal status of the "TRNC" regime and the declared stance of the international community. It is true that the concept of "established by law" is an autonomous one. However, the Court should avoid putting itself in a position where, for supposedly laudable reasons, it is tempted to fashion a semblance of legality out of a clearly illegal situation. Thirdly, the Court should constantly bear in mind that Turkey herself does not claim that the "remedies" in question are Turkish remedies, since the thrust of her arguments throughout this dispute is that the "TRNC" is an independent State responsible for the operation of its own legal system. The Court is thus confronted with the paradox that in its submissions the respondent State is advancing "remedies" that belong supposedly to another legal system. The artificiality of this approach which reflects the reality that the "TRNC" has no standing in the international community or indeed before the Court and is recognised by Turkey alone is, in itself, a reason for the Court to exercise great caution before giving a broad ruling on the status of such "remedies" under the Convention.

Of course, I accept that even in a situation of illegality it is clearly in the interests of the inhabitants that some form of court system is set up to enable basic everyday disputes to be settled by a source of authority. Moreover, it is not to be excluded that the decisions of such courts, particularly in civil matters – divorce, custody arrangements, contracts and the like – could be recognised by the courts of other countries. Such recognition has indeed occurred from time to time, notably after the situation of illegality has ended. However, it is precisely because of the importance of such arrangements for the local population – if the situation permits that recourse be had to them – that an international court should be reluctant to venture into any examination of their legality unless it is strictly necessary to do so. Any other approach may ultimately be harmful to the *de facto* utility of such a system. For example, a finding of "illegality" may discourage the use of such fora to settle disputes. Equally, a finding upholding the lawfulness of such arrangements in the present case could give rise to a call by the legitimate Cypriot government that such tribunals be shunned by the Greek-Cypriot community so as not to compromise the government's internationally asserted claim of illegality. The Court should not assume too readily that it is acting for the benefit of the local population in addressing the legality of such arrangements.

However, I should emphasise at the outset that it does not follow from my acceptance of the utility of a local court system that this Court should

require applicants in northern Cyprus complaining of human rights violations to exhaust these possible avenues of redress – or those avenues which the Court considers to be effective – before it has jurisdiction to examine their complaints. Episodic recognition by foreign courts is one thing. The exhaustion requirement is another. To require those subject to the exigencies of an occupying authority to have recourse to the courts as a precondition to having their complaints of human rights violations examined by this Court is surely an unrealistic proposition given the obvious and justifiable lack of confidence in such a system of administration of justice.

In the present judgment, the Court unwisely embarks on the elaboration of a general theory of remedies in the "TRNC" constructed around the brief remarks of the ICJ in its Advisory Opinion on Namibia (see paragraphs 89-102) and reaches the general conclusion in paragraph 102 that "for the purposes of former Article 26 ..., remedies available in northern Cyprus may be regarded as 'domestic remedies' of the respondent State". This gives rise to two major difficulties. The first is that such a theory in the present case is not at all necessary since the Court does not in fact at any stage reject a complaint under former Article 26 for failure to exhaust domestic remedies! It limits itself to using these considerations only indirectly when considering the effectiveness of remedies from the standpoint of Article 13 and the issue of official tolerance as an element of the concept of administrative practice. The fifth point of the operative provisions on preliminary issues is thus both unnecessary and over-broad.

More importantly, such a general conclusion has as a direct consequence that the European Court of Human Rights may recognise as legally valid decisions of the "TRNC" courts and, implicitly, the provisions of the Constitution instituting the court system. Such an acknowledgment, notwithstanding the Court's constant assertions to the contrary, can only serve to undermine the firm position taken by the international community which, through the United Nations Security Council, has declared the proclamation of the "TRNC"'s statehood "legally invalid" and which has stood firm in withholding recognition from the "TRNC". It also runs counter to the position taken by the Committee of Ministers of the Council of Europe (see paragraph 14 of the judgment and paragraphs 19-23 of the *Loizidou* judgment) and to the terms of various resolutions calling upon States "not to facilitate or in any way assist the illegal secessionist entity" (see in particular paragraphs 20 and 23 of the *Loizidou* judgment). It is my view that an international court should be extremely hesitant before adopting a position which goes so firmly against the grain of international practice – particularly when this is not at all necessary for the disposal of the case before it. The cautious position adopted by the Court in paragraph 45 of its *Loizidou* judgment is a telling example of the wisdom of such an approach.

It remains to explain why it is not necessary for the Court to express any view on the legal significance of the remedies in northern Cyprus in order to decide the present case. I propose to examine in this context the complaints where the Court took into account the existence of remedies in order to reach its conclusion – namely those under Articles 6 and 13 as regards the Greek-Cypriot community in northern Cyprus (paragraphs 233-40 and 324 of the judgment), complaints concerning Turkish-Cypriot political opponents and Gypsies (paragraphs 342-53 of the judgment) and the alleged violation of Article 13 in respect of these complaints (paragraphs 378-83 of the judgment).

1. Articles 6 and 13

The Court reaches the conclusion that no violation of Article 6 has been established "by reason of an alleged practice" as regards the claim that the members of the enclaved Greek-Cypriot population were denied the right to have their civil rights and obligations determined by independent and impartial courts established by law (paragraphs 233-40 of the judgment). In doing so, it endorsed the Commission's conclusion on the facts that there was nothing in the framework of the "TRNC" legal system to cast doubt on the independence and impartiality of the judges and that the courts functioned on the basis of the domestic law of the "TRNC".

Apart from the difficulties inherent in the recognition of the "TRNC" framework which I have alluded to above, the conclusion reached sits ill with the Court's general findings in respect of the enclaved Greek-Cypriot community of multiple grave breaches of the provisions of the Convention (Articles 3, 9, 10 of the Convention and Articles 1 and 2 of Protocol No. 1). The Court accepts that the enclaved Greek Cypriots are "compelled to live in a hostile environment in which it is hardly possible to lead a normal private and family life" (paragraph 300). It also finds that this population is the victim of discriminatory and degrading treatment based on ethnic origin, race and religion and that its members are compelled to live "isolated, restricted in their movements, controlled and with no prospect of renewing or developing their community" (paragraph 309). When one stands away from the legal detail supporting these conclusions, the Court accepts the general picture of a dwindling and aged community that has been subjected to a substantial reduction of the Convention rights of its members under colour of a policy of ethnic separation. The Court, furthermore, agrees with the observations of the United Nations Secretary-General that the restrictions will have the inevitable effect that the community will cease to exist (paragraph 307).

In such a context, is it realistic to say that the members of this community have access to the courts in respect of their civil claims? Is it

a credible proposition that there exists a haven of juridical relief ready and able to defend the rights of this beleaguered population notwithstanding the existence of an official policy of containment and oppression? I would very much like to believe that the courts could and would function in this manner but, in the absence of substantial evidence to the contrary (as opposed to a few successful court judgments in personal-injury or trespass actions[1]), experience and common sense teach us that the courts are generally powerless in such a situation. It must also be borne in mind that the inhabitants during the period under consideration were not permitted to travel more than three miles from their homes – a fact which is hardly conducive to a desire to have recourse to the courts to settle disputes. It is thus a perfectly natural and predictable state of affairs that this population makes no real use of the court system.

The Court must have regard to the general legal and political context in which remedies operate as well as the personal circumstances of the complainants (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69). It is more in keeping with the Court's usual approach to remedies to conclude that where there is a practice of non-observance of Convention provisions, in pursuance of a particular policy of the State, remedies will, as a consequence, be half-hearted, incomplete or futile (see, *mutatis mutandis*, the Commission's report in the "*Greek case*", Yearbook 12, p. 194). This conclusion would also apply to the complaint under Article 13 concerning alleged interferences by private persons with the rights of Greek Cypriots in northern Cyprus. Finally, it is difficult to comprehend how it can be said to be for the benefit of the local population – in the words of the much-relied upon sentence in the Advisory Opinion in the Namibia case – to require members of these communities to exhaust the domestic remedies offered by the "TRNC" before the Court examines their complaints of human rights violations.

In conclusion, the Court ought to have found a violation of this provision as an inevitable consequence of its general appraisal of the plight of this community and left open all issues concerning the legal system of the "TRNC".

2. Complaints concerning Turkish-Cypriot political opponents and Gypsies

The Court rejects the allegations of the existence of an administrative practice of a violation of the rights of both of the above categories. I find it helpful to recall that the concept of administrative practice in the case-law

1. The Court has been informed of several successful court actions but it has no information at its disposal concerning the question of whether these judgments were actually enforced. The issue of enforcement, according to the applicant Government's submissions, is also linked to alleged intimidation by Turkish settlers (see paragraph 229 of the judgment).

of the Convention institutions involves two distinct and cumulative elements: firstly, a repetition of acts or "an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 64, § 159). It also involves a certain "official tolerance" by State authorities on the basis that "it is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice" (ibid.). Furthermore, "under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected" (ibid.)[1]. The Court accepts the Commission's conclusions that the facts do not support the claims of such a general and widespread interference with the rights of the members of these groups (paragraphs 342-53). Accordingly, it could not be said that the first limb of one of the constituent elements of administrative practice – namely a repetition of acts – was present. Having reached this conclusion, it is unnecessary to go further and decide that members of these groups did not have recourse to remedies as the Court has done in paragraph 352 of the judgment. Presumably – although it is not stated *expressis verbis* – the Court has made reference to remedies in this context with a view to demonstrating that the other requirement of an administrative practice, namely official tolerance, was lacking. However, to reach the conclusion that there was no practice, it is sufficient that one of the requirements – in this case the factual one – was lacking. Here again, the Court is unwisely going further than is strictly necessary to reach its conclusion.

3. Article 13 as regards the complaints of the Turkish-Cypriot community

The Court also accepts the Commission's finding in respect of this peripheral complaint that there exist effective remedies before the courts of the "TRNC" in respect of the grievances of the dissident and Gypsy community (paragraphs 378-83). Here it may be questioned

1. The Commission has described the notion of official tolerance as follows: "By official tolerance is meant that though acts of torture and ill-treatment are plainly illegal, they are tolerated in the sense that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or to prevent their repetition; or that higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings a fair hearing of such complaints is denied ... To this latter element, the Commission would add that any action taken by the higher authority must be on a scale which is sufficient to put an end to the repetition of acts or to interrupt the pattern or system" (*France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940-9944/82, Commission decision of 6 December 1983, Decisions and Reports 35, pp. 163-64, § 19; see also the "*Greek case*", Yearbook 12, pp. 195-96).

whether, having earlier rejected the allegations of an administrative practice of violation of the rights of these groups, it is at all necessary to then examine the further question of whether there existed a practice of denying them effective remedies. In my view, this question need only be looked at if the evidence adduced in support of the practice gives rise to an arguable claim of the existence of such a practice. But even if it did, I consider that the burden rests on the respondent Government to demonstrate, with reference to decided cases, that these groups had a realistic possibility of bringing successful court actions. In the political situation obtaining in the "TRNC", I am not at all convinced, for reasons similar to those set forth in the context of Article 6 above, that the court system is capable of affording or would be permitted to afford remedies to political dissidents who call into question the policy of ethnic separation on which the entity is constructed or to impoverished Gypsies living on the margins of society.

Accordingly, the problem of remedies could also have been avoided in this context either by finding that it was not necessary to examine Article 13 or, in the alternative, finding that there was also a violation of that provision on the basis of the ineffectiveness of remedies – while leaving open the question of their legality.

Conclusion

The Court was unwise to follow the Commission in elaborating a general theory concerning the validity and effectiveness of remedies in the "TRNC".

It has perhaps lost sight of the disagreement between the Commission and Court in *Loizidou* as to how to approach issues arising out of Turkey's continuing occupation of northern Cyprus. Surely in such a political area the Court should allow itself to be guided by the firm – and unrelenting – approach followed up to the present day by the international community. As shown above, the approach taken by the Court was unnecessary to decide the issues presented in this case. In an inter-State case where issues arise which have implications for the international community at large in its relations with both parties and indeed with the Court, the principle of judicial restraint should have been given free rein as the Court suggested in its remarks in *Loizidou* referred to above. I very much regret that a similar measure of caution was not followed in this case.

PARTLY DISSENTING OPINION OF JUDGE COSTA

(Translation)

1. There are only two points (out of some fifty operative provisions) on which I disagree with the majority (with regard either to the reasoning or to the conclusion). They concern the religious discrimination against the Greek Cypriots living in the Karpas region and the violation of the rights of the Turkish-Cypriot Gypsy community.

2. As regards the first point, I quite understand why, having found a violation of Article 3 of the Convention against the Karpas Greek Cypriots, the majority does not consider it necessary to examine whether there has also been a violation of Article 14 taken in conjunction with other provisions.

3. I am, however, unhappy that that conclusion was held also to apply to Article 14 taken in conjunction with Article 9. As a matter of general principle, the prohibition on discrimination contained in Article 14 does not appear to me to be made redundant by a mere finding that a right guaranteed by the Convention has been violated. For example, in *Chassagnou and Others v. France* ([GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III) (a case in which I was in the minority, but that is a separate issue), the Court had no hesitation in finding a violation of Article 11 of the Convention and Article 1 of Protocol No. 1, taken both alone and in conjunction with Article 14 of the Convention. For an enclaved community living on an island divided among other things along religious lines and having no freedom of movement (see paragraph 245 of the instant judgment), it seems to me that religious freedom is one of the most important freedoms and has, in the present case, been infringed. For my part, I see nothing illogical in those circumstances in finding violations of Article 9 and of Article 9 taken in conjunction with Article 14.

4. Admittedly, it could be objected that a finding of discriminatory treatment serious enough to amount to inhuman and degrading treatment prohibited by Article 3 suffices. Perhaps. But I am not sure that that Article necessarily encompasses everything and takes precedence over all other violations. The Convention constitutes a whole, but that does not mean that a finding of one violation of the Convention will release the Court from the obligation to examine whether there have been others, save in exceptional circumstances where all the various complaints arise out of exactly the same set of facts.

5. As regards the Turkish Cypriots of Gypsy origin, the Court finds in paragraph 352 of the judgment that no practice of denying protection of their rights has been established. However, the Commission found

numerous violations of those rights and noted particularly serious incidents (see paragraph 54 of the judgment). Without repudiating that finding, the Court merely relies on the fact that the victims did not exercise any remedies before the local courts. However, surely a distinction should be drawn between the infringement of the victims' rights and freedoms, which is undisputed, and the fact that, rightly or wrongly, the victims did not believe that an action in the courts would be feasible or effective. Further, should their failure to bring an action be equated to a lack of evidence of an administrative practice, something which is in any event very difficult to prove and has been only rarely accepted as substantiated in the Court's decisions?

6. To my mind, it would have been simpler for the Court to accept the Commission's findings and to deem them a violation of the rights guaranteed by the Convention and the Protocols thereto. For that reason, I did not vote in favour of that operative provision.

7. As for the rest, and without deriving any individual or collective self-satisfaction, I readily agree with the grounds and operative provisions of this important judgment.

PARTLY DISSENTING OPINION OF JUDGE FUAD

1. I voted against the finding of the majority of the Court that there had been a continuing violation of Article 1 of Protocol No. 1 by the respondent State by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to, and the right to control and enjoy, their property without compensation for the interference with their property rights. Unless the Court, as presently constituted, was persuaded that the judgment of the majority in *Loizidou* was wrong, this decision was to be expected.

2. With great respect, in my view the majority has not given sufficient weight to the causes and effects of the ugly and catastrophic events which took place in Cyprus between 1963 and 1974 (which literally tore the island apart) or to developments that have occurred since, particularly the involvement of the United Nations. I have found the reasoning in some of the dissenting opinions annexed to *Loizidou v. Turkey* (merits) (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI) cogent and compelling. They stress the unique and difficult features of what might be called the Cyprus problem.

3. Judge Bernhardt (joined by Judge Lopes Rocha) made a number of observations about the present situation in Cyprus and the effect that it had on the issues before the Court. He said:

> "1. A unique feature of the present case is that it is impossible to separate the situation of the individual victim from a complex historical development and a no less complex current situation. The Court's judgment concerns in reality not only Mrs Loizidou, but thousands or hundreds of thousands of Greek Cypriots who have (or had) property in northern Cyprus. It might also affect Turkish Cypriots who are prevented from visiting and occupying their property in southern Cyprus. It might even concern citizens of third countries who are prevented from travelling to places where they have property and houses. The factual border between the two parts of Cyprus has the deplorable and inhuman consequence that a great number of individuals are separated from their property and their former homes.
>
> I have, with the majority of the judges in the Grand Chamber, no doubt that Turkey bears a considerable responsibility for the present situation. But there are also other actors and factors involved in the drama. The *coup d'état* of 1974 was the starting-point. It was followed by the Turkish invasion, the population transfer from north to south and south to north on the island, and other events. The proclamation of the so-called 'Turkish Republic of Northern Cyprus', not recognised as a State by the international community, is one of those events. The result of the different influences and events is the 'iron wall' which has existed now for more than two decades and which is supervised by United Nations forces. All negotiations or proposals for negotiations aimed at the unification of Cyprus have failed up to now. Who is responsible for this failure? Only one side? Is it possible to give a clear answer to this and several other questions and to draw a clear legal conclusion?

The case of Mrs Loizidou is not the consequence of an individual act of Turkish troops directed against her property or her freedom of movement, but it is the consequence of the establishment of the borderline in 1974 and its closure up to the present day."

4. After explaining why he considered that the preliminary objection raised by the respondent Government was sustainable, Judge Bernhardt went on to say:

"3. Even if I had been able to follow the majority of the Court in this respect, I would still be unable to find a violation of Article 1 of Protocol No. 1. As explained above, the presence of Turkish troops in northern Cyprus is one element in an extremely complex development and situation. As has been explained and decided in the Loizidou judgment on the preliminary objections (23 March 1995, Series A no. 310), Turkey can be held responsible for concrete acts done in northern Cyprus by Turkish troops or officials. But in the present case, we are confronted with a special situation: it is the existence of the factual border, protected by forces under United Nations command, which makes it impossible for Greek Cypriots to visit and to stay in their homes and on their property in the northern part of the island. The presence of Turkish troops and Turkey's support of the 'TRNC' are important factors in the existing situation; but I feel unable to base a judgment of the European Court of Human Rights exclusively on the assumption that the Turkish presence is illegal and that Turkey is therefore responsible for more or less everything that happens in northern Cyprus."

5. I also agree with the dissenting opinion of Judge Pettiti. After stating why he had been in favour of accepting certain preliminary objections raised by Turkey, he observed:

"Since 1974, the United Nations not having designated the intervention of Turkish forces in northern Cyprus as aggression in the international law sense, various negotiations have been conducted with a view to mediation by the United Nations, the Council of Europe and the European Union. Moreover, the Court did not examine the question whether that intervention was lawful (see paragraph 56 of the judgment). The decision to station international forces on the line separating the two communities made the free movement of persons between the two zones impossible, and responsibility for that does not lie with the Turkish Government alone.

The Court's reference to the international community's views about the Republic of Cyprus and the 'TRNC' (see paragraph 42 of the judgment) is not explained. But is it possible in 1996 to represent the views of this 'international community' on the question as uncontested, given that the most recent resolutions of the United Nations General Assembly and Security Council go back several years and the Court had no knowledge of the missions of the international mediators? For the Court it would appear that only Turkey is 'accountable' for the consequences of the 1974 conflict! In my opinion, a diplomatic situation of such complexity required a lengthy and thorough investigation on the spot, conducted by a delegation of the Commission, of the role of the international forces and the administration of justice, before the Court determined how responsibility, in the form of the jurisdiction referred to in Article 1 of the Convention, should be attributed."

6. In conclusion Judge Pettiti said:

"Whatever the responsibilities assumed in 1974 at the time of the *coup d'état*, or those which arose with the arrival of the Turkish troops in the same year, however hesitant the

international community has been in attempting to solve the international problems over Cyprus since 1974, at the time when the 'TRNC' was set up or at the time of Turkey's declaration to the Council of Europe, those responsibilities being of various origins and types, the whole problem of the two communities (which are not national minorities as that term is understood in international law) has more to do with politics and diplomacy than with European judicial scrutiny based on the isolated case of Mrs Loizidou and her rights under Protocol No. 1. It is noteworthy that since 1990 there has been no multiple inter-State application bringing the whole situation in Cyprus before the Court. That is eloquent evidence that the member States of the Council of Europe have sought to exercise diplomatic caution in the face of chaotic historical events which the wisdom of nations may steer in a positive direction."

7. I also agree with Judge Gölcüklü's views in his dissenting opinion. He emphasised the fact that the Court was dealing with a political situation and that he did not find it possible to separate the political aspects of the case from its legal aspects. He agreed with Judge Bernhardt's approach and then remarked:

"The Cypriot conflict between the Turkish and Greek communities is mainly attributable to the 1974 *coup d'état*, carried out by Greek Cypriots with the manifest intention of achieving union with Greece (*enosis*), which the Cypriot head of state at the time vigorously criticised before the international bodies. After this *coup d'état* Turkey intervened to ensure the protection of the Republic of Cyprus under the terms of a Treaty of Guarantee previously concluded between three interested States (Turkey, the United Kingdom and Greece) which gave these States the right to intervene separately or jointly when the situation so required, and the situation did so require ultimately in July 1974, on account of the *coup d'état*. In all of the above, incidentally, I make no mention of the bloody events and incidents which had been going on continually since 1963.

This implementation of a clause in the Treaty of Guarantee changed the previously existing political situation and durably established the separation of the two communities which had been in evidence as early as 1963.

...

After the establishment of the buffer-zone under the control of United Nations forces, movement from north to south and vice versa was prohibited and there was a population exchange with the common consent of the Turkish and Cypriot authorities under which eighty thousand Turkish Cypriots moved from southern to northern Cyprus."

8. Judges Gölcüklü and Pettiti made other observations about the present situation in Cyprus with which I respectfully agree. I think that they are relevant to the issue before us even though made at the just satisfaction stage (*Loizidou v. Turkey* (Article 50), judgment of 28 July 1998, *Reports* 1998-IV).

Judge Gölcüklü said:

"3. This Loizidou case is not an isolated case concerning the applicant alone (the intervention of the Greek Cypriot administration is manifest proof of that); it concerns on the contrary all the inhabitants of the island, whether of Turkish or Greek origin, who were displaced following the events of 1974, a fact which should cause no surprise.

> At the heart of the Loizidou v. Turkey case lies the future political status of a State that has unfortunately disappeared, a question to which all the international political bodies (the United Nations, the European Union, the Council of Europe, etc.) are now seeking an answer. A question of such importance can never be reduced purely and simply to the concept of the right of property and thus settled by application of a Convention provision which was never intended to solve problems on this scale."

Judge Pettiti observed:

> "My votes in the first two judgments were prompted by the political situation in Cyprus and my interpretation of international law. The fact that an international force controls the 'green line' and prohibits the free movement of persons from one zone to the other and access to property in another zone should in my opinion have been taken into account by the Court. Current political developments show that the problem of Cyprus unfortunately goes well beyond the dimensions of a mere lawsuit."

9. In my opinion, everything that was said in the passages from the dissenting opinions I have quoted is apt, *mutatis mutandis*, when the issue before us falls to be considered. Nothing has happened since the *Loizidou* case was decided that would render those observations untenable or irrelevant.

10. The nettle must be grasped. The Court's majority judgment must mean that unless every Cypriot who wishes to recover possession of his or her property is allowed to do so, crossing the UN-controlled buffer-zone as may be necessary, immediately and before a solution to the Cyprus problem has been found, there will be a violation of Convention rights in respect of the person whose wish is denied. As matters stand today (and sadly, have stood for over a quarter of a century) could anyone, armed with his title deed, go up to a unit of the UN peace-keeping force and demand the right to cross the buffer-zone to resume possession of his or her property? Who would police the operation? What might be the attitude of any present occupier of the property in question? Would not serious breaches of the peace inevitably occur? Who would enforce any eviction which was necessary to allow the registered owner to retake possession?

11. If considerations of this kind are relevant (and I do not see how they can be brushed aside) then, it seems to me, it must be acknowledged that in present-day Cyprus it is simply not realistic to allow every dispossessed property owner to demand the immediate right to resume possession of his or her property wherever it lies. In my opinion, these problems are not overcome by giving such persons the solace of an award of compensation and/or damages because their property rights cannot, for practical reasons, be restored to them. The full impact of the majority decision must be confronted: it goes far beyond matters of compensation and condemnation.

12. Events over the past thirty years or so have shown that despite the devoted and unremitting efforts of the United Nations (through successive holders of the office of Secretary-General and members of

their staff), other organisations and friendly governments, a solution acceptable to both sides has not been found. This is surely an indication of the complexity and difficulty of the Cyprus problem. These efforts continue: talks were in progress in New York as the Court was sitting.

13. Sadly, it may be that when a solution is ultimately found it will be one that fails to satisfy the understandable desire of every Cypriot to return to his or her home and fields, etc. The Secretary-General, looking ahead, has realistically faced this possibility. For example, as long ago as 1992, he included this paragraph in his Set of Ideas:

> "Other areas under Greek-Cypriot and Turkish-Cypriot administration. Each community will establish an agency to deal with all matters related to displaced persons. The ownership of the property of displaced persons, in respect of which those persons seek compensation, will be transferred to the ownership of the community in which the property is located. To this end, all titles of properties will be exchanged on a global communal basis between the two agencies at the 1974 value plus inflation. Displaced persons will be compensated by the agency of their community from funds obtained from the sale of the properties transferred to the agency, or through the exchange of property. The shortfall in funds necessary for compensation will be covered by the federal government from a compensation fund obtained from various possible sources such as windfall taxes on the increased value of transferred properties following the overall agreement, and savings from defence spending. Government and international organisations will also be invited to contribute to the compensation fund. In this connection, the option of long-term leasing and other commercial arrangements may also be considered.
>
> Persons from both communities who in 1974 resided and/or owned property in the federated State administered by the other community or their heirs will be able to file compensation claims. Persons belonging to the Turkish-Cypriot community who were displaced after December 1963 or their heirs may also file claims."

14. More recently, the Secretary-General issued a statement to each side (which was published in the press) at the November 2000 round of proximity talks in Geneva. His statement includes the following paragraph:

> "Concerning property, we must recognise that there are considerations of international law to which we must give weight. The solution must withstand legal challenge. The legal rights which people have to their property must be respected. At the same time, I believe that a solution should carefully regulate the exercise of these rights so as to safeguard the character of the 'component States'. Meeting these principles will require an appropriate combination of reinstatement, exchange and compensation. For a period of time to be established by agreement, there may be limits on the number of Greek Cypriots establishing residence in the north and Turkish Cypriots establishing residence in the south. It is worth mentioning in this context that the criteria, form and nature of regulation of property rights will also have a bearing on the extent of territorial adjustment, and vice versa."

15. I was not satisfied that the applicant Government had established that Turkey was responsible for the alleged violations in relation to Greek-Cypriot owners of property.

16. I am also not able to agree with the decision of the majority of my colleagues regarding the alleged violations which relate to Greek-Cypriot missing persons and their relatives. Like the Commission, the majority has concluded that the facts did not disclose a substantive violation of Article 2 since the evidence was insufficient to establish Turkey's responsibility for the deaths of any of the missing persons. The majority also accepted the finding of the Commission that nothing in the evidence supported the assumption that any of the missing persons were still in Turkish custody during the relevant period in conditions which offended Article 4: thus a breach of that Article had not been established.

17. However, the majority decided that a continuing violation of Article 5 had been shown because the Turkish authorities had failed to conduct an effective investigation into the fate of missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance. They agreed with the Commission that this obligation had not been discharged through Turkey's contribution to the investigatory work of the Committee on Missing Persons (CMP).

18. Further, they held that since Turkey had failed to make the necessary investigations and thus had given no information about the fate of the missing persons, their relatives had been subjected to inhuman treatment of the kind proscribed by Article 3.

19. A great deal of material was before the Commission and the Court about the formation, responsibilities and work of the CMP. A full summary of all this is in the Commission's report. The UN General Assembly called for the establishment of an investigatory body to resolve the cases of missing persons from both communities. The General Assembly requested the Secretary-General to support the establishment of such a body with the participation of the International Committee of the Red Cross (ICRC) "which would be in a position to function impartially, effectively and speedily so as to resolve the problem without undue delay".

20. Eventually it was decided that the CMP should comprise three members: representatives from the Greek and the Turkish side and a representative of the Secretary-General nominated by the ICRC. What seems clear is that the United Nations, for obvious reasons, envisaged a body that would perform its sad and difficult task objectively and without bias. The UN's call was met by the composition of the CMP. Very wisely, if I may say so, the ICRC was to be involved so that its resources and wide experience in the often heart-breaking task involved could be called upon.

21. Since the CMP was set up, I have seen nothing to suggest that the Secretary-General, the ICRC or any other organisation such as the UN Working Group on Enforced and Involuntary Disappearances (Geneva) contemplated that a unilateral investigation by Turkey, the State against

which the most serious allegations about the treatment and fate of the missing persons continue to be made, would satisfy anyone. And, of course, the advantage of the CMP was that it would investigate the disappearances of Turkish-Cypriot missing persons too, as the UN clearly had in mind.

22. Turkey's stand on the whole issue of the missing persons is well known. I have seen no evidence that Turkey has refused to cooperate with the CMP or obstructed its work. If the Terms of Reference, the Rules or the Guidelines that govern the way that the CMP operates are unsatisfactory, these can be amended with good will and the help of the Secretary-General. I am not able to agree with my colleagues that the CMP procedures are not of themselves sufficient to meet the standard of an effective investigation required by Article 2. As the applicable Rules and Guidelines, read with the Terms of Reference, have developed, both sides giving their ungrudging cooperation to the CMP, an effective investigating team has been created. That the CMP was the appropriate body to make the necessary investigations was acknowledged by the UN Working Group on Enforced and Involuntary Disappearances.

23. Apart from the reliance by Turkey on the establishment and responsibilities of the CMP which I consider was justified, in my respectful opinion the majority of the Court has not given effect to the relevant part of the declaration by which Turkey submitted to the compulsory jurisdiction of the Court. Jurisdiction was accepted in relation to "matters raised in respect of facts which have occurred subsequent to [22 July 1990]".

24. The concept of continuing violations is well established and readily understood. In a simple case, for example, where a person has been arrested and detained illegally, it does not matter that his original detention took place before the respondent was subject to the Convention (or even before the Convention prohibiting the violation came into force). The Court will have jurisdiction to examine and adjudicate on the legality of his detention provided he is still under detention at the material time.

25. Here the position is not simple. The events which the majority of the Court held to have given rise to an obligation to conduct effective investigations occurred in July and August 1974. This was some fifteen years before the operative date of Turkey's declaration. Neither the Commission nor the Court found sufficient evidence to hold that the missing persons were still in the custody of the Turkish authorities at the relevant time. In my opinion, it cannot be right to treat the Convention obligation which arises in certain circumstances to conduct a prompt and effective investigation as having persisted for fifteen years after the events which required investigation so that, when Turkey did become bound by the Convention, her alleged failure to date to conduct appropriate

investigations can be regarded as a violation of the Convention. In my view, the concept of continuing violations cannot be prayed in aid to reach such a result. It seems to me that such an approach would be to apply an obligation imposed by the Convention retrospectively and to divest the time limitation in the declaration of its effect.

26. I was not satisfied that the respondent State has been shown to be guilty of any Convention violation in relation to the missing persons or their relatives.

27. I now turn to address the alleged human rights violations said to arise out of the living conditions of Greek Cypriots who choose to live in the Karpas region. My colleagues, following the reasoning of the majority in *Loizidou*, have held that all the violations found to have been established were imputable to Turkey because Turkey had general responsibility under the Convention for the policies and actions of the "TRNC" authorities since, through her army, she exercised overall control over northern Cyprus. They concluded, as had the Commission, that this was obvious "from the large number of troops engaged in active duties in northern Cyprus".

28. I do not think that this aspect of the case can be approached without a consideration of the events which led to the division of Cyprus. These events were unique. The finely balanced constitutional arrangements, supported by solemn treaty obligations, under which the Republic of Cyprus was established, broke down all too soon. Then there was the 1974 *coup*, the object of which is common knowledge. What was virtually a war then ensued, followed by a cease-fire and the movement of many members of the community to the north or to the south of a buffer-zone. Starting as long ago as 1963, the Turkish Cypriots began the process of establishing an administration of their own. They did not sit back and rely on institutions of the Turkish Republic, or apply their laws. There is ample evidence to suggest that the "TRNC" might well, after investigation, be found to display all the attributes of a State (although only recognised by Turkey) which exercises independent and effective control over northern Cyprus. It cannot be assumed, without proper inquiry, that the "TRNC" is a puppet regime or subordinate jurisdiction of Turkey.

29. The fact that Turkey alone has recognised the "TRNC" does not affect the realities of the position. Recognition is, after all, a political act. Once the elaborate constitutional arrangements (with all the checks and balances designed to meet the concerns and anxieties of two distrustful communities) irretrievably broke down, difficult questions regarding recognition must have arisen. Governments were, of course, free to accord or withhold recognition as they wished, but the State that was recognised could not be said to be the bi-communal Republic established in 1960 under those arrangements.

30. I respectfully agree with the observations of Judge Gölcüklü in his dissenting opinion annexed to *Loizidou* (merits), where he said:

> "3. I would also emphasise that not only does northern Cyprus not come under Turkey's jurisdiction, but there is a (politically and socially) sovereign authority there which is independent and democratic. It is of little consequence whether that authority is legally recognised by the international community. When applying the Convention the actual factual circumstances are the decisive element. The Commission and the Court have stated more than once that the concept of 'jurisdiction' within the meaning of Article 1 of the Convention covers both *de facto* and *de jure* jurisdiction. In northern Cyprus there is no 'vacuum', whether *de jure* or *de facto*, but a politically organised society, whatever name and classification one chooses to give it, with its own legal system and its own State authority. Who today would deny the existence of Taiwan? That is why the Commission in its report in the Chrysostomos and Papachrysostomou cases examined the law in force in northern Cyprus *as such, and not Turkish law* in order to determine whether the applicants' detention had been lawful (see paragraphs 148, 149 and 174 of the report)."

31. I do not agree that the facts relied upon by the Court justified a finding that every violation, whatever its nature and whoever perpetrated it, is imputable, without more, to the respondent State. Everything must depend on the factual position as it has developed between 1963 and the present day, and the circumstances which prevailed at the time of each alleged violation. In my judgment, with great respect to those who take a different view, in the light of the events which took place (which have not been paralleled elsewhere) it was essential to examine the role of the troops at the material time as well as their conduct.

32. I mention here that I am not impressed by the submission that unless Turkey is held to be accountable for the alleged violations in the Karpas, no other State would be accountable, with the result that the system of the Convention would be inoperative in the area. I do not think that considerations of this kind should be allowed to influence the Court.

33. I was not satisfied that it had been established to the degree of certainty that is necessary that any of the violations alleged in relation to Greek Cypriots living in the Karpas region of northern Cyprus are imputable to Turkey.

34. On the subject of military courts, for the reasons I have attempted to give, I am unable to accept that Turkey can be held responsible for any shortcomings there might be (for the purposes of Article 6) in the Prohibited Military Areas Decree promulgated by the "TRNC".

PARTLY DISSENTING OPINION OF JUDGE MARCUS-HELMONS

(Translation)

I share the opinion of the majority of the judges of the Court on most of the decisions in this case. There are, however, aspects of this judgment with which I do not agree and for that reason I wish to make the following remarks.

To my mind, the fundamental problem lies in the interpretation of Article 35 of the Convention (former Article 26) and in the issue whether the "courts" established by the "TRNC" in northern Cyprus may be regarded as domestic remedies that must be exhausted (to the extent that the remedies concerned are effective in each individual case). A majority of the judges said that they could and referred in particular to the Advisory Opinion of the International Court of Justice (ICJ) on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (1971 ICJ Reports, vol. 16, p. 56, § 125).

I consider that the majority of the judges of the Court has erred in that interpretation and that a serious point of principle is at stake.

Advisory Opinion in the Namibia case

1. Paragraph 125 of the Advisory Opinion, which is cited by the Commission and relied on by the Court, recognises to a limited degree the effects of certain acts performed before the illegal authorities, such as declarations of birth, marriage or death, so as to avoid seriously disrupting the communal life of the local populations. Nevertheless, paragraph 125 must first be put back into context: in paragraphs 117 to 124, the ICJ repeatedly reminded all States that South Africa's presence in Namibia was illegal and warned of the danger of drawing conclusions from that presence. In conclusion, so as clearly to attenuate and limit the effect of its comments in paragraph 125, the ICJ clearly stated in paragraph 126 that "... the declaration of the illegality of South Africa's presence in Namibia [is] opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law: in particular, *no State which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognise the validity or effects of any such relationship or the consequences thereof*" (emphasis added).

Although the ICJ accepted the validity of certain illegal acts by the South African government, such as the registration of births, deaths and marriages, it did so solely because "[their] effects can be ignored only to the detriment of the inhabitants of the territory". The ICJ thus accepted

that those acts were valid because it was beneficial to the inhabitants of the territory to do so and so as not to make their position worse. Conversely, it would never have occurred to the ICJ to recognise any validity for acts that were illegal under international law if they necessarily operated to the detriment of the inhabitants of the territory.

The ICJ clearly regarded paragraph 125 as the exception, not the rule!

Accordingly, if the Court were to apply the ICJ's reasoning by analogy to Article 35 of the Convention (former Article 26), it would be guilty of misinterpretation, since requiring the inhabitants of Cyprus to exhaust domestic remedies of the "TNRC" before applying to the European Court of Human Rights when, moreover, those remedies are known to be ineffective obviously constitutes an additional obstacle for the inhabitants to surmount in their legitimate desire to secure an end to the violation of a fundamental right by applying to Strasbourg.

2. Nor is there any justification for relying on the Advisory Opinion in the Namibia case as a guide to the interpretation of former Article 26 of the Convention. The Opinion did not in any way concern the exhaustion of domestic remedies or the validity of courts established by an illegal government. It served merely as a means of preserving the rights of the inhabitants in a situation of total illegality.

3. The situations in Namibia and northern Cyprus are completely different. The authorities exercising power in the territory of South West Africa were initially legal by virtue of a mandate granted to South Africa by the League of Nations, which was later converted into a "trusteeship" by the United Nations. It was only subsequently, with the declaration of independence by Namibia, that they became illegal. In northern Cyprus, courts established by law existed before the Turkish invasion of 1974. It was only after that invasion that other – clearly illegal – courts were set up.

4. Moreover, in *Loizidou v. Turkey* (merits) (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), the European Court of Human Rights made no reference to the Opinion in the case of Namibia when considering the issue of exhaustion of domestic remedies under former Article 26 of the Convention. It only did so when considering in general terms the possibility that operations affecting individuals in a *de facto* regime might be recognised as having some validity.

5. By using it with reference to former Article 26 of the Convention, the Court gives the Opinion in the case of Namibia an unduly wide interpretation for which there is no basis and which the ICJ never intended. The consequence of such a wide interpretation would be that: (a) the European Court of Human Rights could not refuse to recognise the courts established by the "TRNC", (b) it would be in the interest of all the inhabitants of northern Cyprus, including Greek Cypriots, to seek the protection of those courts, (c) had the "TRNC" not established those courts, it would have violated the European Convention and, (d) as a

result, the inhabitants of the "TRNC" would have been under an obligation to exhaust the remedies provided by those courts.

6. Paragraphs 95 and 96 of the judgment are to my mind inopportune, as in its Opinion in the case of Namibia the ICJ was clear and deliberately succinct. There appears to be no need to "add to" the text of the majority of the ICJ by referring to individual opinions expressed by some of the judges and to arguments made during the pleadings, especially if the result is to give paragraph 125 of the Opinion greater scope than that intended by the majority in the ICJ.

7. Lastly, in paragraph 97 of the judgment the Court seems to jump to hasty and ill-advised conclusions which it considers to be a widely held opinion on this subject. As evidence of this, one need only examine, among other sources, the case-law of the Supreme Court of the United States on the validity of the confederate acts of the South during the Civil War. It should be noted that the southern authorities were legal until they seceded (the position thus being totally different from one in which courts are illegally established after a military invasion by a neighbouring State). Shortly after the Civil War ended, the Supreme Court recognised in the cases of *Texas v. White*, 74 U.S. 227, 7 Wall. 700 (1868), *Horn v. Lockhart*, 21 L.ed. 658, 17 Wall. 570 (1873), and *Williams v. Bruffy*, 96 U.S. 178 (1878) and within very strict limits that the administrative acts and judgments of the confederate courts had some validity to the extent that their aim and execution did not conflict with the authority of the national government and did not infringe citizens' constitutional rights. Those limited effects given retrospectively were strictly reserved to habitual acts necessary for the proper functioning of life in society. In the more recent case of *Adams v. Adams* ([1970] 3 Weekly Law Reports 934), the English High Court categorically refused to recognise any effect to the acts of the secessionist government concerned (the former Rhodesian government following the adoption of a unilateral declaration of independence).

The European Convention on Human Rights

1. I should like to point out that this is a special situation. The Convention is a *lex specialis* whose special features must be respected and which is amenable to reasoning by analogy only in situations that are on all fours with each other (which is evidently not the case with the Advisory Opinion in the case of Namibia).

2. An analysis of the *travaux préparatoires* on the European Convention (Doc. Council of Europe, secret H (61) 4) reveals that, while domestic remedies were naturally required to be exhausted before applications were sent to Strasbourg, that condition was rapidly supplemented and qualified by the principle that exhaustion must be effected "according to

the generally recognised international law" (ibid., in particular p. 462 and especially p. 497). That wording ultimately became "according to generally recognised rules of international law".

Why were the requirement for the exhaustion of domestic remedies and especially the reference to generally recognised rules of international law made? While it is proper for the domestic courts first to be given the possibility of putting an end to the violation of a fundamental right where that possibility is an effective one, it is equally obvious that the authors of the Convention did not wish to be excessively formal and create additional obstacles for applicants wishing to apply to Strasbourg. The authors of the Convention sought to be rational, but above all effective and to offer a rapid remedy in Strasbourg when no other practical alternative exists. Their concern over effectiveness and fairness was reinforced by the fact that generally recognised rules do exist in this sphere in international law.

3. Indeed, the European Court of Human Rights has interpreted former Article 26 of the Convention on a number of occasions and its interpretation has been consistent with the generally recognised rules of international law (see, among other authorities, *Open Door and Dublin Well Woman v. Ireland*, judgment of 29 October 1992, Series A no. 246-A, p. 23, §§ 48 and 50, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1212, § 72).

Public international law

What are the generally recognised rules of international law in this sphere?

Legal opinion is unanimous on this subject.

The exhaustion of domestic remedies must never pose a theoretical obstacle to an international solution (through diplomatic protection or an international court). It is a clear rule of international law that while domestic remedies will normally require to be exhausted before recourse is had to international solutions, that requirement will never need to be satisfied if the domestic remedies are futile, ineffective, theoretical, non-existent or the domestic remedy is inoperative under the settled case-law.

1. Ch. Rousseau, *Droit international public*, Sirey, Paris, 1953, pp. 366-67.

2. D.P. O'Connell, *International Law*, Stevens, London, 1965, vol. II, pp. 1143-44.

3. M. Sorensen ed., *Manual of Public International Law*, Macmillan, London, 1968, pp. 588-90.

4. N. Quoc Dinh, *Droit international public*, LGDJ, Paris, 1975, p. 644.

5. G. Schwarzenberger and E. Brown, *A Manual of International Law*, 6th ed., Professional Books Limited, Oxon, 1976, p. 144: "If a State lacks

effective local remedies, this amounts to a breach of the minimum standard. *This omission itself constitutes an international tort and, in good faith, precludes the tortfeasor from invoking the local remedies rule*" (emphasis added).

6. O. Schachter, *International Law in Theory and Practice*, M. Nijhoff Publishers, Dordrecht, 1991, p. 213: "Of course the requirement [of exhaustion of local remedies] cannot be imposed where domestic remedies are manifestly ineffective or where they do not exist ...". "But it is not necessary to resort to local courts 'if the result must be a repetition of a decision already given'. An important exception in today's world is that the necessity to resort to local courts does not apply if the courts are completely subservient to the government."

7. E.J. de Aréchaga and A. Tanzi, "International State Responsibility", in M. Bedjaoui ed., *International Law: Achievements and Prospects*, Unesco, Paris, 1991, p. 375: "But even if there are remedies existing and available, the rule does not apply if these remedies are 'obviously futile' or 'manifestly ineffective'."

8. J.M. Arbour, *Droit international public*, 2nd ed., Yvon Blaise, Québec, 1992, pp. 301-02.

9. J. Combacau and S. Sur, *Droit international public*, 4th ed., Montchrestien, 1999, p. 547: "[The exhaustion of domestic remedies] does not come into play either when the remedy is 'manifestly ineffective', that is to say when the competent court does not have effective power to make reparation for the damage sustained; and where judicial practice ... excludes all prospects of success on the merits because the courts consider themselves bound by the 'decisions of the executive' or settled case-law suggests that the remedy will fail."

10. After declaring that remedies before the courts of northern Cyprus constitute domestic remedies for the purposes of former Article 26 of the Convention, the Court states, in paragraph 98 of the judgment, that the question of their effectiveness is to be considered on a case-by-case basis. Then, after analysing each individual case, the Court finds in the judgment that for one reason or another the domestic remedy did not exist or was ineffective.

The result might therefore be considered to be identical to what it would have been if former Article 26 had been strictly construed according to "the generally recognised rules of international law". However, I consider that, although the result is the same, the Court should have avoided reasoning that is potentially perilous, as all the above arguments show. My view is reinforced by the fact that by so acting, the European Court of Human Rights finds itself dangerously caught up in assessing the validity of acts performed by a *de facto* government at a time when several member States of the Council of Europe have autonomist and even secessionist movements.

Paragraph 101 of the judgment

This paragraph, in which the Court notes an apparent contradiction, seems to me particularly inopportune, and even harmful, as it gives the impression that the Court sees no difference between the two violations of which Turkey is accused by Cyprus, as these are two very different cases, despite the fact that a single event is at the origin of both violations.

The criminal law of all democratic countries provides for situations in which a single offence may entail various consequences each of which, taken in isolation, may result in prosecution. By invading Cyprus and setting up illegal courts, Turkey clearly violated Article 6 of the European Convention. It is for that reason that those domestic remedies do not require exhausting before an application is made to Strasbourg. I do not see any contradiction in that.

It is precisely if the situation had been the converse that the applicant Government would have contradicted themselves, namely, on the one hand, by accusing the respondent State of being at the origin of numerous violations of human rights through its illegal occupation of northern Cyprus and, *inter alia*, of having established an illegal regime in that part of the country while, on the other hand, accepting that the courts illegally established by a military force there could provide a legally valid solution to the alleged violations.

Such reasoning is to my mind Cartesian.

Furthermore, the view that there is a "contradiction" is made even more erroneous by the fact that, as will be remembered, Turkey has consistently argued that the "TRNC" is a separate entity and that the courts of the "TRNC" are not part of the Turkish court system. Accordingly, adopting an *ad hominem* approach, how could the courts of the "TRNC" be regarded as being able to provide an effective remedy putting an end to the violations alleged against Turkey?

There is therefore no contradiction on the part of the applicant Government in those circumstances.

It is for that reason that I personally consider, *mutatis mutandis*, that courts established illegally in northern Cyprus do not satisfy the requirements of Article 6 of the Convention, which requires, *inter alia*, "...[a] tribunal ... established by law ...". For exactly the same reason, I am of the view that there is no "effective remedy before a national authority", as required by Article 13 of the Convention, in northern Cyprus (see, in particular, paragraph 324, point 1, and paragraph 383).

Paragraph 221 of the judgment

In this paragraph the Court holds that there has been no violation of Article 2 of the Convention as a result of the "TRNC" authorities' refusal

to afford Greek Cypriots and Maronites living in northern Cyprus access to medical care in another part of the island.

My view is that, at a time when freedom of movement is regarded as essential, especially when it comes to obtaining optimal medical care, a denial of such freedom by the State amounts to a serious breach of its obligations towards those within its jurisdiction. I consider that that is something which may amount to a violation of the State's undertaking under Article 2 of the Convention to protect everyone's right to life by law.

We are living in a period of rapid scientific evolution and there may be substantial differences between institutions offering medical treatment, whether from one country to another or within the same country. For a State to use force to prevent a person from attending the institution which he considers offers him the best chance of recovery is to my mind highly reprehensible.

Furthermore, I regret that the European Court of Human Rights did not seize this opportunity to give Article 2 a teleological interpretation as it has done in the past with other Articles (see, among other authorities, *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, or *Young, James and Webster v. the United Kingdom*, judgment of 13 August 1981, Series A no. 44).

With the rapid evolution of biomedical techniques, new threats to human dignity may arise. The Convention on Human Rights and Biomedicine, signed at Oviedo in 1997, seeks to cover some of those dangers. However, to date only a limited number of States have signed it. Moreover, this convention only affords the European Court of Human Rights consultative jurisdiction. In order for this "fourth generation of human rights" to be taken into account so that human dignity is protected against possible abuse by scientific progress, the Court could issue a reminder that under Article 2 of the European Convention on Human Rights the States undertook to protect everyone's right to life by law.

The right to life may of course be interpreted in many different ways, but it undoubtedly includes freedom to seek to enjoy the best medical treatment actually available.

Paragraph 231 and paragraphs 235 to 240 of the judgment

For the reasons already set out in detail above, I do not share the opinion expressed in these paragraphs on Articles 6 and 13.

In addition to the arguments already put forward on the illegal nature of those courts, it seems to me that there is a further argument dictated by common sense. It is quite unrealistic to consider that the courts established in the territories occupied by the Turkish forces in northern Cyprus could administer independent and impartial justice, especially to

Greek Cypriots, but also to Turkish Cypriots, in matters that are manifestly contrary to the rules established under the Turkish military occupation.

Even though those courts could hear and determine disputes between members of the local population, they would *never* dare take an impartial decision in a case relating to an event resulting from the military occupation.

Paragraph 317 of the judgment

I do not agree with the majority of the Court on this subject. Under a line of authority frequently followed by the Court, a violation of Article 14 of the Convention taken in conjunction with another Article will not be found where it covers the same ground as a finding of a violation of the other Article taken alone. Conversely, where taking Article 14 with that other Article results in a finding of an additional violation or a more serious violation of the other Article, the Court has always accepted in its case-law that there was also a violation of that other Article taken in conjunction with Article 14.

That is exactly the position here. Not to allow the religion to be practised fully constitutes a violation in itself, but the additional imposition of additional restrictions on account of that religion transforms the measure into a separate violation.

Certain documents produced at the United Nations

The Commission and the Court have treated the evidence adduced by the applicant Government in support of their allegations with great, some might say excessive, caution. For example, the report of the Secretary-General of the United Nations (S/1995/1020 of 10 December 1995) clearly documents infringements of the freedom of association of Turkish Cypriots living in the north wishing to take part in the formation of bi-communal associations in northern Cyprus; and a Security Council document of 23 May 2000 (A/54/878-S/2000/462) refers to a letter from the Permanent Representative of Turkey at the United Nations, an appendix to which indisputably establishes that, for the authorities of the "TRNC", Greek Cypriots and Maronites living in northern Cyprus are aliens.

ANNEX

REPORT OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS[1,2]

(adopted on 4 June 1999)

[The Commission was composed as follows:

Mr S. TRECHSEL, *President*,
Mr E. BUSUTTIL,
Mr GAUKUR JÖRUNDSSON,
Mr A. WEITZEL,
Mr J.-C. SOYER,
Mrs G.H. THUNE,
Mr C.L. ROZAKIS,
Mrs J. LIDDY,
Mr M.P. PELLONPÄÄ,
Mr B. MARXER,
Mr M.A. NOWICKI,
Mr I. CABRAL BARRETO,
Mr B. CONFORTI,
Mr I. BÉKÉS,
Mr D. ŠVÁBY,
Mr G. RESS,
Mr A. PERENIČ,
Mr P. LORENZEN,
Mr K. HERNDL,
Mr A. ARABADJIEV,
and Mrs M.-T. SCHOEPFER, *Secretary*.]

1. English original.
2. Extracts; the full text of the report is obtainable from the Registry of the Court.

...

PART ONE

General and preliminary considerations

Chapter 1

Locus standi *of the applicant Government*

68. At various stages of the proceedings, the respondent Government have contested the *locus standi* of the applicant Government to lodge an application under former Article 24 of the Convention. The respondent Government do not recognise the applicant Government, to which they refer as the "Greek-Cypriot administration", as being the lawful government of the Republic of Cyprus. They submit that this administration has been in place since 1963 in flagrant violation of the Cypriot Constitution of 1960 and of the international agreements underlying the independence of Cyprus, in particular the provisions on the bi-communal structure of the government and other central State organs. The respondent Government therefore contend that the applicant Government cannot validly represent the Republic of Cyprus. Their initial refusal to participate in the proceedings on the merits was primarily based on the argument that by admitting the application introduced by that Government the Commission had acted *ultra vires*.

69. The applicant Government contest the respondent Government's arguments. They emphasise that they have been consistently recognised by the international community as the government of the Republic of Cyprus, whose territory covers the whole of the island. As regards non-compliance with the provisions of the 1960 Constitution and corresponding stipulations of the relevant international agreements, they refer to the "doctrine of necessity", that is to say the need to reorganise the State without the representatives of the Turkish Cypriot community after the latter had refused to continue cooperating in the bi-communal structures provided for by the Constitution.

70. The Commission recalls that the same arguments have been raised by the parties in the previous applications brought by Cyprus against Turkey. Furthermore, similar arguments concerning the applicant Government's *locus standi* to bring an application before the Court under former Article 48 (b) of the Convention have been examined by the Court in *Loizidou v. Turkey*. Both the Commission and the Court eventually rejected the respondent Government's claim that the applicant Government had no *locus standi* (see *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, Commission decision of 26 May 1975, Decisions and Reports

(DR) 2, pp. 135-36; *Cyprus v. Turkey*, no. 8007/77, Commission decision of 10 July 1978, DR 13, pp. 146-48; and Eur. Court HR, *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, p. 18, §§ 39-41).

71. In the present case, the Commission cannot but confirm the conclusions reached by itself and the Court in those decisions. It notes in particular the following.

– The Republic of Cyprus continues to exist as a State and as a High Contracting Party to the Convention.

– The applicant Government have been, and continue to be, recognised internationally as the government of the Republic of Cyprus. Even assuming an inconsistency with the Constitution of Cyprus of 1960, the practice under that Constitution, especially since 1963, must also be taken into account. International legal acts and instruments drafted in the course of that practice on behalf of the Republic of Cyprus have consistently been recognised in diplomatic and treaty relations, both by governments of other States and by organs of international organisations, including the Council of Europe. In any event, having regard to the purpose of former Article 24 of the Convention, the protection of the rights and freedoms of the people of Cyprus under the Convention should not be impaired by any constitutional defect of its government.

– The fact that the respondent Government do not recognise the applicant Government does not deprive the latter of the possibility of introducing an inter-State application. The Convention does not only envisage rights and obligations between the High Contracting Parties concerned, but also "objective obligations" accepted by the High Contracting Parties and which are primarily owed to persons within their jurisdiction. These obligations are subject to "collective enforcement", of which former Article 24 of the Convention is the vehicle, and which serves the public order of Europe (see *Austria v. Italy*, no. 788/60, Commission decision of 11 January 1961, Yearbook 4, pp. 138-42). To accept that a government may avoid "collective enforcement" of the Convention under former Article 24 by not recognising the government of the applicant State would defeat the purpose of the Convention.

– Finally, in so far as former Article 28 of the Convention comes into play, that provision does not necessarily require direct contact between the governments concerned, so that non-recognition by one government of the other does not make it impracticable for the Commission to conduct its proceedings with the participation of the parties, as foreseen under that Article.

72. The Commission therefore dismisses the respondent Government's objections.

Conclusion

73. The Commission concludes, unanimously, that the applicant Government did have *locus standi* to bring an application under former Article 24 of the Convention against the respondent State.

Chapter 2

Legal interest of the applicant Government

74. In its decision on the admissibility of the present application (*Cyprus v. Turkey*, no. 25781/94, decision of 28 June 1996, DR 86-A, p. 104), the Commission, reacting to the argument of the respondent Government that this application was essentially the same as the previous inter-State applications lodged by Cyprus against Turkey, reserved for consideration at the merits stage the question whether and, if so, to what extent the applicant Government could have a valid legal interest in the determination of the alleged continuing violations of the Convention in so far as they had already been dealt with in previous reports of the Commission (see *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, report of 10 July 1976 – "the 1976 report", unpublished, and *Cyprus v. Turkey*, no. 8007/77, report of 4 October 1983 – "the 1983 report", DR 72, p. 5). In so far as the respondent Government had raised the arguments of *res judicata* and abuse of process in this context, the Commission further observed that their examination presupposed a finding on the identity of the present application with the previous ones, which could also only be made at the merits stage (see the admissibility decision cited above, pp. 134-35).

75. In their observations on the merits, the respondent Government have reiterated their argument that the applicant Government have no legal interest in bringing repetitive applications *ad infinitum* with a view to changing the relevant resolutions of the Committee of Ministers of the Council of Europe, which the applicant Government may find unsatisfactory but which constitute *res judicata* in relation to proceedings prior to January 1990, when Turkey recognised the Court's compulsory jurisdiction. The respondent Government claim that, with the exception of the complaints under Articles 9, 10 and 11 of the Convention and under Article 3 of Protocol No. 1, the facts submitted and the Articles relied on are the same as in the applicant Government's previous applications and disclose no new information or victims.

76. The applicant Government refute these arguments. They claim that certain of their complaints are entirely new, that others have not been the subject of a definitive finding in the Commission's earlier reports, and that even where there has been such a finding the present

complaints, based on new information and evidence, relate to a later period during which the persistence of a situation in breach of the Convention constitutes an aggravation of that breach. *Res judicata* can only concern a right, question or fact distinctly put in issue and directly determined by the appropriate body, which they submit is not the case with the Committee of Ministers' resolutions concerning the earlier inter-State applications. In any event, in their submission these resolutions have no forward reach.

77. The Commission first notes that certain of the complaints raised by the applicant Government (namely their complaints under Articles 9, 10 and 11 of the Convention and under Article 3 of Protocol No. 1, as well as the complaints relating to the alleged violation of the rights of the missing persons' relatives, the complaints concerning the actual living conditions of Greek Cypriots in northern Cyprus and the complaints relating to the treatment of Gypsies in northern Cyprus) are new and have not been covered by either the 1976 or the 1983 reports on the previous inter-State applications by Cyprus against Turkey. This has, at least in part, been admitted by the respondent Government (see paragraph 75 above). In this respect, an issue as to the applicant Government's legal interest in bringing an application under former Article 24 of the Convention could only arise in so far as the same matters may also be the subject of individual applications under former Article 25 of the Convention (see paragraphs 83-86 below).

78. In so far as the respondent Government's arguments relate to the alleged continuing violations (namely, the complaints concerning the missing persons, those concerning the home and property of displaced Greek Cypriots, the complaints concerning the separation of Greek-Cypriot families and the complaints concerning the situation of Turkish Cypriots in northern Cyprus), the Commission recalls paragraph 56 of the 1983 report (cited above, p. 22) where it found that former Article 27 § 1 (b) of the Convention, while not applicable to cases brought under former Article 24, reflects a basic legal principle which in inter-State applications arises during the examination of the merits: a State cannot, except in specific circumstances, claim an interest to have new findings made where the Commission has already adopted a report under former Article 31 of the Convention concerning the same matter.

79. In so far as the Commission must therefore determine whether, exceptionally, there are specific circumstances which justify a legal interest of the applicant Government in the present case, the Commission first notes that certain of the applicant Government's complaints (such as those concerning the situation of Turkish Cypriots), while having been raised already in the earlier inter-State cases, did not lead to any definitive findings by the Commission in its earlier reports, due to lack of evidence. To the extent that the applicant Government

have now requested the Commission to express its opinion on the basis of new evidential material submitted by them, the Commission accepts their legal interest (see the 1983 report cited above, p. 22, § 58).

80. As regards the remaining complaints concerning alleged continuing violations, the Commission notes the applicant Government's argument that these are not identical to those raised in the previous cases because of the time factor. The Commission accepts that, at least in part, the persons affected by the alleged violations of the Convention are different from those concerned in the previous applications and, even where the same persons' rights are at issue, the examination of the complaints now made by the applicant Government must take into account the evolution of the situation in northern Cyprus, including the creation of a new institutional framework by the proclamation of the establishment of the "Turkish Republic of Northern Cyprus" ("TRNC") – which the respondent Government qualify as a *novus actus interveniens* – and also the imposition of new and additional measures on those persons. Moreover, the Commission recalls the case-law according to which the time factor may in itself be constitutive of a violation of certain Convention rights (concerning deprivation of possessions during a lengthy period, see, for example, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, and *Papamichalopoulos and Others v. Greece*, judgment of 24 June 1993, Series A no. 260-B) or aggravate a violation already established (concerning separation of families, see the 1983 report cited above, p. 42, § 134).

81. For all these reasons, the applicant Government cannot be denied a legal interest in obtaining a finding that a situation previously found to be in breach of the Convention still persists after many years. In principle, this applies in the present case to all the complaints of continuing violations in respect of which the Commission has found breaches of the Convention in its previous reports, the decisive factor for affirming a legal interest being the long period of time since the adoption of those reports without any significant change having occurred in the situation of the persons concerned despite important changes in the institutional framework.

82. In this context, the Commission also notes the applicant Government's complaint of a violation of former Article 32 § 4 of the Convention by reason of Turkey's failure to put an end to the violations of the Convention established in the Commission's previous reports. The Commission recalls its findings in the 1983 report (cited above, pp. 22-23, §§ 59-62) and in its decision on the admissibility of the present application (cited above, p. 134), according to which the applicant Government cannot be denied a legal interest on the basis of an alleged precluding effect of the Committee of Ministers' resolutions concerning both previous inter-State applications. However, the Commission is not competent to make a finding – in the present case or otherwise – that the respondent

Government have not complied with their obligations under former Article 32 of the Convention arising from those resolutions, this being a matter reserved for consideration by the Committee of Ministers.

83. The Commission must finally consider whether the applicant Government's legal interest is excluded or limited on the ground that complaints similar to those raised in the present case have been brought before it by individual applicants. The Commission recalls that Turkey recognised the right of individual petition under former Article 25 of the Convention as from January 1987 and that since that time individual applications can be brought against Turkey, *inter alia*, on account of its exercise of jurisdiction in northern Cyprus (see *Chrysostomos, Papachrysostomou and Loizidou v. Turkey*, nos. 15299/89, 15300/89 and 15318/89, Commission decision of 4 March 1991, DR 68, p. 216). However, the mere possibility for the individuals concerned of bringing applications under former Article 25 in no way affects the right of the High Contracting Parties, including Cyprus, to introduce an application under former Article 24 for the protection of the same individuals. Moreover, even where individual applications have actually been brought, the Commission has accepted in *Donnelly and Others* that in principle inter-State applications and individual applications do not exclude each other since the applicants are different in each case and their respective claims are also different (see *Donnelly and Others v. the United Kingdom*, nos. 5577/72-5583/72, decision of 5 April 1973, Collection of Decisions 43, p. 149).

84. Thus, in an inter-State case, the applicant Government cannot be denied a legal interest in having their claims determined merely because some of the facts coincide with the subject matter of individual applications which have been or are pending before the Convention organs. The Commission notes that in the present case there is indeed some overlap with individual applications which have already been finally determined by the Committee of Ministers (*Chrysostomos and Papachrysostomou v. Turkey*, nos. 15299/89 and 15300/89, Commission's report of 8 July 1993, DR 86-A, p. 4) or the Court (Eur. Court HR, *Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), or which are currently pending before it or the Court at various procedural stages. However, these applications concern the particular situation of each individual applicant, whereas the present case deals with the broader aspects, including general measures affecting more persons than those who brought individual applications. The Commission recalls in this context that individuals can complain of legislation or administrative practices only in so far as they are being applied to them, whereas in an inter-State application the High Contracting Parties can challenge legislative measures and administrative practices as such (see Eur. Court HR, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 63, § 157, and p. 91, § 240).

85. The Commission understands that in the present case the applicant Government essentially complain of the consequences of legislative measures (which they do not recognise as such) and of administrative practices in the northern part of Cyprus. While putting forward, by way of evidence, a host of information concerning the manner in which these measures have been or are being applied to individual persons, they do not seek a determination of these individual cases under the Convention. They only ask for a finding that the said practices exist as alleged and that they are as such in breach of the Convention. On this basis, the Commission sees no reason to deny the legitimate legal interest of the applicant Government because applications relating to the same or similar facts have also been introduced by individual applicants.

86. In the present inter-State case, the Commission must take account of the evidence placed before it, which by its nature relates to individual cases, but which taken as a whole can make up the alleged administrative practices (see *Ireland v. the United Kingdom* cited above, p. 63, § 157). However, it has found it appropriate to exclude from its investigation under former Article 28 § 1 (a) of the Convention the facts underlying any individual applications actually pending (see paragraph 33 of the report). The present report therefore in no way prejudges the findings that may eventually be made in those cases.

Conclusion

87. The Commission concludes, unanimously, that the applicant Government have a legitimate legal interest in having the merits of the present application examined by the Commission.

Chapter 3

Responsibility of Turkey under the Convention

88. In the decision on the admissibility of the present application, the Commission rejected the respondent Government's objections as to Turkey's lack of jurisdiction and responsibility in respect of the acts complained of by the applicant Government, finding that it had not been shown that, generally speaking, these acts were prima facie incapable of falling within Turkish jurisdiction within the meaning of Article 1 of the Convention. The Commission added, however, that this finding did not in any way prejudge the questions to be decided at the merits stage of the proceedings, namely whether the matters complained of were actually

imputable to Turkey and gave rise to her responsibility under the Convention (decision cited above, p. 131).

89. At the merits stage, the respondent Government first refused to participate in the proceedings on the ground that by declaring the case admissible the Commission had acted *ultra vires*. When the respondent Government eventually decided to cooperate with the Commission, they declared, *inter alia*, that they did so on the basis of "the effectiveness of Turkish-Cypriot jurisdiction in northern Cyprus" and "the absence of any jurisdiction of Turkey" in respect of the matters complained of. Accordingly, the observations on the merits were declared to be "observations of the TRNC".

90. In these observations, and again at the hearing on the merits, it was submitted on behalf of the respondent Government that the application did "not concern acts or omissions of Turkey but those of the Turkish Republic of Northern Cyprus (TRNC)", an independent State established by the Turkish-Cypriot community in the north of Cyprus in the exercise of their right to self-determination after the collapse of the bi-communal constitutional arrangements. The "TRNC" had been recognised by Turkey and exercised governmental power, that is to say exclusive control and authority, over the territory north of the United Nations buffer-zone. The fact that the "TRNC" had not been recognised by other States and international organisations did not justify the conclusion that this State did not actually exist and did not have all the attributes of statehood. According to the rules of international law, its acts had to be given effect and this was indeed the practice of the courts in several States. The Commission itself, in its previously cited report in *Chrysostomos and Papachrysostomou*, which was subsequently approved by the Committee of Ministers (see, in particular, p. 38, § 169), had found no indication of control exercised by the Turkish authorities over the prison administration or the administration of justice by Turkish-Cypriot authorities and had stated that the acts complained of in that case were justified under domestic law and not imputable to Turkey.

91. The respondent Government consider that the Commission's finding of Turkish jurisdiction under Article 1 of the Convention in inter-State applications nos. 6780/74 and 6950/75 was due primarily to the presence of Turkey's armed forces. They recall that in the previously cited 1983 report on application no. 8007/77 the Commission observed that "the existence of some kind of civil administration in northern Cyprus does not exclude Turkish responsibility" (p. 24, § 64). However, they reject the proposition that the existence of "jurisdiction" creates an irrefutable presumption of responsibility. Such responsibility cannot in their view be established regardless of the actors and parties involved. Imputability and, consequently, responsibility, necessarily require an examination of the particular facts and proof of actual, and not

presumed involvement of the High Contracting Party concerned with the acts or omissions alleged to constitute violations of the Convention.

92. In this context, the respondent Government categorically reject the Court's finding in *Loizidou* (merits) (judgment cited above, pp. 2234-35, § 52) that the "Turkish Republic of Northern Cyprus" is a "subordinate local administration" of Turkey. *Inter alia*, they contest the basis of this finding, namely the assertion by the Court that "the Turkish Government have acknowledged that the applicant's loss of control of her property stems from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the 'TRNC'" (ibid., p. 2235, § 54). They submit that, in fact, they have never made such an acknowledgment. The Court must have been aware of the process of administrative and political evolution in northern Cyprus and that Turkey could not exercise control directly through its armed forces in that part of the island. They further point out that "TRNC" authority in northern Cyprus is not delegated by Turkey but based on the free will of its people. The "TRNC" legal system, incorporating basic elements from English common law, is very distinct from the system obtaining in Turkey, and the "TRNC" is neither a province nor a protectorate of Turkey. It is further claimed that the establishment of the "TRNC" and the enactment of its legislation is a *novus actus interveniens* capable of rebutting any presumption of Turkey's responsibility for the acts complained of. Finally, the respondent Government submit that *Loizidou*, as an individual application, was decided on its own facts and the Court's judgment in that case therefore cannot be generalised for the purposes of the present inter-State application.

93. The applicant Government note that the respondent Government deny responsibility by raising considerations of public international law. The applicant Government do not deny that the rules and principles of public international law may be relevant, but submit that they have to be seen in the context of the Convention, in particular its Article 1, which here constitutes the applicable law. The Convention as an agreement between States involves a standard form of responsibility for breaches by the Contracting States of their obligation to secure within their jurisdiction the rights enshrined in the Convention, which is an obligation of result and not one of conduct. Turkey cannot avoid this responsibility by claiming that the acts complained of are imputable to organs or authorities of the "TRNC". The military occupation of northern Cyprus results from the illegal use of force and the Turkish policy of fostering a secession based on a racial division of Cyprus has been decisively rejected by the international community. When this policy led to the proclamation of the establishment of the "TRNC" in 1983, this declaration as well as all secessionist actions were declared to be legally invalid by the United Nations Security Council and also by a

resolution of the Committee of Ministers of the Council of Europe. In terms of international law, this legal invalidity is based on two principles of *jus cogens*: the principle of non-recognition of changes resulting from the unlawful use or threat of force, and the prohibition of racial discrimination. In the applicant Government's view, the illegality of the "TRNC" administration has also been confirmed by the Court in *Loizidou* (merits) (judgment cited above, pp. 2230-31, §§ 42 and 44).

94. In the applicant Government's submission, the essential illegality of the administration in northern Cyprus precludes Turkey from relying on any legal justification for her acts and policies motivated by discrimination. Turkey may have no legal title in the areas under occupation, but it does have legal responsibility, or overall accountability, in these areas. This derives from Turkey's overall and exclusive control, which is not shared with any other State. In this connection, the applicant Government refer to the Advisory Opinion of the International Court of Justice in the Namibia case, where it was held that a State occupying a territory without title incurs international responsibility in relation to that territory (1971 ICJ Reports, p. 118, § 54). The applicant Government claim that there is overwhelming evidence of Turkish military presence and overall control in the occupied areas. If Turkey were not to be held responsible for conditions in northern Cyprus, no other legal person could be held responsible and the effectiveness of the Convention system and the public order of Europe would be undermined.

95. Finally, the applicant Government point out that, according to *Loizidou* (preliminary objections) (judgment cited above, p. 24, § 62), the fact that Turkey acts to some extent through a subordinate local administration in no way affects the legal consequences of its control over the occupied areas. While a State may delegate the administrative process to agents of a subordinate local administration established in certain areas, this does not relieve it of the obligation to secure the protection of human rights in those areas. A State cannot by delegation, even if this be genuine, avoid responsibility for breaches of its duties under international law. In the present case, Turkey has the duty to secure in the areas controlled by her the rights and freedoms protected by the Convention and to prevent violations thereof. The applicant Government submit that in the given circumstances there is therefore a strong presumption of Turkish responsibility for all violations of the Convention in the occupied areas, a presumption which in practical terms is irrefutable.

96. The Commission first recalls its reports on the earlier inter-State cases (see the 1976 report cited above, p. 32, §§ 83-85, and p. 33, § 87, fifth indent; and the 1983 report cited above, pp. 23-24, §§ 63-65), where it distinguished between, on the one hand, acts of Turkish military forces and other Turkish authorities – for which the respondent State was held

responsible – and, on the other hand, acts of Turkish-Cypriot authorities – which were not imputed to the respondent State. Accordingly, in those reports the question of imputability was examined separately in relation to each of the applicant Government's complaints on the basis of the actual involvement of Turkish authorities or officers. Such involvement was seen as implying the respondent State's responsibility under the Convention, notwithstanding the fact that most of the acts complained of had occurred outside the national territory of Turkey.

97. Essentially the same approach was followed in the Commission's reports of 8 July 1993 in *Chrysostomos and Papachrysostomou* (cited above, pp. 25-27, §§ 90-102, and pp. 36-38, §§ 161-71) and *Loizidou* (Series A no. 310, opinion of the Commission, p. 46, §§ 48-51, and p. 53, §§ 94-95), in which the Commission additionally distinguished between the "border area" or "buffer-zone", where it considered that Turkish forces exercised overall control, and the remaining parts of northern Cyprus, where the Commission accepted that Turkish-Cypriot authorities could exercise certain powers without engaging Turkey's responsibility (see *Chrysostomos and Papachrysostomou*, report cited above, pp. 34-35, §§ 146-56, and *Loizidou*, report cited above, pp. 50-51, §§ 76-83).

98. The Commission considers that these distinctions cannot be maintained after the Court's two previously cited judgments in *Loizidou* (preliminary objections and merits). In the first judgment, already relied on in the Commission's decision on the admissibility of the present application, it was stated (p. 24, § 62) that:

> "Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may 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."

The Court concluded (ibid., § 64) that the acts complained of in that case (loss of the applicant's control of her property) were capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention. However, the Court reserved for the merits stage the question whether the matters complained of were imputable to Turkey and gave rise to State responsibility.

99. In the judgment on the merits, the Court answered that question as follows (pp. 2235-36, § 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 numbers of troops engaged in active duties in northern Cyprus ... 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 and 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.

In view of this conclusion the Court need not pronounce itself on the arguments ... concerning the alleged lawfulness or unlawfulness under international law of Turkey's military intervention in the island in 1974 since ... the establishment of State responsibility under the Convention does not require such an enquiry ... It suffices to recall in this context ... that the international community considers that the Republic of Cyprus is the sole legitimate Government of the island and has consistently refused to accept the legitimacy of the 'TRNC' as a State within the meaning of international law ..."

100. The Commission considers that it should follow the Court's decision in this respect, which must be considered as the authoritative ruling of the competent Convention organ from the point of view of international law. The fact that the Committee of Ministers seems to have implicitly accepted the Commission's different view of the matter by endorsing the report in *Chrysostomos and Papachrysostomou* cannot make any difference as that resolution (Resolution DH (95) 245 of 19 October 1995, reproduced in DR 86-A, p. 51) does not contain any express reference to the issue of Turkish responsibility and, in any event, the judgment in *Loizidou* is the more recent decision.

101. In reaching this conclusion, the Commission has taken into account the arguments submitted by the parties in the proceedings concerning the present application, in particular the respondent Government's contention that the Court's judgment in *Loizidou* was based on an acknowledgment which in fact had never been made by the respondent Government and their further contention that in any event it was limited to the facts of the particular case and was not capable of generalisation for the purposes of the present inter-State application. The Commission does not share these views of the respondent Government. It notes that the Court's proceedings in *Loizidou* were conducted in parallel with the Commission's proceedings in the present case and that both parties raised largely the same arguments before the Court and the Commission. Even assuming that the respondent Government's assertion that they never made an express acknowledgment in the terms referred to by the Court is true, the latter examined a wide range of other facts and arguments on which it based its above conclusion. Moreover, the Court expressly held that, in order to reach this conclusion, it was not necessary to determine whether Turkey actually exercised detailed control over the policies and actions of the "TRNC"; in these circumstances, the Commission has not considered it appropriate to make such a determination in the present case and to carry out an

investigation on this aspect of the case, as suggested by the applicant Government.

102. Finally, the Commission notes that the Court's findings as to Turkey's responsibility for events in northern Cyprus have been expressed in such broad terms in *Loizidou* that they must be taken as the statement of a general principle. Accordingly, the Commission considers that Turkish responsibility extends to all acts of the "TRNC", being a subordinate local administration of Turkey in northern Cyprus. Thus, this responsibility is not limited to property issues, such as those considered in *Loizidou*, but covers the entire range of complaints raised by the applicant Government in the present application, irrespective of whether they relate to acts or omissions of Turkish or Turkish-Cypriot authorities. Consequently, the Commission will not examine in the present report the question of imputability separately for each of the various complaints at issue.

Conclusion

103. The Commission concludes, unanimously, that the facts complained of in the present application fall within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State's responsibility under the Convention.

Chapter 4

Domestic remedies

104. In the decision on the admissibility of the present application the Commission reserved the question of exhaustion of domestic remedies to the extent that it concerns remedies before the Turkish-Cypriot authorities. It considered that this question was closely related to the above issue of Turkish jurisdiction in the northern part of Cyprus which could only be determined at the merits stage of the proceedings (decision cited above, p. 141). The Commission just having found that the "TRNC" must be considered as a subordinate local administration of Turkey for whose actions and omissions the respondent State is generally to be held responsible under the Convention, it must now examine whether this also implies that "TRNC" remedies have to be regarded as "domestic" remedies within the meaning of former Article 26 of the Convention. In other words, the Commission must determine whether it is a requirement under this provision in relation to any complaint about measures taken by "TRNC" authorities that remedies available in the "TRNC" should have

been exhausted before the Commission can proceed to an examination of the merits of such a complaint.

105. It is the normal practice of the Commission to examine the issue of exhaustion of domestic remedies separately in relation to each particular complaint. The Commission does not propose to depart from this practice in the present case and will therefore consider specific remedies referred to by the respondent Government in the appropriate context in Part Two below. However, the above question whether or not in this context existing "TRNC" remedies can be taken into account at all is of a more general nature and therefore needs to be addressed in general terms.

106. The respondent Government claim that the judicial system set up in the "TRNC" provides adequate and effective institutional guarantees. The applicable substantive and procedural law includes not only the "TRNC Constitution" and the laws made thereunder, but also some laws enacted under the 1960 Constitution which have remained in force and – to a considerable extent where criminal and civil law are concerned – the English common law and doctrines of equity, in so far as they are not inconsistent with the Constitution. There is a fully developed system of independent courts in the "TRNC". The judges' independence is guaranteed by the "TRNC Constitution" and any interference with the courts' jurisdiction amounts to contempt of court. The rules on contempt of court can also be applied *vis-à-vis* the administration, *inter alia*, when an administrative organ fails to execute a court decision. The organisation of the courts essentially goes back to the 1975 Constitution of the "Turkish Federated State of Cyprus", the relevant provisions having been implemented by the 1976 Courts of Justice Law and retained by the 1985 "TRNC Constitution". On the lower level, there are assize courts (composed of three district court judges sitting without a jury who try serious crimes, including crimes carrying the death penalty), district courts (with jurisdiction in civil and criminal matters), family courts and juvenile courts. On the higher level, jurisdiction is concentrated in the Supreme Court, composed of a President and seven judges, and which sits in different functions: as the Supreme Constitutional Court (five judges), as the Court of Appeal (quorum of three judges) and as the High Administrative Court (single judge in first instance, with an appeal lying to the court sitting with three judges).

107. Apart from some other competences, the Constitutional Court has exclusive jurisdiction to decide on the constitutionality of laws and certain other acts. This involves control of the constitutionality of laws or decisions of the Legislative Assembly upon reference by the President of the Republic prior to their promulgation; actions for the annulment of laws and certain other general norms (but not decisions of the Council of Ministers) challenged, on the ground of unconstitutionality, by the

President, political parties, political groups, nine deputies or affected associations; and – most importantly – reference by the courts of questions of constitutionality of laws and other norms (decisions of legislative and administrative organs) which are material for the courts' decisions (the parties to the proceedings have a right to request such reference; the courts are not empowered to rule themselves on the question of constitutionality and are bound by the Constitutional Court's decision and therefore compelled to disregard provisions found to be unconstitutional).

108. The Court of Appeal determines appeals from lower courts in civil and criminal cases. All decisions of district courts and assize courts are open to appeal as of right. Criminal appeals can be lodged against conviction and/or sentence; in assize court cases, the Attorney-General can also appeal against acquittals. Both in criminal and in civil cases, the appeals are determined by way of rehearing. The Court of Appeal may also issue orders in the nature of habeas corpus, mandamus, prohibition, *certiorari* and *quo warranto*. As distinct from the English common-law system, from which they were inherited, in northern Cyprus such writs have less importance as instruments for the judicial review of administrative acts as they cannot be used when other, more specific remedies are available, which is generally the case in view of the exclusive competence of the High Administrative Court in administrative matters.

109. In fact, the competence of the High Administrative Court involves the judicial review of the acts, decisions and omissions of any organ, authority or person exercising any executive or administrative power. In practice, this covers not only State organs *stricto sensu*, but also semi-official institutions (Electricity Authority, Telecommunications Authority, non-private radio and television corporations), but only where individual administrative acts are concerned. Acts which by their nature are legislative (such as rules and regulations by the Council of Ministers) or judicial (such as decisions of the Lands Office relating to boundary disputes and ownership of land) are not considered as administrative acts subject to review by the High Administrative Court. However, decisions of the competent commissions under the 1977 Housing, Allocation of Land and Property of Equal Value Law (relating to distribution of "abandoned" Greek-Cypriot property to Turkish Cypriots) are regarded as administrative acts. Any such acts can be challenged on the grounds of contravention of the Constitution, illegality, and excess or abuse of power. The High Administrative Court can annul the administrative act or decision and, in the case of an omission, declare that it should not have been made and that whatever has been omitted should have been performed. However, it cannot substitute its own decision for that of the competent administrative body or revise the latter's decision, the matter thus normally being referred back to that body for reconsideration. Nor

can the High Administrative Court adjudicate compensation to the aggrieved person, the latter being entitled to bring an action with the district court to this end.

110. Finally, the "TRNC" judicial system provides for two levels of military court which have been established since 1983: the "TRNC Security Forces Court" (composed of two officers of the Security Forces designated by the Security Forces Command, and two civilian judges designated by the Supreme Council of Judicature) and the "Security Forces Court of Appeal" (composed of two officers of the Security Forces designated by the Security Forces Commander, and two Supreme Court judges designated by the Supreme Council of Judicature). These courts try criminal and disciplinary offences of members of the Security Forces. They also have jurisdiction to try offences committed in military areas, during military service and in respect of military property. Otherwise, they have no jurisdiction in respect of civilians.

111. The respondent Government submit that there is access to independent courts for every individual in the "TRNC". As regards the Turkish Cypriots living in northern Cyprus, their rights are fully protected under the Constitution and the laws of the "TRNC". Independent and impartial courts are the guarantors of these rights. No evidence has been adduced to show that remedies do not exist or that those available are insufficient or unpracticable. The respondent Government further submit that Greek Cypriots and Maronites living in northern Cyprus are regarded as "TRNC" citizens and therefore enjoy the same rights and remedies as Turkish Cypriots. In particular, their immovable properties do not come within the definition of "abandoned" properties and therefore there is no restriction on the use and enjoyment of such property by their owners. Karpas Greek Cypriots who in the past instituted court proceedings for unlawful occupation of and/or trespass to property under the Civil Wrongs Law have in fact been successful in their actions. In these cases, the Attorney-General of the "TRNC" was sued as a co-defendant, representing the State, because the occupation of the property in question took place as a result of wrongful allocation or authorisation or consent by the relevant State organs.

112. However, the respondent Government contend that Greek Cypriots and Maronites living in northern Cyprus are being positively discouraged by the "Greek-Cypriot administration" from recognising, or appearing to recognise, Turkish-Cypriot institutions and authorities and are thus prevented from seeking relief within the legal system of the north. Thus, they are unable to conclude transactions at Turkish-Cypriot government departments or to apply to the "TRNC" authorities in order to obtain their right to transfer and/or inherit property. If an application were made to the competent Turkish-Cypriot court for grant of administration of the estate of a deceased Greek Cypriot, there is no

reason why that court should not grant such an order and make it possible to inherit property. In this context, the respondent Government also refer to the finding of the Commission in *Chrysostomos and Papachrysostomou* (report cited above, § 174) that the applicants in that case had not wished to avail themselves of existing remedies.

113. The applicant Government submit that the respondent Government's submissions on the judicial system of the "TRNC" cannot be relied on by the Commission because they are tendentious and highly selective, singling out the formal provisions of the "TRNC Constitution" and "laws" and disregarding the context of total unlawfulness in which this "Constitution" and these "laws" were created and in which they operate. The applicant Government describe these submissions as "an attempt to create an illusion of lawfulness, regularity and judicial remedies", or "an attempt to present unlawful arrangements as constituting a 'legal system' ". They submit that these arrangements are unlawful in international law, as specified in United Nations Security Council Resolutions 541 (1983) and 550 (1984); they are in violation of the 1960 Treaty of Guarantee and the result of Turkish aggression against the Republic of Cyprus; they are unlawful in the municipal law of the Republic of Cyprus; and they flow from violations of the law of the Council of Europe, which repudiates systematic violations of human rights and their results. Also, the false impression is conveyed that the "TRNC", its "Constitution" and its "legal system" just evolved through Turkish-Cypriot actions, disregarding the role which the respondent State played in setting up this institutional framework in northern Cyprus. The applicant Government observe that this has been done with a view to asserting that Turkish-Cypriot institutions cannot be "national authorities" of Turkey, the respondent Government having expressly disclaimed Turkey's responsibility for the "TRNC" and its institutions.

114. The applicant Government point out that, according to the respondent Government's submissions, the "TRNC Constitution" is the basic law of northern Cyprus, and therefore there is no remedy against action consistent with or dictated by that "Constitution". The relationship between the "TRNC Constitution" and the European Convention on Human Rights, incorporated in the law of the Republic of Cyprus in 1962, has not been elucidated by the respondent Government. The Convention rights were directly applicable in Cyprus, but they have been replaced by the "TRNC Constitution" which is narrower in scope. Since that "Constitution" guarantees fundamental rights only to "TRNC citizens", "non-citizens" and in particular non-resident Greek Cypriots cannot rely on them. In any event, the applicant Government claim that, due to the conduct of "public servants" and of the "police", who have a crucial role in initiating remedial procedures, there are systematic administrative practices violating the Convention rights of Karpas Greek

Cypriots and Turkish Cypriots (including Gypsies) in relation to which there is no need to exhaust domestic remedies.

115. The applicant Government consider that the respondent State is responsible in so far as the "legal system" which has been set up in northern Cyprus does not ensure observance of the Convention rights, leading either to actual violation of such rights or failure to observe positive duties arising under the Convention. The fact that responsibility can flow from the acts of Turkish-created institutions does not carry the correlative that such institutions must be treated as institutions which Turkey is required to set up under various Articles of the Convention, such as Articles 6 and 13 (for further arguments of the applicant Government concerning compliance with these Articles, see paragraphs 323, 353-54 and 525). Responsibility for subordinate organs does not mean either that these organs are therefore endowed with capacity to "secure" Convention rights within the meaning of Article 1 of the Convention. Accordingly, it cannot be necessary to exhaust "remedies" before such organs for the purposes of former Article 26 of the Convention. Even if, in carrying out their control functions, such organs do not violate the Convention or if they prevent violations, the system in which they operate cannot be validated. Otherwise, there would be a risk that an illegal regime – internationally recognised as such – might be indirectly legitimated. In the applicant Government's view, there is thus no equivalence between State responsibility and enforcement of Convention duties.

116. The applicant Government refer to the Court's jurisprudence according to which a realistic account must be taken not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate (see Eur. Court HR, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69). They submit that in the present case the violations complained of are interwoven with the nature of the regime in the occupied part of Cyprus and with that regime's declared policies. The regime is a subordinate local administration under the control of the military forces of Turkey. It is expressing and trying to implement the national policies and objectives of Turkey in respect of Cyprus, namely, to divide the island into two separate States to be administered and populated by Greek Cypriots and Turkish Cypriots respectively. In a context of military occupation, it is unrealistic and inconceivable to expect that local administrative or judicial authorities can issue effective decisions against persons exercising authority with the backing of the occupation army, in order to remedy violations of human rights committed in furtherance of the general policies of the regime in the occupied area.

117. Referring to the decision on the admissibility of application no. 8007/77 (cited above, p. 152, § 34), the applicant Government claim

that remedies in the national territory of the occupying country cannot be expected to be used by victims of human rights violations in the occupied territory. Remedies within the occupied territory, on the other hand, cannot be considered as "domestic remedies" of the occupying State and, even if they were regarded as "domestic remedies", a distinction must be made, in the applicant Government's view, between lawful and unlawful remedies, only lawful remedies, namely remedies which have not been established by the illegal regime, being envisaged by former Article 26 of the Convention. It would indeed be absurd to consider that the Convention, which aims at the prevalence of the rule of law and democracy, requires from those intended to be protected by its provisions to use procedures which are illegal as a condition for getting the benefit of such protection.

118. On this basis, the applicant Government submit that Turkey is incapable of providing any lawful remedies in northern Cyprus, the military regime established there being undemocratic and illegal. In particular, any Turkish courts in Cyprus are unlawful, Turkey's action in altering the court system being in breach of the Treaty of Guarantee. Even a belligerent occupier may not alter the legal system of the occupied territory under the applicable rules of international law. It is submitted that in any event the provisions of the Convention prevail over the rules of public international law as regards the position of an occupying power, the Convention being the *lex specialis* on the subject of human rights.

119. Therefore, the applicant Government also consider inapplicable the ruling of the International Court of Justice in the Namibia case (see above), according to which the invalidity of acts of a State which illegally occupies a territory should not result in depriving the people of that territory of advantages derived from international cooperation, such invalidity thus not extending to acts, such as registration of births, deaths and marriages, the effects of which could be ignored only to the detriment of the inhabitants of the territory. They point out that the Namibia ruling was cited in *Loizidou* by the Court which, however, declined to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the "TRNC" (judgment on the merits cited above, p. 2231, § 45). The Namibia ruling was not applied by the European Court of Justice in *Ministry of Agriculture, Fisheries and Food, ex parte S.P. Anastassiou (Pissouris) Ltd v. Sunzest Products*, nor by the US 7th Circuit Court in *Autocephalos Greek Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts* (917 Fed. Reporter 2nd series 278 (7th Cir.) 1990). The applicant Government do not exclude that a few arrangements made in terms of the "legal system of the TRNC" and affecting private persons (for example, a divorce or a testament) might be accorded validity, but consider that this is not inconsistent with the general position prompted by overriding considerations of public policy that the so-called "remedies" are illegal and not relevant to the Convention.

120. The Commission first emphasises that it cannot be its task in the present case to determine the status of the "TRNC" and the validity of the acts of its administration according to the general rules of international law. Its only function in the present context is to determine to what extent the remedies relied on by the respondent Government must be taken into account for the purposes of former Article 26 of the Convention. Since the respondent Government have only referred to remedies claimed to be available in the "TRNC legal system", it must be assumed that there are no other remedies and in particular no remedies in Turkey which could provide relief in respect of the various matters complained of. Even if such remedies exist, they can be disregarded by the Commission in the absence of any claim by the respondent Government that they should have been exhausted.

121. Turning therefore to the remedies in the "TRNC", it seems that both parties agree that they should not be regarded as "domestic" remedies in the sense of former Article 26. However, the reasons for this proposition are different in the argumentation of each party. The respondent Government do not consider the remedies in question as "domestic" because they generally disclaim Turkey's responsibility for the actions of the "TRNC", which in their view is an independent State separate from Turkey. This proposition has already been rejected by the Commission, which found that Turkey must be held responsible due to the overall control which it exercises over the "TRNC", the latter being a subordinate local administration of Turkey. The applicant Government, who accept that the "TRNC" is a subordinate local administration of Turkey, nevertheless contend that "TRNC remedies" are not "domestic" remedies of Turkey, the "TRNC authorities" having no legal capacity to discharge Turkey's duties under the Convention.

122. The Commission considers this distinction to be an artificial one. The question whether Turkey can discharge her duties under certain Convention Articles such as Articles 6 or 13 through institutions which have been set up in the framework of Turkey's subordinate local administration in northern Cyprus goes to the merits of the issues arising under those Articles and has nothing to do with the general procedural requirement under former Article 26 of the Convention according to which any complaints raised before the Commission should first have been ventilated before the appropriate "domestic authorities" capable of providing effective relief. In the Commission's view, it is a necessary corollary of the "TRNC" being considered as a subordinate local administration of Turkey that the remedies available before "TRNC" institutions must be regarded as "domestic remedies" of the respondent State for the purposes of former Article 26 of the Convention.

123. As regards the applicant Government's further argument that these remedies are irrelevant because they operate in a context of total

illegality, the Commission notes that the establishment of the "TRNC" has in fact been declared illegal and invalid by resolutions of the United Nations Security Council and the Committee of Ministers of the Council of Europe, and that it has not been recognised by any State except Turkey. It is also obvious that the proclamation of the "TRNC" as an independent State is incompatible with the international agreements underlying the independence of Cyprus and with the Cypriot Constitution of 1960. Nevertheless, it cannot be denied that the "TRNC" regime exists and that it exercises *de facto* authority in the northern part of Cyprus under the overall control of Turkey. While the government of the Republic of Cyprus remains the sole legitimate government of Cyprus with the consequence that at least certain provisions of the "TRNC Constitution" cannot be attributed legal validity for the purposes of the Convention (see *Loizidou* (merits), cited above, p. 2231, § 44), the Court has acknowledged that "international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, ... the effects of which can be ignored only to the detriment of the inhabitants of the territory" (ibid., § 45, with a reference to the ICJ's Namibia ruling).

124. The Commission notes that the particular provision of the "TRNC Constitution" which the Court considered invalid purported to deprive the individuals concerned of a Convention right. However, as regards the remedies available in the "TRNC legal system", it is in essence contended by the respondent Government that they benefit the population of northern Cyprus in that they serve to prevent violations of their rights or provide redress against such violations. The Commission accepts that this is indeed the function of the remedies in question, despite the fact that the framework within which they have been created and operate is illegal from the point of view of international law. However, this international unlawfulness does not by itself deprive the remedies of their effectiveness. To the extent that they are indeed effective, they provide the persons concerned with a practical means to improve their situation, while ensuring at the same time that the authorities can create the state of affairs which they consider as the appropriate one and which should be the basis for their incurring any international liability, including responsibility under the Convention, which in this instance must be imputed to Turkey.

125. Bearing in mind that the Convention is an instrument which is intended to protect rights that are practical and effective and having regard also to the subsidiary nature of the international control mechanism established under the Convention, the Commission considers that it must in principle take into account, for the purposes of former Article 26, any effective remedies which Turkey's subordinate local administration in northern Cyprus holds available for victims of alleged violations of the Convention. This is also in line with the Commission's

approach in *Chrysostomos and Papachrysostomou*, where it considered certain "TRNC" remedies to be valid (although it did not at that time attribute overall responsibility to Turkey; report cited above, p. 35, § 152).

126. Only effective remedies need to be exhausted. Whether or not a particular remedy can be regarded as effective must be determined in relation to the specific complaint at issue. It is true that, in the present case, the applicant Government's complaints concern essentially a number of alleged administrative practices for which there is no requirement to exhaust domestic remedies. However, the very question whether or not there exists an administrative practice depends on the unavailability of effective remedies in relation to the acts constituting such a practice, and therefore the Commission must consider the question of available remedies in the appropriate places in Part Two of the present report. In the light of the above conclusions it will take account of "TRNC" remedies in this context.

127. The Commission does not consider that a requirement for victims of alleged violations to exhaust available "TRNC" remedies amounts to indirect legitimisation of a regime which is unlawful under international law. The status of the "TRNC" in international law remains that of a subordinate local administration of Turkey for whose actions only the latter is responsible under the Convention.

Conclusion

128. The Commission concludes, by nineteen votes to one, that for the purposes of former Article 26 of the Convention remedies available in northern Cyprus are to be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of those remedies is to be considered in the specific circumstances where it arises.

Chapter 5

Compliance with the six-month time-limit

129. In the decision on admissibility, the Commission also reserved the question whether the six-month time-limit laid down in former Article 26 of the Convention has been complied with in so far as continuing violations of certain Convention Articles are alleged (decision cited above, p. 142). The parties have not submitted any arguments on this question at the merits stage of the proceedings.

130. The Commission notes that the alleged continuing violations arise in the context of administrative practices for which by definition no domestic remedies need to be exhausted and for which, therefore, the

time-limit envisaged by former Article 26 does not run from the date of a final decision but from the date when the acts complained of occurred. The Commission must essentially verify whether the alleged administrative practices are still in force. In this context, it can only take account of practices which remained in force until at least six months before the introduction of the application, in so far as they continued to be applied after that date. Practices which stopped earlier cannot be considered at all. It is with this in mind that the Commission decided to exclude from the scope of its investigation under former Article 28 § 1 (a) of the Convention any situations which ended before 22 May 1994 (see paragraph 33 of the report).

Conclusion

131. The Commission concludes, unanimously, that no further issue arises as to compliance with the six-month time-limit, as laid down in former Article 26 of the Convention.

Chapter 6

Assessment of the evidence

132. Before dealing with the applicant Government's allegations under specific Articles of the Convention, the Commission considers it appropriate to recall the principles which it must apply in the present case in exercising its task to establish the facts under former Article 28 § 1 (a) of the Convention, in particular as regards the assessment of the evidence submitted to it by the parties or taken during the investigation which the Commission's delegates carried out together with the representatives of the parties.

133. According to the case-law of the Convention organs, the required standard of proof is establishment of the facts "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In addition the conduct of the parties when evidence is being obtained may be taken into account (see *Ireland v. the United Kingdom*, cited above, p. 65, § 161). Moreover, as regards the establishment of the existence of administrative practices, the Convention organs do not rely on the concept that the burden of proof is borne by one or the other of the two Governments concerned. Rather, the Commission must examine all the material before it, irrespective of its origin (ibid., p. 64, § 160).

134. In the present case, the Commission is not confronted, as in the earlier inter-State cases, with difficulties arising from non-cooperation of

the respondent Government. It does not consider it appropriate to draw any inferences from the respondent Government's non-cooperation at the early stages of the proceedings on the merits. Therefore, the Commission can rely on evidence submitted by both parties which has been tested in an adversarial procedure. Accordingly, the Commission has not been compelled to resort to special precautions to avoid possible shortcomings of one-sided evidence (see the 1976 report cited above, p. 31, § 81, and the 1983 report cited above, p. 31, § 90, and p. 32, § 95) or to distinguish between different degrees of certainty as to the facts that could be established (see the 1976 report cited above, p. 31, § 82). However, since in the present case reference has frequently been made to findings of the Commission in the earlier inter-State cases, the Commission will take such findings into account where appropriate. It must emphasise in this context that, because the above-mentioned precautions were applied at the relevant time, the reliability of those findings cannot be called into question.

135. It is of course true that, as in the earlier cases, one of the difficulties of the present application is the sheer number of alleged violations of the Convention and the very broad scope of the evidence submitted. The Commission finds that practically all aspects of the case are covered by documentary material submitted by the parties. However, in relation to some such materials objections have been raised by the opposite party with a view to obtaining a ruling of the Commission that they should not be taken into account, either on formal grounds or for reasons of procedural fairness. Thus, the applicant Government have objected to the materials submitted by the respondent Government on 24 November 1997 on the ground that they had been submitted after expiry of the time-limit and on behalf of the "TRNC"; they have further objected to the submission by the respondent Government on 9 June 1998 of a revised version of one of the appendices to those materials, on the grounds that by that time the Commission had indicated to the parties that it did not expect them to make any further submissions and that the applicant Government was deprived of an opportunity to reply. On similar grounds, the respondent Government have objected to the voluminous documents submitted by the applicant Government with their observations of 1 June 1998 and to the documentation on missing persons submitted by the applicant Government at the oral hearing on 7 July 1998. Finally, the applicant Government have objected to the submission of an *aide-mémoire* by the respondent Government on 2 October 1998, after the Commission's decision of 14 September 1998 not to take into account any further submissions of the parties (see paragraph 61 of the report).

136. The Commission has not found it appropriate to exclude from its examination any of the documentary material provided by the parties except the above-mentioned *aide-mémoire* which has been submitted out of

time as well as the documents relating to the death of a witness, submitted by the applicant Government on 2 May 1999 (see paragraph 62 of the report). As regards the documents submitted on 24 November 1997, the Commission notes that they were received from the Agent of the respondent Government in reply to a specific request from the Commission. The non-compliance with the original time-limit set by the Commission for this purpose is explained by the development of the proceedings, the respondent Government having decided only at a late stage to cooperate with the Commission. The fact that the documentation in question has been prepared by the "TRNC" authorities, being a subordinate local administration of Turkey, does not deprive it of evidential value. The Commission wishes to emphasise in this context that the reference to the "TRNC" as the originating authority can in no way affect the status of Turkey as the respondent State in this case. Finally, the fact that one of the appendices to that documentation was later replaced by a new expanded and updated version has not deprived the applicant Government of the opportunity to reply thereto. In fact, in order to give effect to the principle of procedural equality between the parties, the Commission has also taken into account the applicant Government's unsolicited comments of 31 August 1998.

137. As to the documentation submitted by the applicant Government on 1 June 1998, the Commission considers that it exceeded the scope of mere "comments" for which the Commission had asked the applicant Government. However, the extended time-limit set by the Commission was respected. In view of the nature and volume of the applicant Government's submissions, the Commission granted the respondent Government a further opportunity to reply even after the oral hearing, which they did on 27 August 1998. The principle of procedural equality between the parties has therefore been respected as far as possible also in this respect. The Commission is, however, aware that due to lack of time the respondent Government may not have been able to address fully and in detail all the facts covered by the said documentation. Similarly, as regards the documents on missing persons submitted by the applicant Government at the oral hearing on 7 July 1998, while the respondent Government included some comments on this material in their letter of 5 August 1998, their opportunity for fully replying to that material has been limited. In view of considerations of procedural fairness, the Commission can attribute only limited evidential value to the above two sets of documents submitted by the applicant Government.

138. Among the documents before the Commission, there is a United Nations report on the humanitarian situation of Greek Cypriots in the Karpas area, the so-called "Karpas Brief" submitted by the applicant Government in two versions. The Commission was not initially aware that this document was of a confidential nature and had neither been

published nor intended to be published by the United Nations. This was only discovered when the Commission's delegates subsequently heard the authors of the said report, Mr Manzl and Mr O'Sullivan, as witnesses who, despite certain limitations to their testimony due to the duty of discretion which they owed the United Nations, gave valuable information on the circumstances in which this report and two similar reports, on the situation of Maronites in northern Cyprus and of the Turkish-Cypriot minority in southern Cyprus, had been prepared. The applicant Government subsequently requested the Commission to procure the latter reports from the United Nations. The competent UN services would have been prepared to provide them to the Commission on the condition that both parties agreed. As the respondent Government raised objections, the Commission did not ask for the reports. However, the Commission notes that the respondent Government's objections did not relate to the "Karpas Brief", which by that time was already before the Commission. It can therefore be used as evidence although, due to its status as a non-public UN document, the Commission will refrain from quoting any details from that report. Nor will the Commission draw any inferences from the respondent Government's refusal to consent to the disclosure of the other two reports.

139. Apart from that, the following types of documentary evidence are before the Commission:

– a film, *Attila 1974*, by Michael Kakoyiannis, and various documents, books, memoirs, articles, press reports, etc., providing a background to the events in Cyprus around the time of the Turkish intervention; the Commission notes that these materials do not contain matters of direct relevance to the administrative practices complained of in the present case and therefore does not propose to deal with them as a matter of evidence;

– numerous written statements by witnesses (partly anonymous, partly accompanied by official documents, photos, and other material); the Commission sees no reason to doubt the authenticity of the statements, but as it does not know the particular circumstances in which they were prepared, including the degree of involvement of government agents when these statements were taken, it must use them with caution;

– a complete set of UN (Secretary-General and Security Council) reports on the Cyprus question since 1974, covering, *inter alia*, the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP) and the development of the inter-communal talks and of the proceedings of the United Nations Committee on Missing Persons (CMP); in so far as these reports relate to acts alleged to constitute violations of the Convention, they must be considered as an important objective source of information;

– a number of NGO reports on events in Cyprus; some, emanating from independent sources, carry considerable evidential value; to the extent, however, that the NGOs concerned are interest groups involved in the Cyprus conflict, their evidential value appears limited;

– press reports and broadcast transcripts (Greek Cypriot, Turkish Cypriot, Turkish, Greek and international); in so far as they concern specific facts relevant to the case, they may provide useful indications, without, however, amounting to full proof of the facts reported;

– the "TRNC Constitution" and extracts from "TRNC" legislation, treaties and other legal instruments; in the Commission's view, it must be assumed that they indeed constitute the "law" of Turkey's subordinate local administration in northern Cyprus; however, the existence of such legal instruments does not prove that they are actually and effectively applied and that there are no other regulations or practices which might be in conflict with these instruments;

– several collections and surveys of judgments by Turkish-Cypriot courts; their authenticity is not in doubt and therefore they provide proof that the cases at issue were decided in the reported manner;

– various other materials, including government reports, memorials, statistics, etc., which must be assessed in the particular context.

140. Despite the broad scope of documentary evidence submitted to it, the Commission has found it appropriate in the present case to carry out its own investigation of certain of the facts. However, a full investigation of all aspects of the case was not considered necessary. Thus, the Commission has excluded the questions of missing persons and property issues from the investigation, considering that in this respect it can rely in part on findings made in earlier reports and in part on documentary evidence which permits the establishment of the present state of affairs with a sufficient degree of certainty. The investigation has focused on the Convention issues related, on the one hand, to the general living conditions of so-called "enclaved" Greek Cypriots and, on the other, to the situation of Turkish Cypriots, in particular political dissidents and members of the Gypsy minority, in northern Cyprus. As the Commission had before it voluminous documentary material on these issues also, the investigation was not conceived as a comprehensive fact-finding exercise for establishing all relevant circumstances. Rather, the Commission concentrated on matters which did not appear to be sufficiently clear from the other available evidence and on facts which were in dispute between the parties. The results of the investigation have provided the Commission with an important supplementary means of evidence which, due to the immediate impression which the delegates could gain of certain relevant situations and of the credibility of the witnesses, must be given decisive weight in the assessment of disputed facts.

141. The investigation has involved visits to certain localities (the Ledra Palace crossing-point over the demarcation line, a court building in northern Nicosia and Greek Cypriot villages in the Karpas area), and the taking of oral depositions from a number of witnesses and from officials and other persons encountered during the visit to the Karpas peninsula. The conditions under which these witnesses and other persons have been heard have been described in detail above. The Commission recalls in particular that the majority of witnesses used either the Greek or the Turkish language and that they were therefore heard through interpreters. Full verbatim records were prepared of all witnesses' oral evidence and a summary record of the statements heard during the Karpas visit. These records have been used not only by the delegates but also by the plenary Commission. The Commission has noted the corrections made by the parties to the verbatim records and the objections to certain such corrections which in part were of a linguistic nature. It is aware of the difficulty attached to assessing evidence obtained orally through interpreters and has therefore paid careful and cautious attention to the meaning and significance which should be attributed to the statements made by witnesses appearing before its delegates.

142. The Commission further notes that several of the witnesses heard by the delegates on the applicant Government's proposal have remained unidentified and that in this respect a screening procedure was applied by the delegates which allowed the parties' representatives to follow their interrogation only through the English interpretation. This might have caused some additional linguistic difficulties which, however, are mitigated by the fact that the parties subsequently also received a full transcript in the original language on which they could comment. The Commission has authorised the hearing of unidentified witnesses and the use of the said screening procedure mainly on the basis of the subjective fears of the witnesses concerned that they might be exposed to pressure or reprisals. The Commission considers that the existence of such subjective fears was sufficiently demonstrated when the applicant Government asked for the non-disclosure of the identity of the witnesses in question and it is satisfied that it has in each case also been confirmed by the witnesses' attitude when they appeared before the delegates. This does not mean, however, that in the Commission's view the witnesses' subjective fears are objectively justified.

143. The respondent Government contend that they have suffered a procedural disadvantage by the very fact that an important number of the applicant Government's witnesses were heard without being identified and that some of them waived their objections to the non-

disclosure of their identity only at the last minute. This, it is claimed, prevented the respondent Government's representatives from properly preparing for the cross-examination of the said witnesses and from putting useful questions at their interrogation. The Commission observes, however, that a broad profile of the witnesses and the matters on which they were supposed to give evidence had previously been indicated. The procedural disadvantages encountered by the respondent Government's representatives should therefore not be over-estimated. Nevertheless, it cannot be denied that such disadvantages in fact existed and that the credibility of the witnesses in question could not always be fully tested, for example by confronting them with particular facts inconsistent with their testimony. With this in mind, the Commission has preferred to adopt a cautious approach in its assessment of the unidentified witnesses' evidence by ascertaining its value having regard to the particular nature of each of these witnesses' testimony.

144. The Commission finally notes in this context that the respondent Government, too, had proposed two witnesses (probably Maronites living in northern Cyprus) who wished to remain unidentified. The delegates were prepared to hear them under the same conditions as the other unidentified witnesses. They were summoned, but ultimately did not appear before the delegates, for reasons which have remained unexplained. Nevertheless, the Commission does not consider it appropriate in the given circumstances to draw any inferences from that fact.

145. In conclusion, the Commission wishes to observe that, apart from the material referred to in the first indent in paragraph 139 above, it has used the entire evidence placed before it, being well aware that in view of the nature and volume of this evidence it has been confronted with a particularly difficult task. It has attempted to attribute to each item of evidence the appropriate value taking into account in particular the degree of objectivity and/or credibility of the source and the parties' procedural position as to the possibility of challenging the evidence. Where facts were in dispute between the parties, it has been the specific function of the Commission's delegates to seek the necessary clarifications, and therefore the Commission attaches decisive importance in this respect to the findings of its delegates, who had the advantage of gaining a direct and personal impression of the relevant witnesses and of the general situation prevailing in the northern part of Cyprus.

146. In exercising its functions under former Article 28 § 1 (a) of the Convention, the Commission will thus determine the value of each piece of evidence submitted to it having regard to the nature of this evidence and the procedure through which it has been obtained.

PART TWO

The particular complaints

Chapter 1

Greek-Cypriot missing persons

A. Complaints

147. The Commission has declared admissible the applicant Government's complaints that, should any Greek-Cypriot missing persons still be in Turkish custody twenty years after the end of hostilities, this would constitute

– a form of slavery or servitude contrary to Article 4 of the Convention; and

– a grave breach of their right to liberty and security of person as guaranteed by Article 5 of the Convention.

148. Furthermore, the Commission has declared admissible the applicant Government's complaints that the consistent failure of Turkey to provide information on the fate of these persons to their relatives constitutes

– inhuman treatment within the meaning of Article 3 of the Convention;

– interference with the relatives' right to respect for their family life as guaranteed by Article 8 of the Convention; and

– interference with their right to receive information as guaranteed by Article 10 of the Convention.

149. At the merits stage of the proceedings, the applicant Government have in addition alleged violations of the following Convention Articles:

– in respect of the missing persons themselves, violations of Articles 2 (right to life), 3 (inhuman or degrading treatment through prolonged holding or systematic ill-treatment), 6 (right to a fair and public hearing within a reasonable time), 8 (respect for private and family life), 13 (right to an effective remedy), 14 (discrimination on grounds of ethnic origin) and 17 (action aimed at the destruction of Greek Cypriots' rights under the Convention);

– in respect of the missing persons' relatives, violations of Articles 2, 3, 4 and 5 (in so far as these provisions imply a right to proper investigation) and of Article 13.

150. The Commission must accordingly determine:

– whether there are continuing violations of Articles 4 and 5 of the Convention in respect of the missing persons;

– whether Articles 2, 3, 6, 8, 13, 14 and 17 of the Convention can also be taken into account in respect of the missing persons and if so, whether their rights under these provisions have been violated;

– whether there are continuing violations of Articles 3, 8 and 10 of the Convention in respect of the relatives of the missing persons; and

– whether Articles 2, 3 4, 5 (in so far as they imply a right to proper investigation) and Article 13 of the Convention can also be taken into account in respect of the relatives of the missing persons and if so, whether their rights under these provisions have been violated.

...

D. Opinion of the Commission

1. Alleged violations of the rights of the missing persons themselves

(a) Article 4 of the Convention

192. Article 4 of the Convention provides, *inter alia*:

"1. No one shall be held in slavery or servitude."

193. The applicant Government claim that, should any missing persons still be in Turkish custody twenty years after the events of 1974, this would amount to slavery or servitude prohibited by Article 4.

194. The respondent Government deny that any Greek Cypriots remained in their custody after December 1974.

195. The Commission notes the hypothetical character of the applicant Government's complaint. It finds that there is nothing in the evidence to support the assumption that during the period under consideration in the present case (see paragraph 130 above) any of the missing persons were still in Turkish custody and that they were subjected to slavery or servitude.

Conclusion

196. The Commission concludes, unanimously, that there has been no breach of Article 4 of the Convention.

(b) Article 5 of the Convention

197. Article 5 of the Convention provides:

"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:

..."

198. The applicant Government claim that, should any missing persons still be in Turkish custody twenty years after the events of 1974, this would amount to a grave breach of Article 5.

199. The respondent Government deny that any Greek Cypriots remained in their custody after December 1974.

200. The Commission notes that this complaint, too, is of a hypothetical character and that nothing in the evidence supports the assumption that during the period under consideration in the present case any missing Greek Cypriots were still detained by Turkish or Turkish-Cypriot authorities.

201. It follows that there is no basis for a finding of a breach of Article 5 on the ground of actual detention of missing persons.

202. However, the applicant Government also claim that there is a continuing breach of Article 5 on the ground that Greek Cypriots who are still missing were in Turkish custody in 1974 and that this creates a presumption of Turkish responsibility for the fate of these persons, as acknowledged by the Commission in its 1983 report, where it held that any unaccounted disappearance of a detained person must be considered as a particularly serious violation of Article 5, which can also be understood as a guarantee against such disappearances (report cited above, p. 38, §§ 117 and 119). However, despite the further passage of time and the emergence of facts which would have required fresh investigations, the respondent Government have failed to investigate these cases in a serious and effective manner.

203. The respondent Government claim essentially that this issue has already been dealt with in the 1983 report, although on the basis of a one-sided investigation and unreliable material, and does not warrant a new finding in similar terms being made in the present case. They also claim that the matter should not be taken up by the Commission because it is currently being considered by the CMP.

204. The Commission finds that the evidence submitted in the present case corroborates the finding in the 1983 report that certain of the missing persons were in Turkish custody when they disappeared. This has been confirmed in particular by the television statement of Mr Denktaş to which the applicant Government have referred and whose contents have not been contested by the respondent Government. The situation described, namely, that persons taken prisoner by the Turkish army were subsequently handed over to Turkish-Cypriot paramilitary forces who killed them clearly falls within the responsibility of the respondent State, which is also responsible where detention was effected directly by Turkish-Cypriot forces cooperating with the Turkish army, such as described in the Dillon Report. The applicant Government's initial contention that all missing persons must be presumed to have been in Turkish custody cannot be maintained, however. The Commission has not been able to

verify the correctness of the figure given by the applicant Government of missing persons reliably reported as having last been seen alive in Turkish or Turkish-Cypriot custody. Nevertheless, there is sufficient evidence that the number of persons in this category is considerable.

205. The Commission confirms the view it expressed in its 1983 report cited above that the taking of persons into custody creates a responsibility for their fate, and that the unaccounted disappearance of such detained persons amounts to a particularly serious violation of Article 5. This legal principle has been confirmed by the Court in *Kurt v. Turkey*, where the fundamental importance of the guarantees of Article 5 against arbitrary detention, including life-threatening measures or serious ill-treatment, was emphasised. The Court stated:

> "... What is at stake is both the protection of the physical liberty of individuals as well as their personal security in a context which, in the absence of safeguards, could result in a subversion of the rule of law and place detainees beyond the reach of the most rudimentary forms of legal protection.
>
> ... [T]he unacknowledged detention of an individual is a complete negation of these guarantees and a most grave violation of Article 5. Having assumed control over that individual it is incumbent on the authorities to account for his or her whereabouts. For this reason, Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since." (Eur. Court HR, *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1185, §§ 123-24)

206. In the present case, there exists therefore an obligation on the authorities of the respondent State, derived from Article 5 of the Convention, to conduct a "prompt effective investigation" in respect of the disappearance of any persons for whom an arguable claim has been made that they were in Turkish detention at the time of their disappearance in 1974. For this obligation to arise, it is not necessary that the detention be proved beyond reasonable doubt. Rather, it suffices that there is an arguable claim of detention. Where the facts of that detention are in themselves unclear, they should be among the elements to be investigated.

207. The Commission recalls that in 1983, when it adopted its report on application no. 8007/77, it found a breach of Article 5 because at that time no information had been provided by the respondent Government on the fate of missing Greek Cypriots who had disappeared while in Turkish custody. In the Commission's opinion, this breach continues as long as all available information has not been investigated and revealed by the respondent Government. There can be no limitation in time as regards the duty to investigate and inform, especially as it cannot be ruled out that the detained persons who disappeared might have been the victims of the most serious crimes, including war crimes or crimes against

humanity. Nor can the duty to investigate and inform be subjected to conditions, such as prior investigation of disappearances by the other side or prior investigation of disappearances which occurred in a different context, for example in connection with the *coup d'état*.

208. At the time of the 1983 report, the CMP had already been set up but had not yet become operational. Now, more than fifteen years later, the respondent Government claim that the CMP is the most appropriate forum for investigating the fate of the missing persons. As the Commission held in the decision on the admissibility of the present application, the setting up of the CMP under the auspices of the United Nations does not amount to a special agreement within the meaning of former Article 62 of the Convention and therefore does not deprive the Commission of its jurisdiction (decision cited above, p. 138). However, the respondent Government's reference to the CMP as being the most appropriate forum can also be understood as an argument that it is in fact through this investigating body that the respondent State discharges its above duty of investigation. Indeed, procedures concerning the missing persons seem to be pending exclusively before this body which, moreover, has been created with the consent of the applicant Government.

209. The Commission considers that, in principle, a State can also discharge its duty of investigation into the disappearance of detained persons with the assistance of an international investigating body set up for the purpose. Such an approach introduces an element of objectivity and neutral assessment of the evidence, which is no doubt highly desirable in such delicate matters. In the present case, the Commission notes that the CMP's procedures are carried out separately on each side under the responsibility of the respective member and with the assistance of the competent authorities. As regards missing Greek Cypriots who have disappeared in northern Cyprus, it is therefore the Turkish-Cypriot authorities which are involved in the procedure. As these must be considered as a subordinate local administration of Turkey, they are in principle in a position to discharge that State's responsibilities under the Convention. The fact that the procedure foresees as an additional element the presence of the CMP's third member is of no relevance in this respect, as it cannot be assumed that this person would in any way prevent the competent authorities from performing their duties under the Convention.

210. The question arises, however, whether in view of its Terms of Reference and the practice based thereon the CMP is at all capable of fulfilling the requirements of Article 5 of the Convention by its investigative activity. The Commission notes, in particular, that the scope of the investigations is limited to determining whether or not a missing person is dead or alive. The CMP is not empowered to make findings on the cause of death or to establish responsibilities. It has even

endeavoured to promise impunity to witnesses who through their testimony would risk incriminating themselves or others for what, after all, would appear to be most serious crimes. Moreover, the territorial jurisdiction of the CMP is limited to the island of Cyprus, thus excluding investigations in mainland Turkey where some of the disappearances are claimed to have occurred. Furthermore, it is at least doubtful whether the CMP's investigations can extend to acts by the Turkish army or its officials in Cypriot territory.

211. In view of these limitations, the Commission considers that the CMP's procedures – while no doubt useful for the humanitarian purpose for which they have been established – are not by themselves sufficient to meet the standard of an effective investigation required by Article 5 of the Convention. With this in mind, the Commission does not consider it necessary to express an opinion on the question whether one or the other side is to blame for the delay in the CMP's investigations and for the fact that, to the present day, it has not come to any tangible results. Since the scope of the CMP's investigations is too narrow and there have been no other supplementary investigations which would have allowed a full clarification of the fate of those Greek-Cypriot missing persons who were arguably claimed to have been in Turkish custody in 1974, there is a continuing violation of Article 5 for which the respondent State must be held responsible.

Conclusions

212. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 5 of the Convention by virtue of actual detention of Greek-Cypriot missing persons.

213. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 5 of the Convention by virtue of a lack of effective investigation by the authorities of the respondent State into the fate of Greek-Cypriot missing persons in respect of whom there is an arguable claim that they were in Turkish custody at the time when they disappeared.

(c) Complaints under Articles 2, 3, 6, 8, 13, 14 and 17 of the Convention

(i) The Commission's power to examine these complaints

214. At the merits stage of the proceedings, the applicant Government have raised Articles 2, 3, 6, 8, 13, 14 and 17 of the Convention, claiming that these provisions, too, have been violated in respect of the Greek-

Cypriot missing persons, a duty to investigate arising in cases of disappearances also outside the scope of Article 5. They refer in particular to the situation of those Greek-Cypriot missing persons who cannot reliably be shown to have been in Turkish detention at the time when they disappeared in areas controlled by the Turkish army.

215. The respondent Government have not made any specific submissions in this respect.

216. As the applicant Government did not raise the above Convention Articles in relation to missing persons at the admissibility stage, the Commission must first determine whether it can take them into account. In this context, the Commission recalls its constant practice according to which the decision on the admissibility of a case brought before it determines the facts or aggregate of facts as well as the substance of the complaints in relation to those facts which are being reserved for an examination as to their merits. However, the Convention organs are not bound by the legal qualification of the complaints by the parties and retain the power to look into the matters circumscribed by the decision on admissibility in the light of the Convention as a whole (see Eur. Court HR, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3295, § 132, with further references).

217. In the present case, the Commission has declared admissible the applicant Government's complaints in relation to all Greek-Cypriot missing persons who disappeared in the territory controlled by the respondent State and on whose fate no information has been provided. It was also made clear at the admissibility stage that the possibility that these persons might have been killed in the territory controlled by the respondent State was an element of the applicant Government's complaints in this respect, although they consistently claimed that the missing persons must be presumed alive as long as there was no evidence to the contrary. On this basis, the applicant Government implicitly suggested a further presumption, namely that all these persons were still in Turkish "custody".

218. The Commission has not found any evidence to confirm the latter submission. However, it considers that the material already put before it at the admissibility stage is sufficient to warrant an examination as to whether the missing persons' right to life under Article 2 of the Convention has been interfered with, at least by lack of proper investigations into the circumstances in which they might have been killed. In the Commission's opinion, this aspect of the case is covered by the decision on admissibility. On the other hand, the further complaints of the applicant Government concerning alleged interference with the missing persons' rights under Articles 3, 6, 8, 13, 14 and 17 of the Convention are outside the scope of that decision and cannot therefore be entertained by the Commission.

(ii) Consideration under Article 2 of the Convention

219. Having found that it can in principle examine the question of the missing persons in the light of Article 2 of the Convention, the Commission must first determine whether and, if so, to what extent this provision is applicable to the facts complained of. Article 2 reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

220. The case-law makes it clear that Article 2, as a provision which not only safeguards the right to life but sets out the circumstances when the deprivation of life may be justified, ranks as one of the most fundamental provisions of the Convention. It extends to, but is not concerned exclusively with, intentional killing as it also covers situations where it is permitted to use force which may result, as an unintentional outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the achievement of one of the aims set out in the sub-paragraphs of paragraph 2. Moreover, a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision, read in conjunction with the States' general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State (see Eur. Court HR, *McCann and Others v. United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-50, and p. 49, § 161).

221. In its report concerning that same case, the Commission dealt with the minimum requirements of such an investigation in the following terms (ibid., opinion of the Commission, p. 79, § 193):

> "... The nature and degree of scrutiny which satisfies this minimum threshold must ... depend on the circumstances of the particular case. There may be cases where the facts surrounding a deprivation of life are clear and undisputed and the subsequent inquisitorial examination may legitimately be reduced to a minimum formality. But

equally, there may be other cases, where a victim dies in circumstances which are unclear, in which event the lack of any effective procedure to investigate the cause of the deprivation of life could by itself raise an issue under Article 2 of the Convention."

222. In subsequent cases, the Commission and the Court found it to be a sufficient condition for a duty of thorough investigation to arise if the circumstances of a death were unclear, in particular if it was unclear whether the death was due to natural causes or resulted from State action or other causes, such as criminal acts of terrorists or unknown perpetrators (see, for example, Eur. Court HR, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 326, § 91, and opinion of the Commission, p. 349, § 180; and *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, pp. 1732-33, §§ 79-81). The Court has also made it clear that the obligation to investigate is not confined to cases where it has been established that the killing was caused by an agent of the State or where a criminal complaint to that effect has been lodged; the mere fact that the authorities have been informed of a murder or attempted murder *ipso facto* gives rise to such an obligation (see Eur. Court HR, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, p. 1778, § 82, and *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 100; as to positive obligations arising under Article 2 in respect of risks to life emanating from criminal acts of a private individual, see also Eur. Court HR, *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115, and p. 3163, § 123).

223. In the present case, there is no certainty about the fate of the missing persons. The applicant Government contend that they must be presumed alive as long as there is no evidence to the contrary. The respondent Government claim that they are dead. The Commission considers that it is not called upon to speculate about what may be the real situation in this respect. In its opinion, it is sufficient for the applicability of Article 2 to note that the missing persons disappeared in circumstances which were no doubt life-threatening. This has indeed been acknowledged by both parties. In this context, it is also relevant that evidence exists according to which at the relevant time killings occurred on a large scale and that in certain cases such killings were not the result of acts of war but of criminal behaviour outside the fighting zones. In this regard, the Commission refers to its findings in its reports concerning the earlier inter-State cases. It considers that in such circumstances a positive obligation to conduct effective investigations arose for the authorities under Article 2 of the Convention, and that this obligation is still valid in view of the possibility that the missing persons might have lost their lives as a result of crimes not subject to limitation.

224. As with the cases considered under Article 5 of the Convention, the respondent Government may be understood as contending that the

duty of investigation is discharged in the framework of the procedures of the CMP. Again, the Commission would not exclude that the duty to investigate and to inform arising under Article 2 of the Convention can also be fulfilled with the help of an international investigating body. However, as already noted, in the present case the scope of these procedures is limited to the determination of whether the persons concerned are dead or alive, while they do not include investigations into the cause of death or the establishment of responsibility. Persons who might be responsible have even been promised impunity. The Commission finds that in these circumstances the investigations in question are not sufficiently wide in scope to satisfy the requirements of Article 2 of the Convention. Nor is there any indication that the said investigations are supplemented by any other, more effective inquiries.

Conclusion

225. The Commission concludes, unanimously, that it has jurisdiction to examine the question of the Greek-Cypriot missing persons in the light of Article 2 of the Convention, that this provision is applicable and that it has been violated by virtue of a lack of effective investigation by the authorities of the respondent State.

2. Alleged violations of the rights of the missing persons' relatives

226. The applicant Government claim that in the circumstances of the present case the relatives of the missing persons have been subjected to inhuman treatment contrary to Article 3 of the Convention and to violations of their rights under Articles 8 (respect for family life) and 10 (freedom to receive information). They further claim that the relatives' rights under Articles 2, 3, 4, 5 (in so far as those provisions imply a right to proper investigations) and Article 13 have been breached.

227. The respondent Government have not made any specific submissions in this respect.

228. The Commission first observes that the applicant Government's original complaints relating to the rights of the missing persons' relatives were limited to arguments under Articles 3, 8 and 10 of the Convention. The other complaints, which are of a different nature, have been raised for the first time after the Commission's decision on the admissibility of the application and cannot therefore be entertained. In any event, the Commission considers that, in so far as they overlap with the issues under Articles 5 and 2 of the Convention which the Commission has already examined above in respect of the missing persons themselves, these new complaints do not raise any separate issues. It is obvious that

the duty to investigate deriving from the above provisions will in the first place benefit the relatives of the missing persons.

229. As regards the applicant Government's initial complaints under Articles 3, 8 and 10 of the Convention, they are closely interrelated as they all concern the effects which the lack of information on the fate of the missing persons has had on the latter's relatives.

230. Article 3 provides:

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

Article 8 guarantees the right to respect for private and family life[1] and Article 10, which concerns freedom of expression, includes, *inter alia*, the right to receive information[2]. The rights under the latter two Articles may be subject to lawful restrictions for certain purposes if such restrictions are necessary in a democratic society.

231. As regards Article 3, the case-law of the Convention organs establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of this provision. Further, the Court has held that the suffering occasioned must attain a certain level before treatment can be classified as inhuman. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see, for example, *Ireland v. the United Kingdom*, cited above, p. 65, § 162).

232. The Commission and the Court have held that where persons had disappeared and the authorities' responsibility to carry out an investigation was not properly discharged, the prolonged uncertainty, doubt and apprehension suffered by the relatives caused them such severe mental distress and anguish that it amounted to inhuman treatment (see *Kurt*, cited above, pp. 1187-88, §§ 133-34); Eur. Court HR, *Çakıcı v. Turkey* [GC], no. 23657/94, opinion of the Commission, §§ 272-76, ECHR 1999-IV; and *Timurtaş v. Turkey*, no. 23531/94, Commission's report of 29 October 1998, §§ 305-10, unpublished).

233. In the present case, the relatives of the missing persons have been left without any information about the latter's fate for a period of twenty-five years. In view of the circumstances in which these persons disappeared following a military intervention during which many persons were killed or taken prisoner and where the area in which the disappearances took place was subsequently sealed off and became inaccessible to the relatives, the latter must no doubt have suffered the most painful uncertainty and anxiety. While their distress was most acute in the period immediately following the 1974 events, it has not faded with the passage of time. As

1. For the full text of Article 8 of the Convention, see paragraph 261 below.
2. For the full text of Article 10 of the Convention, see paragraph 456 below.

the applicant Government have pointed out, the subsequent life of the relatives was in many cases dominated by the consequences of the disappearance. The written evidence which has been submitted also shows that the relatives created organisations with a view to adopting a common approach in their quest to receive the necessary information. From time to time, new hopes were raised, for example in connection with the procedure before the CMP, but there were also new fears, such as when they learnt of the statements of Mr Denktaş and Mr Yalçın Küçük. For all these reasons, the question of the missing persons has remained alive for the relatives up to the present day. Even if it were true, as submitted by the respondent Government, that the issue has also been exploited for purposes of political propaganda, the Commission finds that the relatives do have legitimate reasons for concern.

234. The Commission considers that, during the period under consideration in the present case, the severity of the treatment to which the relatives of the missing persons were subjected attained the level of inhuman treatment within the meaning of Article 3 of the Convention.

235. In view of this finding, the Commission does not consider it necessary to deal with the applicant Government's further complaints under Articles 8 and 10 of the Convention, which in essence concern the same grievances of the missing persons' relatives.

Conclusions

236. The Commission concludes, unanimously, that there has been a continuing violation of Article 3 of the Convention in respect of the missing persons' relatives.

237. The Commission concludes, unanimously, that it is not necessary to examine whether Articles 8 and/or 10 of the Convention have been violated in respect of the missing persons' relatives.

Chapter 2

Home and property of the displaced persons

A. Complaints

238. The Commission has declared admissible the applicant Government's complaints that

– the continued and consistent refusal to allow displaced Greek Cypriots to return to their homes and families in northern Cyprus amounts to a violation of their rights under Article 8 of the Convention;

– the fact of preventing displaced Greek Cypriots from having access to, using and enjoying their property in northern Cyprus, allocating this

property to Turkish Cypriots and settlers, withholding any compensation and attempting to legalise this *de facto* expropriation by depriving Greek-Cypriot owners of their titles amounts to a continuing violation of Article 1 of Protocol No. 1;

– the displaced Greek Cypriots have no effective domestic remedies against these violations of the Convention, contrary to Article 13 of the Convention; and

– the continued refusal to allow displaced Greek Cypriots to return to their homes and families in northern Cyprus and the continued deprivation of their possessions are discriminatory and contrary to Article 14 of the Convention.

B. As to Article 8 of the Convention

...

3. Opinion of the Commission

261. Article 8 of the Convention reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

262. The applicant Government complain that the continued refusal to allow the return of the displaced persons to their homes in northern Cyprus constitutes a continuing and aggravated violation of the latter's right to respect for their home, as guaranteed by Article 8 of the Convention, and that there is a further distinct violation of this provision by the deliberate change of the environment of the displaced persons' homes.

263. The respondent Government, apart from denying the responsibility of Turkey for measures taken by the Turkish-Cypriot authorities, claim in essence that these measures are necessary in the interest of public safety and thus justified under Article 8 § 2.

264. The Commission first notes that in relation to this complaint no argument has been raised by the respondent Government as to the failure of the persons concerned to exhaust domestic remedies. Indeed, no remedies appear to be available to contest the authorities' refusal to allow the entry of Greek Cypriots into northern Cyprus. In this context, the Commission notes that the regulations on entry into the "TRNC" and the principles for their implementation are based on decisions of the

"TRNC Council of Ministers" which in the legal system of the "TRNC" are not subject to any judicial review. Also, the refusal concerned reflects the acknowledged public policy of the authorities and therefore constitutes an administrative practice in relation to which it is not necessary, according to the established practice of the Convention organs, to exhaust any domestic remedies. It follows that the Commission is called upon to examine the merits of the complaint.

265. The Commission recalls that the issue of displacement of persons was examined under Article 8 of the Convention both in its 1976 report and its 1983 report, cited above. In the 1976 report, the Commission considered (in paragraph 208) "that the prevention of the physical possibility of the return of Greek-Cypriot refugees to their homes in the north of Cyprus amounts to an infringement, imputable to Turkey, of their right to respect of their homes" which could not be justified under any ground under paragraph 2 of Article 8. The Commission further considered (in paragraph 210), with regard to Greek Cypriots transferred to the south under various inter-communal agreements, that the prevention of the physical possibility of the return of these Greek Cypriots generally amounted to an infringement, imputable to Turkey and not justified under paragraph 2, of their right to respect for their homes under paragraph 1 of Article 8. In the 1983 report (p. 42, §§ 133-35) the Commission, having found that the same situation continued to exist and that this continuing situation constituted an aggravating factor, confirmed these findings, concluding that Turkey continued to violate Article 8.

266. The Commission finds that the situation of the displaced Greek Cypriots is still essentially the same in that they continue to be prevented from returning to their homes in northern Cyprus. The fact that after the adoption of the 1983 report the "TRNC" was established there and that the measures complained of are, according to the respondent Government's submissions, taken by the latter's authorities does not in any way affect the respondent State's responsibility, as those authorities are a subordinate local administration of Turkey. It is therefore not necessary to examine whether, during the period under consideration in the present case, Turkish armed forces or other Turkish authorities continued to be involved in the enforcement of the refusal of access to northern Cyprus by Greek Cypriots for any other purpose than family visits and pilgrimage to the Apostolos Andreas Monastery. What counts is that at present displaced Greek Cypriots, without any other exception, are effectively prevented by the authorities in place from even visiting their previous homes, let alone making any application for returning there for permanent settlement.

267. Even those who leave the northern area under the humanitarian transfer arrangements are left no other choice than unconditionally

abandoning their homes, there being no possibility for a reconsideration of their cases should they eventually wish to return. Likewise, children who moved to the south for the purpose of secondary-school studies were until very recently prevented from returning after having attained a certain age. This still applies to Greek-Cypriot males over the age of 16 and to students of both sexes who finished their studies before the entry into force of the decision of the "TRNC Council of Ministers" of 11 February 1998, this regulation having no retroactive effect. Even assuming that in some cases Greek Cypriots wishing to return to northern Cyprus cannot claim to have an established "home" there (see *Loizidou* (merits), cited above, p. 2238, §§ 65-66), the Commission finds that there are in fact cases where there is continuing interference with the displaced persons' right to respect for their home, including cases of recent interference which justify a fresh consideration of the issue notwithstanding the Commission's findings in the previous reports.

268. As to the justification for these measures, the Commission has noted the respondent Government's arguments to the effect that the question of the regulation of the freedom of settlement as part and parcel of an overall solution of the Cyprus problem is one of the subjects of the inter-communal talks, that in this context the introduction of a kind of quota system is envisaged and that, pending the achievement of such a solution, the measures currently applied are necessary in the interest of public safety.

269. The Commission has already expressed its view that the arrangements made for the holding of inter-communal talks are not a special agreement within the meaning of former Article 62 of the Convention which could prevent it from performing its tasks under the Convention. Nor can these talks, even if they aim at eventually bringing about a satisfactory solution to the problem, be relied on as a ground for maintaining measures which in themselves lack justification under the Convention. As the Committee of Ministers of the Council of Europe acknowledged in Resolution DH (79) 1 (see paragraph 7 of the report), the inter-communal talks must be seen as an instrument to put an end to such violations as might continue to occur, but the negotiations in themselves, even if they are actively pursued, do not wipe out those violations. While it is true that certain proposals have been made for the return of at least some of the displaced persons to their homes – the Commission would refer here to the 1992 Set of Ideas of the UN Secretary-General and the 1993 proposals for the resettling of Varosha in the context of a package of confidence-building measures – it appears that the process of the inter-communal talks is still very far from reaching any tangible results in this respect.

270. This being so, the Commission must consider the respondent Government's claim that the measures are justified in the interest of

public safety. Admittedly, this is a legitimate aim recognised in Article 8 § 2 of the Convention, which, however, can only justify a restriction on the rights enshrined in that Article if it is imposed "in accordance with the law" and if it is "necessary in a democratic society". The respondent Government have not indicated any legal basis for the general exclusion of displaced Greek Cypriots from the territory of northern Cyprus, nor can it be said that such a general exclusion is in any way proportionate to the security interests referred to by the respondent Government. It follows that, for these reasons alone, the measures complained of do not meet the requirements of Article 8 § 2 of the Convention.

271. The applicant Government allege a further violation of Article 8 due to the change of the demographic and cultural environment of the displaced persons' homes. The respondent Government, on the other hand, refer to the necessity to resettle Turkish Cypriots displaced from the south and Turkish-Cypriot emigrants who returned to northern Cyprus after 1974. In substance, they submit that the measures complained of are necessary for the economic well-being of the country. However, having regard to its above finding under Article 8 of the Convention and the considerations below under Article 1 of Protocol No. 1, the Commission does not find it necessary to examine this additional aspect of the case in the light of Article 8.

Conclusions

272. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus.

273. The Commission concludes, unanimously, that it is not necessary to examine whether there has been a further violation of Article 8 of the Convention due to the change of the demographic and cultural environment of the displaced persons' homes in northern Cyprus.

C. As to Article 1 of Protocol No. 1

...

3. Opinion of the Commission

310. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

311. The applicant Government complain of a continuing violation of this provision due to the fact that Greek-Cypriot property owners are prevented from having any access to and from controlling, using and enjoying their properties in northern Cyprus, which have been allocated to other persons, and that they have not received any compensation for this interference with their property rights.

312. The respondent Government claim that Turkey is not responsible under the Convention for the interference complained of, the property rights in northern Cyprus being regulated by the legislation of the "TRNC", and that in any event the restrictions imposed are necessary in the public interest for satisfying housing needs of displaced Turkish Cypriots, pending the outcome of the inter-communal talks, of which the property issues, including the question of compensation, are one of the subjects and which the public interest requires not to be prejudged.

313. The Commission notes that the applicant Government's complaints are essentially directed at the "legislation" and the acknowledged administrative practice of the authorities of northern Cyprus. As such, they do not require the persons concerned to have recourse to any domestic remedies. Indeed, it has not been suggested by the respondent Government, nor does it appear from the content of the "TRNC legislation" on which they rely, that any remedies are available to Greek Cypriots deprived of their property in northern Cyprus. Such remedies only seem to exist for foreign nationals ("non-Greek-Cypriot foreigners") who, prior to 1974, acquired property in northern Cyprus by act of sale (Law no. 7/1980) and for Greek Cypriots still resident in northern Cyprus whose property was interfered with by mistake (see paragraph 468 below). The Commission is accordingly required to deal with the merits of the complaint, the more so as in inter-State applications under former Article 24 of the Convention, as distinguished from individual applications under former Article 25, it has the power to examine the conformity with the Convention of legislative measures and administrative practices as such.

314. The fact that in the present case the impugned legislation and administrative practice has been adopted by the authorities of the "TRNC" cannot in any way affect the Commission's competence to examine them, those authorities being a subordinate local administration of Turkey for whose acts the respondent State is responsible under the Convention. For this reason, the Commission cannot accept either the respondent Government's argument that the proclamation of the "TRNC" and the enactment of its "Constitution"

and "legislation" constitutes a "*novus actus interveniens*" which would have affected the respondent State's responsibility. Nor does the Commission consider it necessary in this context to examine the applicant Government's arguments concerning a continued direct involvement of Turkish mainland authorities in the development and implementation of the "TRNC" land-allocation legislation.

315. The Commission has dealt with the origins of the present situation in the earlier inter-State cases. It recalls its conclusion in the 1976 report (cited above, p. 151, § 486) that "there has been deprivation of possessions of Greek Cypriots on a large scale, the exact extent of which could not be determined. This deprivation must be imputed to Turkey under the Convention and it has not been shown that any of these interferences were necessary for any of the purposes mentioned in Article 1 of Protocol No. 1". It further recalls its conclusion in its 1983 report (cited above, p. 47, §§ 154-55) that the legislative consolidation of the earlier occupation of immovable property and the taking of new property constituted a violation of Article 1 of Protocol No. 1.

316. The respondent Government contend that by virtue of the "TRNC legislation" the persons concerned have lost their ownership titles to the properties in northern Cyprus and therefore claims can no longer be raised on their behalf. The applicant Government submit that this issue has been finally determined by the Court in *Loizidou* (merits) (judgment cited above, p. 2232, § 47) where it was held that the applicant, being one of the persons concerned, must still be regarded as the legal owner of the land. The respondent Government refer to the reasons for this finding (ibid., pp. 2230-32, §§ 42 and 46) which were limited to a consideration of whether the applicant in that case had lost title to her property as a result of Article 159 of the "TRNC Constitution". The Court expressly left open the question of the manner in which a loss of ownership could have occurred before the adoption of that constitutional provision and noted that "no other facts entailing loss of title to the applicant's properties' have been advanced by the Turkish Government nor found by the Court". For these reasons, the respondent Government consider that the judgment in *Loizidou* cannot be generalised and applied to the present case.

317. It appears that the respondent Government now claim that a loss of title has been brought about by the administrative practice of issuing title deeds to the new occupants of the properties concerned, which has been applied since June 1989 and consolidated by Law no. 52/1995. However, as the applicant Government rightly observe, this "law" merely purported to give effect to Article 159 of the "TRNC Constitution" which, for the reasons stated by the Court in *Loizidou* (ibid., pp. 2231-32, §§ 43-46) cannot be attributed legal validity for the purposes of the Convention. While the Court did not wish to elaborate a general theory concerning

the lawfulness of legislative and administrative acts of the "TRNC", it must at least be clear that measures taken with the aim of implementing an invalid constitutional provision cannot be attributed any more validity than that provision itself. It follows that despite the administrative practice introduced in the "TRNC" subsequently to the facts relevant in *Loizidou*, the Greek Cypriots whose properties were affected by these measures must still be regarded as the legal owners.

318. As to the nature of the alleged interference with those persons' property rights, the Commission finds that it is essentially the same as that of which Mrs Loizidou complained in her application. In this respect, the Court stated (ibid., pp. 2237-38):

> "63. ... [A]s a consequence of the fact that the applicant has been refused access to the land since 1974, she has effectively lost all control as well as all possibilities to use and enjoy her property. The continuous denial of access must therefore be regarded as an interference with the rights under Article 1 of Protocol No. 1. Such an interference cannot, in the exceptional circumstances of the present case ... be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of Article 1 of Protocol No. 1. However, it clearly falls within the meaning of the first sentence of that provision as an interference with the peaceful enjoyment of possessions. In this respect the Court observes that hindrance can amount to a violation of the Convention just like a legal impediment ...
>
> 64. Apart from a passing reference to the doctrine of necessity as a justification for the acts of the 'TRNC' and to the fact that property rights were the subject of intercommunal talks, the Turkish Government have not sought to make submissions justifying the above interference with the applicant's property rights which is imputable to Turkey.
>
> It has not, however, been explained how the need to rehouse displaced Turkish-Cypriot refugees in the years following the Turkish intervention in the island in 1974 could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access and purported expropriation without compensation.
>
> Nor can the fact that property rights were the subject of intercommunal talks involving both communities in Cyprus provide a justification for this situation under the Convention.
>
> In such circumstances the Court concludes that there has been and continues to be a breach of Article 1 of Protocol No. 1."

319. The Commission notes that *Loizidou* concerned one particular instance of the general administrative practice to which the complaints in the present case relate. The same considerations must therefore apply as regards this administrative practice as such.

320. As regards the justifications which the respondent Government now put forward, they are not essentially different from those advanced in *Loizidou*. In particular, the Commission does not consider that the detailed explanations given by the respondent Government concerning

the need to satisfy the housing requirements of displaced Turkish Cypriots and to consolidate the Turkish-Cypriot economy justify a departure from the Court's above conclusions. Even if these were legitimate aims of public policy, the means employed to achieve them are disproportionate and no fair balance has been struck between the public interest and the individuals' fundamental rights when the latter are being denied any rights at all. By this denial, the authorities have overstepped the margin of appreciation which the Convention allows them.

321. Nor does the fact that a global solution to the Cyprus question, including the compensation of property owners on both sides and a possible return of some of them, is being sought in the framework of the inter-communal talks justify such total denial of rights in the meantime. The inter-communal talks have now gone on for decades without producing any tangible results, although they should be the instrument for putting an end to the human rights violations occurring in Cyprus. As long as this aim has not been achieved, the Commission cannot refrain from denouncing the said violations if they continue.

Conclusion

322. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

D. As to Article 13 of the Convention

323. The applicant Government complain that in relation to the above complaints under Article 8 of the Convention (refusal to allow the return of displaced Greek Cypriots to their homes in northern Cyprus) and Article 1 of Protocol No. 1 (interference with the right of Greek Cypriots to the peaceful enjoyment of their possessions in northern Cyprus) there are continuing violations of Article 13 of the Convention. They submit that the Greek Cypriots concerned cannot have an effective remedy because the "TRNC Constitution" itself purports to legalise the very violations complained of, so that the "courts" operating under that "Constitution" cannot give a remedy. Furthermore, the complaints concern administrative practices in respect of which there are by definition no effective remedies. Finally, they consider that it is impossible to seek a remedy for breach of a right under the Convention before the "courts" of

an entity which is not a State and not a High Contracting Party to the Convention.

324. The respondent Government have not made any submissions on the availability of remedies in respect of the above complaints under Article 8 of the Convention and Article 1 of Protocol No. 1.

325. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

326. The Commission first notes that the applicant Government's above complaints under Article 13 of the Convention relate to administrative practices applied to displaced Greek Cypriots as regards their right to return to their homes in northern Cyprus (Article 8 of the Convention) and the exercise of their property rights in northern Cyprus (Article 1 of Protocol No. 1). These administrative practices are at least in part incorporated in the "legislation" of the "TRNC". In this respect, the Commission recalls that Article 13, as interpreted by the Convention organs, does not require remedies to be provided to contest legislation as such. In the Commission's view, this principle would also apply in the present case, notwithstanding the applicant Government's position that, due to the unlawfulness of the "TRNC", its "laws" should not be recognised as "legislation" within the meaning of the Convention.

327. However, in the present case the administrative practices concerned go beyond the enactment of the "legislation" in question. In particular, the relevant "laws" do not regulate one of the crucial aspects of the interferences complained of, namely, the physical exclusion of the Greek Cypriots from the territory of northern Cyprus which prevents the return to their homes and access to their properties. In fact, no provision is made by the "TRNC legislation" for any remedies which the individuals concerned could use to contest this exclusion, nor can they in any way avail themselves of remedies to at least ensure the correct application of the laws in relation to particular properties, such as are open to non-Greek-Cypriot foreigners and Greek Cypriots residing in northern Cyprus.

Conclusion

328. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention by reason of the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1.

E. As to Article 14 of the Convention

329. The applicant Government complain that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1, in that the above administrative practices are being applied exclusively to Greek Cypriots not resident in northern Cyprus, who are thus being discriminated against. They submit that the policy of the Turkish authorities is based on racial discrimination and apartheid and thus illegal in terms of general international law. Also, the "laws" giving effect to that policy, including the "constitutional" provisions relied on, are by their very terms discriminatory against Greek Cypriots, which is an additional reason why they must be considered invalid under international law. Despite their terminology which refers to "alien persons" (section 2 of Law no. 32/1975), in practice only Greek Cypriots are disentitled to acquire property in the "TRNC", and other "foreigners" such as British or Turkish citizens are not being treated in the same way. On the other hand, the exclusive beneficiaries of the discriminatory "legislation" are Turkish Cypriots and Turkish settlers who acquired "TRNC citizenship".

330. The applicant Government contend that such discrimination on racial or ethnic grounds is not merely in violation of Article 14 of the Convention but also constitutes inhuman or degrading treatment under Article 3. They refer to the Commission's report in *East African Asians v. the United Kingdom* (nos. 4403/70-4419/70 et seq., report of 14 December 1973, DR 78-A, p. 62, §§ 207-09) and submit that treatment singling out categories of persons on racial or ethnic grounds, subjecting them to severe hardship, denying them or interfering with their Convention rights, and doing so specifically and publicly, makes such conduct an affront to their dignity to the point of being inhuman treatment in terms of Article 3 of the Convention.

331. The respondent Government have not made any submissions regarding this point.

332. Article 14 of the Convention reads as follows:

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

333. The Commission recalls that, in its 1976 report (cited above, p. 156, § 502), having found violations of a number of Articles of the Convention, it noted that the acts violating the Convention were exclusively directed against members of one of the two communities in Cyprus, namely the Greek-Cypriot community. The Commission then concluded that Turkey had thus failed to secure the rights and freedoms

set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by Article 14 of the Convention. In its 1983 report, the Commission did not find it necessary to add anything to its finding in the previous case (report cited above, p. 49, § 162).

334. In the present case, the Commission finds that the above interferences with the rights under Article 8 of the Convention and Article 1 of Protocol No. 1 concerned exclusively Greek Cypriots not residing in northern Cyprus and were imposed on them for the very reason that they belonged to this class of people. In these circumstances the treatment complained of was clearly discriminatory and thus infringed Article 14 of the Convention taken in conjunction with the above two Articles.

335. The Commission notes that the applicant Government's further complaint that this discrimination, being based on racial or ethnic grounds, also constituted inhuman or degrading treatment within the meaning of Article 3 of the Convention, has only been submitted at a late stage of the proceedings on the merits. In view of its above finding under Article 14, the Commission does not consider it necessary to examine this additional complaint.

Conclusions

336. The Commission concludes, by nineteen votes to one, that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 by virtue of discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for their homes and to the peaceful enjoyment of their possessions.

337. The Commission concludes, unanimously, that it is not necessary to examine whether this discrimination also constituted inhuman or degrading treatment within the meaning of Article 3 of the Convention.

Chapter 3

Living conditions of Greek Cypriots in northern Cyprus

A. Complaints

338. The Commission has declared admissible the following complaints relating to the enclaved Greek Cypriots:

– that there is a violation of Article 2 of the Convention by reason of denying the protection of life to persons in urgent need of medical treatment;

– that there is a violation of Article 5 of the Convention by reason of threats to individual Greek Cypriots' security of person and the absence of official Turkish action to prevent this;

– that there is a violation of Article 6 of the Convention by virtue of denying a fair and public hearing before an independent and impartial tribunal to Greek Cypriots whose civil rights have been infringed;

– that there is a violation of Article 8 of the Convention by reason of interference with the right to respect for private and family life, home and correspondence;

– that there is a violation of Article 9 of the Convention by reason of interference with freedom of religion;

– that there is a violation of Article 10 of the Convention by reason of interference with the right to receive and impart information and ideas;

– that there is a violation of Article 11 of the Convention by reason of restrictions on freedom of association, in particular between the various groups of enclaved persons and between enclaved persons and Greek Cypriots in the government-controlled area;

– that there is a violation of Article 13 of the Convention by reason of the failure to provide effective remedies;

– that there is a violation of Article 14 of the Convention by reason of the failure to secure Convention rights to Greek Cypriots without discrimination, the violation of these occurring on grounds of their race, religion, national origin or status as Greek Cypriots or Maronites;

– that there is a violation of Article 1 of Protocol No. 1 by reason of the deprivation of possessions and interference with the peaceful enjoyment of possessions;

– that there is a violation of Article 2 of Protocol No. 1 by reason of the denial of secondary education and disrespect for parents' rights to ensure education in conformity with their religious and philosophical convictions.

339. The Commission has further declared admissible the applicant Government's complaint that, in respect of the enclaved Greek Cypriots in the Karpas area, there is a violation of Article 3 of the Convention in that, having regard to the advanced age of many of the persons concerned and the consistent pattern of action against them, the combination of restrictions and pressure placed on them with a view to making them leave the area, including the methods of coercion used for this purpose, amounts to inhuman and degrading treatment.

...

D. Opinion of the Commission

430. The Commission first recalls that in its 1976 report cited above it examined the situation of the enclaved persons in the light of Article 5 of

the Convention. The Commission concluded (in paragraphs 235-36 of that report) that the restrictions applied to them did not amount to a "deprivation" of liberty within the meaning of Article 5, but would rather fall within the scope of Article 2 of Protocol No. 4, which had not been ratified by either Cyprus or Turkey. The 1976 report further dealt with the issue of the separation of families brought about by the refusal to allow displaced persons to return to their homes and family members in northern Cyprus and concluded that it constituted a breach of Article 8 of the Convention (ibid., § 211). This conclusion was confirmed in the 1983 report (cited above, p. 42, §§ 135-36).

431. In the present case, the Commission is confronted with a wide number of complaints concerning various aspects of the living conditions of the Greek Cypriots who have remained in northern Cyprus, the applicant Government claiming that these should be examined separately under each relevant Convention Article and additionally in a global perspective under Article 3 of the Convention. The Commission will in essence follow the approach suggested by the applicant Government by first dealing with the more specific complaints, followed by an examination of whether the combined effect of the impugned measures on the living conditions of the enclaved persons amounts to a breach of the Convention. However, in the particular circumstances of the case, the Commission considers it appropriate to consider this question not only in the light of Article 3 of the Convention, but also under Articles 8 and 14. In relation to each complaint, the Commission must also consider whether domestic remedies were available and have been exhausted (see paragraph 126 above), and finally, as the last item, the Commission will examine whether and, if so, to what extent there may have been a failure to provide effective remedies as required by Article 13 of the Convention.

1. Separate examination of specific complaints

(a) Article 2 of the Convention[1]

432. The applicant Government allege a violation of Article 2 of the Convention by virtue of denying protection of the right to life to enclaved persons in urgent need of medical treatment. This allegation is contested by the respondent Government.

433. The Commission considers that the respondent State's responsibility under Article 2 of the Convention would indeed be engaged if the authorisation system operated by its subordinate local administration in northern Cyprus concerning movements of Greek Cypriots

1. For the text of Article 2 of the Convention, see paragraph 219 above.

for medical purposes had been applied in a manner endangering their life and health. However, the Commission has found no indication of an administrative practice during the period under consideration which could be said to have had such effects. There may have been shortcomings in individual cases, but in general, access to medical services, including hospitals in southern Cyprus, has been available to the persons concerned. The Commission also notes that an authorisation is no longer required to see a doctor in northern Cyprus itself. As to the difficulty encountered by Dr Moutiris in administering humanitarian medical assistance to the Maronite community, it was essentially the result of his refusal to comply with an administrative formality. In any event, although his patients lost considerable advantages when he was no longer allowed to practice, they were not left without any alternative medical facilities in their neighbourhood. The applicant Government's complaint as to the existence of an administrative practice in violation of Article 2 of the Convention has therefore not been substantiated.

434. In view of this finding, the Commission does not consider it necessary to discuss whether in relation to this complaint any domestic remedies which might have been available in the "TRNC" have been exhausted.

Conclusion

435. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 2 of the Convention by virtue of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus.

(b) Article 5 of the Convention[1]

436. The applicant Government allege a violation of Article 5 of the Convention by reason of threats to individual Greek Cypriots' security of person and of the absence of official action to prevent this. The respondent Government have not commented on this complaint.

437. The Commission recalls its finding in the 1976 report that the situation of enclavement does not as such amount to a deprivation of liberty within the meaning of Article 5 (see paragraph 430 above). It notes the applicant Government's admission that there have been no cases of actual detention of enclaved Greek Cypriots during the period under consideration. Nor have the allegations of threats to the security of person been substantiated. The question of exhaustion of domestic remedies does not arise in these circumstances.

1. For the text of Article 5 of the Convention, see paragraph 197 above.

Conclusion

438. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 5 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(c) Article 6 of the Convention

439. The applicant Government complain that Article 6 of the Convention is being violated by withholding a fair and public hearing by an independent and impartial tribunal to Greek Cypriots living in northern Cyprus whose civil rights have been infringed. The respondent Government claim that an effective court system exists in northern Cyprus to which Greek Cypriots also have access.

440. The relevant parts of Article 6 § 1 of the Convention read as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

441. The Commission first notes the widespread reluctance among Greek Cypriots living in northern Cyprus to submit cases to "TRNC" courts. According to the respondent Government, not a single civil case has been instituted before those courts since the introduction of the present application with the Commission. In view of this fact, the question may arise whether the domestic remedies have been exhausted in relation to this complaint, as required by Article 26 of the Convention. The Commission notes however that, at least in some cases, court actions had been brought earlier and that it is alleged, having regard to the manner in which they were dealt with, that there is a practice of denying access to the courts and fair proceedings to Greek Cypriots living in northern Cyprus. If this is the case, the persons concerned would be relieved from exhausting remedies through the institution of further proceedings. In these circumstances, the Commission considers that it is required to deal with the substance of the question whether or not there exists a practice of the "TRNC" courts, as alleged by the applicant Government.

442. However, the facts found by the Commission show that Greek Cypriots living in northern Cyprus are not prevented from bringing civil actions in those courts. In particular, there are no court decisions denying *locus standi* to resident Greek Cypriots on the ground of their special status. It may be that in certain cases the applicable substantive law of the "TRNC" would not support a civil claim which they might wish to put forward, such as a claim that they be allowed to bequeath or transfer their property to Greek Cypriots living in southern Cyprus. While the existence of such laws might raise issues under other provisions of the

Convention, Article 6 cannot be relied on in this context, having regard to the consistent case-law of the Convention organs according to which this provision does not purport to regulate the content of the substantive law of the High Contracting Parties (see *Dyer v. the United Kingdom*, no. 10475/83, Commission decision of 9 October 1984, DR 39, pp. 251 et seq., and the subsequent case-law of the Commission, for example, *H. v. Norway*, no. 17004/90, decision of 19 May 1992, DR 73, p. 170; see also Eur. Court HR, *Skärby v. Sweden*, judgment of 28 June 1990, Series A no. 180-B, p. 36, § 27). Also, it has not been shown that the "TRNC" courts would deny jurisdiction in such cases rather than reject the claim on the basis of the laws which they are required to apply. Accordingly, it has not been made out that there is a practice in the "TRNC" of denying Greek Cypriots residing in the "TRNC" access to court for the purpose of bringing civil actions.

443. There remains the question whether the "TRNC" courts fulfil the requirements of Article 6, that is to say, whether they can be considered as "independent and impartial tribunals established by law". The applicant Government claim that, due to the fact that they operate in the framework of a "legal system" which as a whole is illegal from the point of view of international law and moreover discriminatory, these courts cannot be "independent" and "impartial" *vis-à-vis* Greek Cypriots, and that Turkey, although responsible under the Convention for its subordinate local administration in northern Cyprus, cannot in principle discharge its duties arising under, *inter alia*, Article 6 of the Convention by the creation of illegal institutions such as the "courts" in question (see paragraph 115 above). The respondent Government, on the other hand, claim that the judicial system set up in the "TRNC" provides adequate and effective institutional guarantees, the independence of the courts, which are also impartial, being guaranteed by the "TRNC Constitution".

444. The Commission notes that the "TRNC Constitution" guarantees the independence of the courts and that, indeed, there is nothing in the institutional framework within the legal system of the "TRNC" as described by the respondent Government which is likely to cast doubt on the independence and "objective" impartiality of the civil courts. In particular, there are no special arrangements or procedures when they deal with cases of resident Greek Cypriots. The judges' "subjective" impartiality must be presumed unless there is proof of concrete instances of bias, which is lacking in the present case due to the absence of any proceedings during the period under consideration. Moreover, the fact that in the past a number of actions have been successful does not support the proposition that there is a general attitude of bias against resident Greek Cypriots among "TRNC" judges.

445. In the Commission's opinion, the crucial issue as regards the conformity of the "TRNC" courts with the requirements of Article 6 is

therefore whether they can be considered as "established by law" within the meaning of that provision. There is no doubt that they have a sufficient legal basis within the constitutional and legal system of the "TRNC", but the lawfulness of that legal system in terms of general international law and specific treaty obligations incurred by Turkey at the time of the creation of an independent Cypriot State is open to doubt. The answer to the above question therefore depends on whether the requirement in Article 6 that courts must be "established by law" has to be interpreted as referring only to the domestic legal basis of the judicial system in any given territory or whether lawfulness under international law must also be taken into account.

446. The Commission is of the opinion that the words "established by law" in Article 6 § 1 of the Convention must be understood as referring essentially to the domestic legal basis of the judicial system. It finds support for this view in the Advisory Opinion of the International Court of Justice in the Namibia case (1971 ICJ Reports 16, p. 56, § 125), to which reference has also been made in *Loizidou* (merits) (judgment cited above, p. 2231, § 45), and according to which, in a situation comparable to that of the "TRNC", international law recognises the "legitimacy of certain legal arrangements and transactions ... the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory". This seems to imply that, at least within the limits of the applicability of that principle, the institutions before which such transactions are being made, including the courts, must also be recognised as being legitimate from the point of view of international law. Indeed, it benefits the inhabitants of the territory in question if they can assert their civil rights in the courts. While it is true that foreign courts do not always recognise the decisions of the "TRNC" courts, this is not a universal practice which international law requires to be followed without any exception. Indeed, there may be areas of law in which the decisions of these courts are given, and are required to be given, effect outside the "TRNC" territory.

447. The Commission further recalls its report in *Chrysostomos and Papachrysostomou* (cited above, p. 35, § 152, and p. 38, § 169) where it found, in the context of Article 5 of the Convention, that the requirement of "lawfulness" refers essentially to national law and that, as regards the legal basis of the applicants' detention and the proceedings against them, the judicial system in northern Cyprus was based on the English system of procedure and evidence as it stood for the whole of Cyprus in 1963. While the Commission cannot uphold the conclusion drawn in that same report, namely that proceedings before the "TRNC" courts cannot be imputed to Turkey (ibid., § 170), it still considers that its findings about the judicial system of northern Cyprus were essentially correct and are transposable to the area of Article 6 where civil court proceedings are concerned. It notes in particular that

the ordinary courts called upon to deal with civil cases, while formally established by Turkish-Cypriot legislation introduced after the events of 1974, are in substance based on the Anglo-Saxon tradition of judicial organisation. Thus, they are not essentially different from the courts previously operating in the area concerned and from those which exist in the southern part of Cyprus.

Conclusion

448. The Commission concludes, by seventeen votes to three, that during the period under consideration there has been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(d) Article 9 of the Convention

449. The applicant Government allege that there is a violation of Article 9 of the Convention by reason of interference with the enclaved Greek Cypriots' freedom to manifest their religion. They point out that only four churches remain open, the others having been confiscated and converted to other use; that there is only one priest for the whole Karpas area, as the authorities do not agree to the appointment of further priests; that there are restrictions on the number of religious services at the Apostolos Andreas Monastery and on access to that monastery; and finally that there are restrictions on attendance at religious funerals and on the circulation of school-books with a religious content. The respondent Government contest these allegations and submit that the Greek Cypriots living in northern Cyprus enjoy full freedom of worship.

450. Article 9 of the Convention reads as follows:

> "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."

451. The Commission will limit its examination to the question of the exercise of the right to freedom of religion by the Greek Cypriots still living in northern Cyprus. It is not concerned here with the taking of church property in those parts of northern Cyprus where there are no longer any Greek Cypriots, this being a question which has already been considered in the context of Article 1 of Protocol No. 1 (see Chapter 2 above).

452. The Commission notes that in the Karpas villages where Greek Cypriots live the churches are still operating and that there is no evidence of interference with religious worship as such, although the conduct of religious ceremonies is made difficult by the fact that there is only one priest for the whole area and that, at least until recently, there have been restrictions on access to the most important religious centre of that area, the Apostolos Andreas Monastery. The appointment of further priests has not been approved by the authorities, but there is apparently no administrative decision on this question which could have been challenged through any remedy available in the "TRNC". Nor does it appear that there would have been any effective remedies against the restrictions applied in respect of access to the monastery. The Commission must therefore deal with the merits of the above complaints under Article 9 of the Convention.

453. The Commission finds that the measures complained of are not only the result of the Turkish-Cypriot authorities' general policy in the area of freedom of movement, but also constitute a specific restriction on the religious life of Greek Cypriots living in the northern part of Cyprus. They prevent the organisation of Greek Orthodox religious ceremonies in a normal and regular manner and thus amount to an interference with the exercise of the resident Greek Cypriots' freedom of religion, which cannot be justified under paragraph 2 of Article 9. Indeed, it has not been shown that these measures have a sufficient legal basis or that they are necessary in a democratic society for any of the legitimate purposes enumerated in that provision.

Conclusion

454. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(e) Article 10 of the Convention

455. The applicant Government allege a violation of Article 10 of the Convention by reason of interference with the right of Greek Cypriots living in northern Cyprus to receive and impart information and ideas. They complain in particular about the prohibition on the importation and circulation of Greek-Cypriot (or other Greek language) newspapers and books, the censorship of school-books and the prohibition on receiving television and radio broadcasts from the government-controlled area. The respondent Government contest these allegations, claiming that there are no restrictions on the importation of Greek-Cypriot

newspapers or on the reception of broadcasts and that, as regards books – including school-books – only propaganda material is prohibited.

456. Article 10 of the Convention reads as follows:

> "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."

457. The Commission finds that it has not been substantiated that during the period under consideration restrictions on the importation of newspapers and on the reception of radio and television broadcasts were applied as alleged. It notes, however, the absence of a distribution system for Greek-Cypriot newspapers in the Karpas area itself. In this context, it considers that, while Article 10 does not guarantee the availability of a particular distribution system for press products, the refusal to allow any practicable solution for their distribution to interested persons in a given area could in fact be seen as an interference with their right to receive information and ideas. However, in the present case the Commission has not been informed about any concrete attempts for setting up a regular distribution system for the Greek-Cypriot press in the Karpas area or of administrative measures preventing the establishment of such a system. Nor is it established that no effective remedies would have been available in the "TRNC" against such refusal. It follows that a violation of Article 10 has not been substantiated in this respect.

458. As to the further complaints concerning access of Greek Cypriots living in northern Cyprus to Greek-Cypriot or Greek-language books, the Commission has found no sufficient evidence that during the period under consideration an administrative practice was applied involving a general prohibition on the importation or possession of such books. However, a vetting procedure has been applied to school-books provided by the applicant Government to the Greek-Cypriot schools in northern Cyprus. The procedure has been accepted by the applicant Government in the context of confidence-building measures suggested by UNFICYP and there were apparently no remedies for those concerned (the teachers of the school and the parents of the schoolchildren) to contest its outcome. The procedure involved a unilateral control of the contents of the school-books in question by the Turkish-Cypriot authorities which in a significant

number of cases objected to their distribution on the ground that they were capable of engendering hostility between the ethnic communities. In these circumstances, the measures taken are imputable to Turkey's subordinate local administration in northern Cyprus.

459. The Commission notes from the lists attached to the written statement of Mr Toumazos (see paragraph 380 of the report) and the testimony of Mr Laoutaris (see paragraph 394 of the report) that objections were raised by the Turkish-Cypriot authorities to a considerable number of school-books submitted to them. Thus, of the 152 books submitted for the school year 1996/97 only 84 were approved and could be delivered to the schools. The statement of Mr Laoutaris apparently referred to the school year 1997/98, when only 102 out of 148 proposed books were allowed. Those censored or rejected concerned subjects such as Greek language, English, history, geography, religion, civics, science, mathematics and music. It may be that in this category there was material that indicated the applicant Government's view of the history and culture of the island of Cyprus. If so, it would be for the respondent Government to show that the undisputed censorship or blocking of the books was done "in accordance with the law" and pursued a legitimate aim, such as the prevention of disorder. It would then be for the respondent Government to show that the censorship measures were necessary in a democratic society, in other words that they corresponded to a pressing social need; and that the measures – including the degree of censorship – were not disproportionate to the aim pursued. None of this has been done. Moreover, it is almost impossible to imagine circumstances in which recognised school-books for use at primary level on mathematics, science or Christianity would pose such a threat to public order that censorship would be justified under paragraph 2 of Article 10. Certainly, the respondent Government have not provided such records and justification for their actions as would enable the Convention institutions to assess whether the reasons given by the national authorities are "relevant and sufficient" (see The Sunday Times *v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 38, § 62). In these circumstances, there has been a violation of Article 10 with regard to the school-books.

Conclusion

460. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in that school-books destined for use in their primary schools were subjected to excessive measures of censorship.

(f) Article 11 of the Convention

461. The applicant Government allege that there is a violation of Article 11 of the Convention by reason of restrictions on freedom of association, in particular between the various groups of enclaved persons and between enclaved persons and Greek Cypriots in the government-controlled area. The respondent Government contest this, arguing that while the Law on Associations in force in the "TRNC", adopted by the Turkish Communal Chamber before 1963, is limited to associations of Turkish Cypriots, there is nothing in the laws of the "TRNC" which would prevent the formation or joining of associations by Greek Cypriots living in northern Cyprus. They also claim that any measures restricting their freedom of association could be challenged in the "TRNC" courts.

462. Article 11 of the Convention reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

463. The Commission notes that the applicant Government's allegations, as set out in the particulars of the present application, seem to be based on a concept of "association" in the sense of the mere possibility for people to come together, without necessarily doing so in any organised form. It is clear that the restrictions on the movement of enclaved Greek Cypriots (and persons wishing to visit them) lead to a degree of isolation and interruption of many social contacts. However, in the Commission's view Article 11 of the Convention can only be applied to legal or factual impediments to found or join associations or to take part in the activities of such associations. There must in each case be a minimum of organisational structure which is being interfered with. No submissions have been made in the present case of any specific interference of this kind. In particular, it has not been shown that during the period under consideration there has been interference with attempts by Greek Cypriots to establish their own associations or mixed associations with Turkish Cypriots, or interference with the participation of Greek Cypriots in the activities of associations. Even if, for historical reasons, the law in force in the "TRNC" is by its terms limited to associations of Turkish Cypriots, it is not excluded that, as the respondent Government claim, there may also be legal possibilities for the creation of Greek-

Cypriot associations. The Commission therefore finds that the applicant Government's allegations have not been substantiated.

464. The applicant Government have not submitted any specific complaint relating to interference with the enclaved Greek Cypriots' right to freedom of assembly, which is also guaranteed by Article 11. Certain of the applicant Government's submissions could be understood as involving complaints in this respect, in particular as regards alleged impediments to the participation of enclaved Greek Cypriots in bi-communal events organised by the United Nations. The Commission notes that the relevant United Nations documents in fact mention such impediments which were placed in the way of inter-communal meetings as from the second half of 1996. However, this relates to distinct facts which occurred after the date of the admissibility decision in the present case and which therefore are not covered by it. The Commission accordingly cannot entertain this complaint.

465. In these circumstances, it is not necessary to consider whether any available domestic remedies have been exhausted in relation to the above complaints.

Conclusion

466. The Commission concludes, unanimously, that during the period under consideration there has been no violation of the right to freedom of association under Article 11 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(g) Article 1 of Protocol No. 1[1]

467. The applicant Government allege a violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus by reason of deprivation of possessions and interference with the peaceful enjoyment of possessions. They complain in particular that, when enclaved Greek Cypriots die or leave their homes in northern Cyprus, their properties are allocated to Turkish settlers and that there is a lack of protection against trespassing by Turkish settlers on the property of enclaved Greek Cypriots. The respondent Government contest these allegations. They submit that the property of Greek Cypriots living in northern Cyprus is not regarded as "abandoned property" within the meaning of the land-allocation legislation and that there are effective remedies against trespassing on such property. As regards the alleged interference with inheritance rights, they claim that these too could be asserted in the "TRNC" courts. The respondent Government thus

1. For the text of Article 1 of Protocol No. 1, see paragraph 310 above.

submit that the domestic remedies have not been exhausted in relation to the above complaints.

468. The Commission notes that, in the past also, properties of enclaved Greek Cypriots had been seized and distributed under the land-allocation legislation, but that the Turkish-Cypriot courts decided in a number of cases that this legislation did not apply, that the allocation of the properties concerned to other persons had been wrongful and that they must be returned to their Greek-Cypriot owners. There is no evidence that after these court decisions the practice of applying the land-allocation legislation to the property of resident Greek Cypriots continued. In particular, there is no indication that during the period under consideration in the present case there were any instances of "wrongful allocation" of Greek-Cypriot property to other persons. The Commission therefore accepts that, under the rules applicable in the "TRNC", the property of resident Greek Cypriots is not being treated as "abandoned property".

469. However, the evidence clearly shows that the concept of "abandoned property" continued to be applied during the period under consideration to the possessions of Greek Cypriots who died or who permanently left the territory of the "TRNC". In particular, the Commission considers it as established that Greek Cypriots who leave the north are no longer regarded as the legal owners of the property which they left there. In this respect, even the respondent Government have not claimed that there are remedies by which the persons concerned could assert their property rights. Their situation according to "TRNC" law is apparently the same as that of persons who were displaced during or soon after the events of 1974 with which the Commission has already dealt in Chapter 2 above. There is accordingly a continuing violation of Article 1 of Protocol No. 1 in this regard.

470. The Commission notes the respondent Government's submission that the situation is otherwise in the case of resident Greek Cypriots who die. Allegedly, a court procedure is available to their heirs by which they could assert their inheritance rights. The Commission notes from the relevant United Nations reports that such a procedure might in fact be available if the heirs themselves live in northern Cyprus. However, if they are resident in southern Cyprus, the Commission has serious doubts that the bringing of proceedings in the "TRNC" courts is at all practicable. Even if formal access to the courts would not be denied, the courts would still have to apply the "TRNC" legislation on "abandoned" property which seems to be considered as pertinent at least by the administrative authorities of the "TRNC". Admittedly, the correctness of this legal view has not been tested in the "TRNC" courts, but the respondent Government themselves have submitted that this legislation is applicable. The Commission therefore considers that the remedies on

which the respondent Government rely have not been proved to be effective. It furthermore considers that the restrictions which *de facto* continued to be applied throughout the period under consideration to the inheritance rights in respect of the property of deceased Greek Cypriots in northern Cyprus are incompatible with the letter and spirit of Article 1 of Protocol No. 1 in that they did not respect the very principle of peaceful enjoyment of possessions.

471. Finally, the Commission must consider the applicant Government's complaint that there is a lack of effective protection of the property of Greek Cypriots living in northern Cyprus against trespassing and damage caused by third persons. The evidence has revealed that, at least in the past, such trespassing and damage occurred on a relatively large scale. However, these are the acts of private persons and thus do not as such engage the responsibility of the respondent State. The latter could be held responsible under the Convention only if the authorities were themselves involved in such acts or if they failed to secure the peaceful enjoyment of possessions by an administrative practice of withholding effective remedies against such acts. There is no evidence that during the period under consideration trespassing on or damage to Greek-Cypriot property in northern Cyprus has taken place with the participation of or encouragement by the "TRNC" authorities. On the contrary, it has been shown that in a number of cases civil actions or criminal complaints brought in relation to such incidents have been successful in the "TRNC" courts and in particular that there has been a recent increase in criminal prosecutions despite the general reluctance of Greek Cypriots living in northern Cyprus to turn to the "TRNC" authorities. In these circumstances, the Commission does not find it established that there is an administrative practice in the "TRNC" of failing to provide effective remedies to Greek Cypriots in northern Cyprus against interference with their property rights by private persons.

Conclusions

472. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in the case of their permanent departure from that territory and in that, in the case of their death, inheritance rights of persons living in southern Cyprus were not recognised.

473. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 1 of Protocol No. 1 by failure to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons.

(h) Article 2 of Protocol No. 1

474. The applicant Government allege a violation of Article 2 of Protocol No. 1 by reason of a denial of secondary education to children of Greek Cypriots living in northern Cyprus and disrespect for the parents' right to ensure education in conformity with their religious and philosophical convictions. The respondent Government deny these allegations, submitting that school facilities of both primary and secondary level are available to Greek Cypriots in Turkish-Cypriot schools, that primary education in the Greek language is in fact provided and that special secondary-education facilities in the Greek language could not be expected due to the small number of students. However, the students in question are allowed to attend schools in southern Cyprus.

475. Article 2 of Protocol No. 1 reads as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

476. The Commission recalls the case-law according to which this provision does not require the State to establish a particular educational system, but merely guarantees to persons subject to the jurisdiction of the Contracting Parties the right, in principle, to avail themselves of the means of instruction existing at a given time. The Convention lays down no specific obligations concerning the extent of these means and the manner of their organisation or subsidisation. In particular, the first sentence of Article 2 does not specify the language in which education must be conducted in order that the right to education be respected. However, the right to education would be meaningless if it did not imply in favour of its beneficiaries the right to be educated in the national language or in one of the national languages, as the case may be. This right by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education or conflict with other rights enshrined in the Convention (see *Case "relating to certain aspects of the laws on the use of languages in Belgium"* (merits), judgment of 23 July 1968, Series A no. 6, pp. 31-32, §§ 3-5).

477. In the present case, the Commission finds that the Turkish-Cypriot authorities allow such education in the Greek language to the children of Greek Cypriots living in northern Cyprus at primary-school level. The problems which have existed in this respect due to the vacancy of teachers' posts have in the meantime been resolved. The further problems which have arisen in relation to the provision of

school-books have been considered above under Article 10 of the Convention. In the Commission's opinion, they do not interfere with the essence of the right to education and thus raise no separate issue under Article 2 of Protocol No. 1. The Commission therefore finds that, at primary-school level, the right to education of Greek Cypriots living in northern Cyprus has not been disregarded.

478. As regards secondary-school education, it is not available in northern Cyprus in the Greek language although it is well known to the Turkish-Cypriot authorities that in practice all Greek Cypriots concerned prefer to be educated in their own language. It may be true that, as the respondent Government assert, secondary schools operating in northern Cyprus in the Turkish or English language would also be open to Greek Cypriots living in northern Cyprus. However, education in such schools does not correspond to the needs of the persons concerned, who have the legitimate wish to preserve their own ethnic and cultural identity. While it is true that Article 2 of Protocol No. 1 guarantees access only to existing educational facilities, it must be noted that in the present case such educational facilities have in fact existed in the past and have been abolished by the Turkish-Cypriot authorities. Moreover, the Commission understands that, as at primary-school level, the applicant Government would also be prepared to operate secondary schools for Greek Cypriots living in northern Cyprus despite the limited number of pupils, and that they are prevented from doing so by the Turkish-Cypriot authorities despite a stipulation to that effect in the inter-communal agreement concluded in Vienna in 1975. In the Commission's opinion, the total absence of appropriate secondary schools for Greek Cypriots living in northern Cyprus cannot be compensated for either by the authorities' allowing the pupils concerned to attend such schools in southern Cyprus. In fact, this permission is not unconditional in that, until recently, not all pupils were allowed to return after completion of their studies and, even now, male students beyond the age of 16 are not allowed to do so. In these circumstances, the practice of the Turkish-Cypriot authorities amounts to a denial of the substance of the right to education.

Conclusion

479. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that no appropriate secondary-school facilities were available to them.

2. Global examination of the living conditions of Greek Cypriots in northern Cyprus

(a) Article 8 of the Convention

480. The applicant Government allege a continuing violation of Article 8 of the Convention by reason of interference with the right of Greek Cypriots living in northern Cyprus to respect for their private and family life, their home and their correspondence. The respondent Government, while admitting that the persons concerned live under difficult conditions, deny that there has been an interference with their rights under this provision.

481. As indicated above, the Commission finds it appropriate in the particular circumstances of the present case to examine globally the living conditions of the Greek Cypriots in northern Cyprus from the standpoint of Article 8 of the Convention. While it must not lose sight of the various distinct aspects of that provision, it considers a global approach justified, having regard in particular to the applicant Government's contention that the multitude of restrictions imposed on these people is part of a deliberate policy of creating unbearable living conditions for them with the ultimate aim of making them leave northern Cyprus. It is true that the applicant Government have mainly relied on Article 3 of the Convention in this respect, but the Commission considers that, by their very nature, these complaints also raise issues under Article 8.

482. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

483. The Commission first recalls its findings in the 1976 and 1983 reports, according to which the separation of families brought about by the refusal to allow the return of displaced Greek Cypriots to their enclaved families in northern Cyprus constitutes an aggravated breach of Article 8 (see paragraph 430 above). The Commission notes that Greek Cypriots who have permanently left the north of Cyprus, including recent emigrants, are still not allowed to return, even if they have a family there. While family visits of both Greek Cypriots living in southern Cyprus to their relatives in the north and of Greek Cypriots living in northern Cyprus to their relatives in the south have been facilitated by a number of measures, most of which were taken during

the period which is relevant in the present application, certain administrative restrictions, such as limitation to first-degree relatives, visa requirements and levying of entry and exit fees still continue to be applied to such visits. Until recently, there were also severe limitations on the number and duration of the visits. These restrictions were also applied to Greek-Cypriot schoolchildren above a certain age who attended secondary schools in southern Cyprus and who, like any other emigrants, were not allowed to return permanently to their families in northern Cyprus after reaching the age-limit. This practice is still in force for students who completed their studies before the entry into force of the new regulations of February 1998 and for Greek-Cypriot males over the age of 16.

484. The Commission considers it as established that, by these measures, new cases of separation of families were brought about during the period under consideration and that the possibility for Greek Cypriots living in northern Cyprus of leading a normal family life continued to be affected in other ways during that period. The Commission finds that no remedies are available to the persons concerned to contest the measures in question. It considers that these measures, taken as a whole, constitute a grave interference with the right to respect for the family life of the persons concerned, which cannot be justified under Article 8 § 2 of the Convention, having regard to the absence of a clear legal basis, the absence of any legitimate aim and the obvious disproportionality of the measures in question.

485. The Commission further considers it as established that the entirety of the measures which continued to be imposed on the enclaved population during the period under consideration went far beyond a restriction of their liberty of movement in the sense of Article 2 of Protocol No. 4, which has not been ratified by Turkey. In particular, the restrictions on their freedom of movement were until recently accompanied by measures of strict police control, which applied even to visits to neighbouring villages or towns, with an apparent requirement to indicate the purpose of the visits, such as seeing friends, shopping or medical consultations, participation in religious manifestations, etc. Repeated reporting to the police was required when they made such visits inside the territory of northern Cyprus or to the southern part of Cyprus, and visitors whom they received were not only subjected to similar reporting requirements but even physically accompanied by policemen who, at least in certain cases, stayed with the visitors inside the homes of the enclaved Greek Cypriots. Also, the UNFICYP personnel who visited the Greek Cypriots in the Karpas area for humanitarian purposes have until recently been accompanied by Turkish-Cypriot police who went into the homes, thus preventing any conversation in private.

486. The Commission finds that, in this respect also, no remedies were available in northern Cyprus and that the administrative practice in question amounted to a clear interference with the right of the enclaved Greek Cypriots to respect for their private life and home which cannot be justified under Article 8 § 2. In particular, as the measures in question lacked any basis in laws or regulations accessible to the persons concerned, the latter found themselves in a situation of total legal insecurity which continued even after the measures were lifted, since that fact had not been brought to their attention. Moreover, the Commission does not see that these measures, whose scope was excessive by any standard, could have served any legitimate purpose recognised in the Convention.

487. In view of this finding, the Commission does not consider it necessary to examine the applicant Government's further complaints that there has also been interference with the enclaved Greek Cypriots' right to respect for their home by the change of the demographic and cultural environment of their homes and by failure to protect them against acts of private persons, in particular Turkish settlers, interfering with the undisturbed enjoyment of their homes. It appears that, at least in the latter respect, remedies are available to the persons concerned before the Turkish-Cypriot courts.

488. The Commission has also considered whether during the period under consideration there have been unjustified interferences with the right of the enclaved Greek Cypriots to respect for their correspondence. It notes that, even now, no direct postal and telecommunications links exist between the two parts of Cyprus, but that, after the recent installation of telephone lines in Greek Cypriots' homes in northern Cyprus, calls can be made through the switchboard of the United Nations at the Ledra Palace. Neither the allegation that such calls are being tapped nor the allegation that mail to Greek Cypriots in the north used to be delivered by the police rather than the Turkish-Cypriot postal service and that the mail was opened by the police has been substantiated. There are certain indications that persons who crossed from one part of Cyprus to the other have been searched for letters which they carried with them, but the evidence is not sufficient to establish that there exists a consistent practice to that effect. The Commission considers that the non-existence of direct communication links between the two parts of Cyprus, which apparently is not the exclusive responsibility of the respondent State, cannot be seen as amounting to an interference by that State with the right to respect for correspondence within the meaning of Article 8. As regards the other aspects of this right discussed above, the Commission finds that the material before it does not allow the conclusion to be drawn that during the period under consideration there has been an administrative

practice of disregarding the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

489. Finally, the Commission observes that, taken as a whole, the daily life of the Greek Cypriots in northern Cyprus is characterised by a multitude of adverse circumstances. The absence of normal means of communication, the unavailability in practice of the Greek-Cypriot press, the insufficient number of priests, the difficult choice before which parents and schoolchildren are put regarding secondary education, the restrictions and formalities applied to freedom of movement, the impossibility of preserving property rights upon departure or death and the various other restrictions create a feeling among the persons concerned of being compelled to live in a hostile environment in which it is hardly possible to lead a normal private and family life. As these adverse circumstances in the living conditions are to a large extent the direct result of the official policy conducted by the respondent State and its subordinate local administration, they constitute factors by which the above interferences with the rights of the enclaved Greek Cypriots under Article 8 of the Convention are aggravated.

Conclusions

490. The Commission concludes, unanimously, that during the period under consideration there has been a violation of the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention.

491. The Commission concludes, unanimously, that during the period under consideration there has been no violation of the right of Greek Cypriots living in northern Cyprus to respect for their correspondence, as guaranteed by Article 8 of the Convention.

(b) Article 3 of the Convention[1]

492. The applicant Government complain under Article 3 of the Convention that the various measures applied to the Greek Cypriots living in the Karpas area of northern Cyprus disclose a consistent pattern of discriminatory action against them with a view to making them leave the area, and that these measures, taken as a whole, amount to "ethnic cleansing" and thus constitute inhuman and degrading treatment. In this connection, the applicant Government refer to the Commission's report in *East African Asians* (cited above, p. 62, §§ 207-09).

1. For the text of Article 3 of the Convention, see paragraph 230 above.

493. The respondent Government submit that the facts in the present case must be distinguished from those underlying the report in *East African Asians*. They claim in particular that an aggregate of facts none of which in itself constitutes a violation of the Convention cannot be considered cumulatively under Article 3.

494. However, the Commission recalls that the question whether "the refusal of a right which is not in itself protected by the Convention could nevertheless in certain circumstances violate another right already included in this treaty" has in fact been discussed in the report in *East African Asians* itself. The Commission stated that "by admitting the present applications both under Article 3 and under other provisions of the Convention, the Commission impliedly accepted that the finding of such a violation was not excluded" (ibid., p. 54, § 185). The Commission considers that in the present case, too, neither the fact that it has already found certain of the impugned measures to be in breach of the Convention nor the fact that no such finding was made concerning certain other measures prevents it from examining in addition whether through all these measures a policy of racial discrimination was pursued which, as such, can be seen to amount to a violation of Article 3 of the Convention.

495. In this connection, the Commission recalls paragraph 207 of the above report (ibid., p. 62) where it confirmed the view that "discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention". The Commission further stated that "as generally recognised, a special importance should be attached to discrimination based on race; that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity; and that differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question".

496. The Commission recalls that, in its 1976 report cited above (§ 503), having found violations of a number of Articles of the Convention, it noted that the acts violating the Convention were exclusively directed against members of one of the communities in Cyprus, namely the Greek-Cypriot community. The Commission then concluded that Turkey had thus failed to secure the rights and freedoms set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by Article 14. In its 1983 report, the Commission did not find it necessary to add anything to its finding under Article 14 in the previous case (report cited above, p. 49, § 162).

497. With regard to the facts of the present case, the Commission has found above that during the period under consideration there has been interference with the rights of Greek Cypriots living in northern Cyprus

under several provisions of the Convention. In particular, it has found (see paragraph 489 above) that the general living conditions of Greek Cypriots living in northern Cyprus are such that there is an aggravated interference with their right to respect for their private and family life and for their home. The Commission notes that also during the period under consideration in the present case all these interferences concerned exclusively Greek Cypriots living in northern Cyprus and were imposed on them for the very reason that they belonged to this class of person. In these circumstances, the treatment complained of was clearly discriminatory against them on the basis of their "ethnic origin, race and religion". While the predominant factor here is ethnic discrimination, the Commission considers that the principle stated in *East African Asians* in relation to racial discrimination based on colour is applicable in the same manner.

498. However, this principle has not been stated in absolute terms, the conclusion of a violation of Article 3 of the Convention in *East African Asians* having been reached by the Commission in the light of the very particular circumstances of that case. Indeed, in such a case as in any other case where Article 3 is applied, a violation of this provision can only be found if the treatment in question attains the required level of severity. In the present case, the Commission notes that the general living conditions of Greek Cypriots resident in northern Cyprus were imposed on them in pursuit of an acknowledged policy aiming at the separation of the ethnic groups in the island in the framework of a bi-communal and bi-zonal arrangement. This policy has led to the confinement of the Greek-Cypriot population still living in northern Cyprus (other than the Maronites) within a small area of the Karpas peninsula. There is a steady decrease in their numbers as a result of specific measures which prevent the renewal of the population. Moreover, their property is confiscated if they die or leave the area. As it was noted in the United Nations humanitarian review (see paragraph 387 of the report), the restrictions imposed on them have the effect of ensuring that "inexorably with the passage of time, those communities [will] cease to exist in the northern part of the island". The Commission considers that, despite recent improvements in certain respects, the hardships to which the Greek Cypriots living in the Karpas area of northern Cyprus were subjected during the period under consideration still affected their daily life to such an extent that it is justified to conclude that the discriminatory treatment complained of attained a level of severity which constitutes an affront to their human dignity.

Conclusion

499. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 3 of the

Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment.

(c) Article 14 of the Convention[1]

500. The applicant Government complain that the various restrictive measures imposed on the Greek Cypriots living in northern Cyprus are discriminatory and thus amount to a violation of Article 14 of the Convention taken in conjunction with the other relevant Convention Articles. The respondent Government deny these allegations, claiming that any differentiation made between Greek Cypriots and Turkish Cypriots is only the result of the bi-communal structure of Cyprus, in which certain matters concerning the two communities are being regulated separately with a view to preserving their ethnical identity.

501. In the light of its above finding under Article 3 of the Convention (see paragraph 499), the Commission does not find it necessary also to examine the issue of discrimination against Greek Cypriots living in northern Cyprus in the light of Article 14.

Conclusion

502. The Commission concludes, unanimously, that it is not necessary to examine whether during the period under consideration there has been a violation of Article 14 of the Convention in respect of Greek Cypriots living in northern Cyprus.

(d) Article 13 of the Convention[2]

503. The applicant Government finally complain that there has been a violation of Article 13 of the Convention by reason of the failure to provide effective remedies to the Greek Cypriots living in northern Cyprus in relation to all the restrictions of their Convention rights discussed above. The respondent Government claim that the "TRNC" legal system in fact provides them effective remedies.

504. The Commission recalls its above finding under Article 6 of the Convention that the lawfulness under international law of the legal system of the "TRNC" is not to be taken into account in determining the question whether the "TRNC" courts are "established by law" (see paragraphs 446-47 above). The same consideration must apply in relation to any other remedies provided by the "TRNC" legal system.

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1. For the text of Article 14 of the Convention, see paragraph 332 above.
2. For the text of Article 13 of the Convention, see paragraph 325 above.

505. The Commission has discussed above, in the light of Article 26 of the Convention, whether or not in relation to each complaint concerning the Greek Cypriots living in northern Cyprus effective remedies were available. This question, however, does not arise in respect of those complaints which the Commission has found to be unsubstantiated (namely, the complaints under Articles 2, 5, 6 and 11 of the Convention). As regards the remaining complaints, the Commission recalls its above findings according to which there are effective remedies against trespassing on and damage to property by private persons (see paragraph 471 above) and against interference by private persons with the right to respect for the home of Greek Cypriots (see paragraph 487 above). However, there are no effective remedies as regards the remaining complaints concerning interference by the authorities with Greek Cypriots' rights under Articles 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1. Nor are there any remedies as regards the discrimination against Greek Cypriots living in northern Cyprus and the resultant degrading treatment contrary to Article 3 of the Convention.

Conclusions

506. The Commission concludes, by eighteen votes to two, that there has been no violation of Article 13 of the Convention in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Articles 8 of the Convention and Article 1 of Protocol No. 1.

507. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

Chapter 4

The right of displaced Greek Cypriots to hold free elections

A. Complaints and submissions of the parties

508. The applicant Government complain that there is a violation of Article 3 of Protocol No. 1 in that displaced Greek Cypriots, as a result of their displacement and their being refused to return, are prevented from effectively enjoying the right to have freely elected representatives in the Cyprus legislature in respect of the occupied territory. Although elections in the government-controlled area are organised in respect of the whole

territory of Cyprus, they are deprived of their meaning and effect in so far as there is no effective representation of the area under Turkish occupation and effective legislation cannot be passed in respect of that area.

509. The respondent Government deny the alleged violation of Article 3 of Protocol No. 1. They submit in particular that the applicant Government still hold elections for the constituencies of Kyrenia and Famagusta and that Greek Cypriots in northern Cyprus wishing to vote are allowed to do so. They blame the applicant Government for not taking into account the exchange of population agreements setting the basis for a bi-communal and bi-zonal federation.

510. No particular evidence has been submitted in relation to this complaint, except a press report recording a statement by the Deputy Prime Minister of the "TRNC" that any enclaved Greek Cypriot from the Karpas area who was elected to the Cypriot parliament in the May 1996 elections would be expelled from the "TRNC".

B. Opinion of the Commission

511. Article 3 of Protocol No. 1 reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

512. The Commission notes that the electoral system in Cyprus has always been based on a principle of ethnicity. The organisation of free elections for all Greek Cypriots (including the Greek Cypriots in northern Cyprus) is possible and is in fact carried out in the southern part of the island. The applicant Government have not contradicted the respondent Government's assertion in this respect that such elections are also held for constituencies in northern Cyprus and that Greek Cypriots still living there can participate in those elections. The only impediment is that the applicant Government is deprived of the territorial basis in northern Cyprus both for holding the elections (the Greek Cypriots living there must vote in the south) and for implementing legislation adopted by the legislature. In the Commission's opinion, this is only the consequence of the general political situation in Cyprus as it has existed since 1974 and does not involve a specific interference with the Cypriot electoral system as such.

513. The Commission finds it unsatisfactory that the electoral system operated in both parts of Cyprus does not provide for a proper place for Greek Cypriots living in northern Cyprus. Although they can participate in elections in the south, the legislature there is *de facto* incapable of solving any of their problems. On the other hand, it appears that the Greek Cypriots in the north, although considered as "TRNC citizens",

are excluded from participating in "TRNC" elections because of the principle of the ethnic vote. However, since the principle operates on both sides, Turkish Cypriots in the government-controlled area are in the same position and the Commission finds that no particular responsibility can be attributed in this respect to the respondent State.

514. The Commission has considered the allegation concerning particular measures that would be taken against enclaved Greek Cypriots who stand for election and manage to get elected. Such measures must clearly be seen as an impediment to the free expression of the opinion of the people in the choice of their legislature. However, the only evidence in this respect is a press report whose correctness the Commission has not been able to verify. Nor has the Commission been informed of any concrete measures being taken to the effect indicated in the press report. Therefore, it has not been substantiated that during the elections concerned there has in fact been pressure on the free expression of the will of the people.

Conclusion

515. The Commission concludes, unanimously, that there has been no violation of the displaced Greek Cypriots' right to hold free elections, as guaranteed by Article 3 of Protocol No. 1.

Chapter 5

Complaints relating to Turkish Cypriots

A. Complaints

516. The Commission has declared admissible the following complaints relating to Turkish Cypriots living in northern Cyprus:

– that there is a violation of Article 5 of the Convention because their security of person is not ensured;

– that there is a violation of Article 6 of the Convention, by virtue of their being subjected to "military courts" which do not ensure that charges against them are heard by an independent and impartial tribunal;

– that there is a violation of Article 10 of the Convention by reason of the prohibition on the circulation of Greek-language newspapers in northern Cyprus;

– that there is a violation of Article 11 of the Convention by reason of the denial of their right to freely associate with Greek Cypriots;

– that there is a violation of Article 1 of Protocol No. 1 by reason of the failure to allow them to return to their properties in southern Cyprus.

517. The Commission has further declared admissible complaints under Articles 3, 5 and 8 of the Convention in relation to the treatment of Turkish-Cypriot Gypsies who sought asylum in the United Kingdom.

518. Finally, the Commission has declared admissible the complaint that there is a violation of Article 13 of the Convention in that there are no relevant or sufficient remedies available to the Turkish Cypriots concerned as regards the interference with their above Convention rights.

519. At the merits stage of the proceedings, the applicant Government have in addition alleged the following violations of the Convention:

– degrading treatment not only of the Gypsy community but also of Turkish Cypriots and Turkish residents of northern Cyprus who were consequently compelled to seek asylum in the United Kingdom (Article 3);

– arrests and unlawful detention of persons politically opposed to the Turkish policy in northern Cyprus (Article 5);

– Turkish soldiers are beyond the jurisdiction of "civil courts"; arrested persons or persons with civil claims are denied a fair trial of claims they have against members of the mainland Turkish army, the "police" of Turkey's subordinate local administration, settlers and their political opponents who inflict injuries upon them (Article 6);

– interference with the right to respect for private and family life and home (Article 8), occasioned by

(a) Turkey's policy of massive mainland settlement;

(b) assaults on and threats to the lives of Turkish Cypriots opposed to Turkey's policy in the occupied area, such assaults being committed by the "police", persons associated with the "police" and the Turkish "embassy", or tolerated by Turkish officials, such persons also condoning violence by mass entrants to the occupied area who have been encouraged by Turkey to come to Cyprus; the level of severity of some assaults and threats is such that they come under Article 3 of the Convention; they have led to persons seeking asylum in the United Kingdom;

(c) denial of family reunion with Turkish Cypriots who left the occupied area and now live in the government-controlled area. Persons who subsequently managed to return to the occupied area have been assaulted by the "police";

(d) denial of the possibility of employment by the "State" and toleration of practices involving denial of employment in the private sector to persons who do not support the regime;

(e) refusal to permit medical treatment at nearby specialist facilities in the government-controlled area;

– interference with freedom of expression (Article 10) effected by the Turkish army, the "police" or persons acting in association with them, who place a chill on the exercise of the right to receive or impart information;

– interference with peaceful demonstrations by persons opposed to Turkey's policy in the occupied area (Article 11);

– discrimination in securing Convention rights to members of the Gypsy community, in particular in conjunction with the denial of Gypsy children's entitlement to education under Article 2 of Protocol No. 1, and discrimination against Alevi Kurds resident in the occupied area (Article 14);

– interference with the peaceful enjoyment of possessions and acquiescence in attacks on the possessions of members of political parties opposed to the Denktaş regime (Article 1 of Protocol No. 1);

– *de facto* denial of the right to education to Gypsy children by systematic misconduct of teachers, failure to provide them with education according to their needs and failure to protect them against humiliation and degrading treatment (Article 2 of Protocol No. 1).

520. The Commission must accordingly determine whether the last-mentioned complaints can be taken into account in the context of its examination of the merits of the present application as declared admissible.

...

D. Opinion of the Commission

1. Scope of the Commission's examination

569. The Commission recalls application no. 8007/77, where it had before it complaints by the applicant Government about continuous violations of the rights of Turkish Cypriots living in northern Cyprus, including systematic acts of violence, threats, insults and other oppressive acts by Turkish settlers encouraged and countenanced by the presence of Turkish troops, and prevention of any return by Turkish Cypriots to their homes and properties in the government-controlled area. It was alleged that these acts constituted continuous violations of Articles 3, 5, 6 and 8 of the Convention and of Article 1 of Protocol No. 1 (see the 1983 report cited above, p. 49, § 163). The respondent Government qualified these allegations as propaganda (ibid., § 164). The Commission, having regard to the material before it, found that it did not have sufficient available evidence enabling it to come to any conclusion regarding this complaint (ibid., p. 50, § 165).

570. In view of this finding, the applicant Government have now submitted extensive evidence on the situation of Turkish Cypriots in northern Cyprus which they claim is sufficient to establish violations of the Convention in several respects. The Commission notes, however, that the original complaints submitted by the applicant Government in the present application differ somewhat from those in the previous application and that they were considerably expanded at the merits stage

of the proceedings (see paragraph 519 above). The Commission is therefore required to determine to what extent it can deal with the applicant Government's complaints as developed after the admissibility decision (see paragraph 520 above).

571. In this connection, the Commission refers to its considerations above (see paragraph 216) according to which the scope of its examination of the merits is circumscribed by the facts or aggregate of facts covered by the admissibility decision without the Commission being bound by their initial legal qualification. On this basis, the Commission now finds in relation to the issues under consideration here that it cannot entertain most of the additional complaints set out in paragraph 519 above as they are in no way covered by the admissibility decision. The Commission will, however, include in its examination those aspects of the present situation of Turkish Cypriots in northern Cyprus which may be regarded as being inherently covered by the admissibility decision, as described in the mandate to the Commission's delegates concerning the scope of their investigations (see paragraph 521 of the report). This means in particular that the Commission will deal with various aspects of the alleged treatment of political opponents (ill-treatment, actual detention, harassment and interference with family life, restriction of their freedom of expression and assembly) which initially had been put before it only as a matter of their "security of person" under Article 5 of the Convention. The Commission will then deal with the allegations concerning the Turkish-Cypriot Gypsy community (including the allegation of discrimination which had already been mentioned at the admissibility stage) and finally with the remaining complaints.

2. Complaints relating to political opponents

572. The applicant Government complain of administrative practices directed against Turkish Cypriots who are political opponents of the ruling parties in northern Cyprus and which allegedly subject them to inhuman or degrading treatment (Article 3 of the Convention), interfere with their security of person (Article 5), their private and family life (Article 8), and their freedom of expression (Article 10) and assembly (Article 11). The respondent Government, without making specific submissions concerning the particular complaints, in substance deny these allegations.

573. The Commission has found credible indications that, prior to and during the period under consideration, certain activists of opposition political parties have in fact experienced difficulties in connection with their political activities. It cannot exclude that in individual cases their rights under the above Convention Articles have in fact been interfered with. However, many of the interferences have been the acts of private

persons against which no remedies were taken by the persons concerned in the courts of the "TRNC". In cases where the persons concerned were – sometimes repeatedly – subjected to short periods of actual detention, they did not make use of habeas corpus proceedings. Likewise, they did not introduce court remedies against other allegedly unlawful acts of the "TRNC" police or administrative authorities. The Commission considers that it has not been shown beyond reasonable doubt that all of these remedies would have been ineffective and that there is accordingly an administrative practice by the "TRNC" authorities, including the courts, of refusing any legal protection to the persons concerned. The Commission recalls in this context that in case of doubt as to the effectiveness of particular remedies the victims of alleged violations of the Convention are required to make use of these remedies.

Conclusion

574. The Commission concludes, by nineteen votes to one, that there has been no violation of the rights of Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10 and 11 of the Convention by reason of failure to protect their rights under these provisions.

3. Complaints concerning the Turkish-Cypriot Gypsy community

575. The applicant Government complain that the Turkish-Cypriot Gypsy community is severely discriminated against by administrative practices in the fields of education, housing, employment, transport and property allocation. They also refer to cases of unjustified detention and ill-treatment and allege violations of Articles 3 (inhuman or degrading treatment), 5 (security of person), 8 (interference with home and private and family life) and 14 (discrimination in the enjoyment of Convention rights) of the Convention as well as of Articles 1 (peaceful enjoyment of possessions) and 2 (right to education) of Protocol No. 1. The respondent Government deny these allegations.

576. The Commission has found indications that in fact many members of the Gypsy community of northern Cyprus live in very poor conditions and experience difficulties of the sort alleged by the applicant Government. However, most of the incidents reported by the witnesses occurred prior to the period under consideration in the present case. It is true that during that period there have been individual cases of hardship such as the demolition of the houses of a Gypsy community near Morphou on the order of the local authorities, the refusal of airline companies to transport Gypsies without a visa, and humiliation of Gypsy children at school. However, it appears that in all these cases available domestic

remedies have not been exhausted. Moreover, the Commission does not find it established beyond reasonable doubt that there is a deliberate practice of the authorities in northern Cyprus to discriminate against Gypsies or to withhold protection against social discrimination. The Commission further observes that the applicant Government's complaints under Articles 1 and 2 of Protocol No. 1 cannot be entertained since they were only introduced at the merits stage of the proceedings and are not in substance covered by the admissibility decision.

Conclusion

577. The Commission concludes, by thirteen votes to seven, that there has been no violation of the rights of members of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8 and 14 of the Convention by reason of failure to protect their rights under these Articles.

4. The remaining complaints

(a) Article 6 of the Convention[1]

578. The applicant Government complain under Article 6 of the Convention that the military courts in northern Cyprus, which are also competent for certain matters concerning civilians, are not independent and impartial as required by that provision. The respondent Government have not made any specific submissions in relation to this complaint. In the context of their submissions on the legal system of the "TRNC" they have, however, provided certain information on the organisation of the military courts in northern Cyprus (see paragraph 110 above).

579. In the light of this information, the Commission notes that military officers appointed by the Security Forces Command (first instance) or the Security Forces Commander (second instance) are members of those courts alongside civilian judges. In view of the composition of these courts, the Commission has doubts as to their conformity with the requirements of Article 6 (see Eur. Court HR, *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, pp. 1571-73, §§ 65-73). However, it has not been established in the present case that during the period under consideration any proceedings, and in particular proceedings against civilians, in fact took place before those courts. The Commission therefore considers that it has not been established that during this period there has been a violation of Article 6 in this respect.

1. For the text of Article 6 of the Convention, see paragraph 440 above.

580. The Commission notes that, since the decision on admissibility, the applicant Government have submitted additional complaints under Article 6. They allege in essence that excessive immunity is being granted from civil jurisdiction of the "TRNC" courts, the members of the Turkish military forces being liable only in Turkish military courts. Furthermore, it is alleged that Turkish-Cypriot civilians are being actively discouraged from bringing civil lawsuits against members of the military forces and the police. However, the Commission cannot entertain these complaints, which are beyond the scope of the admissibility decision.

Conclusion

581. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 6 of the Convention in that Turkish-Cypriot civilians living in northern Cyprus were tried by military courts lacking independence and impartiality.

(b) Article 10 of the Convention[1]

582. The applicant Government complain of a violation of Article 10 of the Convention in that the right of Turkish Cypriots living in northern Cyprus to receive information was interfered with by a prohibition on the circulation of Greek-language newspapers. The respondent Government deny the existence of such restrictions.

583. The Commission refers to its finding above (see paragraph 457), according to which the existence of restrictions on the circulation of Greek-language newspapers in northern Cyprus has not been substantiated.

584. The Commission notes that at the merits stage of the proceedings the applicant Government have raised Article 10 also in other respects, claiming in particular a chilling effect on the press by oppressive measures taken against critical Turkish-Cypriot journalists, such as the murder of Mr Adali, allegedly instigated or tolerated by the authorities. These complaints, however, are not covered by the admissibility decision. In particular, the murder of Mr Adali is a distinct fact which occurred after the date of that decision and which therefore is outside the scope of the present case. In so far as it is alleged that there has also been an interference with the freedom of expression of political opponents to the regime in northern Cyprus, the Commission refers to its findings in paragraph 573 above.

1. For the text of Article 10 of the Convention, see paragraph 456 above.

Conclusion

585. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 10 of the Convention by virtue of restrictions on the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek-language press.

(c) Article 11 of the Convention[1]

586. The applicant Government complain of a violation of Article 11 of the Convention by reason of restrictions on the right of Turkish Cypriots living in northern Cyprus to associate themselves freely with Greek Cypriots and others from the government-controlled area. The respondent Government in essence contest this allegation.

587. The Commission refers to its observations above concerning similar complaints relating to Greek Cypriots living in northern Cyprus (see paragraph 463). Nothing has been brought to its attention to the effect that during the period under consideration there have been attempts by Turkish Cypriots living in northern Cyprus to establish associations with Greek Cypriots in the northern or southern parts of Cyprus which were prevented by the authorities. The Commission therefore considers this complaint as being unsubstantiated.

588. The Commission notes that at the merits stage of the proceedings the applicant Government also submitted complaints in relation to restrictions on the right to freedom of assembly of Turkish Cypriots living in northern Cyprus. In particular, it has been alleged that there have been impediments to their participation in bi-communal events. The Commission notes that the relevant United Nations documents in fact mention such impediments which were placed in the way of inter-communal meetings as from the second half of 1996. However, this relates to distinct facts which occurred after the date of the admissibility decision in the present case and which therefore are not covered by it. The Commission accordingly cannot entertain this complaint.

Conclusion

589. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 11 of the Convention by interference with the right to freedom of association of Turkish Cypriots living in northern Cyprus.

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1. For the text of Article 11 of the Convention, see paragraph 462 above.

(d) Article 1 of Protocol No. 1[1]

590. The applicant Government complain that there is a continuing violation of Article 1 of Protocol No. 1 by reason of the failure to allow Turkish Cypriots living in northern Cyprus to return to their properties in the southern part of Cyprus. They further complain about a continuous infringement of Turkish Cypriots' right to enjoy their possessions, by reason of criminal conduct which the authorities allegedly condone. The respondent Government deny these allegations, claiming in particular that it is an unrealistic assumption that any Turkish Cypriots living in the northern part of the island actually wish to return to southern Cyprus and that they would be allowed by the authorities of the applicant State to claim back their property there. They have also submitted that in the "TRNC" effective remedies are generally available to Turkish Cypriots.

591. The question whether there is interference by the respondent State with Turkish-Cypriot property rights in southern Cyprus is not symmetrical to the similar issue raised in respect of displaced Greek Cypriots (see paragraphs 311-22 above). The measures taken by the authorities of the applicant State for the administration of Turkish-Cypriot property in the south (which the respondent Government claim are analogous to those applied to Greek-Cypriot property in the north) are not in issue here. However, the Commission notes that, due to the land-allocation system operated in northern Cyprus, Turkish Cypriots living there have generally transferred their claims to property in southern Cyprus to the "TRNC" in return for property which they received in the north. It is alleged that this was done under compulsion and that, for the purposes of the Convention, the persons concerned must therefore still be regarded as the legal owners of the property left behind in southern Cyprus. If that were the case, the measures taken by the northern Cypriot authorities would not have validly deprived the Turkish-Cypriot owners of the control of their properties in the south and, as the applicant Government do not recognise the legal validity of their transactions with the northern authorities, such control could also effectively be exercised by them if they wished to do so. The only impediment for which the authorities of the respondent State could be held responsible in this respect is interference with their access to the property situated in southern Cyprus, in so far as the freedom of movement of Turkish Cypriots to the south is restricted. Assuming that the impossibility of access to property as a consequence of restrictions on freedom of movement might bring those restrictions within the scope of Article 1 of Protocol No. 1 (see *Loizidou* (merits), cited above), the

1. For the text of Article 1 of Protocol No. 1, see paragraph 310 above.

Commission notes that in any event no cases have been brought to its attention where, during the period under consideration in the present application, Turkish Cypriots living in northern Cyprus made attempts to accede to their property in southern Cyprus and were prevented from doing so. The Commission therefore finds that the above complaint is unsubstantiated.

592. As regards the further complaint of unlawful interference with the property of Turkish Cypriots living in northern Cyprus by private persons, the Commission notes that although this complaint was not expressly mentioned in the admissibility decision, it had already been submitted at the admissibility stage of the proceedings. However, the Commission considers that sufficient remedies exist in northern Cyprus in this respect. In any event, it does not consider it established that there exists an administrative practice by the authorities of systematically condoning such interferences.

Conclusion

593. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 1 of Protocol No. 1 by reason of failure to secure enjoyment of their possessions to Turkish Cypriots living in northern Cyprus.

(e) Article 13 of the Convention[1]

594. The applicant Government complain that there is a violation of Article 13 of the Convention in that there are no relevant or sufficient remedies available to the Turkish Cypriots living in northern Cyprus as regards the interference with their above Convention rights. The respondent Government claim that effective remedies are generally available to Turkish Cypriots in northern Cyprus.

595. The Commission recalls the information which the respondent Government have provided on the legal system of the "TRNC" (see paragraphs 106-11 above). It considers that, generally speaking, the remedies provided by this legal system appear sufficient to provide redress against any alleged violation of Convention rights. In particular, in its examination of the various complaints raised in the present application in relation to the rights of Turkish Cypriots it has found unsubstantiated the allegation that there exist administrative practices of withholding legal protection from certain groups of persons. Moreover, the special considerations which have prompted the Commission to find that no effective remedies exist in northern Cyprus for certain complaints

1. For the text of Article 13 of the Convention, see paragraph 325 above.

of Greek Cypriots (see paragraph 505 above) do not apply in the case of Turkish Cypriots. It follows that this complaint must be rejected.

Conclusion

596. The Commission concludes, by nineteen votes to one, that during the period under consideration there has been no violation of Article 13 of the Convention by reason of failure to secure effective remedies to Turkish Cypriots living in northern Cyprus.

Recapitulation of conclusions

A. General and preliminary considerations

597. The Commission concludes, unanimously, that the applicant Government did have *locus standi* to bring an application under former Article 24 of the Convention against the respondent State (paragraph 73).

598. The Commission concludes, unanimously, that the applicant Government have a legitimate legal interest in having the merits of the present application examined by the Commission (paragraph 87).

599. The Commission concludes, unanimously, that the facts complained of in the present application fall within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State's responsibility under the Convention (paragraph 103).

600. The Commission concludes, by nineteen votes to one, that for the purposes of former Article 26 of the Convention remedies available in northern Cyprus are to be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of those remedies is to be considered in the specific circumstances where it arises (paragraph 128).

601. The Commission concludes, unanimously, that no further issue arises as to compliance with the six-month time-limit, as laid down in former Article 26 of the Convention (paragraph 131).

B. Greek-Cypriot missing persons

602. The Commission concludes, unanimously, that there has been no breach of Article 4 of the Convention (paragraph 196).

603. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 5 of the Convention by virtue of actual detention of Greek-Cypriot missing persons (paragraph 212).

604. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 5 of the Convention by virtue of a lack of effective investigation by the authorities of the respondent State into the fate of Greek-Cypriot missing persons in respect of whom there is an arguable claim that they were in Turkish custody at the time when they disappeared (paragraph 213).

605. The Commission concludes, unanimously, that it has jurisdiction to examine the question of the Greek-Cypriot missing persons in the light of Article 2 of the Convention, that this provision is applicable and that it has been violated by virtue of a lack of effective investigation by the authorities of the respondent State (paragraph 225).

606. The Commission concludes, unanimously, that there has been a continuing violation of Article 3 of the Convention in respect of the missing persons' relatives (paragraph 236).

607. The Commission concludes, unanimously, that it is not necessary to examine whether Articles 8 and/or 10 of the Convention have been violated in respect of the missing persons' relatives (paragraph 237).

C. Home and property of displaced persons

608. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus (paragraph 272).

609. The Commission concludes, unanimously, that it is not necessary to examine whether there has been a further violation of Article 8 of the Convention due to the change of the demographic and cultural environment of the displaced persons' homes in northern Cyprus (paragraph 273).

610. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights (paragraph 322).

611. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention by reason of the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1 (paragraph 328).

612. The Commission concludes, by nineteen votes to one, that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 by virtue of discriminatory treatment of Greek Cypriots not residing in northern

Cyprus as regards their rights to respect for their homes and to the peaceful enjoyment of their possessions (paragraph 336).

613. The Commission concludes, unanimously, that it is not necessary to examine whether this discrimination also constituted inhuman or degrading treatment within the meaning of Article 3 of the Convention (paragraph 337).

D. Living conditions of Greek Cypriots in northern Cyprus

614. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 2 of the Convention by virtue of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus (paragraph 435).

615. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 5 of the Convention in respect of Greek Cypriots living in northern Cyprus (paragraph 438).

616. The Commission concludes, by seventeen votes to three, that during the period under consideration there has been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus (paragraph 448).

617. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus (paragraph 454).

618. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in that school-books destined for use in their primary schools were subjected to excessive measures of censorship (paragraph 460).

619. The Commission concludes, unanimously, that during the period under consideration there has been no violation of the right to freedom of association under Article 11 of the Convention in respect of Greek Cypriots living in northern Cyprus (paragraph 466).

620. The Commission concludes, unanimously, that during the period under consideration there has been a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in the case of their permanent departure from that territory and in that, in the case of their death, inheritance rights of persons living in southern Cyprus were not recognised (paragraph 472).

621. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 1 of

Protocol No. 1 by failure to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons (paragraph 473).

622. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that no appropriate secondary-school facilities were available to them (paragraph 479).

623. The Commission concludes, unanimously, that during the period under consideration there has been a violation of the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention (paragraph 490).

624. The Commission concludes, unanimously, that during the period under consideration there has been no violation of the right of Greek Cypriots living in northern Cyprus to respect for their correspondence, as guaranteed by Article 8 of the Convention (paragraph 491).

625. The Commission concludes, unanimously, that during the period under consideration there has been a violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment (paragraph 499).

626. The Commission concludes, unanimously, that it is not necessary to examine whether during the period under consideration there has been a violation of Article 14 of the Convention in respect of Greek Cypriots living in northern Cyprus (paragraph 502).

627. The Commission concludes, by eighteen votes to two, that there has been no violation of Article 13 of the Convention in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Articles 8 of the Convention and Article 1 of Protocol No. 1 (paragraph 506).

628. The Commission concludes, unanimously, that there has been a violation of Article 13 of the Convention in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1 (paragraph 507).

E. The right of displaced Greek Cypriots to hold free elections

629. The Commission concludes, unanimously, that there has been no violation of the displaced Greek Cypriots' right to hold free elections, as guaranteed by Article 3 of Protocol No. 1 (paragraph 515).

F. Complaints relating to Turkish Cypriots

630. The Commission concludes, by nineteen votes to one, that there has been no violation of the rights of Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10 and 11 of the Convention by reason of failure to protect their rights under these provisions (paragraph 574).

631. The Commission concludes, by thirteen votes to seven, that there has been no violation of the rights of members of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8 and 14 of the Convention by reason of failure to protect their rights under these Articles (paragraph 577).

632. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 6 of the Convention in that Turkish-Cypriot civilians living in northern Cyprus were tried by military courts lacking independence and impartiality (paragraph 581).

633. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 10 of the Convention by virtue of restrictions on the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek-language press (paragraph 585).

634. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 11 of the Convention by interference with the right to freedom of association of Turkish Cypriots living in northern Cyprus (paragraph 589).

635. The Commission concludes, unanimously, that during the period under consideration there has been no violation of Article 1 of Protocol No. 1 by reason of failure to secure enjoyment of their possessions to Turkish Cypriots living in northern Cyprus (paragraph 593).

636. The Commission concludes, by nineteen votes to one, that during the period under consideration there has been no violation of Article 13 of the Convention by reason of failure to secure effective remedies to Turkish Cypriots living in northern Cyprus (paragraph 596).

M.-T. SCHOEPFER
Secretary to the Commission

S. TRECHSEL
President of the Commission

PARTLY DISSENTING OPINION OF Mr TRECHSEL ON ARTICLE 14 OF THE CONVENTION

Contrary to the opinion of the majority of the Commission, I am of the opinion that Article 14 does not apply at all in a case where a violation of the Convention has already been found. In fact, the Commission is called upon to make a choice between two alternatives: either a particular guarantee of the Convention has been violated or not. If one of the guarantees set out in the substantive provisions of the Convention or the Protocols is found to have been violated, there is no room for an additional finding according to which the violation is aggravated by an element of discrimination.

I concede that discrimination in itself could constitute a wrong, amounting to the violation of a human right. As the Commission held in the present case, the pattern of behaviour of the Turkish-Cypriot authorities in Cyprus, by discrimination, violated the right under Article 3 of the Convention of the whole Greek-Cypriot community in the northern area of the country. However, Article 14 prohibits discrimination only in connection with "the enjoyment of the rights and freedoms set forth" in the Convention. This wording is to be read in the sense that only where an unreasonable differentiation is made between individuals both enjoying, though to a varying degree, the rights and freedoms set forth in the Convention, can there be discrimination. Such might be the case, for instance, in a discriminate interference with one of the rights set forth in Articles 8 to 11 in circumstances covered by paragraph 2 of these Articles. As soon as there has been a violation of the Convention, however, the very concept of discrimination/reasonable differentiation becomes meaningless.

PARTLY DISSENTING OPINION OF Mr BUSUTTIL

I demur from the conclusion reached by the majority in paragraph 448 of the report that there has been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus.

Article 6 demands that courts be "established by law" in order to satisfy the requirements of the Convention. The crucial question here, therefore, is whether the courts in northern Cyprus are courts "established by law", having regard to the precarious international law status of the "TRNC".

To my mind, the reference to law in the phrase "established by law" cannot be simply a reference to domestic law, particularly in an inter-State application of this type. The lawfulness of the judicial system in question must necessarily be compatible with the principles of general international law as also, in the instant case, with the specific treaty obligations incurred by Turkey at the time of the creation of the independent State of Cyprus in 1960.

The term "law" in Article 6 must be read in conjunction with the bold affirmation of the Contracting States in the Preamble that the rule of law is part and parcel of their common heritage. And if this is so, it appears to me impossible to distinguish between the rule of law as a domestic concept and the rule of law as a common international concept in a European setting. The two merge inevitably into one indivisible concept.

The majority in paragraph 444 place reliance on the "Constitution of the TRNC" as the established law in northern Cyprus, but the European Court in its judgment on the merits in *Loizidou v. Turkey* (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI) has stated that "the international community considers that the Republic of Cyprus is the sole legitimate Government of the island and has consistently refused to accept the legitimacy of the 'TRNC' as a State within the meaning of international law" (pp. 2235-36, § 56).

To me, this can only mean that the legal and judicial systems established by the "TRNC", and currently in force in northern Cyprus, emanate from an unlawful regime which is incapable of generating legality. While taking into account the view expressed by the International Court of Justice in its Advisory Opinion in the Namibia case to the effect that international law recognises the legitimacy of certain legal arrangements and transactions, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the territory concerned, it is a matter of considerable doubt if this limited exception can apply generally to the establishment in such territory of a judiciary which is called upon to operate in a "legal" environment which is itself detrimental to the inhabitants in that a number of their fundamental rights have already been found by the majority in the present report to have been violated.

PARTLY DISSENTING OPINION OF Mr ROZAKIS

While I agree with most of the findings and conclusions of the Commission with regard to the complaints of the applicant Government, I find myself unable to agree with five of its conclusions, namely, (a) that during the period under consideration there has been no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus; (b) that there has been no violation of Article 13 of the Convention in respect of interferences by private persons with the rights under Article 8 of the Convention and Article 1 of Protocol No. 1 of Greek Cypriots living in northern Cyprus; (c) that there has been no violation of the rights under Articles 3, 5, 8, 10 and 11 of the Convention of Turkish Cypriots who are opponents of the regime in northern Cyprus by reason of failure to protect their rights under those provisions; (d) that there has been no violation of Article 13 of the Convention by reason of failure to secure effective remedies to Turkish Cypriots living in northern Cyprus; and, finally, (e) that there has been no violation of the rights of the Turkish-Cypriot Gypsy community under Article 8 of the Convention by reason of failure to protect their rights under that Article. With regard to the last complaint, I have joined in the dissenting opinion of Mrs Liddy, with whose reasoning I fully agree.

The point of departure for my dissent with regard to the first four conclusions reached by the Commission and referred to above is that I am unable to agree that the remedies offered by Turkey can be considered effective for Greek Cypriots living in the northern part of Cyprus or Turkish Cypriots living in the same area who oppose the regime; they are ineffective because, in the eyes of those two categories of the local population, they lack independence and impartiality.

In explaining my preference for a finding of violation with regard to the above-mentioned complaints, I would start by acknowledging my agreement with the Commission (which has in this respect followed the case-law of the European Court of Human Rights, engendered by *Loizidou v. Turkey*) that Turkey is responsible under the Convention for all the matters complained of in this inter-State application, since they all fall within its jurisdiction within the meaning of Article 1 of the Convention. I also agree with its finding that "the Convention is an instrument which is intended to protect rights that are practical and effective ..." and that it "must in principle take into account, for the purposes of former Article 26, any effective remedies which Turkey's subordinate local administration in northern Cyprus holds available for victims of alleged violations of the Convention" (see paragraph 125 of the report). My interpretation of that sentence, and the reason which led me to vote for the finding in question, is that, in circumstances of military occupation which lasts for a

considerable period of time, the occupying power has the obligation either to allow the unimpeded operation of the existing institutions serving the population of the occupied territory or to take measures, in situations where the normal functioning of such bodies cannot practically be assured, to establish similar institutions to serve the interests of the people living there. It goes without saying that, regardless of whether the occupying State opts for the first or the second alternative – according to the circumstances – it remains, in the eyes of international law and the European Convention on Human Rights, responsible for the acts or omissions of such authorities. It must also be added that the fact that a State occupying the territory of another State establishes a local administration to deal with the exercise of power in that territory may by no means lead to a legitimisation, under international law, of the act of forcible retention of the territory of another State.

Hence, I accept that the authorities in the northern part of Cyprus (what the Commission calls "the subordinate local administration of Turkey") are, as a *fictio juris*, Turkish authorities. No distinction may be made between the Turkish authorities operating on the Turkish mainland and those operating in the occupied territory of the Republic of Cyprus. For this reason, the remedies provided by the latter may be considered, for the purposes of Articles 6 and 13 of the Convention, as "local remedies" of Turkey.

Yet, the fact that the Commission has accepted that the remedies offered by the subordinate local authorities in northern Cyprus are Turkish domestic remedies does not make them automatically effective or – as a consequence – subject to exhaustion before an application is made to Strasbourg. A number of preconditions must be satisfied before a local remedy can be qualified as effective. The requirement that the remedy must be established by law is one of them; another, on which I rely to found my dissent, is the requirement of independence and objective impartiality – mainly on the part of the judiciary, in the circumstances of the case.

The Commission, in dealing (in paragraphs 439 et seq. of the report) with the applicant Government's complaint under Article 6 of the Convention, the omnibus provision regarding the issue of remedies, examined both whether the tribunals in the northern part of Cyprus, when dealing with the civil rights of Greek Cypriots, were "established by law" and whether they could be considered as independent and impartial. On both counts the Commission found that the requirements of Article 6 were satisfied.

I have my doubts whether in the circumstances of this case we may accept that the requirement of Article 6 that a tribunal be established by law is satisfied, and I share these doubts with my other dissenting colleagues; however, I consider that – despite the

Commission's downgrading of this issue – the main problem here is whether we may conclude that the local tribunals can be regarded as independent and objectively impartial.

Indeed, if one reads the Commission's report in its entirety, one realises that the Commission itself concludes, on the basis of forceful reasoning, that there have been violations of Convention rights which are closely intertwined with the essence of the independence and impartiality of the courts. The Commission, concludes, for instance, that there have been violations of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property (paragraph 322); of Article 13 by reason of the failure to provide Greek Cypriots not residing in northern Cyprus with any means of challenging interferences with their rights under Article 8 and Article 1 of Protocol No. 1 (paragraph 328); of Article 8 and Article 1 of Protocol No. 1 by virtue of discrimination against Greek Cypriots not living in northern Cyprus as regards their right to respect for their homes and to the peaceful enjoyment of their possessions (paragraph 336); of Article 9 in respect of Greek Cypriots living in northern Cyprus (paragraph 454); of Article 10 in respect of Greek Cypriots living in northern Cyprus in that school-books for use in their primary schools were subjected to excessive censorship measures (paragraph 460); of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in the case of their permanent departure from that territory and that, in the case of their death, inheritance rights of persons living in southern Cyprus were not recognised (paragraph 472); of Article 8 in respect of the same group with regard to respect for their private life and their home (paragraph 490); and, finally, of Article 3 in that the Greek Cypriots living in northern Cyprus have been subjected to discrimination amounting to degrading treatment (paragraph 499).

The Commission's reasoning in finding violations is specifically developed, in respect of each complaint, in the various paragraphs that I have referred to. The passages on the violation of Article 3, however, summarise with admirable precision the grounds upon which that finding rests:

> "497. With regard to the facts of the present case, the Commission has found above that during the period under consideration there has been interference with the rights of Greek Cypriots living in northern Cyprus under several provisions of the Convention. In particular, it has found (see paragraph 489 above) that the general living conditions of Greek Cypriots living in northern Cyprus are such that there is an aggravated interference with their right to respect for their private and family life and for their home. The Commission notes that also during the period under consideration in the present case all these interferences concerned exclusively Greek Cypriots living in

northern Cyprus and were imposed on them for the very reason that they belonged to this class of person. In these circumstances, the treatment complained of was clearly discriminatory against them on the basis of their 'ethnic origin, race and religion'. While the predominant factor here is ethnic discrimination, the Commission considers that the principle stated in *East African Asians* in relation to racial discrimination based on colour is applicable in the same manner.

498. ... In the present case, the Commission notes that the general living conditions of Greek Cypriots resident in northern Cyprus were imposed on them in pursuit of an acknowledged policy aiming at the separation of the ethnic groups in the island in the framework of a bi-communal and bi-zonal arrangement. This policy has led to the confinement of the Greek-Cypriot population still living in northern Cyprus (other than the Maronites) within a small area of the Karpas peninsula. There is a steady decrease in their numbers as a result of specific measures which prevent the renewal of the population. Moreover, their property is confiscated if they die or leave the area. As it was noted in the United Nations humanitarian review (see paragraph 387 of the report), the restrictions imposed on them have the effect of ensuring that 'inexorably with the passage of time, those communities [will] cease to exist in the northern part of the island'. The Commission considers that, despite recent improvements in certain respects, the hardships to which the Greek Cypriots living in the Karpas area of northern Cyprus were subjected during the period under consideration still affected their daily life to such an extent that it is justified to conclude that the discriminatory treatment complained of attained a level of severity which constitutes an affront to their human dignity."

I wonder whether the position taken by the Commission in finding violations on all the grounds I have referred to, and which are recapitulated in its reasoning concerning the violation of Article 3, can be easily reconciled with the view that, despite those findings, the courts in northern Cyprus are independent and objectively impartial when they deal with the cases of Greek Cypriots. In other words, the question arises to what extent Greek Cypriots can really believe that, in the hostile environment in which they live, under a policy tending towards complete national separation, the only authority which remains outside this well-orchestrated policy is the judiciary. The legislative authority discriminates, the executive authority discriminates; and yet the judicial authority, composed of persons from the same national bodies, remains the sole guarantor of the protection of a small minority threatened with extinction. I think that such a proposition is unrealistic and not at all consonant with the other findings of the Commission. For these reasons, I believe that the courts in northern Cyprus cannot be considered independent from the other authorities there and that they lack objective impartiality in so far as Greek Cypriots are concerned – a belief which, after all, seems to be shared by the individuals concerned, who do not make real use of the remedies provided by those courts.

For the same reasons, I believe that Article 13 has been violated by reason of interferences by private persons with the rights under Article 8

of the Convention and Article 1 of Protocol No. 1 of Greek Cypriots living in northern Cyprus.

With regard to the Turkish-Cypriot opponents of the regime, I have the same misgivings concerning the protection of their rights by the local administration, in view of the particular political situation prevailing in northern Cyprus and the desire of the current regime to achieve its goal of ethnic separation in the area. It seems that views opposing that aim are not very welcome to the regime. Hence, since the Commission's findings of non-violation of the substantive Articles relied on are based mainly on the argument that the opponents of the regime could have aired their grievances through the remedies available to them in northern Cyprus, I am also obliged to dissent from those findings. The same, of course, applies with regard to Article 13 in respect of Turkish Cypriots who oppose the regime.

PARTLY DISSENTING OPINION OF Mrs LIDDY JOINED BY Mr TRECHSEL, Mrs THUNE, Mr ROZAKIS, Mr ŠVÁBY, Mr RESS AND Mr PERENIČ

As to Article 8 (paragraph 577 of the report)

The applicant Government's complaints under this heading include a complaint of interference with the homes and private and family lives of the Turkish-Cypriot Gypsy community. They refer to the demolition of the houses of a Gypsy community near Morphou on the order of the local authorities. There was witness evidence that this had been done without any prior warning, allegedly for reasons of hygiene. Adjacent similar shacks of other inhabitants of the village had not been demolished. The Gypsies ended up living in the open air.

The respondent Government have not pointed to any remedy that would compel the authorities to provide adequate alternative accommodation for the Gypsies prior to the demolition of their shacks or that, after the event, would have been realistically available and effective in providing alternative accommodation speedily.

In *Buckley v. the United Kingdom* (judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1292-95, §§ 76, 77, 80, 81, 83 and 84), the Court took into account a number of factors relevant to the need to respect the traditional lifestyle of Gypsies before concluding that the refusal of planning permission to a Gypsy to live in a caravan was a justified interference with the applicant's right to respect for her home. It stated that the interests of the community were to be balanced against the applicant's right to respect for her home, a right which was pertinent to her and her children's personal security and well-being. The Court's task was to determine whether the decision-making process was fair and afforded due respect to the interests safeguarded to the individual and whether the reasons relied on to justify the interference were relevant and sufficient. In *Buckley*, the applicant had been able to make representations to the authorities and her special needs as a Gypsy following a traditional lifestyle were taken into account. She was twice given the opportunity to apply for a pitch on an official caravan site not far away. In the event, she was merely fined for failing to remove her unauthorised caravan and was not forcibly evicted. The Court concluded that proper regard was had to her predicament both under the terms of the regulatory framework, which contained adequate procedural safeguards protecting her interest under Article 8, and by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of her case.

In the present case, there is no indication that adequate procedural safeguards were in place prior to the demolition without notice of the Gypsies' homes near Morphou. Moreover, it has not been shown that the authorities had proper regard to the Gypsies' predicament when exercising their discretion to demolish their shacks but not the adjacent villagers' shacks. It is not established that the reasons relied on were relevant and sufficient and, in particular, whether they took into account the availability or otherwise of alternative accommodation.

In these circumstances, there has been a violation of Article 8 by reason of the demolition of the homes of the Turkish-Cypriot Gypsy community.

PARTLY DISSENTING OPINION OF Mr CABRAL BARRETO

(Translation)

In the report that we have just adopted there are two points where, with regret, I cannot concur with the opinion of the majority of the Commission.

1. The first point concerns the question whether Article 6 of the Convention has been violated with regard to the Greek Cypriots living in northern Cyprus. Despite the quality of the organisation of the judiciary, one can doubt the independence and impartiality of the courts, from the subjective point of view, if one looks at the conclusion at which the Commission arrived concerning the living conditions of the Greek Cypriots (violation of Article 3 of Convention).

The crucial point for me, however, is to determine whether or not the judicial system in place has been "established by law".

In a system such as that of the Convention, where the rule of law is the overriding principle, it appears to me difficult to argue that the requisite "law" is merely that of the internal legal order. To my mind, compliance with both the internal and the international legal order is necessary in order to meet the requirements of Article 6. This does not mean, however, that decisions of the national courts, in so far as they benefit the Greek Cypriots, must be called in question.

2. The other point concerns Article 13 of the Convention and is related to the first: the domestic remedies available in northern Cyprus to the Greek Cypriots living there do not meet the requirements of Article 13 for the same reasons as those set out above.

CHYPRE c. TURQUIE
(Requête n° 25781/94)

GRANDE CHAMBRE

ARRÊT DU 10 MAI 2001

Disparitions à la suite de l'invasion de Chypre par la Turquie en 1974 et caractère effectif des enquêtes sur ces disparitions
Refus de permettre aux personnes déplacées d'accéder à leur domicile et à leurs biens situés dans le nord de Chypre et de les utiliser
Allégations de restrictions aux droits et libertés des Chypriotes grecs dans le nord de Chypre

En l'affaire Chypre c. Turquie,

La Cour européenne des Droits de l'Homme, siégeant en une Grande Chambre composée des juges dont le nom suit :

M. L. WILDHABER, *président*,
M^me^ E. PALM,
MM. J.-P. COSTA,
L. FERRARI BRAVO,
L. CAFLISCH,
W. FUHRMANN,
K. JUNGWIERT,
M. FISCHBACH,
B. ZUPANČIČ,
M^me^ N. VAJIĆ,
M. J. HEDIGAN,
M^me^ M. TSATSA-NIKOLOVSKA,
MM. T. PANŢÎRU,
E. LEVITS,
A. KOVLER,
K. FUAD, *juge* ad hoc *au titre de la Turquie*,
S. MARCUS-HELMONS, *juge* ad hoc *au titre de Chypre*,

ainsi que de M. M. DE SALVIA, *greffier*,

Après en avoir délibéré en chambre du conseil les 20, 21, 22 septembre 2000 et 21 mars 2001,

Rend l'arrêt que voici, adopté à cette dernière date :

PROCÉDURE

1. L'affaire a été déférée à la Cour, conformément aux dispositions qui s'appliquaient avant l'entrée en vigueur du Protocole n° 11 à la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales (« la Convention »), par le gouvernement de la République de Chypre (« le gouvernement requérant ») le 30 août 1999 et par la Commission européenne des Droits de l'Homme (« la Commission ») le 11 septembre 1999 (article 5 § 4 du Protocole n° 11 et anciens articles 47 et 48 de la Convention).

2. A son origine se trouve une requête (n° 25781/94) dirigée contre la République de Turquie et dont le gouvernement requérant avait saisi la Commission le 22 novembre 1994 en vertu de l'ancien article 24 de la Convention.

3. Le gouvernement requérant alléguait, en ce qui concerne la situation régnant à Chypre depuis que la Turquie a déclenché des opérations militaires dans le nord de l'île en juillet 1974, que le gouvernement turc (« le gouvernement défendeur ») continuait de contrevenir à la Convention

en dépit de l'adoption par la Commission de rapports au titre de l'ancien article 31 de la Convention les 10 juillet 1976 et 4 octobre 1983 et de l'adoption de résolutions à cet égard par le Comité des Ministres du Conseil de l'Europe. Il invoquait en particulier les articles 1 à 11 et 13 de la Convention ainsi que les articles 14, 17 et 18 combinés avec les dispositions précitées. Il tire également des griefs des articles 1, 2 et 3 du Protocole n° 1.

Ces griefs se rapportent selon le cas aux thèmes suivants : Chypriotes grecs portés disparus et leur famille, domicile et biens des personnes déplacées, droit des Chypriotes grecs déplacés à tenir des élections libres, conditions de vie des Chypriotes grecs dans le nord de Chypre et situation des Chypriotes turcs et de la communauté tsigane installés dans le nord de Chypre.

4. La Commission a déclaré la requête recevable le 28 juin 1996. Ayant constaté qu'il n'existait pas de base permettant de parvenir à un règlement amiable, elle a rédigé et adopté le 4 juin 1999 un rapport où elle établit les faits et formule un avis sur le point de savoir si ces faits révèlent les violations alléguées par le gouvernement requérant[1].

5. Devant la Cour, le gouvernement requérant est représenté par son agent, M. A. Markides, procureur général de la République de Chypre, et le gouvernement défendeur par son agent, M. Z. Necatigil.

6. Le 20 septembre 1999, un collège de la Grande Chambre a décidé que l'affaire devait être examinée par la Grande Chambre (article 100 § 1 du règlement de la Cour).

7. La composition de la Grande Chambre a été fixée conformément aux dispositions des articles 27 §§ 2 et 3 de la Convention et 24 (ancienne version) du règlement combiné avec les articles 28 et 29 de ce dernier.

8. A la suite du déport de M. R. Türmen, juge élu au titre de la Turquie (article 28 du règlement), le gouvernement défendeur a désigné M. S. Dayıoğlu pour siéger en qualité de juge *ad hoc* (articles 27 § 2 de la Convention et 29 § 1 du règlement). Le gouvernement requérant ayant récusé ce juge, la Grande Chambre a pris acte le 8 décembre 1999 de l'intention de M. Dayıoğlu de se déporter, ce dont il avait fait part au président (article 28 §§ 3 et 4 du règlement). Le gouvernement défendeur a ensuite désigné M^me^ N. Ferdi pour siéger en qualité de juge *ad hoc*.

Le 8 décembre 1999, la Grande Chambre a également étudié la requête en récusation émise par le gouvernement défendeur à l'égard de M. L. Loucaides, juge élu au titre de Chypre. A cette même date, la Grande Chambre a décidé d'inviter M. Loucaides à se déporter (article 28 § 4 du règlement). Le gouvernement requérant a ultérieurement désigné

1. *Note du greffe* : des extraits du rapport de la Commission ainsi que les cinq opinions en partie dissidentes dont il s'accompagne sont reproduits en annexe.

M. L. Hamilton pour siéger en qualité de juge *ad hoc* (articles 27 § 2 de la Convention et 29 § 1 du règlement).

Le 29 mars 2000, à la suite de la récusation formulée par le gouvernement requérant à l'encontre de M^me^ Ferdi, la Grande Chambre a estimé que celle-ci ne pouvait pas participer à l'examen de l'affaire (article 28 § 4 du règlement). Plus tard, le gouvernement défendeur a désigné M. K. Fuad pour siéger en qualité de juge *ad hoc*.

A la suite du décès de M. Hamilton le 29 novembre 2000, l'agent du gouvernement requérant a informé le greffier le 13 décembre 2000 que son gouvernement avait désigné M. S. Marcus-Helmons pour siéger en qualité de juge *ad hoc*.

9. Lors d'une réunion tenue le 24 octobre 1999 avec les agents et autres représentants des parties afin de les consulter, le président a fixé la procédure à suivre en cette affaire (article 58 § 1 du règlement). Le 24 novembre 1999, la Grande Chambre a approuvé les propositions du président concernant les dispositions à prendre, tant sur le fond qu'en pratique, pour la procédure écrite et orale.

10. Conformément à ce qui avait été convenu, le gouvernement requérant a déposé son mémoire avant la date limite fixée par le président (31 mars 2000). Par une lettre du 24 avril 2000, le délai étant alors expiré, l'agent du gouvernement défendeur a demandé l'autorisation de soumettre son mémoire avant le 24 juillet 2000. Le 3 mai 2000, le président, avec l'accord de la Grande Chambre, a accepté de repousser au 5 juin 2000 la date limite de dépôt du mémoire du gouvernement défendeur, étant entendu que si celui-ci ne se conformait pas au nouveau délai, il serait considéré comme ayant renoncé à son droit de soumettre un mémoire.

Le gouvernement défendeur n'ayant pas respecté ce nouveau délai, le président a informé les agents des deux gouvernements dans une lettre du 16 juin 2000, par l'intermédiaire du greffier, que la procédure écrite était close. Une copie du mémoire du gouvernement requérant a été adressée à l'agent du gouvernement défendeur à seule fin d'information. Dans cette lettre, le président indiquait en outre aux agents qu'une réunion préparatoire à l'audience se tiendrait le 7 septembre 2000 en leur présence.

11. A cette date, le président a rencontré l'agent et d'autres représentants du gouvernement requérant afin de régler les derniers détails d'organisation de l'audience. Bien qu'invité, le gouvernement défendeur n'a pas assisté à cette réunion.

12. L'audience s'est déroulée en public au Palais des Droits de l'Homme, à Strasbourg, le 20 septembre 2000 (article 59 § 2 du règlement). Le gouvernement défendeur n'a pas communiqué à la Cour les noms de ses représentants avant l'audience et n'a pas participé à celle-ci. En l'absence de raisons suffisantes de la part du gouvernement défendeur de ne pas se présenter, la Grande Chambre a décidé de tenir

l'audience, cela lui paraissant compatible avec une bonne administration de la justice (article 64 du règlement).

Le président a informé le président du Comité des Ministres de cette décision par une lettre du 21 septembre 2000.

Ont comparu :

– *pour le gouvernement requérant*
MM. A. MARKIDES, procureur général
de la République de Chypre, *agent*,
I. BROWNLIE *QC*,
D. PANNICK *QC*,
M^me^ C. PALLEY, *Barrister-at-Law*,
M. M. SHAW, *Barrister-at-Law*,
M^me^ S.M. JOANNIDES, conseil principal
de la République de Chypre,
MM. P. POLYVIOU, *Barrister-at-Law*,
P. SAINI, *Barrister-at-Law*, *conseils*,
N. EMILIOU, consultant, *conseiller* ;

– *pour le gouvernement défendeur*
Le gouvernement défendeur ne s'est pas présenté à l'audience.

La Cour a entendu en leurs déclarations MM. Markides, Brownlie, Shaw, Pannick et Polyviou.

EN FAIT

LES CIRCONSTANCES DE L'ESPÈCE

A. Le contexte général

13. Les griefs exposés dans la requête à l'étude se rapportent aux opérations militaires menées par la Turquie dans le nord de Chypre en juillet et août 1974 ainsi qu'à la division toujours actuelle du territoire de Chypre. Lorsque la Cour a statué au fond en l'affaire *Loizidou c. Turquie* en 1996, elle a décrit la présence militaire turque à l'époque des faits en ces termes :

> « 16. Les forces armées turques, comptant plus de 30 000 hommes, sont stationnées à travers la zone occupée du nord de Chypre, qui fait constamment l'objet de patrouilles et renferme des postes de contrôle sur tous les grands axes de communication. L'état-major de l'armée se trouve à Kyrenia. Le 28^e^ régiment d'infanterie est basé à Asha (Assia) ; il couvre le secteur allant de Famagouste à Mia Milia, banlieue de Nicosie, et

est fort de 14 500 hommes. Le 39e régiment d'infanterie, avec 15 500 hommes environ, est basé au village de Myrtou et couvre le secteur allant du village de Yerolakkos à Lefka. Les TOURDYK (Forces turques à Chypre en vertu du Traité de garantie (*Turkish Forces in Cyprus under the Treaty of Guarantee*)) sont stationnées au village de Orta Keuy près de Nicosie; elles couvrent un secteur allant de l'aéroport international de cette ville à la rivière Pedhieos. Un bataillon naval turc et un avant-poste sont basés respectivement à Famagouste et Kyrenia. Des membres de l'armée de l'air turque sont basés à Lefkoniko, Krini et d'autres terrains d'aviation. Les forces aériennes turques sont stationnées en métropole, à Adana.

17. Les forces turques et tous les civils qui pénètrent dans les zones militaires sont passibles des tribunaux militaires turcs, ainsi que le prévoient pour les «citoyens de la RTCN» le décret de 1979 sur les zones militaires interdites (article 9) et l'article 156 de la Constitution de la «RTCN».» (*Loizidou c. Turquie* (fond), arrêt du 18 décembre 1996, *Recueil des arrêts et décisions* 1996-VI, p. 2223, §§ 16-17)

14. Dans le contexte de la division de Chypre en deux parties, il s'est produit en novembre 1983 un événement notable: la proclamation de la «République turque de Chypre-Nord» («RTCN»), suivie de l'adoption de la «Constitution de la RTCN» le 7 mai 1985.

La communauté internationale a condamné cette évolution. Le Conseil de sécurité des Nations unies a adopté le 18 novembre 1983 la Résolution 541 (1983) déclarant la proclamation de la «RTCN» juridiquement nulle et demandant à tous les Etats de ne pas reconnaître d'autre Etat chypriote que la République de Chypre. Le Conseil de sécurité a réitéré cet appel dans sa Résolution 550 (1984) du 11 mai 1984. En novembre 1983, le Comité des Ministres du Conseil de l'Europe a décidé qu'il continuait à considérer le gouvernement de la République de Chypre comme le seul gouvernement légitime de Chypre et a appelé à respecter la souveraineté, l'indépendance, l'intégrité territoriale et l'unité de la République de Chypre.

15. Selon le gouvernement défendeur, la «RTCN» est un Etat démocratique et constitutionnel politiquement indépendant de tout autre Etat souverain, y compris la Turquie; c'est le peuple chypriote turc, dans l'exercice de son droit à l'autodétermination, qui a mis en place une administration dans le nord de Chypre, et non la Turquie. Malgré cela, seul le gouvernement chypriote est reconnu au plan international comme le gouvernement de la République de Chypre dans le cadre des relations diplomatiques et contractuelles et dans le fonctionnement des organisations internationales.

16. La Force des Nations unies chargée du maintien de la paix à Chypre («UNFICYP») tient une zone tampon. Un certain nombre d'initiatives politiques ont été prises par les Nations unies en vue de régler la question chypriote sur la base de solutions institutionnelles acceptables par les deux parties. A cette fin, des pourparlers intercommunautaires se sont déroulés sous les auspices du Secrétaire général des Nations unies et sur les instructions du Conseil de sécurité.

Sur ce point, le gouvernement défendeur a fait valoir que les autorités chypriotes turques de Chypre du Nord menaient les pourparlers en se fondant sur les principes de «bizonalité» et de «bicommunautarisme» (partition de l'île en deux zones et deux communautés), qu'elles considéraient comme acquis dans le cadre d'une constitution fédérale. On trouve confirmation de cette base de négociation dans l'Ensemble d'idées émis par le Secrétaire général des Nations unies le 15 juillet 1992 et les résolutions du Conseil de sécurité des Nations unies des 26 août et 25 novembre 1992, qui prévoient que la solution fédérale recherchée par les deux parties sera «bicommunautaire» et «bizonale».

Par ailleurs – fait qui présente un intérêt pour la requête à l'étude –, le Comité des personnes disparues des Nations unies («le CMP») a été créé en 1981 afin d'examiner «les cas des personnes portées disparues au cours des combats intercommunautaires et des événements de juillet 1974, ou par la suite» et de «dresser des listes exhaustives des personnes portées disparues appartenant aux deux communautés, précisant selon le cas si elles sont en vie ou décédées et, dans ce dernier cas, la date approximative de leur décès». Le CMP n'a pas encore terminé ses recherches.

B. Les précédentes requêtes interétatiques

17. Le gouvernement requérant a précédemment dirigé trois requêtes contre l'Etat défendeur en vertu de l'ancien article 24 de la Convention pour dénoncer les événements de juillet et août 1974 et leurs conséquences. La Commission a joint la première (n° 6780/74) et la deuxième (n° 6950/75) et adopté à leur sujet le 10 juillet 1976 un rapport au titre de l'ancien article 31 de la Convention («le rapport de 1976»), où elle exprime l'avis que l'Etat défendeur a commis des violations des articles 2, 3, 5, 8, 13 et 14 de la Convention et de l'article 1 du Protocole n° 1. Le 20 janvier 1979, le Comité des Ministres du Conseil de l'Europe a à son tour adopté la Résolution DH (79) 1 en s'appuyant sur une décision antérieure du 21 octobre 1977. Il y exprime notamment la conviction que «la protection durable des droits de l'homme à Chypre ne peut être réalisée que par le rétablissement de la paix et de la confiance entre les deux communautés, et que des pourparlers intercommunautaires constituent le cadre adéquat pour parvenir à une solution du différend». En outre, le Comité des Ministres y invite fermement les parties à reprendre les pourparlers intercommunautaires sous les auspices du Secrétaire général des Nations unies, de façon à se mettre d'accord sur les moyens de résoudre tous les aspects du différend (paragraphe 16 ci-dessus). Le Comité des Ministres a considéré que cette décision mettait un terme à son examen de l'affaire.

La troisième requête (n° 8007/77) émanant du gouvernement requérant a fait l'objet d'un autre rapport de la Commission au titre de l'ancien article 31 en date du 4 octobre 1983 («le rapport de 1983»). La Commission y formule l'avis que l'Etat défendeur a manqué aux obligations lui incombant en vertu des articles 5 et 8 de la Convention et de l'article 1 du Protocole n° 1. Le 2 avril 1992, le Comité des Ministres a adopté la Résolution DH (92) 12 relative au rapport de 1983, où il s'est borné à décider de rendre public ledit rapport et à considérer que cette décision mettait un terme à son examen de l'affaire.

C. La requête à l'étude

18. La requête à l'étude est la première à être déférée à la Cour. Dans son mémoire, le gouvernement requérant prie celle-ci de «dire que l'Etat défendeur est responsable de violations continues et autres violations des articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 17 et 18 de la Convention et des articles 1 et 2 du Protocole n° 1».

Ces griefs se répartissent en quatre grandes catégories: les violations alléguées des droits des Chypriotes grecs portés disparus et de leur famille, les violations alléguées du domicile et du droit de propriété des personnes déplacées, les violations alléguées des droits des Chypriotes grecs enclavés dans le nord de Chypre et, enfin, les violations alléguées des droits des Chypriotes turcs et de la communauté tsigane installés dans le nord de Chypre.

D. Les faits établis par la Commission concernant la requête à l'étude

19. La Cour estime qu'il convient à ce stade de résumer les faits établis par la Commission quant aux différents chefs de violation de la Convention allégués par le gouvernement requérant ainsi que les principaux arguments avancés par les deux parties et les documents et autres éléments de preuve sur lesquels la Commission s'est appuyée.

1. Violations alléguées des droits des Chypriotes grecs portés disparus et de leur famille

20. Le gouvernement requérant soutient en substance que 1 491 Chypriotes grecs environ sont toujours portés disparus vingt ans après la fin des hostilités. Ces personnes ont été vues en vie pour la dernière fois alors qu'elles se trouvaient détenues sous l'autorité de la Turquie et l'Etat défendeur n'a jamais donné d'explication quant à leur sort.

21. Le gouvernement défendeur a affirmé pour sa part qu'il n'existait aucune preuve de ce que l'un quelconque des disparus fût encore en vie ou en détention. A titre principal, il a déclaré que les questions soulevées par le gouvernement requérant devaient continuer d'être examinées par le Comité des personnes disparues des Nations unies (paragraphe 16 ci-dessus) plutôt que sous l'angle de la Convention.

22. La Commission a considéré qu'elle avait pour tâche, non d'établir ce qui était réellement arrivé aux Chypriotes grecs portés disparus à la suite des opérations militaires menées par la Turquie dans le nord de Chypre en juillet et août 1974, mais de déterminer si le fait que l'Etat défendeur n'ait pas éclairci les circonstances entourant les disparitions, comme cela était allégué, s'analysait en une violation continue de la Convention.

23. A cette fin, la Commission a tenu compte en particulier de ses précédents constats, exposés dans ses rapports de 1976 et 1983. Elle a rappelé avoir déclaré dans son rapport de 1976 qu'il était communément admis qu'un nombre considérable de Chypriotes étaient toujours portés disparus à la suite du conflit armé ayant sévi à Chypre et qu'un certain nombre d'entre eux étaient des Chypriotes grecs faits prisonniers par l'armée turque. A l'époque, la Commission avait considéré que ce constat impliquait une présomption de responsabilité de la Turquie quant au sort des personnes dont on savait qu'elles étaient en détention sous l'autorité de cet Etat. Tout en notant que les meurtres de civils chypriotes grecs avaient été commis sur une grande échelle, la Commission avait également estimé à l'époque où elle avait rédigé son rapport de 1976 qu'elle n'était pas en mesure de déterminer si des prisonniers chypriotes grecs portés disparus avaient été tués, ni dans quelles circonstances.

24. Dans le cadre de la requête à l'étude, la Commission a rappelé en outre que, dans son rapport de 1983, elle avait tenu pour établi que, dans un nombre indéfini de cas, il existait suffisamment d'éléments donnant à penser que les Chypriotes grecs disparus avaient été détenus sous l'autorité de la Turquie en 1974, et considéré que ce constat entraînait là encore une présomption de responsabilité de la Turquie quant au sort de ces personnes.

25. Pour la Commission, les éléments qui lui ont été soumis en l'espèce confirmaient ses précédents constats selon lesquels certains disparus avaient été vus pour la dernière fois alors qu'ils étaient détenus sous autorité turque ou chypriote turque. A cet égard, elle a pris en compte ce qui suit: une déclaration de M. Denktaş, «président de la RTCN», diffusée le 1er mars 1996, dans laquelle celui-ci reconnaissait que quarante-deux prisonniers chypriotes grecs avaient été remis à des combattants chypriotes turcs qui les avaient tués et que, pour éviter d'autres incidents tragiques, les prisonniers avaient par la suite été transférés en Turquie; la déclaration radiodiffusée de M. Yalçın Küçük,

ancien officier de l'armée turque en activité à l'époque des faits ayant participé à l'opération militaire à Chypre en 1974, qui laissait entendre que l'armée turque s'était livrée à de nombreux meurtres, notamment de civils, à l'occasion de prétendues opérations de nettoyage; le rapport Dillon, remis au Congrès américain en mai 1998, indiquant, entre autres, que des soldats turcs et chypriotes turcs avaient rassemblé des civils chypriotes grecs dans le village d'Asha le 18 août 1974 et emmené les hommes de plus de quinze ans, qui pour la plupart auraient été tués par des combattants chypriotes turcs; les déclarations écrites de témoins tendant à confirmer les précédents constats de la Commission, à savoir que de nombreuses personnes toujours portées disparues auraient été arrêtées par des soldats turcs ou des membres des forces paramilitaires chypriotes turques.

26. La Commission a conclu que, indépendamment des preuves relatives au meurtre de prisonniers et civils chypriotes grecs, rien ne montrait que l'une quelconque des personnes disparues eût été tuée dans des circonstances dont l'Etat défendeur pût être tenu pour responsable. Elle n'a pas non plus trouvé d'éléments prouvant que l'une quelconque des personnes arrêtées fût toujours détenue ou tenue en servitude par ce dernier. En revanche, elle a tenu pour établi que les autorités n'avaient pas éclairci le sort des disparus ni donné d'informations à ce sujet aux familles des victimes.

27. La Commission a conclu en outre que ce n'était pas parce que le CMP poursuivait ses travaux qu'elle-même ne pouvait examiner les griefs soulevés par le gouvernement requérant en l'espèce. Elle a relevé à cet égard que l'enquête du CMP se limitait à rechercher si les personnes figurant sur sa liste étaient vivantes ou décédées, et que ce comité n'était pas habilité à procéder à des constats quant à la cause de la mort et quant aux responsabilités en cas de décès. De plus, la compétence territoriale du CMP était confinée à l'île de Chypre, ce qui lui interdisait d'enquêter en Turquie, où seraient survenues certaines disparitions. La Commission a observé également que des personnes susceptibles d'être responsables de violations de la Convention s'étaient vu promettre l'impunité et qu'il était douteux que l'enquête du CMP pût porter sur des actes commis par l'armée turque ou des agents de l'Etat turc sur le territoire chypriote.

2. Violations alléguées des droits des personnes déplacées au respect de leur domicile et au respect de leurs biens

28. La Commission a établi les faits à cet égard en gardant à l'esprit l'argument principal du gouvernement requérant selon lequel plus de 211 000 Chypriotes grecs déplacés et leurs enfants continuaient de faire l'objet d'une politique consistant à les empêcher de rentrer chez eux dans le nord de Chypre et d'accéder, pour quelque motif que ce soit, à

leurs biens qui s'y trouvaient. Le gouvernement requérant soutient qu'en raison de la présence de l'armée turque et des restrictions aux frontières imposées par la «RTCN», le retour des personnes déplacées est physiquement impossible et, par voie de conséquence, les personnes qui ont des proches de l'autre côté de la frontière ont beaucoup de difficultés à leur rendre visite. Ce qui était au début un processus illégal progressif et continu a abouti au fil des années au transfert sans dédommagement des biens abandonnés par les personnes déplacées au profit des autorités de la «RTCN» et à leur attribution, «titres de propriété» à l'appui, à des organismes d'Etat, des Chypriotes turcs et des colons venus de Turquie.

29. Le gouvernement défendeur a affirmé devant la Commission que la question du quartier de Varosha à Famagouste, tout comme celles de la liberté de circulation, de la liberté d'installation et du droit de propriété, ne pouvait se résoudre que dans le cadre des pourparlers intercommunautaires (paragraphe 16 ci-dessus) et sur la base des principes convenus par les deux parties quant à la façon de les mener. Jusqu'à ce que soit trouvée une solution globale au problème chypriote acceptable par les deux parties, et pour des raisons de sécurité, il ne saurait être question d'un droit pour les personnes déplacées de rentrer chez elles. Le gouvernement défendeur a en outre soutenu que le régime des biens abandonnés par les personnes déplacées, de même que les restrictions aux déplacements transfrontaliers, relevaient exclusivement de la compétence des autorités de la «RTCN».

30. La Commission a constaté qu'il était communément admis qu'à l'exception de quelques centaines de maronites vivant dans la région de Kormakiti et des Chypriotes grecs résidant dans la péninsule du Karpas, la totalité de la population chypriote grecque qui était établie avant 1974 dans la partie nord de Chypre avait quitté cette région. Ces personnes étaient désormais pour la plupart installées dans le sud de Chypre. Le gouvernement défendeur n'a pas nié cette réalité.

31. La Commission a noté qu'à la date d'introduction de la requête à l'étude, la situation n'avait pas fondamentalement changé par rapport à ce qu'elle avait constaté dans ses rapports de 1976 et 1983. Dès lors, et le gouvernement défendeur ne l'a pas non plus contesté, les Chypriotes grecs déplacés étaient dans l'impossibilité de regagner leur foyer dans le nord de Chypre et, d'ailleurs, ne pouvaient même pas se rendre dans la partie nord, étant donné qu'elle était bouclée par l'armée turque. Les dispositions introduites par les autorités de la «RTCN» en 1998 afin de permettre aux Chypriotes grecs et aux maronites d'aller dans le nord de Chypre voir leur famille ou, en ce qui concerne les Chypriotes grecs, de se rendre au monastère Apostolos Andreas, ne modifiaient en rien cette conclusion.

32. Le gouvernement défendeur n'a pas non plus démenti le fait que les Chypriotes grecs possédant des biens dans le nord de Chypre ne pouvaient toujours pas y avoir accès, ni en avoir la maîtrise, l'usage et la

jouissance. Quant au sort de ces biens, la Commission a considéré comme établie l'existence jusqu'en 1989 d'une pratique administrative de la part des autorités chypriotes turques consistant à ne pas modifier le cadastre officiel et à enregistrer séparément les biens «abandonnés» et leur attribution. Les personnes auxquelles des biens étaient attribués se voyaient remettre des «certificats de possession», mais non des «titres de propriété» sur les biens concernés. Toutefois, la pratique a changé en juin 1989: à compter de cette date, des «titres de propriété» ont été émis et les changements de propriétaires ont été inscrits au cadastre. La Commission a estimé qu'il était établi qu'à partir de juin 1989 au moins, les autorités chypriotes turques avaient cessé de reconnaître les droits de propriété des Chypriotes grecs sur leurs biens situés dans le nord de Chypre. Selon elle, cela se trouvait confirmé par les dispositions de «l'article 159 § 1 b) de la Constitution de la RTCN» du 7 mai 1985 et la «loi n° 52/1995» tendant à donner effet à cette disposition.

33. Bien que le gouvernement défendeur ait fait remarquer dans ses observations à la Commission que la question du droit des Chypriotes grecs déplacés à rentrer chez eux devait être résolue dans le cadre des pourparlers intercommunautaires organisés sous les auspices du Secrétaire général des Nations unies (paragraphe 16 ci-dessus), la Commission a estimé qu'aucun progrès significatif n'avait été réalisé au cours des dernières années dans la discussion de questions telles que la liberté d'installation, l'indemnisation des Chypriotes grecs pour les atteintes à leur droit de propriété ou la restitution aux Chypriotes grecs de leurs biens sis dans le quartier de Varosha.

3. Violations alléguées découlant des conditions de vie des Chypriotes grecs dans le nord de Chypre

34. Le gouvernement requérant a fourni des éléments à l'appui de son grief selon lequel les Chypriotes grecs, de moins en moins nombreux, vivant dans la péninsule du Karpas, dans le nord de Chypre, sont soumis à une oppression constante qui s'analyse en un déni total de leurs droits et une négation de leur dignité humaine. Outre les mesures de harcèlement et d'intimidation que leur font subir les colons turcs en toute impunité, les Chypriotes grecs enclavés souffrent de restrictions portant atteinte à nombre des droits matériels énoncés dans la Convention. Les ingérences quotidiennes dans ces droits n'ont pu être redressées sur le plan local en raison de l'absence de recours effectifs devant les tribunaux de la «RTCN». Des restrictions du même ordre mais moins fortes touchent la population maronite installée dans la région de Kormakiti, dans le nord de Chypre.

35. Le gouvernement défendeur a affirmé devant la Commission que tous les Chypriotes grecs vivant dans le nord de Chypre avaient accès à des

recours judiciaires effectifs. Il a cependant soutenu que le gouvernement requérant décourageait activement ces personnes d'engager des procédures en «RTCN» et que les éléments dont la Commission disposait n'étayaient nullement les allégations formulées.

36. La Commission a établi les faits se rapportant aux violations en cause en se fondant sur des éléments fournis par les deux gouvernements. Il s'agit notamment de déclarations écrites émanant de personnes frappées par les restrictions dont fait état le gouvernement requérant, d'articles de presse traitant de la situation dans le nord de Chypre, de la jurisprudence des tribunaux de la «RTCN» quant à la disponibilité de recours en «RTCN», de la «législation de la RTCN» et de décisions du «Conseil des Ministres de la RTCN» relatives à l'entrée et à la sortie des personnes par le poste de contrôle de Ledra Palace. Elle a également pris en compte les documents des Nations unies concernant les conditions de vie des Chypriotes grecs enclavés, en particulier les rapports d'activité du Secrétaire général de l'ONU datés des 10 décembre 1995 et 9 mars 1998 relatifs à l'étude humanitaire conduite par l'UNFICYP en 1994 et 1995 sur les conditions de vie des Chypriotes grecs du Karpas, dénommée «rapport Karpas».

37. De surcroît, les délégués de la Commission ont entendu quatorze témoins au sujet de la situation des Chypriotes grecs et maronites vivant dans le nord de Chypre. Parmi eux figuraient deux personnes étroitement associées à la préparation du «rapport Karpas» ainsi que des personnes citées par les deux gouvernements. Les délégués se sont par ailleurs rendus, les 23 et 24 février 1998, dans un certain nombre de localités du nord de Chypre, notamment des villages chypriotes grecs du Karpas, où ils ont recueilli les déclarations de fonctionnaires et d'autres personnes rencontrées au cours de leur visite.

38. La Commission a considéré que le «rapport Karpas» décrivait fidèlement la situation des populations chypriote grecque et maronite enclavées à peu près à l'époque de l'introduction de la présente requête et que les mesures correctives recommandées par l'UNFICYP à la suite de l'étude humanitaire reflétaient les besoins réels de ces groupes face à des pratiques administratives réellement en vigueur au moment des faits. Bien que la Commission ait constaté une amélioration notable de la situation des populations enclavées, comme le montraient les rapports d'activité du Secrétaire général des Nations unies relatifs aux recommandations du «rapport Karpas», un certain nombre de fortes restrictions demeure. Celles-ci n'étaient pas consignées dans la «législation de la RTCN», mais participaient de pratiques administratives.

39. La Commission a relevé en outre que la «RTCN» était dotée d'un système judiciaire opérationnel accessible en principe aux Chypriotes grecs vivant dans le nord de Chypre. Il apparaissait que, dans quelques affaires de trouble de la possession ou de dommages corporels, des Chypriotes grecs avaient obtenu gain de cause devant les juridictions

civiles et pénales. Toutefois, vu le peu d'affaires portées en justice par des Chypriotes grecs vivant dans le nord de Chypre, la Commission a conclu que le caractère effectif du système judiciaire en ce qui les concerne n'avait pas été réellement mis à l'épreuve.

40. La Commission a conclu également que rien n'indiquait que l'attribution irrégulière à autrui de biens appartenant à des Chypriotes grecs vivant dans le Nord se fût poursuivie pendant la période en cause. En revanche, elle a estimé établie l'existence d'une pratique continue de la part des autorités de la «RTCN» consistant à attribuer à des Chypriotes turcs ou à des immigrants les biens de Chypriotes grecs décédés ou ayant quitté le nord de Chypre.

41. En l'absence de procédure devant les tribunaux de la «RTCN», la Commission a noté que l'on ne pouvait pas savoir si les Chypriotes grecs ou maronites vivant dans le nord de Chypre étaient en fait considérés comme des citoyens bénéficiant de la protection de la «Constitution de la RTCN». Cependant, il était selon elle établi que, dans la mesure où les groupes concernés se plaignaient de pratiques administratives telles que des restrictions portant sur leur liberté de circulation et les visites à leur famille, et qui étaient fondées sur des décisions du «Conseil des Ministres de la RTCN», toute contestation de ces restrictions devant les tribunaux serait vaine puisque ces décisions ne se prêtaient pas à un contrôle judiciaire.

42. Bien que n'ayant trouvé aucun élément attestant de cas réels de détention de membres de la population enclavée, la Commission était convaincue qu'il était clairement prouvé que des restrictions continuaient de s'appliquer aux Chypriotes grecs et aux maronites, en dépit d'améliorations récentes, en ce qui concerne leur liberté de circulation et leurs visites à leur famille. En outre, elle a noté qu'une autorisation de sortie restait nécessaire pour le transfert vers des centres médicaux dans le Sud, même si aucune taxe n'était perçue dans les cas d'urgence. Aucune preuve ne venait étayer l'allégation selon laquelle le traitement des demandes de déplacement serait dans certains cas retardé au point de mettre la santé ou la vie des patients en danger; il n'existait pas non plus d'indices allant dans le sens d'une pratique délibérée consistant à différer le traitement de ces demandes.

43. La Commission a tenu pour établie l'existence de restrictions à la liberté de circulation des enfants chypriotes grecs et maronites fréquentant des écoles dans le Sud. Avant l'entrée en vigueur de la décision du «Conseil des Ministres de la RTCN» du 11 février 1998, ces enfants n'avaient pas le droit de rentrer définitivement dans le Nord au-delà de l'âge de seize ans pour les garçons et dix-huit ans pour les filles. L'âge limite de seize ans était maintenu pour les Chypriotes grecs de sexe masculin. Jusqu'à cet âge limite, certaines restrictions, qui se sont progressivement assouplies, s'appliquaient aux visites des étudiants à

leurs parents dans le Nord. Ces visites sont toutefois encore aujourd'hui soumises à un visa et à un « droit d'entrée » réduit.

44. En matière d'enseignement, la Commission a constaté que, s'il existait une école primaire pour les enfants des Chypriotes grecs vivant dans le nord de Chypre, les établissements secondaires faisaient défaut. La grande majorité des écoliers suivait l'enseignement secondaire dans le Sud et les mesures limitant le retour des enfants chypriotes grecs et maronites dans le Nord après la fin de leurs études avaient entraîné la séparation de nombreuses familles. De plus, les manuels scolaires en usage dans l'école primaire chypriote grecque faisaient l'objet d'une procédure d'agrément dans le cadre des mesures d'instauration de la confiance suggérées par l'UNFICYP. Cette procédure était lourde et un nombre assez élevé d'ouvrages scolaires était refusé par l'administration chypriote turque.

45. Hormis les manuels scolaires, la Commission n'a pas constaté d'autres restrictions frappant l'importation, la diffusion ou la détention d'autres types de livres pendant la période considérée, ni la diffusion des journaux publiés dans la partie sud. Toutefois, la distribution de la presse chypriote grecque n'était pas assurée régulièrement dans la région du Karpas et il n'existait pas de liaisons postales et téléphoniques directes entre les deux parties de l'île. La Commission a noté en outre que la population enclavée captait la radio et la télévision chypriotes grecques.

46. La Commission n'a trouvé de preuve concluante ni de l'ouverture par la police de la « RTCN » de lettres destinées à des Chypriotes grecs ni de la mise sur écoute de leurs téléphones.

47. Quant aux restrictions alléguées à la liberté de culte, la Commission a noté que, pour les Chypriotes grecs, le principal problème à cet égard provenait de ce qu'un seul prêtre officiait dans toute la région du Karpas et que les autorités chypriotes turques n'étaient pas favorables à la nomination d'autres prêtres venant du Sud. Les délégués de la Commission n'ont pu déterminer, lors de leur visite dans le Karpas, si les Chypriotes grecs de cette zone étaient libres de se rendre quand ils le voulaient au monastère Apostolos Andreas. Il semblerait qu'au moment des grandes fêtes religieuses (c'est-à-dire trois fois par an), le monastère soit également ouvert aux Chypriotes grecs du Sud.

48. En ce qui concerne les restrictions alléguées à la liberté d'association de la population enclavée, la Commission a relevé que la loi pertinente de la « RTCN » sur les associations ne traitait que de la fondation d'associations par des Chypriotes turcs.

4. Violations alléguées des droits des Chypriotes turcs et de la communauté tsigane chypriote turque installés dans le nord de Chypre

49. Le gouvernement requérant a soutenu devant la Commission que les Chypriotes turcs vivant dans le nord de Chypre, notamment les

dissidents politiques et les membres de la communauté tsigane, étaient victimes d'une pratique administrative de violation des droits énoncés dans la Convention. Il a affirmé, preuves à l'appui, que ces groupes faisaient l'objet d'arrestations et de détentions arbitraires, de fautes policières, de discrimination et de mauvais traitements et de diverses ingérences dans d'autres droits garantis par la Convention, comme les droits à un procès équitable, au respect de la vie privée et familiale, à la liberté d'expression, à la liberté d'association, au respect des biens et à l'instruction.

50. Le gouvernement défendeur a soutenu en substance que les allégations précitées n'étaient corroborées par aucune preuve et que la « RTCN » offrait des recours effectifs aux personnes lésées.

51. La Commission a enquêté sur les allégations du gouvernement requérant en se fondant principalement sur les dépositions orales de treize témoins interrogés par ses délégués au sujet de la situation des Chypriotes turcs et des Tsiganes vivant dans le nord de Chypre. Ces témoins avaient été cités par les deux parties. Les délégués ont recueilli leur témoignage à Strasbourg, Chypre et Londres entre novembre 1997 et avril 1998.

52. La Commission a observé des rivalités et conflits sociaux entre les Chypriotes turcs d'origine et les immigrants turcs qui continuaient d'affluer en grand nombre. Certains des Chypriotes turcs d'origine, ainsi que les groupes politiques et médias qui les représentaient, n'acceptaient pas la politique d'intégration totale des colons prônée par la « RTCN ».

53. En outre, alors que l'émigration à partir de la « RTCN » tenait pour une bonne part à des raisons économiques, on ne saurait exclure que des Chypriotes turcs aient fui cette région par crainte de persécutions politiques. La Commission n'a aperçu aucune raison de mettre en doute les affirmations des témoins selon lesquelles, dans un petit nombre de cas, la police de la « RTCN » n'avait pas examiné les plaintes d'opposants politiques pour harcèlement ou discrimination de la part de groupes de particuliers. Toutefois, elle a conclu qu'il n'avait pas été établi au-delà de tout doute raisonnable qu'il existait en fait une pratique administrative systématique de la part des autorités de la « RTCN », dont les tribunaux, consistant à refuser toute protection aux opposants politiques aux partis au pouvoir. Pour ce qui est de l'allégation du gouvernement requérant selon laquelle les autorités elles-mêmes participaient au harcèlement d'opposants politiques, la Commission n'a pas disposé de suffisamment de précisions sur les incidents dénoncés (par exemple la dispersion de manifestations, des détentions de courte durée) pour lui permettre d'apprécier le caractère justifié ou non des actes critiqués. La Commission a noté qu'en tout état de cause il n'apparaissait pas que les personnes se prétendant victimes d'une arrestation ou d'une détention arbitraires aient eu recours à l'*habeas corpus*.

54. Concernant les allégations de discrimination et de traitements arbitraires à l'égard de membres de la communauté tsigane chypriote turque, la Commission a constaté que les recours judiciaires n'avaient apparemment pas été exercés à la suite d'incidents particulièrement graves comme la destruction de cabanes près de Morphou et le refus de compagnies aériennes d'acheminer au Royaume-Uni des Tsiganes sans visa.

55. Enfin, la Commission a conclu qu'elle ne disposait d'aucune preuve montrant que des civils chypriotes turcs avaient été traduits devant des tribunaux militaires pendant la période en cause. Par ailleurs, s'appuyant sur les éléments en sa possession, la Commission a considéré qu'il n'était pas établi qu'il y avait eu pendant la période examinée une interdiction officielle frappant la diffusion de journaux en langue grecque dans le nord de Chypre ou des mesures empêchant la création d'associations bicommunautaires. S'agissant du refus allégué des autorités de la «RTCN» d'autoriser les Chypriotes turcs à rentrer chez eux dans le sud de Chypre, la Commission a noté qu'aucun cas de ce genre ne lui avait été signalé pour la période à l'étude.

EN DROIT

I. QUESTIONS PRÉLIMINAIRES

56. La Cour relève que le gouvernement défendeur a soulevé devant la Commission plusieurs exceptions d'irrecevabilité de la requête. Lorsque la Commission a procédé à l'examen de la recevabilité, elle a classé ces exceptions de la manière suivante: 1. défaut allégué de juridiction et de responsabilité de l'Etat défendeur quant aux actes dénoncés; 2. identité alléguée de la présente requête et de celles précédemment introduites par le gouvernement requérant; 3. abus allégué de procédure de la part du gouvernement requérant; 4. allégation relative à un compromis spécial entre les gouvernements respectifs en vue de régler le différend par d'autres procédures internationales; 5. allégation de non-épuisement des recours internes de la part des personnes lésées concernées par la requête; et 6. allégation de non-respect du délai de six mois de la part du gouvernement requérant.

57. La Cour note en outre que, dans sa décision sur la recevabilité du 28 juin 1996, la Commission a rejeté les exceptions figurant aux points 3 et 4 et décidé de joindre au fond celles citées aux autres points.

58. La Cour observe que les exceptions invoquées par la Turquie devant la Commission ne lui ont pas été soumises pour examen, le gouvernement défendeur n'ayant pas participé à la procédure écrite et orale devant elle (paragraphes 11-12 ci-dessus). Bien que l'article 55 de

son règlement lui permette dans ces conditions de refuser de statuer sur les exceptions d'irrecevabilité émanant du gouvernement défendeur, la Cour juge malgré tout approprié de les étudier à titre de questions préliminaires. A cet égard, elle relève que le gouvernement requérant a consacré une part importante de son mémoire et de sa plaidoirie à ces questions ainsi qu'à leur rapport avec le fond des diverses allégations.

Questions réservées par la Commission pour être jointes au fond

1. Locus standi *du gouvernement requérant*

59. Lors de la procédure devant la Commission, le gouvernement défendeur a affirmé que le gouvernement requérant n'était pas le gouvernement légitime de la République de Chypre. Le qualifiant «d'administration chypriote grecque», il soutenait que le gouvernement requérant n'avait pas qualité pour soumettre la requête à l'étude.

60. Le gouvernement requérant a réfuté cet argument en se fondant notamment sur les conclusions de la Cour dans l'arrêt *Loizidou c. Turquie* (exceptions préliminaires) du 23 mars 1995, série A n° 310, et sur la réaction de la communauté internationale à l'égard de la proclamation de la «RTCN» en 1983, en particulier les deux résolutions du Conseil de sécurité des Nations unies et celle adoptée par le Comité des Ministres du Conseil de l'Europe pour condamner cette initiative en termes on ne peut plus vigoureux (paragraphe 14 ci-dessus).

61. A l'instar de la Commission, la Cour juge impossible d'admettre cet argument. Dans le droit fil de son arrêt *Loizidou* (fond) (précité), elle considère qu'il ressort clairement de la pratique internationale et des condamnations exprimées dans les résolutions du Conseil de sécurité des Nations unies et du Comité des Ministres du Conseil de l'Europe que la communauté internationale ne reconnaît pas la «RTCN» comme un Etat au regard du droit international. La Cour réitère la conclusion à laquelle elle est parvenue dans son arrêt *Loizidou* (fond) : la République de Chypre demeure l'unique gouvernement légitime de Chypre, raison pour laquelle son *locus standi* de gouvernement d'une Haute Partie contractante à la Convention ne prête à aucun doute (*ibidem*, p. 2231, § 44, et arrêt *Loizidou* (exceptions préliminaires) précité, p. 18, § 40).

62. La Cour conclut que le gouvernement requérant a qualité pour soumettre en vertu de l'ancien article 24 (article 33 actuel) de la Convention une requête dirigée contre l'Etat défendeur.

2. Intérêt juridique du gouvernement requérant

63. Devant la Commission, le gouvernement défendeur a fait valoir que les Résolutions DH (79) 1 et DH (92) 12 adoptées par le Comité des

Ministres au sujet des précédentes requêtes interétatiques (paragraphe 17 ci-dessus) avaient force de chose jugée quant aux griefs soulevés dans la présente requête qui, selon lui, serait en substance identique à celles sur lesquelles le Comité des Ministres avait statué au moyen desdites résolutions.

64. Le gouvernement requérant a répliqué qu'aucune des résolutions en question n'empêchait la Cour de connaître des griefs formulés dans la requête à l'étude. En premier lieu, le Comité des Ministres n'a jamais pris de décision formelle quant aux conclusions figurant dans les deux rapports établis par la Commission au titre de l'ancien article 31. En second lieu, il y a lieu de distinguer des précédentes la requête dont la Cour est à présent saisie car elle expose de nouvelles violations de la Convention et des griefs sur lesquels la Commission n'a pas émis de conclusion définitive dans ses rapports antérieurs, et, en outre, repose essentiellement sur la notion de violation continue des droits garantis par la Convention.

65. La Commission a souscrit au raisonnement du gouvernement requérant et rejeté l'exception invoquée par le gouvernement défendeur en la matière.

66. La Cour, à l'instar de la Commission, reconnaît la force du raisonnement du gouvernement requérant. Elle ajoute qu'il s'agit de la première fois qu'elle se trouve saisie des griefs invoqués par le gouvernement requérant dans le cadre d'une requête interétatique, étant donné que ni les parties ni la Commission n'avaient eu la faculté de lui déférer les précédentes requêtes en vertu de l'ancien article 45 de la Convention combiné avec l'ancien article 48 de celle-ci. Elle observe à cet égard que la Turquie n'a reconnu la juridiction obligatoire de la Cour qu'avec sa déclaration du 22 janvier 1990 (*Mitap et Müftüoğlu c. Turquie*, arrêt du 25 mars 1996, *Recueil* 1996-II, p. 408, § 17).

67. Sans préjuger la question de savoir si, et dans quelles conditions, la Cour a compétence pour examiner une affaire ayant fait l'objet d'une décision prise par le Comité des Ministres au titre de l'ancien article 32 de la Convention, il y a lieu de noter qu'en ce qui concerne les précédentes requêtes interétatiques, ni la Résolution DH (79) 1 ni la Résolution DH (92) 12 n'ont débouché sur une «décision» au sens du paragraphe 1 de l'article 32, comme cela ressort clairement du libellé de ces textes. De fait, il faut en outre relever que, dans les observations qu'il a présentées à l'appui de ses exceptions préliminaires en l'affaire *Loizidou*, le gouvernement défendeur a admis que le Comité des Ministres n'avait pas entériné les conclusions de la Commission dans les précédentes affaires interétatiques (arrêt *Loizidou* (exceptions préliminaires) précité, pp. 21-22, § 56).

68. La Cour conclut dès lors que le gouvernement requérant a un intérêt juridique légitime à ce qu'elle statue sur le fond de la requête.

3. Responsabilité de l'Etat défendeur pour les violations alléguées au titre de la Convention

69. Le gouvernement défendeur a contesté la responsabilité de la Turquie au regard de la Convention quant aux allégations formulées dans la requête. Dans ses observations à la Commission, il affirmait que les actes et omissions dénoncés étaient exclusivement imputables à la «République turque de Chypre-Nord» («RTCN»), à savoir un Etat indépendant, instauré par la communauté chypriote turque en application de son droit à l'autodétermination, qui exerce une autorité et un contrôle exclusifs sur le territoire se trouvant au nord de la zone tampon des Nations unies. A cet égard, le gouvernement défendeur a déclaré que, dans les arrêts *Loizidou* (exceptions préliminaires et fond), la Cour avait fait erreur en concluant que la «RTCN» était une administration locale subordonnée dont les actes et omissions engageaient la responsabilité de la Turquie au titre de l'article 1 de la Convention.

70. Comme il l'a fait devant la Commission, le gouvernement requérant soutient devant la Cour que la «RTCN» est une entité illégitime au regard du droit international car elle doit son existence à l'invasion illégale de la partie nord de Chypre par l'Etat défendeur en 1974, partie qu'il continue depuis lors d'occuper illégalement. La création de la «RTCN», que l'Etat défendeur a proclamée en 1983 afin de renforcer la division de Chypre, a été condamnée en termes énergiques par la communauté internationale, comme le montrent les Résolutions 541 (1983) et 550 (1984) adoptées par le Conseil de sécurité des Nations unies et la Résolution du Comité des Ministres du Conseil de l'Europe du 24 novembre 1983 (paragraphe 14 ci-dessus).

71. Le gouvernement requérant souligne que, même si le droit international ne reconnaît à la Turquie aucun titre à l'égard de la partie nord de Chypre, la Turquie est bien juridiquement responsable de cette région au regard de la Convention, étant donné le contrôle militaire et économique global qu'elle y exerce. Il veut pour preuve de ce contrôle, non seulement global mais aussi exclusif sur la zone occupée, le pouvoir incontestable qu'a la Turquie de dicter le cours des événements dans la zone occupée. Selon lui, un Etat partie à la Convention ne saurait se soustraire à sa responsabilité quant aux violations de la Convention, et d'ailleurs du droit international en général, en déléguant ses pouvoirs à une administration subordonnée et illégale. Compte tenu de la situation régnant actuellement dans le nord de Chypre, toute autre conclusion entraînerait une grave lacune dans le système de protection des droits de l'homme et, de surcroît, priverait le système de la Convention de toute efficacité dans cette région.

72. Le gouvernement requérant prie la Cour de dire, à l'instar de la Commission, que les arrêts *Loizidou* (exceptions préliminaires et fond)

mettent en échec les arguments du gouvernement défendeur puisqu'ils confirment que, tant que la République de Chypre est illégalement privée de sa juridiction légitime sur le nord de Chypre, c'est la Turquie qui exerce sur cette région la «juridiction», au sens de l'article 1 de la Convention, et qui est en conséquence responsable des violations de la Convention qui y sont commises.

73. Le gouvernement requérant demande en outre à la Cour de dire que l'Etat défendeur est responsable au titre de la Convention non seulement des actes et omissions des autorités publiques en place dans la «RTCN», mais également de ceux des particuliers. En anticipant sur les arguments plus détaillés qu'il a soumis sur le fond, le gouvernement requérant affirme d'ores et déjà que les Chypriotes grecs vivant dans le nord de Chypre sont en butte à des actes de harcèlement racial de la part des colons turcs avec la connivence et au su des autorités de la «RTCN», la Turquie étant responsable des actes de celle-ci.

74. La Commission a rejeté les arguments du gouvernement défendeur. S'appuyant notamment sur le paragraphe 56 (pp. 2235-2236) de l'arrêt *Loizidou* (fond), elle a conclu qu'il fallait désormais considérer que la responsabilité de la Turquie au titre de la Convention était engagée pour tous les actes de la «RTCN» et s'appliquait à l'ensemble des griefs formulés dans la présente requête, que ceux-ci se rapportent à des actes ou omissions des autorités turques ou des autorités chypriotes turques.

75. La Cour rappelle que, dans l'affaire *Loizidou*, l'Etat défendeur a nié avoir juridiction sur le nord de Chypre et invoqué à l'appui de cette thèse des arguments semblables à ceux exposés devant la Commission en l'espèce. Dans l'arrêt *Loizidou* (fond), la Cour a rejeté ces arguments en invoquant les principes d'imputabilité élaborés dans son arrêt antérieur relatif aux exceptions d'irrecevabilité soulevées à titre préliminaire par l'Etat défendeur.

76. Plus précisément, la Cour a déclaré dans l'arrêt *Loizidou* (fond) précité, pp. 2234-2236, au sujet de la situation difficile de la requérante en cette affaire:

> «52. Quant à la question de l'imputabilité, la Cour rappelle d'abord que dans son arrêt Loizidou (*exceptions préliminaires*) précité (pp. 23-24, § 62), elle a souligné que, selon sa jurisprudence constante, la notion de «juridiction» au sens de l'article 1 de la Convention ne se circonscrit pas au territoire national des Hautes Parties contractantes. La responsabilité de ces dernières peut donc entrer en jeu à raison d'actes ou d'omissions émanant de leurs organes et déployant leurs effets en dehors de leur territoire. Conformément aux principes pertinents de droit international régissant la responsabilité de l'Etat, la Cour a dit – ce qui revêt un intérêt particulier en l'occurrence – qu'une Partie contractante peut également voir engager sa responsabilité lorsque, par suite d'une action militaire – légale ou non – elle exerce en pratique le contrôle sur une zone située en dehors de son territoire national. L'obligation d'assurer, dans une telle région, le respect des droits et libertés garantis

par la Convention découle du fait de ce contrôle, qu'il s'exerce directement, par l'intermédiaire des forces armées de l'Etat concerné ou par le biais d'une administration locale subordonnée (...)

(...)

54. Il est important pour l'appréciation par la Cour du problème de l'imputabilité que le gouvernement turc ait reconnu que la perte, par la requérante, de la maîtrise de sa propriété provient de l'occupation de la partie septentrionale de Chypre par les troupes turques et l'établissement de la «RTCN» dans cette région (...) D'ailleurs, les troupes turques ont sans contredit empêché l'intéressée à plusieurs reprises d'accéder à sa propriété (...)

Pendant toute la procédure, le gouvernement turc a pourtant nié que les faits dénoncés engagent la responsabilité de l'Etat; il a affirmé que ses forces armées agissent exclusivement en coopération avec les autorités prétendument indépendantes et autonomes de la «RTCN» et pour leur compte.

(...)

56. (...)

Il ne s'impose pas de déterminer si, comme la requérante et le gouvernement cypriote l'avancent, la Turquie exerce en réalité dans le détail un contrôle sur la politique et les actions des autorités de la «RTCN». Le grand nombre de soldats participant à des missions actives dans le nord de Chypre (...) atteste que l'armée turque exerce en pratique un contrôle global sur cette partie de l'île. D'après le critère pertinent et dans les circonstances de la cause, ce contrôle engage sa responsabilité à raison de la politique et des actions de la «RTCN» (...). Les personnes touchées par cette politique ou ces actions relèvent donc de la «juridiction» de la Turquie aux fins de l'article 1 de la Convention. L'obligation qui lui incombe de garantir à la requérante les droits et libertés définis dans la Convention s'étend en conséquence à la partie septentrionale de Chypre.»

77. Certes, dans l'affaire *Loizidou*, la Cour traitait du grief d'un particulier relatif au refus continu des autorités de l'autoriser à accéder à ses biens. Il convient toutefois de noter que le raisonnement de la Cour revêt la forme d'une déclaration de principe quant à la responsabilité de manière générale de la Turquie au regard de la Convention à raison des mesures et actes des autorités de la «RTCN». Etant donné que la Turquie exerce en pratique un contrôle global sur le nord de Chypre, sa responsabilité ne saurait se circonscrire aux actes commis par ses soldats ou fonctionnaires dans cette zone mais s'étend également aux actes de l'administration locale qui survit grâce à son soutien militaire et autre. En conséquence, sous l'angle de l'article 1 de la Convention, force est de considérer que la «juridiction» de la Turquie vaut pour la totalité des droits matériels énoncés dans la Convention et les Protocoles additionnels qu'elle a ratifiés, et que les violations de ces droits lui sont imputables.

78. A ce propos, la Cour doit tenir compte de la nature particulière de la Convention, instrument de l'ordre public européen pour la protection

des êtres humains, et de sa mission, fixée à l'article 19, celle d'« assurer le respect des engagements résultant pour les Hautes Parties contractantes de la présente Convention » (arrêt *Loizidou* (exceptions préliminaires) précité, p. 31, § 93). Eu égard au fait que l'Etat requérant n'est toujours pas en mesure d'exécuter dans le nord de Chypre les obligations que lui impose la Convention, toute autre conclusion conduirait à une lacune regrettable dans le système de protection des droits de l'homme dans cette région, car les individus qui y résident se verraient privés des garanties fondamentales de la Convention et de leur droit de demander à une Haute Partie contractante de répondre des violations de leurs droits dans une procédure devant la Cour.

79. La Cour relève que le gouvernement requérant évoque la question de l'imputabilité tout au long de son mémoire sur le fond. Vu sa conclusion à ce sujet, elle ne juge pas nécessaire d'y revenir lorsqu'elle examinera au fond les griefs que le gouvernement requérant tire de la Convention.

80. Partant, la Cour conclut, sous réserve de son examen ultérieur des actes de particuliers (paragraphe 81 ci-dessous), que les questions soulevées dans la présente requête entrent dans la « juridiction » de la Turquie au sens de l'article 1 de la Convention et engagent donc la responsabilité de l'Etat défendeur au regard de celle-ci.

81. Quant à l'affirmation du gouvernement requérant selon laquelle cette « juridiction » porte également sur les actes commis par des particuliers dans le nord de Chypre en violation des droits de Chypriotes grecs ou Chypriotes turcs qui y vivent, la Cour estime qu'il y a lieu d'en traiter lorsqu'elle étudiera au fond les griefs soumis par ce gouvernement à cet égard. Pour l'heure, elle se borne à dire que si les autorités d'un Etat contractant approuvent, formellement ou tacitement, les actes de particuliers violant dans le chef d'autres particuliers soumis à sa juridiction les droits garantis par la Convention, la responsabilité dudit Etat peut se trouver engagée au regard de la Convention. Toute autre conclusion serait incompatible avec l'obligation énoncée à l'article 1 de la Convention.

4. Obligation d'épuiser les voies de recours internes

82. Devant la Commission, le gouvernement défendeur a affirmé que la « RTCN » était dotée d'un système complet de tribunaux indépendants accessibles à tout un chacun. De plus, selon lui, tous les Chypriotes grecs et maronites vivant dans le nord de Chypre étaient considérés comme des citoyens de la « RTCN », bénéficiant des mêmes droits et recours que les Chypriotes turcs qui y étaient installés. Afin d'illustrer le caractère effectif à ses yeux des recours locaux, le gouvernement défendeur a porté à l'attention de la Commission le cas de Chypriotes grecs vivant dans la région du Karpas, dans le nord de Chypre, qui avaient assigné en justice

le procureur général de la «RTCN» en vertu de la loi sur les actes dommageables pour des affaires patrimoniales, et avaient obtenu gain de cause. Il a fait valoir à cet égard que l'Etat requérant dissuadait activement les Chypriotes grecs et maronites installés dans le nord de Chypre de reconnaître les institutions de la «RTCN», si bien que ceux-ci ne cherchaient pas à faire redresser leurs griefs dans le cadre du système judiciaire de la «RTCN».

83. Devant la Cour, le gouvernement requérant maintient ses objections à ces arguments. Il souligne que la description que donne le gouvernement défendeur du système constitutionnel et juridique de la «RTCN» ne tient aucun compte du contexte de totale illégalité qui a présidé à l'élaboration de la «Constitution» et des «lois». Le gouvernement requérant répète que, selon lui, la création de la «RTCN» en 1983 et de son ordre juridique et constitutionnel découle directement de l'agression perpétrée par la Turquie contre la République de Chypre en 1974. Cette agression continue de se manifester par la poursuite de l'occupation illégale du nord de Chypre. Pour le gouvernement requérant, si l'on tient compte de cette occupation militaire continue et du fait que la «RTCN» est une administration locale subordonnée de l'Etat défendeur, il est irréaliste de penser que les autorités administratives ou judiciaires locales peuvent prendre des décisions effectives à l'encontre de personnes au pouvoir avec le soutien de l'armée d'occupation, en vue de redresser des violations des droits de l'homme commises en application de politiques générales définies par le régime en place dans la zone occupée.

84. Le gouvernement requérant déclare devant la Cour partir du principe que le droit applicable dans le nord de Chypre demeure celui de la République de Chypre et qu'il n'y a pas lieu de s'intéresser à d'autres législations. Toutefois, au cas où la Cour aurait l'intention de prendre en compte d'autres législations, et dans ce cas seulement, cela ne devrait pas la conduire à approuver le raisonnement et les constats formulés par la Commission au titre des articles 6 et 13 et de l'ancien article 26 de la Convention. Selon lui, et contrairement à l'avis de la Commission, ce n'est pas parce que l'on considère la «RTCN» comme une administration locale subordonnée de l'Etat défendeur qu'il faut nécessairement estimer que les recours disponibles en «RTCN» constituent des «recours internes» de l'Etat défendeur aux fins de l'ancien article 26 de la Convention. Le gouvernement requérant plaide à cet égard que l'Etat défendeur lui-même ne considère pas les recours de la «RTCN» comme fournis par la Turquie en tant que Partie contractante. De plus, étant donné que l'administration locale est subordonnée à l'Etat défendeur et contrôlée par lui non pas en vertu du principe de légalité et de la règle démocratique mais par le biais d'une occupation militaire, les tribunaux de la «RTCN» ne sauraient passer pour «établis par la loi» au sens de

l'article 6 de la Convention. Le gouvernement requérant affirme que, dans ces conditions, il ne serait pas juste de demander à des personnes lésées, afin d'épuiser les voies de recours internes comme le prévoit l'ancien article 26, de se prévaloir de recours qui ne satisfont ni aux exigences de l'article 6 ni, par voie de conséquence, à celles de l'article 13 de la Convention.

85. De l'avis du gouvernement requérant, la Commission a mal interprété, aux paragraphes 123 et 124 de son rapport, la portée de l'avis consultatif rendu par la Cour internationale de justice dans l'affaire de la Namibie (Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la Résolution 276 (1970) du Conseil de sécurité, Recueil de la Cour internationale de justice 1971, vol. 16).

86. Pour sa part, la Commission a rappelé que la proclamation de l'indépendance de la «RTCN» a été rejetée et condamnée par la communauté internationale, à l'exception de l'Etat défendeur. Toutefois, elle a observé aussi que le fait que le régime de la «RTCN» existait et exerçait *de facto* l'autorité sous le contrôle global de la Turquie n'était pas dénué de conséquences sur la question de savoir si les recours que l'Etat défendeur affirmait être disponibles au sein du «système de la RTCN» devaient être épuisés par les personnes lésées avant que leurs griefs puissent être déclarés recevables sous l'angle de la Convention. La Commission a noté à cet égard, en s'appuyant sur l'avis consultatif précité de la Cour internationale de justice en l'affaire de la Namibie (paragraphe 85 ci-dessus), que, même si la communauté internationale ne reconnaissait pas la légitimité d'un Etat, «le droit international reconnaissait en pareil cas la légitimité de certains arrangements et transactions juridiques (...) dont on ne pourrait méconnaître les effets qu'au détriment des habitants du territoire» (avis précité, p. 56, § 125). Etant entendu que les recours invoqués par l'Etat défendeur étaient destinés à profiter à l'ensemble de la population vivant dans le nord de Chypre et pour autant qu'ils pouvaient passer pour effectifs, il convenait en principe de les prendre en compte aux fins de l'ancien article 26 de la Convention.

87. La Commission a donc estimé qu'il fallait examiner en fonction du grief en cause la question de savoir si un recours donné pouvait passer pour effectif et devait en conséquence être utilisé. Elle a relevé à cet égard, pour autant que le gouvernement requérant alléguait que les griefs exposés dans la requête se rapportaient à des pratiques administratives imputables à l'Etat défendeur, que la preuve de l'existence de ces pratiques dépendait de l'absence de recours effectifs pour redresser les actes présentés comme constitutifs desdites pratiques.

88. A la lumière de ces considérations, la Commission a conclu qu'aux fins de l'ancien article 26 de la Convention, les recours disponibles dans le

nord de Chypre devaient passer pour des «recours internes» de l'Etat défendeur et qu'elle procéderait à l'évaluation de leur caractère effectif dans les circonstances spécifiques où cette question se posait.

89. La Cour constate que la Commission s'est gardée de se livrer à des déclarations générales sur la validité des actes des autorités de la «RTCN» au regard du droit international et s'est bornée à des considérations sur la question, strictement liée à la Convention, de l'application de la règle de l'épuisement énoncée à l'ancien article 26 de la Convention dans le cadre du système «constitutionnel» et «juridique» mis en place en «RTCN». La Cour approuve cette manière de procéder. Elle rappelle à ce propos que lorsque, dans son arrêt *Loizidou* (fond), elle s'est refusée à attribuer une validité juridique à des dispositions comme «l'article 159 de la Constitution de la RTCN», cela valait aux fins de la Convention (p. 2231, § 44). Cette conclusion s'imposait d'autant plus que cet article visait à conférer aux autorités de la «RTCN», de manière irréversible et sans dédommagement aucun, les droits de la requérante sur son terrain situé dans le nord de Chypre. Dans cet arrêt, la Cour a d'ailleurs estimé qu'il n'était pas «souhaitable, encore moins nécessaire, d'énoncer ici une théorie générale sur la légalité des actes législatifs et administratifs de la «RTCN» (*ibidem*, p. 2231, § 45).

90. Selon la Cour, et sans mettre aucunement en doute le point de vue de la communauté internationale au sujet de la création de la «RTCN» (paragraphe 14 ci-dessus) ou le fait que le gouvernement de la République de Chypre demeure l'unique gouvernement légitime de Chypre (paragraphe 61 ci-dessus), on ne saurait exclure que l'ancien article 26 de la Convention exige de tenter les recours ouverts à toutes les personnes habitant dans le nord de Chypre pour leur permettre d'obtenir le redressement des violations dans leur chef des droits garantis par la Convention. La Cour, à l'instar de la Commission, estime que la situation qui perdure dans le nord de Chypre depuis 1974 se caractérise par l'exercice de l'autorité de fait par la «RTCN». Comme elle l'a observé dans son arrêt *Loizidou* (fond) en se référant à l'avis consultatif de la Cour internationale de justice en l'affaire de la Namibie, le droit international reconnaît la légitimité de certains arrangements et transactions juridiques dans des situations telles que celle régnant en «RTCN», par exemple en ce qui concerne l'inscription à l'état civil des naissances, mariages ou décès, «dont on ne pourrait méconnaître les effets qu'au détriment des habitants du territoire» (*ibidem*, p. 2231, § 45).

91. La Cour n'approuve pas les critiques formulées par le gouvernement requérant quant à la manière dont la Commission s'est appuyée sur cette partie de l'avis consultatif. Selon elle, et à en juger uniquement sous l'angle de la Convention, cet avis confirme que lorsque l'on peut prouver que des individus disposent de recours qui leur offrent des chances raisonnables de succès quand il s'agit de prévenir des

violations de la Convention, ils doivent les utiliser. La Cour estime que cette exigence, appliquée dans le cadre de la «RTCN», s'accorde avec sa déclaration antérieure relative à la nécessité d'éviter l'apparition dans la partie nord de Chypre d'un vide en matière de protection des droits de l'homme garantis par la Convention (paragraphe 78 ci-dessus).

92. Pour la Cour, il paraît évident, malgré les réserves que peut émettre la communauté chypriote grecque dans le nord de Chypre quant aux tribunaux de la «RTCN», que ce sont les membres de cette communauté qui pâtiraient de l'absence de telles institutions. De plus, la reconnaissance du caractère effectif de ces organes à seule fin de protéger les droits des habitants de cette région ne confère, d'après la Cour et l'avis consultatif de la Cour internationale de justice, aucune légitimité à la «RTCN».

93. La Cour rappelle que, dans son avis consultatif sur la Namibie, la Cour internationale de justice déclare (CIJ, Recueil 1971, p. 56, § 125):

> «D'une manière générale, la non-reconnaissance de l'administration sud-africaine dans le territoire ne devrait pas avoir pour conséquence de priver le peuple namibien des avantages qu'il peut tirer de la coopération internationale. En particulier, alors que les mesures prises officiellement par le gouvernement sud-africain au nom de la Namibie ou en ce qui la concerne après la cessation du mandat sont illégales ou nulles, cette nullité ne saurait s'étendre à des actes, comme l'inscription des naissances, mariages ou décès à l'état civil, dont on ne pourrait méconnaître les effets qu'au détriment des habitants du territoire.»

94. Elle observe que ce passage a été inséré à la suite des divers arguments soulevés au cours de la procédure ayant précédé l'adoption de l'avis. En effet, le représentant des Pays-Bas avait fait observer à la Cour internationale de justice que la non-reconnaissance de l'administration illégale de l'Afrique du Sud en Namibie «n'exclu[ait] pas de prendre en compte l'exercice de pouvoirs pour autant que cette prise en compte s'impos[ait] pour rendre justice aux intérêts légitimes de l'individu [qui] est en fait soumis à ce pouvoir» (Mémoires, vol. II, p. 130). Le représentant des Etats-Unis s'était exprimé ainsi: «il y aurait, par exemple, violation des droits des personnes si un Etat étranger refusait de reconnaître le droit des Namibiens de se marier conformément aux lois en vigueur (...) ou jugerait leurs enfants illégitimes. Un contrat de vente ne devrait pas non plus être déclaré nul simplement parce qu'il a été conclu conformément au droit commercial ordinaire appliqué par l'Afrique du Sud en Namibie» (Mémoires, vol. II, p. 503). Il y a lieu de considérer, en bonne logique, que ces déclarations valent également pour les décisions prises par les tribunaux quant à ces relations courantes. Les citations ci-dessus montrent qu'en dépit de la demande du Secrétaire général des Nations unies, la Cour internationale a fermement rejeté la démarche consistant à refuser tout effet aux régimes de fait illégaux.

95. La Cour note que, dans leurs opinions individuelles, les juges Dillard, de Castro et Onyeama rejoignent la position adoptée dans l'avis en la développant. Le juge Dillard (CIJ, Recueil 1971, pp. 166-167) souligne que la maxime «*ex injuria jus non oritur*» n'est pas absolue et ajoute que «s'il en allait autrement, l'intérêt général à la sécurité des transactions en souffrirait beaucoup trop et l'on gênerait les efforts visant à réduire les difficultés et frictions inutiles au lieu de soutenir ces efforts». Le juge de Castro (*ibidem*, pp. 218-219) distingue les actes des autorités de fait en Namibie, qui touchent les actes et dispositions «visant des biens publics, des concessions, etc.», et les «actes et droits des particuliers» «qu'on doit considérer comme valides (...) (validité des actes d'état civil, du registre foncier, des mariages, des sentences des tribunaux civils, etc.)». Le juge Onyeama, quant à lui, estime que les Etats tiers ont certes l'obligation de ne pas reconnaître la légalité de la présence de l'Afrique du Sud en Namibie, mais que cette obligation n'entraîne pas forcément celle de «refuser de reconnaître la validité des mesures prises par l'Afrique du Sud au nom de la Namibie ou en ce qui la concerne, étant donné que l'administration sud-africaine en Namibie, bien qu'illégale, demeure le gouvernement *de facto* du territoire».

96. A noter que l'avis consultatif de la Cour internationale, lu conjointement avec les mémoires et les explications données par certains membres de la Cour, montre clairement que, dans des situations analogues à celle de l'espèce, l'obligation de ne pas tenir compte des actes des entités de fait est loin d'être absolue. La vie continue pour les habitants de la région concernée. Les autorités de fait, y compris leurs tribunaux, doivent rendre cette vie tolérable et la protéger et, dans l'intérêt même des habitants, les actes y relatifs émanant de ces autorités ne peuvent tout simplement pas être ignorés par les Etats tiers et par les institutions internationales, en particulier les juridictions, y compris la nôtre. Toute autre conclusion équivaudrait à dépouiller les habitants de la région de tous leurs droits lorsque ceux-ci sont examinés dans un cadre international, ce qui reviendrait à les priver même de leurs droits minimums.

97. La Cour relève que le point de vue exprimé par la Cour internationale de justice dans le contexte décrit au paragraphe ci-dessus n'est en aucun cas isolé. Il est confirmé par d'éminents auteurs qui ont écrit sur le sujet des entités de fait en droit international et par la pratique en vigueur, en particulier la jurisprudence des tribunaux internes sur la valeur des décisions prises par les autorités d'entités de fait. Cela vaut notamment pour les relations de droit privé et les actes y afférents émanant des organes des autorités de fait. Certains organes d'Etat sont allés plus loin pour reconnaître *de facto* même les actes touchant des situations de droit public, par exemple en accordant l'immunité souveraine à des entités de fait ou en refusant de mettre en cause des dépossessions de biens opérées par les organes de telles entités.

98. Pour la Cour, force est de conclure qu'elle ne saurait simplement faire abstraction, aux fins des relations en cause en l'espèce, des organes judiciaires institués par la «RTCN». La faculté de demander la protection de ces organes est dans l'intérêt même des habitants de la «RTCN», y compris les Chypriotes grecs; et si les autorités de la «RTCN» ne les avaient pas instaurés, l'on pourrait à juste titre juger la situation contraire à la Convention. Par conséquent, les habitants de cette région peuvent être tenus d'épuiser ces recours, sauf à prouver leur inexistence ou leur caractère inopérant, ce qu'il y a lieu d'examiner au cas par cas.

99. A l'instar de la Commission, la Cour recherchera donc pour chacune des violations alléguées par le gouvernement requérant si les personnes touchées auraient pu se prévaloir de recours effectifs pour obtenir un redressement. Elle déterminera en particulier si l'existence de recours est suffisamment sûre tant en théorie qu'en pratique et si des circonstances particulières dispensent les personnes concernées en l'espèce de l'obligation d'épuiser les recours qui, comme le gouvernement défendeur l'a prétendu devant la Commission, s'offraient à elles. La Cour rappelle à ce propos que la règle de l'épuisement ne s'applique pas lorsqu'est prouvée l'existence d'une pratique administrative, à savoir la répétition d'actes interdits par la Convention avec la tolérance officielle de l'Etat, de sorte que toute procédure serait vaine ou ineffective (voir, *mutatis mutandis*, l'arrêt *Akdivar et autres c. Turquie* du 16 septembre 1996, *Recueil* 1996-IV, p. 1210, §§ 66-67).

100. Eu égard à ce qui précède, la Cour ne juge pas nécessaire à ce stade de se pencher sur les critiques plus générales formulées par le gouvernement requérant à l'encontre du système judiciaire et administratif de la «RTCN» sous l'angle des articles 6 et 13 de la Convention.

101. Elle tient toutefois à ajouter que la thèse du gouvernement requérant relative à l'illégalité des juridictions de la «RTCN» semble en contradiction avec les affirmations de celui-ci selon lesquelles la Turquie est responsable des violations commises dans le nord de Chypre – affirmations auxquelles la Cour souscrit (paragraphes 75-81 ci-dessus). En effet, il paraît difficile d'accepter de tenir un Etat pour responsable des actes qui se produisent sur un territoire qu'il occupe et administre illégalement et de lui refuser la possibilité de tenter de ne pas encourir cette responsabilité en redressant dans le cadre de ses tribunaux les préjudices qui lui sont imputables. L'octroi à l'Etat défendeur de cette faculté dans le contexte de la présente requête ne vaut en aucun cas légitimation indirecte d'un régime illégal au regard du droit international. La même contradiction apparaît entre l'argument tiré de l'illégalité des institutions créées par la «RTCN» et l'allégation d'un manquement à l'article 13 examinée ci-après (voir, par exemple, les paragraphes 318-321 ci-dessous): on ne saurait affirmer, d'une part,

qu'il y a violation de cette disposition en ce que l'Etat ne fournit pas de recours et, d'autre part, que tout recours disponible serait dépourvu de tout effet.

102. La Cour conclut en conséquence qu'aux fins de l'ancien article 26 (article 35 § 1 actuel) de la Convention, les recours disponibles en «RTCN» peuvent passer pour des «recours internes» de l'Etat défendeur et qu'il y a lieu d'en évaluer le caractère effectif dans les circonstances particulières où la question se pose.

5. Règle des six mois

103. La Cour observe que, bien que la Commission ait réservé la question pour la joindre au fond, aucun des deux gouvernements n'a soumis d'observation à ce sujet. Le gouvernement requérant ne l'a pas non plus évoquée dans son mémoire ou sa plaidoirie devant la Cour.

104. Dans le droit fil de l'approche définie par la Commission, la Cour confirme que, pour autant que le gouvernement requérant dénonce des violations continues découlant de pratiques administratives, elle ne tiendra pas compte des situations qui ont pris fin six mois avant la date d'introduction de la requête, à savoir le 22 novembre 1994. En conséquence, elle estime, à l'instar de la Commission, que sont exclues du champ de son étude les pratiques dont il est prouvé qu'elles se sont terminées avant le 22 mai 1994.

II. ÉTABLISSEMENT DES FAITS ET APPRÉCIATION DES PREUVES

105. La Cour note que la Commission a pris en compte des preuves écrites ainsi que, pour certaines catégories de griefs, des preuves orales, afin d'éclaircir et d'établir les faits à l'origine des allégations formulées par le gouvernement requérant. Selon le cas, la Commission s'est en outre appuyée sur les constats exposés dans ses rapports de 1976 et 1983 (paragraphe 17 ci-dessus) ainsi que sur les documents qu'elle s'est procurés d'office et, pour l'essentiel, sur les éléments fournis par les parties. Quant aux preuves écrites émanant des parties, elle constate que la Commission a versé au dossier toutes les observations soumises par les deux gouvernements aux stades de la recevabilité et du fond jusqu'au 14 septembre 1998. La Commission s'en est tenue strictement à cette date limite, raison pour laquelle elle a décidé le 5 mars 1999 de ne pas verser au dossier un aide-mémoire sur les «mesures relatives aux conditions de vie des Chypriotes grecs et des maronites dans la République turque de Chypre-Nord» comme le gouvernement défendeur le lui demandait. La Cour constate qu'il s'agit du seul document écarté par la Commission, tous les autres ayant été acceptés dans le respect du principe de l'égalité des armes entre les parties.

106. La Cour note que, lorsqu'il s'est révélé impossible de garantir le respect total du principe de l'égalité des armes au cours de la procédure devant la Commission, par exemple en raison du peu de temps dont disposait une partie pour répondre en tout point aux observations de l'autre, la Commission en a tenu compte dans son appréciation de la valeur probante des éléments en cause. Tout en se devant d'examiner l'ensemble des objections élevées par le gouvernement requérant quant à la manière dont la Commission a établi les faits et apprécié les preuves, la Cour relève que, pour ce qui est des preuves écrites, les deux parties ont eu tout loisir de les commenter dans leur intégralité au cours de la procédure devant elle, y compris l'aide-mémoire précité, qu'elle a accepté de verser au dossier par une décision de procédure du 24 novembre 1999.

107. Concernant les dépositions orales, la Cour note que la Commission a désigné trois délégués pour recueillir des témoignages sur des questions se posant sous l'angle de la Convention au sujet des conditions de vie en général des Chypriotes grecs «enclavés» et de la situation des Chypriotes turcs vivant dans le nord de Chypre, en particulier les dissidents politiques et les membres de la minorité tsigane chypriote turque. Des témoins ont été entendus à Strasbourg les 27 et 28 novembre 1997, à Nicosie (principalement) les 22 et 23 février 1998 et à Londres le 22 avril 1998. Les délégués ont également visité certains lieux (le point de passage de la ligne de démarcation de Ledra Palace, le tribunal de la partie nord de Nicosie, et des villages chypriotes grecs de la région du Karpas). Les délégués ont recueilli les déclarations d'un certain nombre de fonctionnaires et autres personnes rencontrés au cours de leur visite dans la partie nord de Chypre, y compris la péninsule du Karpas. Lors de la première audition, ils ont entendu dix témoins cités par le gouvernement requérant, dont trois non identifiés. Au cours de la deuxième, ils ont entendu douze témoins, dont sept cités par le gouvernement défendeur et cinq par le gouvernement requérant (parmi lesquels quatre témoins non identifiés). Enfin, lors de la troisième audition qui s'est tenue à Londres, ils ont entendu cinq témoins cités par le gouvernement requérant, dont quatre non identifiés.

108. La Cour note que les délégués de la Commission ont fait le nécessaire pour assurer que l'audition des témoins non identifiés se déroulât dans le respect des conditions d'équité prévues à l'article 6 de la Convention.

109. En outre, pour autant que le gouvernement défendeur a critiqué les dispositions prises par les délégués pour l'audition des témoins non identifiés cités par le gouvernement requérant, la Cour observe que ces mesures ont respecté le dispositif de protection exigé par l'Etat défendeur lui-même pour assurer la sécurité de témoins anonymes dans le cadre de requêtes antérieures sans rapport avec celle à l'étude (*Sargın et*

Yağcı c. Turquie, nos 14116-14117/88, rapport de la Commission du 17 janvier 1991, non publié). Selon la Cour, les obstacles auxquels le gouvernement défendeur affirmait s'être heurté devant la Commission ont été suffisamment compensés par la procédure suivie par celle-ci. Elle note aussi que, dans son appréciation des dépositions fournies par des témoins non identifiés, la Commission a procédé avec prudence en vérifiant leur valeur probante en fonction de la nature particulière de chacune des déclarations; de plus, elle n'a pas fondé ses constats uniquement, ni dans une mesure déterminante, sur les déclarations de témoins anonymes (*Van Mechelen et autres c. Pays-Bas*, arrêt du 23 avril 1997, *Recueil* 1997-III, p. 712, §§ 54-55).

110. Devant la Cour, le gouvernement requérant ne conteste pas les modalités adoptées pour l'audition des témoins non identifiés. Par contre, il met en cause la limitation par les délégués du nombre de témoins entendus par eux. Cela est vrai en particulier de l'enquête menée par la Commission sur les allégations relatives à la situation des Chypriotes turcs et des membres de la communauté tsigane vivant dans le nord de Chypre (paragraphe 338 ci-dessous). Bien que la Cour doive revenir sur cette question lorsqu'elle recherchera par elle-même si les faits constatés par la Commission corroborent les allégations du gouvernement requérant, elle juge approprié à ce stade d'examiner le fond de cette critique. Elle relève à cet égard que le gouvernement requérant a en fait été prié par la Commission de choisir un nombre limité de témoins pour déposer au sujet du grief selon lequel l'Etat défendeur violait dans le chef des Chypriotes turcs et des membres de la communauté tsigane installés dans le nord de Chypre les droits garantis par la Convention. La Cour ne considère pas que la démarche suivie par la Commission appelle des critiques quant à l'équité de la procédure. En premier lieu, les délégués ont entendu cinq témoins cités par le gouvernement requérant et il n'y a aucune raison de penser qu'ils ont été spécialement choisis selon l'importance que ce dernier accordait à leur déposition. En second lieu, pour s'acquitter de manière effective de sa tâche d'établissement des faits, la Commission était dans l'obligation de réglementer la procédure d'audition des témoins en fonction des contraintes de temps et de sa propre opinion quant à la nécessité de recueillir des témoignages supplémentaires.

111. C'est pourquoi la Cour rejette les critiques formulées par le gouvernement requérant à ce sujet.

112. La Cour relève aussi que, pour apprécier les éléments relatifs aux différents griefs déclarés recevables, la Commission a appliqué le critère de la preuve «au-delà de tout doute raisonnable», énoncé par la Cour dans son arrêt *Irlande c. Royaume-Uni* du 18 janvier 1978, série A n° 25, sachant qu'une telle preuve peut résulter d'un faisceau d'indices, ou de présomptions non réfutées, suffisamment graves, précis et concordants (*ibidem*, pp. 64-65, § 161).

113. Pour sa part, la Cour approuve l'utilisation de ce critère, d'autant plus qu'il a été exposé pour la première fois dans le cadre d'une affaire interétatique et appartient à la jurisprudence établie de la Cour depuis l'adoption de l'arrêt dans cette affaire (voir, comme exemple récent, l'arrêt *Salman c. Turquie* [GC], n° 21986/93, § 100, CEDH 2000-VII).

De plus, pour établir l'existence de pratiques administratives, la Cour ne s'inspire pas de l'idée que la charge de la preuve pèse sur l'un des deux gouvernements en cause, mais elle doit plutôt étudier l'ensemble des éléments en sa possession, d'où qu'ils proviennent (arrêt *Irlande c. Royaume-Uni* précité, p. 64, § 160).

114. La Cour note toutefois que le gouvernement requérant conteste le bien-fondé de l'application du critère de la preuve précité à ses allégations selon lesquelles les violations de la Convention qu'il dénonce découlent de pratiques administratives de l'Etat défendeur. Selon lui, la Commission a commis une erreur en ne tenant pas compte de l'existence de «preuves suffisantes» des pratiques administratives, et le fait qu'elle ait recouru au critère de la preuve «au-delà de tout doute raisonnable» l'a empêchée de tirer des conclusions correctes des faits pour un certain nombre de griefs. Pour le gouvernement requérant, le critère de la preuve appliqué par la Commission ne cadre pas avec l'approche suivie par la Cour dans l'arrêt *Irlande c. Royaume-Uni*, approche à laquelle préparait déjà selon lui la décision de la Commission dans l'«*Affaire grecque*» (Annuaire 12).

115. La Cour rappelle toutefois que, dans son arrêt *Irlande c. Royaume-Uni*, elle a rejeté l'argument du gouvernement irlandais selon lequel le critère de la preuve «au-delà de tout doute raisonnable» était trop rigoureux pour établir l'existence d'une pratique administrative de violation de l'article 3 de la Convention (*ibidem*, pp. 64-65, § 161). Ce critère a été appliqué en cette affaire afin de déterminer si les preuves corroboraient l'allégation d'une pratique de violation. La Cour procédera donc à l'évaluation des faits constatés par la Commission en s'appuyant sur ledit critère. De plus, elle appliquera la définition d'une pratique administrative incompatible avec la Convention, énoncée dans son arrêt *Irlande c. Royaume-Uni*, à savoir une accumulation de manquements de nature identique ou analogue, assez nombreux et liés entre eux pour ne pas se ramener à des incidents isolés, ou à des exceptions, et pour former un ensemble ou système (*ibidem*, p. 64, § 159).

116. Elle rappelle de plus que, dans le domaine de l'épuisement des recours internes, la charge de la preuve ne pèse pas sur une seule partie. En l'espèce, il incombe au gouvernement défendeur, qui excipe du non-épuisement, de convaincre la Cour que le recours était effectif et disponible tant en théorie qu'en pratique à l'époque des faits, c'est-à-dire qu'il était accessible, était susceptible d'offrir à la personne lésée le redressement de ses griefs et présentait des perspectives raisonnables de

succès. Cependant, une fois cela démontré, c'est au gouvernement requérant qu'il revient d'établir que le recours évoqué par le gouvernement défendeur a en fait été employé ou bien, pour une raison quelconque, n'était ni adéquat ni effectif compte tenu des faits de la cause ou encore que certaines circonstances particulières le dispensaient de cette obligation. L'un de ces éléments peut être la passivité totale des autorités nationales face à des allégations sérieuses selon lesquelles des agents de l'Etat ont commis des fautes ou causé un préjudice, par exemple lorsqu'elles n'ouvrent aucune enquête ou ne proposent aucune aide. Dans ces conditions, l'on peut dire que la charge de la preuve se déplace à nouveau, et qu'il incombe au gouvernement défendeur de montrer quelles mesures ont été prises eu égard à l'ampleur et à la gravité des faits dénoncés (voir, *mutatis mutandis*, l'arrêt *Akdivar et autres* précité, p. 1211, § 68).

117. Eu égard à ce qui précède, la Cour rappelle sa jurisprudence constante selon laquelle le système de la Convention en place avant l'entrée en vigueur le 1er novembre 1998 du Protocole n° 11 à la Convention confiait en premier lieu à la Commission l'établissement et la vérification des faits (anciens articles 28 § 1 et 31). Sans être liée par les constatations du rapport et demeurant libre d'apprécier elle-même les faits à la lumière de tous les éléments qu'elle possède, la Cour n'use de ses propres pouvoirs en la matière que dans des circonstances exceptionnelles (voir, parmi beaucoup d'autres, l'arrêt *Akdivar et autres* précité, p. 1214, § 78, et, plus récemment, l'arrêt *Salman* précité, § 89).

118. La Cour a déjà indiqué que le gouvernement requérant avait critiqué les constats établis par la Commission au sujet de certaines de ses allégations, en les jugeant contraires aux preuves soumises. La Cour entend examiner ces critiques lorsqu'elle se prononcera sur le fond de ces allégations.

III. SUR LES VIOLATIONS ALLÉGUÉES DES DROITS DES CHYPRIOTES GRECS PORTÉS DISPARUS ET DE LEUR FAMILLE

A. Chypriotes grecs portés disparus

1. Quant aux faits établis par la Commission

119. A l'audience devant la Cour, le gouvernement requérant a déclaré que le nombre de disparus était actuellement de 1 485 et que les preuves indiquaient clairement que ces personnes se trouvaient soit détenues par l'armée turque ou sa milice, soit sous la surveillance ou l'autorité et la responsabilité directe de celles-ci, et avaient été vues pour

la dernière fois dans des zones placées sous le contrôle effectif de l'Etat défendeur. Il a en outre affirmé que la Cour devait partir de l'hypothèse que ces personnes étaient toujours en vie, sauf preuve du contraire.

120. La Cour note d'emblée que le gouvernement requérant ne conteste pas les faits établis par la Commission (paragraphes 25-27 ci-dessus). Pour sa part, elle ne distingue aucune circonstance exceptionnelle exigeant qu'elle s'écarte des constats de la Commission, compte tenu de l'analyse approfondie de toutes les preuves pertinentes, y compris les conclusions figurant dans ses rapports de 1976 et 1983, à laquelle celle-ci s'est livrée. A l'instar de la Commission, la Cour ne juge pas approprié d'estimer le nombre de personnes entrant dans la catégorie des «disparus». Elle se borne à observer que les chiffres sont communiqués par le gouvernement requérant au Comité des personnes disparues des Nations unies («le CMP») et révisés au fur et à mesure de l'obtention de nouvelles informations.

121. De plus, la Cour est à l'instar de la Commission soucieuse de se limiter, dans son examen, à déterminer si, et dans quelle mesure, les autorités de l'Etat défendeur ont éclairci le sort des personnes disparues ou l'endroit où elles se trouvent. Elle n'a pas pour tâche de tirer, à partir des preuves, des conclusions sur le point de savoir si certaines de ces personnes sont vivantes ou mortes ou ont été tuées dans des conditions qui engagent la responsabilité de l'Etat défendeur. De fait, le gouvernement requérant prie la Cour de se fonder sur l'hypothèse que ces personnes sont toujours en vie. La Cour reviendra sur cette question lorsqu'elle examinera les allégations du gouvernement requérant sous l'angle de l'article 2 de la Convention.

122. Cela posé, la Cour va procéder à l'examen au fond des allégations du gouvernement requérant.

2. Sur le bien-fondé des griefs du gouvernement requérant

a) Article 2 de la Convention

123. Le gouvernement requérant invite la Cour à dire que les faits de la cause révèlent une violation continue des obligations procédurales et matérielles de l'article 2, qui dispose en sa partie pertinente :

«1. Le droit de toute personne à la vie est protégé par la loi. (...)»

124. De l'avis du gouvernement requérant, la violation procédurale alléguée relève d'une pratique administrative, étant donné que les autorités de l'Etat défendeur n'ont jamais mené la moindre enquête sur le sort des disparus. En particulier, rien n'indique que ces autorités aient recherché les morts ou les blessés, et encore moins qu'elles se soient préoccupées d'enterrer les défunts. De plus, l'Etat défendeur, de par la présence de ses forces armées, continue directement d'empêcher que

soient menées dans la zone occupée des enquêtes pour retrouver les personnes encore portées disparues, et refuse toujours de dire ce qu'elles sont devenues.

125. Le gouvernement requérant souligne de surcroît que l'Etat défendeur ne saurait s'acquitter de l'obligation procédurale de protéger le droit à la vie qui lui incombe en vertu de l'article 2 en renvoyant aux travaux en cours du CMP (paragraphe 16 ci-dessus), eu égard aux limites du mandat de ce comité et aux caractéristiques d'une « enquête effective » telles qu'elles sont définies dans la jurisprudence de la Cour relative à la clause de la Convention à l'étude.

126. Quant à l'obligation matérielle contenue à l'article 2, le gouvernement requérant demande à la Cour de dire, dans le droit fil de la conclusion de la Commission, que l'Etat défendeur n'a pas pris les mesures opérationnelles nécessaires pour protéger le droit à la vie de ces personnes, qui ont toutes disparu dans des conditions où leur vie était menacée, ce que l'Etat défendeur savait puisque c'est lui qui est à l'origine de cette situation.

127. La Commission a observé que ces personnes avaient disparu dans des circonstances où leur vie était en danger, étant donné notamment qu'il existait à l'époque des preuves manifestes de meurtres perpétrés sur une grande échelle, y compris par suite d'actes criminels commis en dehors des zones de combat. S'appuyant sur la jurisprudence de la Cour, la Commission a estimé que l'article 2 imposait aux autorités de l'Etat défendeur l'obligation positive de mener une enquête effective sur les circonstances dans lesquelles étaient survenues les disparitions. De plus, cette obligation revêtait un caractère continu puisqu'il se pouvait que les disparus eussent trouvé la mort du fait de crimes imprescriptibles.

128. La Commission a conclu en conséquence à la violation de l'article 2 du fait de l'absence d'enquête effective de la part des autorités de l'Etat défendeur, qui ne saurait être compensée par la contribution de celui-ci aux travaux du CMP.

129. La Cour observe que, pour le gouvernement requérant, il faut avant tout présumer que les disparus sont toujours en vie, sauf s'il existe des preuves claires du contraire (paragraphe 119 ci-dessus). Même si les éléments soumis à la Commission confirmaient que les opérations militaires de juillet et août 1974 avaient fait de très nombreuses victimes parmi les militaires et les civils, la Cour répète qu'elle ne saurait spéculer sur le point de savoir si certaines des personnes disparues ont en fait été tuées par les forces turques ou par les forces paramilitaires chypriotes turques entre les mains desquelles elles ont pu tomber. Il est vrai que le « président de la RTCN », M. Denktaş, a diffusé le 1er mars 1996 une déclaration où il reconnaissait que l'armée turque avait remis des prisonniers chypriotes grecs à des combattants chypriotes turcs sous commandement turc et que ces prisonniers avaient ensuite été tués

(paragraphe 25 ci-dessus). Il est également vrai qu'en février 1998 M. Yalçın Küçük, officier turc en activité en 1974, a affirmé que l'armée turque s'était livrée à de très nombreux meurtres de civils (paragraphe 25 ci-dessus). Bien que toutes ces déclarations aient suscité des inquiétudes incontestables, notamment chez les familles des disparus, la Cour estime qu'elles ne suffisent pas à établir que l'Etat défendeur est responsable de la mort de l'un quelconque des disparus. Dire que l'une de ces personnes a été tuée dans les circonstances ainsi rapportées relève de la pure spéculation.

130. La Cour note que les preuves qui lui ont été fournies au sujet de meurtres perpétrés directement par des soldats turcs ou avec leur complicité se rapportent à une période qui ne relève pas de la requête à l'étude. D'ailleurs, il convient d'observer que la Commission n'avait pas pu établir à partir des faits si l'un quelconque des disparus avait été tué dans des circonstances engageant la responsabilité de l'Etat défendeur au titre des exigences matérielles de l'article 2 de la Convention. La Cour conclut en conséquence qu'elle ne saurait accueillir les allégations du gouvernement requérant selon lesquelles les faits révèlent une violation des dispositions matérielles de l'article 2 dans le chef de l'une quelconque des personnes disparues.

131. Pour la Cour, toutefois, il y a lieu d'examiner les allégations du gouvernement requérant à la lumière de l'obligation procédurale de protection du droit à la vie qui est celle des Etats contractants en vertu de l'article 2. Elle rappelle à cet égard que l'obligation de protéger le droit à la vie qu'impose cette disposition, combinée avec le devoir général incombant à l'Etat en vertu de l'article 1 de la Convention de «reconna[ître] à toute personne relevant de [sa] juridiction les droits et libertés définis [dans] la (...) Convention», implique et exige de mener une forme d'enquête efficace lorsque le recours à la force, par des agents de l'Etat, a entraîné mort d'homme (voir, *mutatis mutandis*, arrêts *McCann et autres c. Royaume-Uni*, 27 septembre 1995, série A n° 324, p. 49, § 161, *Kaya c. Turquie*, 19 février 1998, *Recueil* 1998-I, p. 329, § 105) ou lorsque le recours à la force meurtrière n'était pas le fait d'agents de l'Etat (voir, *mutatis mutandis*, arrêts *Ergi c. Turquie*, 28 juillet 1998, *Recueil* 1998-IV, p. 1778, § 82, *Yaşa c. Turquie*, 2 septembre 1998, *Recueil* 1998-VI, p. 2438, § 100, et *Tanrıkulu c. Turquie* [GC], n° 23763/94, § 103, CEDH 1999-IV).

132. La Cour rappelle que rien n'indique que l'un quelconque des disparus ait été tué illégalement. Toutefois, selon elle, et cela s'applique en l'espèce, l'obligation procédurale précitée vaut également lorsqu'il existe, preuve à l'appui, un grief défendable qu'un individu, vu pour la dernière fois sous la surveillance d'agents de l'Etat, a par la suite disparu dans des circonstances pouvant être considérées comme mettant sa vie en danger.

133. Cela étant, la Cour observe que les preuves corroborent l'allégation du gouvernement requérant selon laquelle nombre des personnes encore portées disparues se trouvaient détenues par des forces turques ou chypriotes turques, à une époque où les opérations militaires s'accompagnaient d'arrestations et de meurtres sur une grande échelle. C'est à juste titre que la Commission a considéré que cette situation mettait la vie des intéressés en danger. La déclaration précitée de M. Denktaş et le rapport ultérieur de M. Yalçın Küçük, s'ils ne suffisent pas pour conclure que l'Etat défendeur est responsable de la mort des disparus, donnent à tout le moins des indications claires quant au climat de danger et de peur qui régnait à l'époque des faits et aux risques réels que couraient les détenus.

134. Il est indéniable que tel est le contexte dans lequel sont survenues les disparitions. La Cour ne peut que noter que les autorités de l'Etat défendeur n'ont jamais ouvert la moindre enquête sur les griefs émanant des familles des disparus selon lesquels on aurait perdu la trace de ces derniers alors qu'ils se trouvaient détenus dans des circonstances où il y avait de réelles raisons de nourrir des craintes à leur sujet. A cet égard, force est de noter que la déclaration alarmante de M. Denktaş n'a eu aucune suite officielle. Rien n'a été tenté pour identifier les personnes qui auraient été libérées par les forces turques pour être remises aux forces paramilitaires chypriotes turques ni pour rechercher à quel endroit les corps auraient été abandonnés. Il n'apparaît pas non plus que la moindre enquête officielle ait été ouverte sur l'allégation selon laquelle des prisonniers chypriotes grecs auraient été transférés en Turquie.

135. La Cour estime comme le gouvernement requérant que l'Etat défendeur ne saurait s'acquitter de l'obligation procédurale en cause par sa participation aux enquêtes du CMP. A l'instar de la Commission, elle note que, si les procédures de ce comité concourent sans conteste au but humanitaire pour lequel elles ont été créées, elles ne répondent pas en elles-mêmes à l'exigence d'enquête effective découlant de l'article 2 de la Convention, eu égard notamment à l'étroite portée des enquêtes du CMP (paragraphe 27 ci-dessus).

136. A la lumière de ce qui précède, la Cour conclut qu'il y a eu violation continue de l'article 2 de la Convention en ce que les autorités de l'Etat défendeur n'ont pas mené d'enquête effective visant à faire la lumière sur le sort des Chypriotes grecs qui ont disparu dans des circonstances mettant leur vie en danger, et sur le lieu où ils se trouvaient.

b) Article 4 de la Convention

137. Le gouvernement requérant prie la Cour de dire que les circonstances de l'affaire révèlent aussi une violation de l'article 4 de la Convention, qui dispose en son passage pertinent :

« 1. Nul ne peut être tenu en esclavage ni en servitude.

(...) »

138. Le gouvernement requérant fait valoir que, en l'absence de conclusion irréfutable selon laquelle les personnes disparues sont actuellement décédées, force est de présumer qu'elles sont toujours détenues dans des conditions qui, vu le délai écoulé depuis les événements de 1974, doivent être qualifiées de servitude. Selon lui, cette thèse ne saurait être contredite que si la Cour considérait comme prouvé que les disparus sont maintenant décédés, auquel cas il faudrait conclure que l'Etat défendeur a méconnu les obligations que lui impose l'article 2.

139. La Commission a conclu à la non-violation de l'article 4, estimant qu'aucun élément de preuve ne venait étayer l'hypothèse selon laquelle, au cours de la période examinée, l'une quelconque des personnes disparues se trouvait toujours détenue sous l'autorité de la Turquie dans des conditions contraires à l'article 4.

140. La Cour souscrit au constat de la Commission. Comme cette dernière, elle refuse de spéculer sur le sort des disparus ou le lieu où ils pourraient se trouver. En outre, elle accepte les faits établis par la Commission.

141. Il s'ensuit qu'aucune violation de l'article 4 de la Convention n'est établie.

c) Article 5 de la Convention

142. Le gouvernement requérant affirme qu'il existe de la part de l'Etat défendeur une pratique administrative de violation de l'article 5 de la Convention. Cette clause énonce en ses passages pertinents :

« 1. Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas suivants et selon les voies légales :

(...) »

143. Selon lui, le fait que les autorités de l'Etat défendeur aient négligé de mener une enquête rapide et effective sur les circonstances entourant la détention puis la disparition d'un nombre élevé mais indéterminé de Chypriotes grecs disparus, alors qu'il existait beaucoup d'informations à ce sujet, emporte violation des obligations procédurales inhérentes à l'article 5. Il réaffirme que l'Etat défendeur est présumé responsable du sort des disparus car les preuves établissent clairement que ceux-ci ont été vus pour la dernière fois alors qu'ils se trouvaient sous le contrôle et la surveillance de militaires turcs ou d'agents à leur solde.

144. De plus, la détention des disparus ne saurait se justifier au regard des conditions posées par l'article 5 ; il y a donc lieu de la considérer comme illégale. Le gouvernement requérant affirme que l'Etat défendeur n'a tenu aucun registre précis ou fiable des personnes détenues par ses autorités et

agents ni pris aucune autre mesure de nature à prévenir le risque de disparition.

145. La Commission a conclu que l'Etat défendeur avait failli à son obligation de mener une enquête rapide et effective au sujet d'un grief défendable selon lequel des Chypriotes grecs détenus par les forces turques ou leurs agents en 1974 avaient par la suite disparu. A son avis, un manquement à l'obligation inhérente à l'article 5 devait s'interpréter comme une violation continue puisqu'elle avait déjà constaté dans son rapport de 1983 relatif à la requête n° 8007/77 que le gouvernement défendeur n'avait fourni aucune information sur le sort des Chypriotes grecs disparus alors qu'ils étaient détenus sous l'autorité de la Turquie. La Commission a souligné que le devoir d'enquêter et d'informer ne saurait se voir limiter dans le temps, notamment parce que l'on ne pouvait exclure que les détenus qui avaient disparu aient été victimes des crimes les plus graves, comme des crimes de guerre ou des crimes contre l'humanité.

146. En revanche, la Commission a conclu à la non-violation de l'article 5 au motif d'une détention réelle de Chypriotes grecs disparus. Elle a noté à cet égard qu'aucune preuve ne venait étayer l'hypothèse selon laquelle l'un quelconque des Chypriotes grecs disparus se serait encore trouvé détenu par les autorités turques ou chypriotes turques pendant la période considérée.

147. La Cour souligne d'emblée que la détention non reconnue d'un individu constitue une négation totale du droit à la liberté et à la sûreté garanti par l'article 5 de la Convention et une violation extrêmement grave de cette disposition. Les autorités qui ont mis la main sur un individu sont tenues de révéler l'endroit où il se trouve. C'est pourquoi il faut considérer que l'article 5 leur fait obligation de prendre des mesures effectives pour pallier le risque d'une disparition et de mener une enquête rapide et efficace dans l'hypothèse d'une plainte plausible selon laquelle une personne a été appréhendée et n'a pas été revue depuis (*Kurt c. Turquie*, arrêt du 25 mai 1998, *Recueil* 1998-III, p. 1185, § 124).

148. La Cour renvoie aux preuves irréfutables selon lesquelles des Chypriotes grecs ont été détenus par les forces turques ou chypriotes turques. Rien n'indique l'existence de registres où auraient été consignés l'identité des détenus ou la date et l'endroit de leur détention. D'un point de vue humanitaire, on ne peut excuser cette lacune en invoquant les combats qui se déroulaient à l'époque ou le climat général de confusion et de tension d'alors. Considérée sous l'angle de l'article 5 de la Convention, l'absence d'informations de cette nature a empêché d'apaiser les inquiétudes des familles des disparus au sujet du sort de ces derniers. Même s'il lui était impossible de donner l'identité des personnes placées en détention, l'Etat défendeur aurait dû procéder à d'autres recherches afin d'expliquer les disparitions. Comme indiqué précédemment, les nouveaux éléments montrant que des Chypriotes grecs disparus avaient été placés en

détention sous l'autorité de la Turquie n'ont pas suscité la moindre réaction officielle (paragraphe 134 ci-dessus).

149. La Cour a examiné cette allégation sous l'angle des exigences procédurales de l'article 5 de la Convention et des obligations qui pèsent sur l'Etat défendeur en sa qualité de Partie contractante à la Convention. Comme la Commission, et sans mettre en doute la valeur du travail humanitaire entrepris par le CMP, la Cour réaffirme qu'il est impossible de s'acquitter de ces obligations en s'en remettant au CMP, en raison de la nature des enquêtes qu'il mène (paragraphe 135 ci-dessus).

150. La Cour conclut qu'il y a eu pendant la période considérée une violation continue de l'article 5 de la Convention en ce que les autorités de l'Etat défendeur n'ont pas mené d'enquête effective sur le sort des Chypriotes grecs disparus dont on allègue de manière défendable qu'ils étaient détenus au moment de leur disparition, et sur le lieu où ils se trouvaient.

151. En revanche, la Cour estime, à l'instar de la Commission, qu'il n'est pas établi qu'au cours de la période examinée l'un quelconque des Chypriotes grecs disparus se trouvait réellement détenu par les autorités chypriotes turques.

d) Articles 3, 6, 8, 13, 14 et 17 de la Convention

152. La Cour observe que, dans le cadre de l'examen au fond mené par la Commission, le gouvernement requérant a soutenu que les faits de la cause emportaient violation des articles précités. La Commission a conclu que ces griefs sortaient du cadre de sa décision sur la recevabilité, raison pour laquelle elle ne pouvait les examiner.

153. La Cour note en outre que le gouvernement requérant n'a maintenu ces griefs ni dans son mémoire ni à l'audience. Il n'a pas non plus contesté la manière dont la Commission a interprété l'objet de sa décision sur la recevabilité. Dans ces conditions, la Cour estime qu'elle n'a aucune raison de rechercher si elle a compétence pour connaître de ces griefs ni de les étudier au fond.

La Cour conclut en conséquence qu'il n'y a pas lieu d'examiner les griefs soulevés par le gouvernement requérant sur le terrain des articles 3, 6, 8, 13, 14 et 17 de la Convention quant aux Chypriotes grecs portés disparus.

B. Familles des Chypriotes grecs portés disparus

1. Article 3 de la Convention

154. Pour les raisons indiquées par la Commission, le gouvernement requérant prie la Cour de dire que les souffrances ininterrompues des

familles des disparus s'analysent en une violation non seulement continue mais aussi aggravée de l'article 3 de la Convention, aux termes duquel :

> « Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants. »

155. D'après la Commission, la situation évoquée par le gouvernement requérant témoignait d'une violation continue de l'article 3 dans le chef des familles des disparus. Elle a considéré que, vu les circonstances dans lesquelles leurs proches avaient disparu – c'est-à-dire à la suite d'une intervention militaire qui avait fait beaucoup de morts et de prisonniers, après quoi la région avait été bouclée et rendue inaccessible aux familles –, ces dernières avaient indubitablement dû connaître les affres de l'incertitude et de l'angoisse. De plus, leurs souffrances morales ne s'étaient pas apaisées avec le temps. La Commission a estimé que le traitement subi par les familles des disparus pouvait à juste titre être qualifié d'inhumain au sens de l'article 3.

156. La Cour rappelle que la question de savoir si le proche d'un « disparu » est victime d'un traitement contraire à l'article 3 dépend de l'existence de facteurs particuliers conférant à la souffrance de l'intéressé une dimension et un caractère distincts du désarroi affectif que l'on peut considérer comme inévitable pour les proches parents d'une personne victime de violations graves des droits de l'homme. Parmi ces facteurs figureront la proximité de la parenté – dans ce contexte, le lien parent-enfant sera privilégié –, les circonstances particulières de la relation, la mesure dans laquelle le parent a été témoin des événements en question, la participation du parent aux tentatives d'obtention de renseignements sur le disparu, et la manière dont les autorités ont réagi à ces demandes. La Cour souligne en outre que l'essence d'une telle violation ne réside pas tant dans le fait de la « disparition » du membre de la famille que dans les réactions et le comportement des autorités face à la situation qui leur a été signalée. C'est notamment au regard de ce dernier élément qu'un parent peut se prétendre directement victime du comportement des autorités (*Çakıcı c. Turquie* [GC], n° 23657/94, § 98, CEDH 1999-IV).

157. La Cour observe que les autorités de l'Etat défendeur n'ont mené aucune enquête sur les circonstances ayant entouré les disparitions. En l'absence d'informations sur le sort des personnes disparues lors des événements de juillet et août 1974, leurs familles ont été condamnées à vivre de manière prolongée dans un état d'angoisse extrême dont on ne peut dire qu'il s'est apaisé avec le temps. Dans les circonstances de l'espèce, la Cour ne pense pas que le fait que certaines personnes n'aient pas vu concrètement des membres de leur famille en détention ou ne se soient pas plaintes aux autorités de l'Etat défendeur

de pareille détention les prive de la qualité de victime au regard de l'article 3. Elle rappelle que l'opération militaire a provoqué la mort d'un nombre considérable de personnes, de très nombreuses arrestations et détentions et la séparation forcée de familles. Toute la situation doit être encore très présente à l'esprit des proches des personnes dont le sort n'a jamais été éclairci par les autorités. Ils sont au supplice d'ignorer si les membres de leur famille ont été tués pendant le conflit ou sont toujours détenus ou, pour le cas où ils auraient été arrêtés, s'ils sont morts depuis. Le fait qu'un nombre très élevé de Chypriotes grecs ait dû chercher refuge dans le Sud, ainsi que la division continue de Chypre, doivent être tenus pour de très sérieux obstacles à leur quête d'informations. C'est aux autorités de l'Etat défendeur qu'il incombe de fournir pareilles informations; or elles n'en ont rien fait. Pour la Cour, le silence des autorités de l'Etat défendeur devant les inquiétudes réelles des familles des disparus constitue à l'égard de celles-ci un traitement d'une gravité telle qu'il y a lieu de le qualifier d'inhumain au sens de l'article 3.

158. C'est pourquoi la Cour conclut qu'au cours de la période considérée il y a eu violation continue de l'article 3 de la Convention dans le chef des familles des Chypriotes grecs disparus.

2. Articles 8 et 10 de la Convention

159. Dans son mémoire, le gouvernement requérant soutient en outre que le fait que les autorités de l'Etat défendeur aient négligé de manière persistante de donner des explications aux familles des disparus constitue une grave atteinte au droit de celles-ci au respect de leur vie familiale ainsi qu'à leur droit de recevoir des informations. Il affirme que la responsabilité du gouvernement défendeur se trouve engagée au titre des articles 8 et 10 de la Convention, dispositions selon lui méconnues dans les circonstances de l'espèce.

160. La Cour note que, pour la Commission, les griefs que le gouvernement requérant tire des articles 8 et 10 portent en substance sur le traitement subi par les familles des disparus dans leur quête pour connaître le sort de ces derniers. Cela étant posé, la Commission s'est bornée à examiner les questions que soulevait pareil traitement sous l'angle de l'article 3.

161. La Cour se rallie au point de vue de la Commission. Eu égard à sa conclusion relative à l'article 3, qui met l'accent sur l'effet de l'absence d'informations sur les familles des disparus, elle juge inutile d'examiner séparément les griefs formulés par le gouvernement requérant sur le terrain des articles 8 et 10 de la Convention.

IV. SUR LES VIOLATIONS ALLÉGUÉES DES DROITS DES PERSONNES DÉPLACÉES AU RESPECT DE LEUR DOMICILE ET AU RESPECT DE LEURS BIENS

A. Quant aux faits établis par la Commission

162. Le gouvernement requérant souscrit aux faits établis par la Commission (paragraphes 30-33 ci-dessus). A cet égard, il prie la Cour de conclure que ceux-ci témoignent de violations des articles 8 et 13 de la Convention et de l'article 1 du Protocole n° 1 ainsi que de l'article 14 de la Convention combiné avec les dispositions précitées. Il estime en outre que ces faits donnent lieu à des violations des articles 3, 17 et 18 de la Convention.

163. La Cour n'aperçoit aucune circonstance exceptionnelle pouvant la conduire à adopter quant aux faits un point de vue différent de celui de la Commission (paragraphes 30-33 ci-dessus). Elle note que celle-ci s'est inspirée des constats qu'elle avait formulés dans ses rapports de 1976 et 1983 et a tenu compte de l'influence des textes «législatifs» et autres en vigueur en «RTCN» sur la jouissance des droits invoqués par le gouvernement requérant. De plus, le gouvernement défendeur n'a pas contesté l'exactitude de plusieurs allégations formulées quant aux faits par le gouvernement requérant au cours de la procédure devant la Commission (paragraphe 29 ci-dessus).

164. Partant, la Cour procédera à l'examen au fond des griefs du gouvernement requérant en s'appuyant sur les faits établis par la Commission.

B. Sur le bien-fondé des griefs du gouvernement requérant

1. Article 8 de la Convention

165. Le gouvernement requérant affirme qu'il est incontestable que ce sont les mesures de l'Etat défendeur qui ont empêché les Chypriotes grecs déplacés de rentrer chez eux, au mépris de l'article 8 de la Convention, ainsi libellé :

> «1. Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.
>
> 2. Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui.»

166. Il déclare que la politique de l'Etat défendeur visant à diviser Chypre en fonction de critères raciaux a touché 211 000 Chypriotes grecs déplacés et leurs enfants ainsi qu'un certain nombre de maronites, Arméniens, catholiques et autres citoyens de la République de Chypre qui avaient choisi, comme la Constitution leur en offrait la possibilité, d'appartenir à la communauté chypriote grecque. Selon lui, le refus continu des autorités de la «RTCN» d'autoriser les personnes déplacées à retourner dans le Nord emporte violation non seulement de leur droit au respect de leur domicile mais aussi de leur droit au respect de leur vie familiale. Sur ce dernier point, le gouvernement requérant note que la politique en cause a provoqué la séparation de familles.

167. De plus, le gouvernement requérant demande à la Cour de dire que les faits de la cause révèlent aussi une politique de destruction et de modification délibérées de l'environnement humain, culturel et naturel et des conditions de vie dans le nord de Chypre. Il affirme que cette politique repose sur l'implantation massive de colons venus de Turquie qui a pour but et résultat d'éliminer la présence et la culture grecques dans le nord de l'île. Pour lui, les concepts de «domicile» et de «vie privée» sont suffisamment larges pour englober la notion de maintien des relations culturelles existantes au sein d'un environnement culturel qui vient à subsister. Compte tenu des altérations causées à cet environnement par l'Etat défendeur, on ne peut que conclure que le droit des personnes déplacées au respect de leur vie privée et de leur domicile a été violé en ce sens également.

168. La Commission a observé tout d'abord qu'il n'y avait pas lieu de rechercher si les personnes touchées par les mesures litigieuses auraient dû se prévaloir des recours internes pour faire redresser leurs griefs. Selon elle, le refus des autorités de la «RTCN» d'autoriser les personnes déplacées à retourner chez elles traduirait l'existence d'une politique officielle reconnue et, partant, d'une pratique administrative. Dans ces conditions, la Convention n'exigeait pas l'épuisement des voies de recours internes.

169. Concernant le fond des griefs relatifs à la situation difficile des personnes déplacées, la Commission a estimé, eu égard aux conclusions de ses rapports de 1976 et de 1983 et à ses constats en l'espèce (paragraphes 30-33 ci-dessus), que ces personnes continuaient sans exception d'être empêchées de rentrer chez elles dans le nord de Chypre ou même de s'y rendre en visite. Indépendamment des motifs de sûreté publique, prévus au paragraphe 2 de l'article 8, qu'avançait le gouvernement défendeur, la Commission a estimé que les faits révélaient une violation continue de l'article 8 à cet égard. Quant au point de vue du gouvernement défendeur selon lequel la demande des Chypriotes grecs déplacés de regagner leur domicile dans le Nord devait être traitée dans le cadre général des pourparlers intercommunautaires,

la Commission était d'avis que ces négociations, qui étaient encore très loin d'avoir produit quelque résultat concret que ce soit sur cette question précise, ne sauraient être invoquées pour justifier le maintien permanent de mesures contraires à la Convention.

170. Etant donné sa conclusion relative à l'article 8 ainsi que celles qui se rapportent au grief que le gouvernement requérant tire de l'article 1 du Protocole n° 1 (paragraphe 183 ci-dessous), la Commission a estimé qu'il n'était pas nécessaire d'examiner les autres allégations de ce gouvernement concernant les modifications apportées à l'environnement démographique et culturel dans lequel se trouvaient les domiciles des personnes déplacées.

171. La Cour note que, devant la Commission, le gouvernement défendeur n'a pas contesté l'affirmation du gouvernement requérant selon laquelle il était impossible aux Chypriotes grecs déplacés de rentrer chez eux dans le Nord. Il soutenait que cette situation demeurerait inchangée tant qu'une solution politique globale n'aurait pas été trouvée à la question chypriote. Dans ces conditions, la Cour estime, à l'instar de la Commission, qu'il n'y a pas à se demander si les personnes lésées auraient dû se prévaloir des recours internes offerts par la «RTCN».

172. La Cour observe que la politique officielle des autorités de la «RTCN» consistant à dénier aux personnes déplacées le droit de regagner leur domicile est renforcée par les restrictions très sévères appliquées par ces mêmes autorités aux visites dans le Nord des Chypriotes grecs vivant dans le Sud. En conséquence, non seulement les personnes déplacées ne peuvent s'adresser aux autorités pour occuper de nouveau des maisons qu'elles ont abandonnées, mais elles sont en outre physiquement empêchées de s'y rendre en visite.

173. La Cour relève de plus que la situation dénoncée par le gouvernement requérant perdure depuis les événements survenus dans le nord de Chypre en 1974. Il semblerait qu'elle n'ait jamais été traduite en «lois», mais qu'elle relève d'une politique venant en application d'un arrangement bizonal prétendument destiné à réduire les risques de conflit que pourrait provoquer la cohabitation des communautés chypriote grecque et chypriote turque dans le Nord. Cet arrangement bizonal continue d'être débattu dans le cadre des pourparlers intercommunautaires qui se tiennent sous les auspices du Secrétaire général des Nations unies (paragraphe 16 ci-dessus).

174. La Cour formule à ce sujet les observations suivantes: premièrement, le déni total du droit des personnes déplacées au respect de leur domicile n'est pas prévu par la loi au sens de l'article 8 § 2 de la Convention (paragraphe 173 ci-dessus); deuxièmement, les pourparlers intercommunautaires ne sauraient être invoqués pour légitimer une violation de la Convention; troisièmement, la violation en cause fait

l'objet d'une politique qui perdure depuis 1974, et doit donc être qualifiée de continue.

175. Eu égard à ces considérations, la Cour conclut à la violation continue de l'article 8 de la Convention en raison du refus d'autoriser les Chypriotes grecs déplacés à regagner leur domicile dans le nord de Chypre.

176. Quant à l'allégation supplémentaire du gouvernement requérant concernant les modifications de l'environnement démographique et culturel du domicile des personnes déplacées, la Cour considère à l'instar de la Commission qu'il n'y a pas lieu d'examiner ce grief, étant donné qu'elle vient de conclure à la violation continue de l'article 8 de la Convention.

177. En outre, la Cour juge approprié d'étudier les arguments du gouvernement requérant au sujet de la séparation des familles (paragraphe 166 ci-dessus) avec les allégations de celui-ci portant sur les conditions de vie des Chypriotes grecs du Karpas.

2. Article 1 du Protocole n° 1

178. Le gouvernement requérant affirme que le refus continu de l'Etat défendeur d'autoriser le retour des personnes déplacées dans le nord de Chypre empêche celles-ci non seulement d'avoir accès à leurs biens situés dans cette région mais aussi d'en user, de les vendre, léguer, hypothéquer, développer et d'en jouir. Selon lui, il y a eu violation continue de tous les aspects du droit au respect des biens garanti par l'article 1 du Protocole n° 1, qui dispose :

> « Toute personne physique ou morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.
>
> Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etats de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes. »

179. Le gouvernement requérant soutient que l'Etat défendeur a adopté une politique systématique et continue d'atteintes aux biens immeubles des personnes déplacées. Il déclare notamment que la possession des biens en cause, dont les personnes déplacées ont été illégalement expropriées du fait qu'elles ont été chassées du Nord, a été transférée à des Turcs. Des mesures ont été prises pour « légaliser » cette appropriation illégale des biens et leur attribution à des organismes « d'Etat », Chypriotes turcs et colons venus de Turquie, par exemple par l'octroi de « titres de propriété » aux nouveaux possesseurs. Les victimes de ces atteintes n'ont jamais été indemnisées. De plus, des mesures spécifiques ont été prises pour mettre en valeur et exploiter

commercialement les terres des personnes déplacées, des terres appartenant à l'Eglise ont été cédées au fonds religieux musulman et la production agricole des terres chypriotes grecques est actuellement exportée avec des certificats d'origine turque.

180. Pour le gouvernement requérant, la violation continue des droits de propriété engage indubitablement la responsabilité de l'Etat défendeur au titre de la Convention, étant donné les conclusions énoncées par la Cour dans l'arrêt *Loizidou* (fond). Cette considération mise à part, il fait observer que, pour autant que l'Etat défendeur cherche à justifier les atteintes aux droits de propriété des personnes déplacées en se fondant sur la dérogation énoncée à l'article 1 du Protocole n° 1, les mesures «légales» invoquées doivent nécessairement être considérées comme nulles car elles émanent d'une entité sécessionniste illégale et ne peuvent de ce fait passer pour respecter les exigences qualitatives inhérentes à la notion de «prévisibilité par la loi».

181. La Commission a relevé que les griefs du gouvernement requérant se rapportaient essentiellement à la «législation» et à la pratique administrative avérée des autorités de la «RTCN». De ce fait, les personnes lésées n'étaient pas tenues d'user des recours internes, la Commission notant qu'en tout état de cause il semblait que les Chypriotes grecs privés de leurs biens dans le nord de Chypre n'en aient pas eu à leur disposition.

182. Quant au fond, la Commission a estimé que les atteintes alléguées aux droits de propriété des Chypriotes grecs déplacés étaient en substance de même nature que celle dont M^me^ Loizidou se plaignait dans sa requête. Même si celle-ci portait sur un cas particulier de la pratique administrative générale incriminée en l'espèce, il y avait lieu de considérer que le raisonnement suivi par la Cour aux paragraphes 63 et 64 de son arrêt *Loizidou* (fond) (pp. 2237-2238) valait également pour la pratique administrative en tant que telle.

183. La Commission a conclu, principalement pour les motifs exposés par la Cour dans son arrêt précité, qu'il y avait eu violation continue de l'article 1 du Protocole n° 1 pendant la période considérée du fait que les Chypriotes grecs possédant des biens dans le nord de Chypre avaient été privés de l'accès, de la maîtrise, de l'usage et de la jouissance de leurs biens ainsi que de toute réparation pour l'atteinte à leurs droits de propriété.

184. La Cour souscrit à l'analyse de la Commission. Elle note que, pour cette dernière, les preuves établissent que depuis juin 1989 au moins, les autorités de la «RTCN» ne reconnaissent plus les droits de propriété des Chypriotes grecs sur leurs biens sis dans le nord de Chypre (paragraphe 32 ci-dessus). Cette prétendue privation de propriété est inscrite dans une disposition constitutionnelle, «l'article 159 de la Constitution de la RTCN», à laquelle la «loi n° 52/1995» donne effet. Il semblerait que la

légalité des atteintes aux biens des personnes déplacées ne puisse pas être contestée devant les tribunaux de la « RTCN ». Dès lors, les personnes concernées ne sont pas tenues de se prévaloir des recours internes pour faire redresser leurs griefs.

185. La Cour observe de plus qu'en substance le gouvernement requérant ne se plaint pas d'une expropriation formelle et illégale des personnes déplacées, mais du fait que ces personnes, en raison d'un déni continu de l'accès à leurs biens, ont perdu toute maîtrise sur leurs terres ainsi que la possibilité d'en jouir. Comme elle l'a relevé précédemment (paragraphes 172-173 ci-dessus), l'exclusion physique des Chypriotes grecs du territoire de Chypre du Nord est mise en œuvre par la « RTCN » au titre d'une politique ou d'une pratique. Dans ces conditions, l'exigence d'épuisement ne s'applique pas.

186. La Cour rappelle avoir conclu dans l'arrêt *Loizidou* (fond) qu'en cette affaire la requérante ne pouvait passer pour avoir perdu son droit sur ses biens par le jeu de « l'article 159 de la Constitution de la RTCN », disposition qu'elle a considérée comme dépourvue de validité juridique aux fins de la Convention (p. 2231, § 44). L'adoption de la « loi n° 52/1995 » ne modifie en rien cette conclusion. La Cour ajoute que, bien que cette dernière loi n'ait pas été invoquée devant elle dans l'affaire *Loizidou*, il n'y a aucune raison de lui reconnaître plus de validité juridique qu'à « l'article 159 », auquel elle tend à donner effet.

187. La Cour est convaincue que le raisonnement comme la conclusion qu'elle a formulés dans l'arrêt *Loizidou* (fond) s'appliquent avec la même force aux Chypriotes grecs déplacés qui, telle M^me^ Loizidou, ne peuvent avoir accès à leurs biens se trouvant dans le nord de Chypre en raison des restrictions adoptées par les autorités de la « RTCN » pour les empêcher d'accéder physiquement à ces biens. Le déni continu et total de l'accès à leurs biens constitue à l'évidence une ingérence dans le droit des Chypriotes grecs déplacés au respect de leurs biens au sens de la première phrase de l'article 1 du Protocole n° 1. La Cour note en outre qu'en ce qui concerne la prétendue expropriation les personnes déplacées n'ont aucunement été dédommagées pour les atteintes à leurs droits de propriété qu'elles ont subies et continuent de subir.

188. La Cour relève que, lors de la procédure devant la Commission, le gouvernement défendeur s'est efforcé de justifier l'ingérence en invoquant les pourparlers intercommunautaires et la nécessité de reloger les réfugiés chypriotes turcs déplacés. Or dans l'affaire *Loizidou* il avait déjà avancé de tels arguments, que la Cour a rejetés dans son arrêt au fond (pp. 2237-2238, § 64). La Cour ne voit en l'espèce aucune raison de revenir sur ces justifications.

189. Pour ces raisons, la Cour conclut qu'il y a eu violation continue de l'article 1 du Protocole n° 1 en ce que les Chypriotes grecs possédant des biens dans le nord de Chypre se sont vu refuser l'accès à leurs biens, la

maîtrise, l'usage et la jouissance de ceux-ci ainsi que toute réparation de l'ingérence dans leur droit de propriété.

3. Article 13 de la Convention

190. Le gouvernement requérant affirme que le fait que l'Etat défendeur ne fournisse manifestement aucun recours effectif ni même un quelconque recours aux personnes déplacées pour redresser les violations de l'article 8 de la Convention et de l'article 1 du Protocole n° 1 entraîne à l'évidence une violation de l'article 13 de la Convention, qui dispose :

> « Toute personne dont les droits et libertés reconnus dans la (...) Convention ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles. »

191. Il approuve dans ses grandes lignes le raisonnement qui a conduit la Commission à conclure à la violation de l'article 13.

192. La Commission s'est appuyée sur sa conclusion selon laquelle les droits des personnes déplacées garantis par les articles 8 de la Convention et 1 du Protocole n° 1 avaient été violés, et ce au titre d'une pratique administrative. Pour autant que ces pratiques étaient inscrites dans la « législation » de la « RTCN », la Commission a noté qu'aucune disposition ne permettait aux Chypriotes grecs de contester leur exclusion physique du territoire du nord de Chypre. C'est pourquoi elle a conclu que les personnes déplacées ne disposaient d'aucun recours pour contester les ingérences dans les droits garantis par ces articles et qu'il y avait donc eu violation de l'article 13.

193. La Cour note que le gouvernement défendeur a fait valoir devant la Commission que, tant qu'une solution politique globale au problème chypriote acceptable par tous n'aurait pas été élaborée, il ne saurait être question d'un droit pour les personnes déplacées de retourner dans le nord de Chypre pour y retrouver leurs domiciles et leurs biens, ou de réclamer leurs biens immobiliers transférés aux autorités de la « RTCN » en vertu de « l'article 159 de la Constitution de la RTCN » et attribués à des Chypriotes turcs avec des titres de propriété conformément à la « loi n° 52/1995 ». Le gouvernement défendeur n'a pas affirmé devant la Commission que les personnes déplacées pouvaient se prévaloir des recours locaux pour contester cette politique d'ingérence dans leurs droits. De fait, la Cour estime qu'il serait contradictoire avec la politique déclarée d'offrir des recours pour contester son application. A cet égard, elle rappelle en outre avoir conclu, s'agissant des violations alléguées au titre des articles 8 de la Convention et 1 du Protocole n° 1, qu'aucune question ne se pose sous l'angle de l'épuisement des recours internes, et

renvoie aux motifs étayant cette conclusion (paragraphes 171-175 et 184-189 ci-dessus).

194. Dès lors, la Cour, à l'instar de la Commission, conclut qu'il y a eu violation de l'article 13 de la Convention du fait que l'Etat défendeur n'a fourni aux Chypriotes grecs ne résidant pas dans le nord de Chypre aucun recours pour contester les atteintes à leurs droits garantis par les articles 8 de la Convention et 1 du Protocole n° 1.

4. Article 14 de la Convention combiné avec les articles 8 et 13 et l'article 1 du Protocole n° 1

195. Le gouvernement requérant déclare que les pratiques administratives, la «législation» et les «dispositions constitutionnelles» en cause violent non seulement les droits garantis par les articles 8 de la Convention et 1 du Protocole n° 1 mais également l'article 14 de la Convention puisqu'elles visent exclusivement les Chypriotes grecs qui ne vivent pas dans le nord de Chypre. Cette dernière disposition est ainsi libellée:

> «La jouissance des droits et libertés reconnus dans la (...) Convention doit être assurée, sans distinction aucune, fondée notamment sur le sexe, la race, la couleur, la langue, la religion, les opinions politiques ou toutes autres opinions, l'origine nationale ou sociale, l'appartenance à une minorité nationale, la fortune, la naissance ou toute autre situation.»

196. Pour préciser son allégation, le gouvernement requérant affirme que l'Etat défendeur entend mettre les Grecs et Chypriotes grecs à l'index car seules ces catégories de personnes ne sont pas autorisées à acquérir des biens immeubles en «RTCN». D'autres «étrangers» comme les retraités britanniques peuvent faire l'acquisition de biens immeubles en «RTCN», y compris des biens «abandonnés» par les Chypriotes grecs déplacés. De plus, les Turcs de Turquie ne résidant pas en «RTCN» ne sont pas considérés comme ayant abandonné leurs biens et sont autorisés à acheter de nouvelles exploitations ou maisons.

197. Le gouvernement requérant fait en outre valoir qu'il y a de la part de l'Etat défendeur une pratique discriminatoire consistant à ne pas fournir de recours aux Chypriotes grecs et Grecs en matière de droit de propriété. Selon lui, il y a eu violation de l'article 14 de la Convention combiné avec l'article 13.

198. La Commission a conclu que les ingérences dans les droits garantis par les articles 8 de la Convention et 1 du Protocole n° 1 touchaient exclusivement les Chypriotes grecs ne résidant pas dans le nord de Chypre, et ce précisément au motif qu'ils appartenaient à cette catégorie de personnes. Il y a donc eu violation de l'article 14 de la Convention combiné avec les articles 8 et 1 du Protocole n° 1. La

Commission ne s'est pas prononcée sur le grief tiré de l'article 13 combiné avec l'article 14.

199. La Cour considère que, dans les circonstances de l'espèce, les griefs exposés par le gouvernement requérant au titre de ces articles sont les mêmes, quoique considérés sous un autre angle, que ceux qu'elle a déjà examinés sur le terrain des articles 8 et 13 de la Convention et de l'article 1 du Protocole n° 1, et au sujet desquels elle a conclu à la violation. Elle estime qu'il n'y a pas lieu de rechercher s'il y a eu en l'occurrence violation de l'article 14 combiné avec ces dispositions du fait d'un traitement discriminatoire à l'encontre des Chypriotes grecs ne résidant pas dans le nord de Chypre en ce qui concerne leurs droits au respect de leur domicile, au respect de leurs biens et à un recours effectif.

5. Article 3 de la Convention

200. Le gouvernement requérant affirme que le traitement auquel sont soumises les personnes déplacées s'analyse en une atteinte à l'article 3 de la Convention, ainsi libellé :

> « Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants. »

201. Il plaide que la Cour doit conclure à la violation de l'article 3 car, selon lui, infliger de dures épreuves à des catégories particulières de personnes en fonction de critères raciaux et ethniques et leur dénier les droits garantis par la Convention ou porter atteinte à ceux-ci, et ce de manière ciblée et publique, constitue une atteinte à la dignité humaine d'une gravité telle qu'elle représente un traitement inhumain.

202. La Commission a considéré qu'il n'y avait pas lieu de rechercher si la discrimination en cause était également constitutive d'un traitement inhumain ou dégradant au sens de l'article 3 vu sa conclusion sur le terrain de l'article 14.

203. Eu égard à sa propre conclusion relative aux griefs que le gouvernement requérant tire de l'article 14 de la Convention (paragraphes 195 et 199 ci-dessus) ainsi qu'à ses constats de violation des articles 8 et 13 de la Convention et de l'article 1 du Protocole n° 1, la Cour quant à elle ne juge pas nécessaire de rechercher si les faits allégués emportent également violation de l'article 3 de la Convention.

6. Articles 17 et 18 de la Convention

204. Le gouvernement requérant soutient que les faits de la cause révèlent une violation des articles 17 et 18 de la Convention, ainsi libellés :

Article 17

«Aucune des dispositions de la (...) Convention ne peut être interprétée comme impliquant pour un Etat, un groupement ou un individu, un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la (...) Convention ou à des limitations plus amples de ces droits et libertés que celles prévues à [la] Convention.»

Article 18

«Les restrictions qui, aux termes de la (...) Convention, sont apportées auxdits droits et libertés ne peuvent être appliquées que dans le but pour lequel elles ont été prévues.»

205. Il affirme qu'il y a eu violation de l'article 17 car l'Etat défendeur a apporté aux droits et libertés de certaines personnes, principalement des Chypriotes grecs, des limitations plus amples que celles prévues dans la Convention. Selon lui, l'Etat défendeur a appliqué des restrictions aux droits dans un but autre que celui prévu, au mépris de l'article 18 de la Convention.

206. De l'avis de la Cour, il n'y a pas lieu d'examiner séparément ces griefs, eu égard aux conclusions qu'elle a énoncées quant aux griefs du gouvernement requérant sur le terrain des articles 8 et 13 de la Convention et 1 du Protocole n° 1.

V. SUR LES VIOLATIONS ALLÉGUÉES DÉCOULANT DES CONDITIONS DE VIE DES CHYPRIOTES GRECS DANS LE NORD DE CHYPRE

207. Le gouvernement requérant affirme que les conditions de vie faites aux Chypriotes grecs restés dans le Nord donnent lieu à d'importantes violations de la Convention. Il souligne que ces violations résultent d'une pratique et visent une population très réduite et désormais essentiellement âgée vivant dans la région du Karpas, dans le nord de Chypre, en application d'une politique de nettoyage ethnique. On peut d'après lui mesurer le succès de celle-ci au fait que, sur les quelque 20 000 Chypriotes grecs qui vivaient dans le Karpas en 1974, il n'en reste actuellement plus que 429. Les maronites, dont 177 résident encore dans le nord de Chypre, souffrent de restrictions similaires mais moins dures.

208. Le gouvernement requérant invoque les articles 2, 3, 5, 6, 8, 9, 10, 11, 13 et 14 de la Convention et les articles 1 et 2 du Protocole n° 1.

A. Quant aux faits établis par la Commission

209. D'une manière générale, le gouvernement requérant soutient que c'est à tort et en allant contre les preuves que la Commission a conclu pour certains de ses griefs à la non-violation de la Convention.

D'après lui, les constats de la Commission sur des questions comme les restrictions à l'importation de livres autres que les manuels scolaires, les ingérences dans la correspondance et le déni d'accès aux soins médicaux ne sont pas seulement contraires aux dépositions écrites et orales des témoins, mais aussi aux conclusions très claires du «rapport Karpas» (paragraphe 36 ci-dessus) et aux études sur les actions menées par les autorités de la «RTCN» pour mettre en œuvre les mesures proposées en vue d'apaiser les souffrances que causent aux populations chypriote grecque et maronite les pratiques administratives de violation de leurs droits garantis par la Convention. Le gouvernement requérant affirme en outre que les témoins, dont le nombre a malheureusement été limité, n'ont eu qu'un court temps de parole pour relater leurs expériences devant les délégués de la Commission. De plus, les avocats du gouvernement requérant n'ont disposé que d'un infime délai après les auditions pour extraire les faits pertinents.

210. Le gouvernement requérant insiste pour que la Cour tienne compte de ces défauts, et d'autres, de la procédure d'audition des témoins lorsqu'elle se penchera sur les constats de la Commission. Selon lui, la Cour devrait se procurer l'étude humanitaire établie sur les maronites vivant dans le nord de Chypre, afin de juger des difficultés de leur situation. Il observe à cet égard que le Secrétaire général des Nations unies a proposé de communiquer cette étude au cours de la procédure devant la Commission mais que, le gouvernement défendeur s'y étant opposé, elle n'a pu être versée au dossier.

211. La Cour précise que la Commission a établi les faits en s'appuyant notamment sur les dépositions de témoins cités par les deux parties. Elle rappelle de surcroît avoir rejeté les critiques formulées par le gouvernement requérant quant à la manière dont les délégués ont conduit les auditions de témoins et réaffirme que celles-ci ont été organisées de sorte à respecter le principe de l'égalité des armes entre les deux parties (paragraphes 110-111 ci-dessus). Il faut noter en outre que, pour établir les faits, la Commission a largement puisé dans des documents tels que le «rapport Karpas» relatif aux conditions de vie de la population chypriote grecque enclavée dans le nord de Chypre et les rapports d'activité du Secrétaire général des Nations unies sur les mesures correctives exposées dans ledit rapport.

212. La Cour observe que le gouvernement requérant, s'il admet dans l'ensemble les faits établis par la Commission, critique certaines des conclusions qu'elle en a tirées. De son côté, et compte tenu de l'analyse large et approfondie des preuves à laquelle la Commission a procédé, la Cour n'aperçoit pas de circonstances exceptionnelles devant la conduire à s'écarter des faits établis par celle-ci. En revanche, elle recherchera avec soin si les faits corroborent tous les griefs du gouvernement requérant. Elle rappelle qu'elle se livrera à cet exercice en utilisant le critère de la

preuve «au-delà de tout doute raisonnable», même pour ce qui est de l'allégation ayant trait à l'existence d'une pratique administrative de violation des droits garantis par la Convention qu'invoque le gouvernement requérant (paragraphes 114-115 ci-dessus).

213. Quant à la demande du gouvernement requérant tendant à ce qu'elle se procure l'étude humanitaire relative aux conditions de vie de la communauté maronite dans le nord de Chypre, la Cour relève que le gouvernement défendeur n'a pas fait savoir qu'il ne s'opposait plus à la communication de ce document. Quoi qu'il en soit, elle observe que des aspects majeurs de l'étude ont été rendus publics et versés au dossier.

214. La Cour note qu'en examinant le bien-fondé des griefs du gouvernement requérant, la Commission a procédé à une évaluation d'ensemble des conditions de vie des Chypriotes grecs résidant dans le nord de Chypre sous l'angle des articles 3, 8 et 14 de la Convention. Parallèlement, elle a étudié le bien-fondé des griefs relatifs aux conditions de vie sur le terrain de chacun des articles pertinents (articles 2, 5, 6, 9, 10 et 11 de la Convention et articles 1 et 2 du Protocole n° 1), tout en traitant dans le cadre de son examen global les griefs spécifiques que le gouvernement requérant tire de l'article 8 au sujet des ingérences dans le droit des Chypriotes grecs du Karpas au respect de leur vie privée et familiale, de leur domicile et de leur correspondance. Etant donné que les arguments du gouvernement requérant sur ces derniers aspects de l'article 8 sont étroitement liés à ses observations générales relatives à la violation de cette disposition, la Cour estime qu'il convient de les aborder lorsqu'elle étudiera les conditions de vie des Chypriotes grecs du Karpas sous l'angle de l'article 8.

215. La Cour suivra donc la même démarche que la Commission.

B. Sur le bien-fondé des griefs du gouvernement requérant

1. Article 2 de la Convention

216. Le gouvernement requérant affirme que les restrictions qui frappent les Chypriotes grecs et maronites enclavés ayant besoin d'un traitement médical et le fait de ne pas leur fournir ou de ne pas les autoriser à bénéficier de soins adéquats emportent violation de l'article 2 de la Convention.

217. Pour lui, il faut considérer que l'Etat défendeur se livre à une pratique administrative consistant à ne pas protéger le droit à la vie de ces communautés, puisqu'il n'existe pas dans le nord de Chypre de services d'urgence et spécialisés ni de soins pour les personnes âgées. A l'appui de sa thèse, il indique que les Chypriotes grecs âgés sont obligés de se rendre dans le Sud pour obtenir les soins et l'attention nécessaires.

218. La Commission a conclu qu'il n'y avait pas eu violation de l'article 2 du fait que les Chypriotes grecs et maronites vivant dans le nord de Chypre s'étaient vu dénier l'accès aux soins. Elle a considéré que, même s'il avait pu y avoir des carences dans certains cas, ces populations avaient en général accès aux soins médicaux, y compris les hôpitaux dans le Sud. Elle n'a donc pas estimé nécessaire de rechercher si les recours internes éventuellement disponibles en «RTCN» avaient été épuisés en vue de redresser ce grief.

219. La Cour observe qu'une question peut se poser sous l'angle de l'article 2 de la Convention lorsqu'il est prouvé que les autorités d'un Etat contractant ont mis la vie d'une personne en danger en lui refusant les soins médicaux qu'elles se sont engagées à fournir à l'ensemble de la population. A cet égard, elle note que l'article 2 § 1 de la Convention astreint l'Etat non seulement à s'abstenir de provoquer la mort de manière volontaire et irrégulière, mais aussi à prendre les mesures nécessaires à la protection de la vie des personnes relevant de sa juridiction (*L.C.B. c. Royaume-Uni*, arrêt du 9 juin 1998, *Recueil* 1998-III, p. 1403, § 36). Or elle relève que la Commission n'a pas été en mesure d'établir, à partir des faits, que les autorités de la «RTCN» empêchaient délibérément la population concernée de bénéficier de soins médicaux ou avaient adopté une pratique consistant à retarder le traitement des demandes de patients souhaitant se faire soigner dans le Sud. Elle constate que, pendant la période considérée, les populations concernées se sont effectivement heurtées à des difficultés pour consulter un médecin par suite des restrictions que les autorités de la «RTCN» leur imposaient en matière de liberté de circulation et que, dans certains cas, il y a bien eu des retards. Toutefois, il n'a pas été établi que la vie de malades ait été mise en danger du fait de retards dans des cas particuliers. Il faut aussi noter que ni la population chypriote grecque ni la population maronite n'ont été empêchées de bénéficier des services médicaux existant dans le Nord, y compris les hôpitaux. Le gouvernement requérant critique la qualité des soins offerts dans le Nord. Cependant, la Cour ne juge pas nécessaire de rechercher en l'espèce dans quelle mesure l'article 2 de la Convention impose à un Etat contractant l'obligation d'offrir un certain niveau de soins médicaux.

220. La Cour observe en outre que les difficultés que connaissent les communautés chypriote grecque et maronite dans le domaine de la santé découlent essentiellement des restrictions apportées à leur liberté de circulation, lesquelles résultent d'une pratique administrative qui ne peut être attaquée devant les tribunaux de la «RTCN» (paragraphe 41 ci-dessus). C'est pourquoi la Cour considère qu'il ne s'impose pas d'examiner la question de l'épuisement des recours internes.

221. La Cour conclut que n'est établie aucune violation de l'article 2 de la Convention à raison d'une pratique alléguée consistant à refuser aux

Chypriotes grecs et maronites vivant dans le nord de Chypre l'accès aux soins médicaux.

222. Elle reviendra sur le grief du gouvernement requérant relatif à l'entrave alléguée à l'accès aux soins médicaux lorsqu'elle étudiera globalement la question du respect de l'article 8 de la Convention (paragraphes 281 et suivants ci-dessous).

2. Article 5 de la Convention

223. Invoquant l'article 5 de la Convention, le gouvernement requérant affirme que les preuves établissent manifestement que le droit des Chypriotes grecs enclavés à la sûreté a fait l'objet d'une pratique de violation. Le passage pertinent de l'article 5 est ainsi rédigé :

« 1. Toute personne a droit à la liberté et à la sûreté. (...) »

224. Selon lui, la Commission a eu tort de conclure que ce grief n'était pas corroboré par les preuves. Il soutient que les dépositions écrites et orales des témoins montrent clairement la vulnérabilité et les craintes de la population enclavée ainsi que l'impunité dont bénéficient les auteurs d'infractions contre les personnes et les biens. Sur ce dernier point, le gouvernement requérant observe que la police n'a pris aucune mesure alors qu'elle était saisie de plaintes ; or si les agresseurs et suspects ne sont pas identifiés, toute action civile est impossible même s'il existe des recours. Il souligne qu'il faut tenir compte de l'âge avancé des victimes de ces actes criminels ainsi que de la crainte de représailles éprouvée par certains des témoins qui ont été entendus par les délégués de la Commission.

225. La Commission a relevé qu'aucun Chypriote grec enclavé n'avait réellement été détenu pendant la période à l'étude. Elle n'a pas non plus considéré comme établies les allégations de menaces pour la sûreté. Dans ces conditions, la question de l'épuisement des recours internes ne se posait pas. Elle a conclu à la non-violation de l'article 5.

226. La Cour constate que le gouvernement requérant n'affirme pas que l'un quelconque des Chypriotes grecs enclavés a réellement été détenu pendant la période en question. Le grief qu'il exprime est lié à la vulnérabilité de cette population âgée et décroissante face à la menace d'agressions et d'actes criminels, et à son sentiment d'insécurité en général. Toutefois, la Cour estime que ces questions sortent du champ d'application de l'article 5 de la Convention et qu'il convient plutôt d'en traiter lorsqu'elle procédera à l'examen d'ensemble des conditions de vie des Chypriotes grecs du Karpas sous l'angle des exigences de l'article 8 (paragraphes 281 et suivants ci-dessous).

227. C'est pourquoi la Cour conclut qu'il n'y a pas eu violation de l'article 5 de la Convention.

3. Article 6 de la Convention

228. Le gouvernement requérant, rappelant ses précédents arguments concernant les recours internes soulevés dans le cadre des questions préliminaires (paragraphes 83-85 ci-dessus), affirme que les Chypriotes grecs du nord de Chypre sont privés du droit d'obtenir qu'un tribunal indépendant et impartial établi par la loi statue sur leurs droits et obligations de caractère civil. Il prie la Cour de conclure à la violation de l'article 6 de la Convention, qui dispose en ses passages pertinents:

> « 1. Toute personne a droit à ce que sa cause soit entendue équitablement (...) par un tribunal indépendant et impartial, établi par la loi, qui décidera (...) des contestations sur ses droits et obligations de caractère civil (...) »

229. Il critique le fait que la Commission n'ait pas pris en compte l'illégalité intrinsèque du régime dans le cadre duquel fonctionnent les tribunaux de la «RTCN». Il fait valoir à ce propos que l'on ne saurait affirmer que ces tribunaux sont «établis par la loi» au sens de l'article 6 tel qu'interprété dans la jurisprudence de la Cour. Il déplore que la Commission ait commis l'erreur de considérer que les tribunaux de la «RTCN» avaient une base légale suffisante au sein du «système constitutionnel et juridique de la RTCN». De plus, la Commission a négligé des éléments probants appuyant son point de vue selon lequel la population chypriote grecque enclavée n'avait aucune confiance en l'indépendance et l'impartialité du système judiciaire, et les décisions rendues en faveur des justiciables restaient lettre morte en raison de l'intimidation pratiquée par les colons turcs. Plusieurs faits s'ajoutent à cela: premièrement, l'absence d'aide judiciaire susceptible de faciliter l'ouverture d'actions et, deuxièmement, l'absence de mesures de la part des autorités pour empêcher les colons de se livrer à des actes d'intimidation; en conséquence, les décisions de justice demeurent inexécutables. De surcroît, il ne faut pas oublier que la possibilité d'ester en justice est gênée de par les restrictions touchant la liberté de circulation des Chypriotes grecs enclavés et donc leur accès aux tribunaux. Selon le gouvernement requérant, le «rapport Karpas» confirme l'existence de pareilles entraves sérieuses à la justice.

230. La Commission a conclu à partir des faits que les Chypriotes grecs vivant dans le nord de Chypre n'étaient pas empêchés d'intenter des actions civiles devant les juridictions de la «RTCN». Selon elle, le gouvernement requérant n'a pas prouvé son allégation selon laquelle il existait en «RTCN» une pratique consistant à dénier l'accès à la justice.

231. Pour autant que le gouvernement requérant a soutenu que les tribunaux de la «RTCN» ne satisfaisaient pas aux critères énoncés à l'article 6, la Commission a noté, premièrement, que rien, dans le cadre institutionnel du système judiciaire de la «RTCN», ne permettait de jeter le doute sur l'indépendance et l'impartialité des tribunaux civils ou

l'impartialité subjective et objective des juges et, deuxièmement, que ces tribunaux fonctionnaient sur la base de la législation interne de la «RTCN», indépendamment du fait que la «RTCN» n'était pas un Etat légitime au regard du droit international. La Commission a considéré que l'avis consultatif émis par la Cour internationale de justice dans l'affaire de la Namibie (paragraphe 86 ci-dessus) appuyait ce point de vue. De plus, il fallait selon elle tenir dûment compte de ce que les juridictions civiles de la «RTCN» s'inspiraient en substance de la tradition anglo-saxonne et ne se distinguaient pas fondamentalement de celles qui étaient en place avant les événements de 1974 ni de celles établies dans la partie sud de Chypre.

232. Dès lors, la Commission a conclu que, pendant la période considérée, il n'y avait pas eu violation de l'article 6 de la Convention dans le chef des Chypriotes grecs vivant dans le nord de Chypre.

233. La Cour constate que le gouvernement requérant s'est borné à présenter des arguments quant à la branche civile de l'article 6 de la Convention. Elle rappelle à cet égard que le premier paragraphe de cet article énonce le droit d'accès à un tribunal afin d'obtenir qu'il tranche les contestations sur des droits ou obligations de caractère civil que l'on peut dire, au moins de manière défendable, reconnus en droit interne; il n'assure par lui-même aux droits et obligations aucun contenu matériel déterminé dans l'ordre juridique des Etats contractants (voir, entre autres, *Lithgow et autres c. Royaume-Uni*, arrêt du 8 juillet 1986, série A n° 102, p. 70, § 192). De plus, un tribunal se caractérise au sens matériel par son rôle juridictionnel: trancher, sur la base de normes de droit et à l'issue d'une procédure organisée, toute question relevant de sa compétence. Il doit aussi remplir une série d'autres conditions – indépendance, notamment à l'égard de l'exécutif, impartialité, durée du mandat des membres, garanties offertes par la procédure – dont plusieurs figurent dans le texte même de l'article 6 § 1 (voir, entre autres, *Belilos c. Suisse*, arrêt du 29 avril 1988, série A n° 132, p. 29, § 64).

234. La Cour note que, selon le gouvernement requérant, la population chypriote grecque enclavée est empêchée d'intenter des actions civiles devant les tribunaux de la «RTCN», et ce au titre d'une pratique administrative. Or cette affirmation est en contradiction avec les déclarations des témoins entendus par les délégués, y compris ceux cités par le gouvernement requérant. Elle va également à l'encontre des preuves écrites soumises à la Commission. Il est manifeste que des Chypriotes grecs vivant dans le Nord ont parfois obtenu gain de cause dans des actions en défense de leur droit de propriété (paragraphe 39 ci-dessus) et que l'accès aux tribunaux locaux ne leur est pas interdit pour des raisons de race, de langue ou d'origine ethnique. Telle est la conclusion que la Commission a tirée des faits; la Cour ne la conteste pas. Pour elle, le gouvernement requérant doit montrer que les

tribunaux ont été saisis mais n'ont pas rempli leur rôle. Faute de cela, elle ne peut que spéculer sur le bien-fondé du grief. Certes, la population enclavée n'a engagé qu'un nombre limité d'actions. Toutefois, ce fait en lui-même ne suffit pas à corroborer le grief du gouvernement requérant, notamment si l'on pense que cette population est âgée et peu nombreuse et que, pour des raisons d'allégeance, elle est peut-être psychologiquement peu encline à saisir les juridictions instaurées par la «RTCN».

235. La Cour estime aussi que cette conclusion ne se trouve en rien modifiée par le fait que certaines questions susceptibles de peser d'un grand poids dans la vie quotidienne des Chypriotes grecs enclavés ne peuvent être portées devant les tribunaux de la «RTCN», comme les restrictions à leur liberté de circulation ou leur droit de transmettre leurs biens à des membres de leur famille vivant dans le Sud (paragraphes 40-41 ci-dessus). La Cour considère toutefois que les mesures en cause, qu'elles relèvent d'une politique ou de la «législation», doivent être considérées sous l'angle de l'effectivité des recours au sens de l'article 13 de la Convention et de leur compatibilité avec les autres dispositions matérielles de la Convention et de ses Protocoles. Leur existence ne renforce pas la thèse du gouvernement requérant concernant la pratique administrative alléguée de violation de l'article 6. Elle rappelle à cet égard que l'application de cet article présuppose un grief défendable en droit interne (*Lithgow et autres* précité, p. 70, § 192, et *Powell et Rayner c. Royaume-Uni*, arrêt du 21 février 1990, série A n° 172, pp. 16-17, § 36).

236. Quant à la mise en cause par le gouvernement requérant de la légalité même du système judiciaire de la «RTCN», la Cour observe que celui-ci a avancé des arguments similaires sur la question préliminaire de l'épuisement des voies de recours internes en ce qui concerne les griefs faisant l'objet de la présente requête (paragraphes 83-85 ci-dessus). La Cour a conclu que, indépendamment de l'illégalité de la «RTCN» au regard du droit international, on ne saurait exclure que des requérants soient tenus de porter leurs griefs entre autres devant les tribunaux locaux en vue d'un redressement. Elle a également indiqué à ce propos que sa principale préoccupation en la matière était d'assurer, du point de vue du système de la Convention, que soient utilisés des mécanismes de résolution des différends qui permettent de saisir la justice pour redresser des préjudices ou demander réparation.

237. La Cour constate, à partir des preuves soumises à la Commission (paragraphe 39 ci-dessus), que la «RTCN» est dotée d'un système judiciaire opérationnel pour le règlement des litiges portant sur des droits et obligations de caractère civil définis en «droit interne» et dont la population chypriote grecque peut faire usage. Ainsi que la Commission l'a constaté, le fonctionnement et les procédures de ce système judiciaire reflètent la tradition judiciaire chypriote, qui est celle de la *common law*

(paragraphe 231 ci-dessus). A son avis, sachant que le « droit interne de la RTCN » définit le contenu matériel de ces droits et obligations à l'intention de la population dans son ensemble, il s'ensuit nécessairement que les tribunaux internes établis par la « loi » de la « RTCN » sont le lieu qui convient pour en obtenir l'exécution. Selon la Cour, les tribunaux locaux peuvent passer pour « établis par la loi », ce qui renvoie à la « base constitutionnelle et juridique » sur laquelle ils fonctionnent, aux fins de statuer sur des « droits et obligations de caractère civil ».

Pour la Cour, toute autre conclusion serait contraire aux intérêts de la communauté chypriote grecque et conduirait à fermer aux membres de cette communauté la possibilité d'obtenir une décision de justice sur un grief dirigé contre un particulier ou un organisme public (paragraphe 96 ci-dessus). Il faut noter à cet égard que les éléments de preuve confirment que des Chypriotes grecs qui ont saisi la justice pour faire valoir leurs droits de caractère civil ont obtenu gain de cause.

238. La Cour ajoute que sa conclusion sur ce point ne vaut nullement reconnaissance, implicite ou autre, de ce que la « RTCN » constitue un Etat (paragraphes 61, 90 et 92 ci-dessus).

239. La Cour relève que le gouvernement requérant conteste l'indépendance et l'impartialité du système judiciaire de la « RTCN » en se plaçant du point de vue de la population chypriote grecque locale. Or la Commission a rejeté ce grief au vu des faits (paragraphe 231 ci-dessus). Eu égard à sa propre appréciation des preuves, la Cour souscrit à cette conclusion.

240. Pour ces raisons, la Cour conclut que n'est établie aucune violation de l'article 6 de la Convention dans le chef des Chypriotes grecs vivant dans le nord de Chypre à raison d'une pratique alléguée de déni de leur droit d'obtenir qu'un tribunal indépendant et impartial décide équitablement de leurs droits et obligations de caractère civil.

4. Article 9 de la Convention

241. Le gouvernement requérant allègue que les faits révèlent une ingérence dans le droit des Chypriotes grecs enclavés à la liberté de manifester leur religion, au mépris de l'article 9 de la Convention, ainsi libellé :

> « 1. Toute personne a droit à la liberté de pensée, de conscience et de religion ; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.
>
> 2. La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui. »

242. Il affirme que l'ingérence dans le droit de la population concernée garanti par l'article 9 s'exprime dans la politique de la «RTCN» consistant à limiter la liberté de circulation et par là l'accès aux lieux de culte de celle-ci. Il condamne aussi le fait que la «RTCN» n'ait pas nommé d'autres prêtres dans la région. Il souscrit aux constats que la Commission a tirés des faits et à sa conclusion de violation de l'article 9. Il ajoute qu'il y a également lieu de conclure à la violation de cette disposition à l'égard de la population maronite vivant dans le nord de Chypre parce que celle-ci s'est aussi trouvée en butte à des restrictions à son droit de se rendre dans ses lieux saints situés dans le nord de Chypre et de les entretenir.

243. La Commission a observé qu'un certain nombre de mesures encadrait la vie religieuse des Chypriotes grecs enclavés. A cet égard, elle a noté qu'au moins jusqu'à une période récente ils ne pouvaient se rendre comme ils le voulaient au monastère Apostolos Andreas ni sortir de leurs villages pour participer à des cérémonies religieuses. De plus, les autorités de la «RTCN» n'avaient pas approuvé la nomination d'autres prêtres dans la région, alors qu'il n'y en avait qu'un seul pour tout le Karpas. Pour la Commission, ces restrictions empêchaient l'organisation normale et régulière des cérémonies religieuses orthodoxes grecques, ce qui enfreignait l'article 9 de la Convention. Elle a estimé de plus qu'il n'existait aucun recours effectif pour faire redresser les mesures incriminées.

244. Partant, la Commission a conclu qu'il y avait eu pendant la période considérée violation de l'article 9 de la Convention dans le chef des Chypriotes grecs vivant dans le nord de Chypre.

245. La Cour admet les faits tels que la Commission les a établis et le gouvernement requérant ne les conteste pas. Ce dernier ne prétend pas que les autorités de la «RTCN» ont entravé en tant que tel l'exercice par les Chypriotes grecs du droit de manifester leur religion individuellement ou collectivement, pareille ingérence n'étant d'ailleurs pas corroborée par les faits. Toutefois, les restrictions touchant leur liberté de circulation pendant la période à l'étude ont considérablement réduit leur aptitude à respecter leurs convictions religieuses, notamment l'accès aux lieux de culte situés en dehors de leurs villages et leur participation à d'autres aspects de la vie religieuse.

246. La Cour conclut qu'il y a eu violation de l'article 9 de la Convention dans le chef des Chypriotes grecs vivant dans le nord de Chypre.

247. Elle rappelle que le gouvernement requérant l'a priée de formuler un constat similaire pour ce qui est de la communauté maronite vivant dans le nord de Chypre. Toutefois, elle estime que les preuves dont elle dispose ne sont pas suffisantes pour démontrer au-delà de tout doute raisonnable que les membres de cette communauté ont subi le même préjudice que la population chypriote grecque du Nord dans

l'exercice de leur droit à la liberté de religion. C'est pourquoi elle conclut que n'est établie aucune violation de l'article 9 à l'égard de la population maronite vivant dans le nord de Chypre.

5. Article 10 de la Convention

248. Le gouvernement requérant affirme que les autorités de la «RTCN» se sont livrées à une censure excessive des ouvrages scolaires, ont restreint l'importation de journaux et livres en langue grecque et empêché la diffusion de tous les journaux ou livres dont elles désapprouvaient le contenu. A son avis, ces actes sont constitutifs d'une pratique administrative de violation du droit des Chypriotes grecs enclavés de recevoir et de communiquer des informations et des idées garanti par l'article 10 de la Convention, ainsi libellé :

> « 1. Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontière. Le présent article n'empêche pas les Etats de soumettre les entreprises de radiodiffusion, de cinéma ou de télévision à un régime d'autorisations.
>
> 2. L'exercice de ces libertés comportant des devoirs et des responsabilités peut être soumis à certaines formalités, conditions, restrictions ou sanctions prévues par la loi, qui constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à l'intégrité territoriale ou à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui, pour empêcher la divulgation d'informations confidentielles ou pour garantir l'autorité et l'impartialité du pouvoir judiciaire. »

249. Le gouvernement requérant approuve le constat de la Commission selon lequel les ouvrages scolaires destinés aux enfants chypriotes grecs du Nord ont fait l'objet d'une censure excessive. Il estime cependant que la Commission n'a pas tenu suffisamment compte des nombreuses preuves montrant que les livres et journaux en langue grecque étaient censurés et confisqués par les autorités de la «RTCN». Selon lui, il faut être plus que crédule pour imaginer que les autorités censurent les manuels scolaires, tout innocent que soit leur contenu, mais autorisent l'importation libre d'autres catégories de livres. Il invoque les déclarations de certains témoins entendus par les délégués de la Commission selon lesquelles les livres et les journaux devaient être acheminés clandestinement vers le nord de Chypre par crainte qu'ils ne fussent confisqués.

250. La Commission a conclu à la violation de l'article 10 dans la mesure où, pendant la période considérée, les autorités chypriotes turques avaient censuré ou interdit la distribution d'un nombre considérable de manuels scolaires au motif que leur contenu risquait de susciter l'hostilité entre les communautés ethniques vivant dans le nord

de Chypre. Elle a relevé que les livres ainsi censurés ou interdits traitaient de sujets tels que la langue grecque, l'anglais, l'histoire, la géographie, la religion, l'instruction civique, les sciences, les mathématiques et la musique. Même en tenant compte de l'éventualité que ces manuels renfermaient des éléments reflétant le point de vue du gouvernement requérant sur l'histoire et la culture de Chypre, la mesure attaquée ne satisfaisait pas aux exigences prévues au paragraphe 2 de l'article 10. Selon la Commission, il n'existait aucun recours qui eût permis aux parents ou professeurs de contester les mesures en cause.

251. En revanche, la Commission n'a pas estimé établi, au vu des faits, que les restrictions aient frappé l'importation de journaux ou de livres en langues grecque ou chypriote grecque autres que des ouvrages scolaires, pas plus que la réception de communications électroniques. Quant à l'absence de système de distribution de journaux dans la région du Karpas, la Commission a noté qu'elle n'avait pas eu connaissance de mesures administratives ayant empêché la mise en place d'un tel système.

252. La Cour rappelle avoir accepté les faits établis par la Commission (paragraphe 212 ci-dessus). Cela posé, elle confirme le constat de celle-ci selon lequel il y a eu méconnaissance de l'article 10 en raison de la pratique des autorités de la « RTCN » consistant à passer au crible le contenu des manuels scolaires avant de les distribuer. Elle observe à cet égard que, bien que cette procédure d'agrément ait été conçue pour identifier les éléments susceptibles de menacer les relations intercommunautaires et ait été appliquée dans le cadre des mesures d'instauration de la confiance recommandées par l'UNFICYP (paragraphe 44 ci-dessus), les autorités ont en réalité unilatéralement censuré ou interdit un grand nombre d'ouvrages scolaires, aussi anodin soit leur contenu, pendant la période considérée. Il faut de plus noter que, devant la Commission, le gouvernement défendeur n'a fourni aucune justification de cette large censure. Force est donc de conclure que celle-ci est largement sortie du cadre des mesures de confiance et s'analyse en un déni du droit à la liberté d'information. Il ne semble avoir existé aucun recours pour contester les décisions des autorités de la « RTCN » à cet égard.

253. La Cour note que, selon le gouvernement requérant, la Commission a versé dans l'erreur dans son appréciation des preuves relatives aux autres catégories de livres et journaux en langue grecque. Après avoir soigneusement étudié les questions évoquées par le gouvernement requérant, la Cour ne juge pas que les exemples isolés de confiscation au poste de contrôle de Ledra Palace, qui ont été présentés à la Commission et mis en évidence par le gouvernement requérant dans son mémoire et à l'audience, établissent cette allégation à l'aune du critère de la preuve « au-delà de tout doute raisonnable ».

254. La Cour estime donc qu'il y a eu violation de l'article 10 de la Convention dans le chef des Chypriotes grecs vivant dans le nord de Chypre dans la mesure où les manuels destinés à leur école primaire ont été soumis à une censure excessive pendant la période considérée.

6. Article 11 de la Convention

255. Le gouvernement requérant précise que, sous l'angle de cette disposition, il se plaint de ce que les Chypriotes grecs du Karpas font l'objet d'ingérences dans leur droit à la liberté de réunion, au mépris de l'article 11 de la Convention, ainsi libellé :

> « 1. Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.
>
> 2. L'exercice de ces droits ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui. Le présent article n'interdit pas que des restrictions légitimes soient imposées à l'exercice de ces droits par les membres des forces armées, de la police ou de l'administration de l'Etat. »

256. Le gouvernement requérant affirme que la Commission n'a pas pris dûment en compte les preuves relatives à la politique menée de longue date par l'Etat défendeur pour empêcher la population enclavée d'exercer son droit de participer à des réunions organisées ou impromptues. Selon lui, la Commission a conclu à tort que des obstacles n'ont été mis aux réunions bicommunautaires qu'à partir de la mi-1996, raison pour laquelle ils ne feraient pas l'objet de la présente requête. Le gouvernement requérant fait valoir que la population concernée n'a en réalité cessé, depuis 1974, de se heurter à ces obstacles qui découlent de la politique générale de restrictions suivie par l'Etat défendeur en matière de liberté de circulation. Il soutient que ce grief est corroboré par les observations du Secrétaire général des Nations unies sur les mesures appliquées par les autorités chypriotes turques à l'égard des Chypriotes grecs et des maronites installés dans la partie nord de Chypre (document ONU S/1995/1020, annexe IV, 30 novembre 1995). A titre d'exemple de restrictions au droit à la liberté d'association pendant la période à l'étude, le gouvernement requérant indique que les autorités chypriotes turques ont refusé à une chanteuse grecque l'autorisation de donner un concert dans la région du Karpas le 13 novembre 1994.

257. Le gouvernement requérant allègue en outre que la pratique administrative en cause entraîne aussi une violation de l'article 8 étant donné que les populations chypriote grecque et maronite ne peuvent se rassembler ni se réunir librement, que ce soit en dehors de leurs villages

en «RTCN» ou en traversant la ligne de cessez-le-feu pour se rendre dans la zone tampon, ou encore dans la zone libre.

258. La Commission est partie du principe que, sous l'angle de l'article 11, le gouvernement requérant se plaignait essentiellement de la violation du droit de la population concernée à la liberté d'association au sens de fonder une association ou d'y adhérer ou de participer aux activités d'une association ayant un minimum d'organisation, à l'exclusion des relations sociales. Elle a constaté d'après les faits qu'au cours de la période considérée le droit ainsi défini n'avait fait l'objet d'aucune restriction. Quant aux entraves à la participation des Chypriotes grecs enclavés à des événements bicommunautaires organisés par les Nations unies, la Commission a noté que les documents de l'ONU faisaient état d'obstacles de cette nature à partir de la mi-1996. Or ces événements étant fondés sur des faits distincts survenus après la date de la décision sur la recevabilité, les griefs qui s'y rapportaient ne pouvaient être pris en compte.

259. Ayant conclu à la non-violation du droit des Chypriotes grecs vivant dans le nord de Chypre à la liberté d'association, la Commission a considéré qu'il n'y avait pas lieu de rechercher si les recours éventuellement disponibles avaient été épuisés s'agissant des allégations du gouvernement requérant.

260. La Cour observe que les questions soulevées par le gouvernement requérant sont essentiellement factuelles et ont été examinées avec soin par la Commission lorsqu'elle a effectué son enquête. Elle note que, sur la base des preuves analysées, la Commission a estimé impossible de conclure que les autorités de la «RTCN» avaient mis au cours de la période considérée des obstacles aux démarches entreprises par des Chypriotes grecs pour créer leurs propres associations ou des associations communes avec des Chypriotes turcs ou encore à la participation de Chypriotes grecs aux activités de ces associations (paragraphe 258 ci-dessus). La Cour souscrit au constat de la Commission et ajoute que les preuves ne lui permettent pas de conclure, au-delà de tout doute raisonnable, à l'existence d'une pratique administrative de violation du droit des Chypriotes grecs enclavés à la liberté d'association pendant la période en question.

261. A l'instar de la Commission, la Cour considère que cette conclusion la dispense de rechercher si les recours internes éventuellement disponibles ont été épuisés pour ce qui est des griefs en cause.

262. Quant aux plaintes du gouvernement requérant se rapportant à une pratique qui consisterait à imposer des restrictions à la participation de Chypriotes grecs à des événements bi- ou intercommunautaires durant la période concernée, la Cour estime, étant donné l'objet des événements cités, qu'il convient plutôt d'en traiter sous l'angle de l'article 8 de la Convention. Elle s'y emploiera dans le cadre de son examen global de cet article (paragraphes 281 et suivants ci-dessous).

263. La Cour conclut que n'est établie aucune violation de l'article 11 de la Convention à raison d'une pratique alléguée consistant à dénier aux Chypriotes grecs vivant dans le nord de Chypre le droit à la liberté d'association.

7. Article 1 du Protocole n° 1

264. Le gouvernement requérant soutient que les Chypriotes grecs et maronites vivant dans le nord de Chypre ont été victimes de violations des droits garantis par l'article 1 du Protocole n° 1. A son avis, les autorités de l'Etat défendeur ont illégalement porté atteinte aux biens des Chypriotes grecs et maronites décédés ainsi qu'à ceux des personnes ayant décidé de quitter définitivement la partie septentrionale. En outre, les propriétaires fonciers se sont vu refuser l'accès à leurs terres agricoles situées à plus de cinq kilomètres de leurs villages. Le gouvernement requérant prie la Cour de confirmer la conclusion de la Commission selon laquelle il y a eu violation de l'article 1 du Protocole n° 1 à ces égards.

265. De plus, le gouvernement requérant renvoie à son grief selon lequel, d'une part, des tiers ont porté atteinte aux biens des personnes concernées, que ce soit dans les villages ou au-delà de la zone des cinq kilomètres et, d'autre part, les autorités de la «RTCN» ont approuvé ou toléré ces atteintes. D'après lui, les éléments soumis à la Commission montrent clairement que la police locale avait pour pratique administrative de ne pas enquêter sur les intrusions illégales sur les terres d'autrui, les cambriolages et les dommages aux biens, alors que l'article 1 du Protocole n° 1 met l'Etat défendeur dans l'obligation positive de le faire. Il déplore que la Commission n'ait pas conclu à la violation en dépit de l'existence de preuves suffisantes attestant d'une pratique administrative. Le gouvernement requérant prie la Cour de s'écarter de l'avis de la Commission concernant ce grief.

266. Ayant examiné les preuves, la Commission a constaté que rien ne montrait qu'il y avait eu au cours de la période considérée un quelconque cas d'attribution illicite à autrui de biens appartenant à des Chypriotes grecs et que les biens des Chypriotes grecs vivant dans le Nord n'avaient pas été tenus pour des «biens abandonnés» au sens de «l'article 159 de la Constitution de la RTCN» (paragraphe 184 ci-dessus). Elle a observé à cet égard que les tribunaux locaux s'étaient prononcés en faveur d'un certain nombre de Chypriotes grecs qui affirmaient que leurs biens avaient fait l'objet d'une attribution irrégulière en vertu des «dispositions» internes applicables. En revanche, elle a estimé établi que les Chypriotes grecs qui décidaient d'aller s'installer dans le Sud n'étaient plus considérés comme les propriétaires légaux des biens laissés dans le Nord. Leur situation était en cela comparable à celle des personnes déplacées (paragraphe 187

ci-dessus) et, comme pour celles-ci, il n'existait aucun recours leur permettant de dénoncer cet état de choses.

267. La Commission n'était pas non plus persuadée que les héritiers vivant dans le sud de Chypre aient réellement eu la possibilité d'user des recours offerts par les tribunaux de la «RTCN» pour faire valoir leurs droits sur les biens situés dans le Nord et appartenant à des Chypriotes grecs décédés. Selon la Commission, le gouvernement défendeur ne lui avait pas démontré de manière convaincante que ces biens n'étaient pas considérés comme «abandonnés» en vertu des «dispositions» pertinentes. En tout état de cause, l'existence même de ces «dispositions» et l'éventualité de leur application étaient, pour la Commission, incompatibles avec l'esprit et la lettre de l'article 1 du Protocole n° 1.

268. Quant aux actes criminels de tiers évoqués par le gouvernement requérant, la Commission a estimé que les preuves ne corroboraient pas les allégations selon lesquelles les autorités de la «RTCN» auraient incité ou participé à la commission d'infractions contre des biens. Elle a noté qu'un certain nombre d'actions civiles et pénales avaient été engagées avec succès devant les tribunaux au sujet d'incidents de ce type et qu'il y avait récemment eu une augmentation des poursuites pénales.

269. La Cour note, à partir des faits établis par la Commission, que la pratique de la «RTCN» en matière de propriété des biens situés dans le Nord consiste à ne pas établir de distinction entre les propriétaires chypriotes grecs déplacés et les propriétaires chypriotes grecs du Karpas quittant définitivement la «RTCN», en conséquence de quoi les biens immeubles de ces derniers sont réputés «abandonnés» et peuvent être attribués à des tiers en «RTCN».

Pour la Cour, ces faits révèlent une violation continue de l'article 1 du Protocole n° 1 dans le chef des Chypriotes grecs vivant dans le nord de Chypre en ce que, lorsqu'ils quittent définitivement cette région, leur droit au respect de leurs biens n'est pas garanti.

270. La Cour observe en outre que les preuves recueillies au sujet de ce grief donnent elles aussi fortement à penser que les Chypriotes grecs possédant des biens dans le Nord ne peuvent les léguer à leur mort et que ceux-ci reviennent aux autorités à titre de biens «abandonnés». Elle note que le gouvernement défendeur a affirmé devant la Commission que les héritiers pouvaient user d'un recours pour faire valoir leur droit sur les biens d'un parent chypriote grec décédé. La Cour, pas plus que la Commission, n'est convaincue que les intéressés aient quelque chance d'obtenir gain de cause, étant donné le point de vue exprimé par le gouvernement défendeur devant la Commission: les biens des Chypriotes grecs décédés reviennent aux autorités car ils sont assimilés à des biens «abandonnés». Elle remarque en outre que les héritiers installés dans le Sud ne pourraient en réalité pas se rendre dans le Nord pour y avoir accès aux biens dont ils auraient hérité.

En conséquence, il y a eu violation de l'article 1 du Protocole n° 1 à cet égard aussi, en ce que les droits successoraux des personnes vivant dans le Sud sur les biens sis dans le Nord appartenant à leurs proches chypriotes grecs décédés ne sont pas reconnus.

271. En ce qui concerne l'allégation du gouvernement requérant relative à l'absence de mesures pour protéger les biens des Chypriotes grecs d'actes criminels, la Cour estime que les éléments fournis n'établissent pas, à en juger à l'aune du critère requis, l'existence d'une pratique administrative de la part des autorités de la « RTCN » consistant à cautionner pareils actes, à ne pas enquêter à leur sujet ou à ne rien faire pour les prévenir. Elle observe que la Commission a examiné avec soin les dépositions des témoins sans pouvoir conclure que cette allégation se trouvait établie. Ayant procédé à sa propre appréciation des éléments de preuve invoqués par le gouvernement requérant, la Cour souscrit à cette conclusion. Elle relève en outre que le « droit interne » de la « RTCN » prévoit la possibilité d'assigner au civil les auteurs de troubles de la possession et au pénal les auteurs d'actes illicites. Les tribunaux de la « RTCN » ont parfois donné gain de cause à des plaignants chypriotes grecs. Comme indiqué précédemment, les éléments de preuve ne permettent pas d'établir l'existence, pendant la période en cause, d'une pratique administrative consistant à dénier aux membres de la population enclavée l'accès à un tribunal pour faire valoir leurs droits de caractère civil (paragraphe 240 ci-dessus).

272. Dès lors, la Cour conclut que n'est établie aucune violation de l'article 1 du Protocole n° 1 à raison d'une pratique alléguée consistant à ne pas protéger les biens des Chypriotes grecs vivant dans le nord de Chypre contre les ingérences de particuliers.

8. Article 2 du Protocole n° 1

273. Le gouvernement requérant affirme que les enfants des Chypriotes grecs vivant dans le nord de Chypre ne disposent pas d'un enseignement secondaire et que les parents chypriotes grecs d'enfants en âge de fréquenter le secondaire se voient en conséquence refuser le droit d'assurer à leur progéniture une éducation conforme à leurs convictions religieuses et philosophiques. Il invoque l'article 2 du Protocole n° 1, qui dispose :

> « Nul ne peut se voir refuser le droit à l'instruction. L'Etat, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques. »

274. Le gouvernement requérant approuve les raisons pour lesquelles la Commission a conclu à la violation de cette disposition. Il prie toutefois la Cour de constater que cette clause a également été méconnue du fait

que l'Etat défendeur a empêché l'enseignement primaire de fonctionner correctement jusqu'à la fin de 1997 car, avant cela, la « RTCN » n'avait pas permis la nomination d'un instituteur. Selon lui, cette politique porte atteinte au droit des enfants chypriotes grecs à l'instruction primaire.

275. La Commission, s'appuyant sur les principes dégagés dans l'*Affaire relative à certains aspects du régime linguistique de l'enseignement en Belgique* (fond) (arrêt du 23 juillet 1968, série A n° 6), a noté que les possibilités d'enseignement secondaire auparavant offertes aux enfants chypriotes grecs avaient été supprimées par les autorités chypriotes turques. Dès lors, il n'était plus possible de répondre au souhait légitime des Chypriotes grecs vivant dans le nord de Chypre de faire instruire leurs enfants selon leur tradition culturelle et ethnique, notamment avec un enseignement en langue grecque. La Commission a considéré en outre que l'absence totale d'enseignement secondaire pour cette population ne saurait être compensée par l'autorisation accordée par les autorités aux élèves de fréquenter des écoles dans le Sud, vu les restrictions qui frappaient leur retour dans le Nord (paragraphe 44 ci-dessus). Elle a conclu que la pratique des autorités chypriotes turques s'analysait en un déni de la substance du droit à l'instruction et en une violation de l'article 2 du Protocole n° 1.

276. Pour ce qui est de l'enseignement primaire en langue grecque, la Commission a estimé que les autorités chypriotes turques n'avaient pas méconnu le droit à l'instruction de la population concernée et que les problèmes découlant de la vacance de postes d'enseignants avaient été résolus.

277. La Cour relève que, lorsque les enfants de parents chypriotes grecs vivant dans le nord de Chypre souhaitent suivre un enseignement secondaire en langue grecque, ils sont contraints de fréquenter des établissements situés dans le Sud, car cette possibilité ne leur est pas offerte en « RTCN » depuis que les autorités chypriotes turques ont décidé de la supprimer. Les enfants qui atteignent l'âge de douze ans peuvent certes poursuivre leur scolarité dans le Nord, où l'enseignement est dispensé en turc ou en anglais. Il n'y a donc pas au sens strict du terme de refus du droit à l'instruction, qui est la principale obligation incombant aux Parties contractantes en vertu de la première phrase de l'article 2 du Protocole n° 1 (*Kjeldsen, Busk Madsen et Pedersen c. Danemark*, arrêt du 7 décembre 1976, série A n° 23, pp. 25-26, § 52). De plus, cette disposition ne précise pas la langue dans laquelle l'enseignement doit être dispensé afin que le droit à l'instruction soit respecté (arrêt précité en l'*affaire linguistique belge*, pp. 30-31, § 3).

278. Pour la Cour, toutefois, la possibilité offerte aux parents chypriotes grecs d'inscrire leurs enfants dans les établissements secondaires du Nord dans les conditions proposées n'est pas très réaliste, étant donné que ces enfants y ont déjà effectué leur scolarité primaire

dans une école chypriote grecque. Les autorités ne peuvent ignorer que les parents chypriotes grecs souhaitent que leurs enfants poursuivent leur enseignement en langue grecque. Le fait que les autorités de la «RTCN», après avoir organisé un enseignement primaire en langue grecque, n'aient pas fait de même pour le secondaire ne peut que passer pour un déni de la substance du droit en cause. On ne saurait affirmer que l'existence d'établissements secondaires dans le Sud offrant un enseignement conforme à la tradition linguistique des Chypriotes grecs enclavés suffise à satisfaire à l'obligation qu'impose l'article 2 du Protocole n° 1, vu l'impact de cette option sur la vie familiale (paragraphes 277 ci-dessus et 292 ci-dessous).

279. La Cour note que le gouvernement requérant soulève un grief supplémentaire concernant l'enseignement primaire et l'attitude des autorités de la «RTCN» en matière de nomination des professeurs. A l'instar de la Commission, elle estime que, prises globalement, les preuves ne révèlent pas l'existence d'une pratique administrative consistant à refuser le droit à l'instruction primaire.

280. Eu égard à ce qui précède, la Cour conclut qu'il y a eu violation de l'article 2 du Protocole n° 1 dans le chef des Chypriotes grecs vivant dans le nord de Chypre dans la mesure où ils n'ont pas bénéficié d'un enseignement secondaire approprié.

C. Examen d'ensemble des conditions de vie des Chypriotes grecs dans le nord de Chypre

1. Article 8 de la Convention

281. Invoquant l'article 8 de la Convention, le gouvernement requérant affirme qu'il y a de la part de l'Etat défendeur une pratique administrative de violation, à divers égards, du droit des Chypriotes grecs vivant dans le nord de Chypre au respect de leur vie privée et de leur domicile.

282. Il invite la Cour à confirmer le constat de violation de cette disposition formulé par la Commission, premièrement du fait de la séparation des familles engendrée par les restrictions continues au droit des Chypriotes grecs de regagner leur domicile dans le Nord et, deuxièmement, à raison des conséquences de l'ensemble de ces restrictions sur la population enclavée.

283. En outre, le gouvernement requérant avance que la Commission a omis de conclure expressément à la violation de l'article 8 du fait des conséquences que les diverses restrictions imposées à la liberté de circulation des Chypriotes grecs enclavés durant la période considérée ont eues sur le droit des intéressés au respect de leur vie privée. A cet

égard, il met en évidence les mesures empêchant cette population de se réunir avec d'autres personnes de manière informelle ou occasionnelle et d'assister à des réunions bicommunautaires ou d'autres rassemblements (paragraphes 256-257 ci-dessus). Le gouvernement requérant affirme aussi qu'il y a lieu de constater une violation supplémentaire distincte du droit au respect de la vie privée, compte tenu des incidences des restrictions à la liberté de circulation sur l'accès des Chypriotes grecs enclavés aux soins médicaux (paragraphes 216-217 ci-dessus). Sur ce point, il relève que l'obligation pour les Chypriotes grecs vivant dans le Nord de demander une autorisation pour se faire soigner et l'impossibilité pour eux de recevoir la visite de médecins chypriotes grecs ou maronites de leur choix portent atteinte à leur droit au respect de leur vie privée.

284. Le gouvernement requérant soutient encore que les éléments produits devant la Commission montrent à l'évidence qu'il y a également eu un manquement à l'article 8 à raison des ingérences des autorités de la «RTCN» dans le droit au respect de la correspondance par le biais de fouilles au poste de contrôle de Ledra Palace et la confiscation de lettres, et eu égard au refus de ces mêmes autorités, pendant une longue période et de manière discriminatoire, d'installer le téléphone au domicile des Chypriotes grecs et à l'interception des communications téléphoniques une fois que celles-ci se révélaient possibles.

285. Le gouvernement requérant réitère son point de vue selon lequel l'Etat défendeur, à travers sa politique de colonisation, a délibérement altéré l'environnement démographique et culturel du «domicile» des Chypriotes grecs (paragraphe 167 ci-dessus). Il prie la Cour de constater une violation de l'article 8 de ce fait.

286. En conclusion, le gouvernement requérant déclare que la Cour doit, contrairement à la Commission, aborder séparément chacune des ingérences susmentionnées et dire qu'elles donnent lieu à des violations distinctes de l'article 8.

287. La Commission a procédé à un examen global des griefs du gouvernement requérant, sans perdre de vue les divers aspects de ladite disposition (paragraphe 214 ci-dessus). Elle a estimé, au vu des faits, que les restrictions imposées par les autorités de la «RTCN», pendant la période considérée, à la liberté des Chypriotes grecs de circuler entre le Nord et le Sud constituaient une grave ingérence dans le droit des Chypriotes grecs enclavés au respect de leur vie familiale. De plus, la liberté des intéressés de se déplacer dans le Karpas, y compris de se rendre dans les villes et villages voisins, s'accompagnait d'un contrôle policier strict et omniprésent. La Commission a constaté que les visiteurs étaient escortés par des policiers qui, dans certains cas, restaient avec eux à l'intérieur du domicile de leurs hôtes. Pour la Commission, cette pratique administrative s'analysait en une ingérence manifeste dans le

droit des Chypriotes grecs enclavés au respect de leur vie privée et de leur domicile.

288. La Commission a relevé qu'il n'existait aucun recours permettant de contester les mesures appliquées à la population enclavée, lesquelles ne sauraient trouver quelque justification que ce fût au regard du second paragraphe de l'article 8.

289. Compte tenu de ce constat, la Commission n'a pas jugé devoir examiner le bien-fondé du grief du gouvernement requérant relatif aux incidences alléguées de la politique de colonisation menée par l'Etat défendeur sur l'environnement démographique et culturel du domicile des Chypriotes grecs.

290. Elle a estimé en outre que les éléments de preuve n'établissaient pas l'existence, au cours de la période à l'étude, d'une pratique administrative consistant à faire fi du droit des Chypriotes grecs vivant dans le nord de Chypre au respect de leur correspondance.

291. Toutefois, la Commission a noté que, considérée dans son ensemble, la vie quotidienne des Chypriotes grecs du nord de l'île se caractérisait par une multitude de conditions défavorables qui étaient dans une large mesure la conséquence directe de la politique officielle menée par l'Etat défendeur et son administration subordonnée. Selon la Commission, ces circonstances adverses aggravaient la violation du droit des Chypriotes grecs enclavés au respect de leur vie privée et familiale et de leur domicile.

292. La Cour relève en premier lieu que les faits établis par la Commission confirment que, durant la période examinée, les mesures imposées par les autorités de la « RTCN » pour limiter le regroupement des familles ont considérablement entravé l'exercice par les Chypriotes grecs enclavés du droit au respect de leur vie familiale. Ainsi, dans la procédure devant la Commission, le gouvernement défendeur n'a pas contesté que les Chypriotes grecs qui quittaient définitivement le Nord n'étaient pas autorisés à y retourner, même s'ils y laissaient de la famille (paragraphe 29 ci-dessus). Si les autorités de la « RTCN » ont pris en 1998 des dispositions destinées à faciliter dans une certaine mesure les visites familiales, la période examinée en l'espèce se caractérise néanmoins par de sévères restrictions du nombre et de la durée des visites. De plus, au cours de la période en question, les élèves du nord de Chypre fréquentant des établissements scolaires dans le Sud n'étaient pas autorisés à rentrer définitivement dans le Nord après l'âge de seize ans pour les jeunes gens et dix-huit ans pour les jeunes filles. Il y a lieu de noter également que certaines restrictions s'appliquaient aux visites de ces étudiants à leurs parents dans le Nord (paragraphe 43 ci-dessus).

293. De l'avis de la Cour, les restrictions imposées, par principe et sans aucune base légale, pendant la période considérée se sont traduites par la séparation forcée de familles et ont privé la population chypriote grecque du

Nord de toute possibilité de mener une vie familiale normale. Ces restrictions étant dépourvues de base légale, la Cour n'a pas à rechercher si les ingérences litigieuses se justifient au regard du second paragraphe de l'article 8 de la Convention. Pour la même raison, il n'y a pas lieu d'examiner si les personnes lésées auraient dû épuiser les voies de recours internes pour contester ce qui constitue en réalité une pratique administrative d'ingérence dans l'exercice du droit au respect de la vie familiale.

294. Quant aux atteintes alléguées au droit des Chypriotes grecs enclavés au respect de leur vie privée et de leur domicile, la Cour constate que la Commission a estimé établi par les éléments de preuve qu'au cours de la période en question les contacts et déplacements des membres de cette communauté avaient effectivement été surveillés (paragraphe 287 ci-dessus), les intéressés ayant dû rendre compte aux autorités des motifs, même les plus banals, de leurs déplacements en dehors de leur village. La Cour relève aussi que la surveillance exercée par les autorités allait jusqu'à la présence physique d'agents de l'Etat au domicile de Chypriotes grecs à l'occasion de visites sociales ou autres effectuées par des tiers, y compris des parents proches.

295. La Cour estime que pareils actes, extrêmement importuns et généralisés, emportent violation du droit de la population chypriote grecque de la région du Karpas au respect de sa vie privée et familiale. Aucune base légale n'a été invoquée, et moins encore une justification de nature à faire jouer les dispositions du second paragraphe de l'article 8 de la Convention. Ces actes procédant d'une pratique, aucune question ne se pose en l'occurrence quant à l'épuisement des voies de recours internes.

296. A la lumière de ce qui précède, la Cour conclut qu'il y a eu violation du droit des Chypriotes grecs vivant dans le nord de Chypre au respect de leur vie privée et familiale et de leur domicile garanti par l'article 8 de la Convention.

297. Par ailleurs, la Cour note que le gouvernement requérant réfute la conclusion de la Commission selon laquelle l'existence durant la période examinée d'une pratique administrative consistant à intercepter ou ouvrir la correspondance des Chypriotes grecs enclavés n'est pas établie. Eu égard à sa propre appréciation des éléments de preuve, la Cour estime ne pas pouvoir retenir cette objection. Elle observe que les preuves confirment que dans certains cas des fouilles ont été pratiquées sur des personnes au poste de contrôle de Ledra Palace afin de vérifier si elles transportaient des lettres. Toutefois, les indices dont elle dispose n'étayent pas avec le niveau de preuve requis l'allégation selon laquelle ces fouilles relèvent d'une pratique administrative ; ils ne permettent pas non plus de considérer qu'il existait une pratique systématique d'écoutes téléphoniques au domicile des Chypriotes grecs.

298. Dans ces conditions, la Cour conclut que n'est établie aucune violation de l'article 8 de la Convention à raison d'une pratique alléguée

d'ingérence dans le droit des Chypriotes grecs vivant dans le nord de Chypre au respect de leur correspondance.

299. La Cour relève que le gouvernement requérant ne conteste pas la décision de la Commission d'envisager globalement les conditions de vie des Chypriotes grecs dans le nord de Chypre sous l'angle de l'article 8. Il invite toutefois la Cour à examiner indépendamment certaines allégations d'ingérences dans le droit au respect de la vie privée et à statuer séparément sur leur bien-fondé (paragraphes 283-286 ci-dessus). De l'avis de la Cour, les faits invoqués par le gouvernement requérant à cet égard sont en réalité liés à son allégation plus générale selon laquelle l'Etat défendeur mène une politique visant à revendiquer la partie nord de Chypre pour les Chypriotes turcs et des colons en provenance de Turquie et à exclure toute influence chypriote grecque. Le gouvernement requérant affirme que cette politique se manifeste par la sévérité des restrictions imposées à la population chypriote grecque enclavée. Pour la Cour, les griefs spécifiques soulevés par le gouvernement requérant concernant les entraves à l'accès aux soins médicaux et à la participation à des manifestations bicommunautaires ou intercommunautaires (paragraphes 216-227, 257 et 283 ci-dessus) appellent un examen dans le cadre d'une analyse générale des conditions de vie de la population concernée sous l'angle de leurs conséquences sur le droit des intéressés au respect de leur vie privée et familiale.

300. A ce propos, la Cour ne peut que faire sien le constat émis par la Commission au paragraphe 489 de son rapport selon lequel les restrictions qui accablent les Chypriotes grecs enclavés au quotidien engendrent chez les personnes concernées le sentiment «d'être contraintes de vivre dans un environnement hostile où elles ne peuvent guère mener une vie privée et familiale normale». A l'appui de ce constat, la Commission a noté les conditions défavorables auxquelles étaient soumis les intéressés, dont l'absence de moyens de communication normaux (paragraphe 45 ci-dessus), l'impossibilité pratique de se procurer la presse chypriote grecque (paragraphe 45 ci-dessus), le nombre insuffisant de prêtres (paragraphe 47 ci-dessus), le choix difficile auquel parents et élèves se trouvaient confrontés en ce qui concerne l'enseignement secondaire (paragraphes 43-44 ci-dessus), les restrictions et les formalités imposées à la liberté de circulation, notamment – précise la Cour – pour se faire soigner et participer à des manifestations bi- ou intercommunautaires, et l'impossibilité de sauvegarder les droits patrimoniaux en cas de départ ou de décès (paragraphe 40 ci-dessus).

301. La Cour, à l'instar de la Commission, considère que ces restrictions constituent des facteurs aggravant les violations constatées quant au droit des Chypriotes grecs enclavés au respect de leur vie privée ou familiale (paragraphe 296 ci-dessus). Eu égard à cette conclusion, elle

estime qu'il n'y a pas lieu d'examiner séparément les allégations du gouvernement requérant sur le terrain de l'article 8 concernant l'installation de colons turcs dans le nord de Chypre (paragraphe 285 ci-dessus).

2. Article 3 de la Convention

302. Le gouvernement requérant allègue que les Chypriotes grecs de la région du Karpas, dans le nord de Chypre, subissent un traitement inhumain et dégradant, en particulier par la voie d'une discrimination s'analysant en un tel traitement, qui relève d'une pratique.

303. Il soutient que la Cour, comme la Commission, doit conclure à la violation de l'article 3. Le gouvernement requérant souscrit pleinement au raisonnement de la Commission sur ce point.

304. La Commission a rejeté la thèse du gouvernement défendeur selon laquelle elle ne pouvait pas examiner si la totalité des mesures dénoncées par le gouvernement requérant, y compris celles pour lesquelles elle ne concluait pas à un manquement à la Convention, attestait de la mise en œuvre d'une politique de discrimination raciale emportant violation de l'article 3 de la Convention. A ce propos, la Commission a en particulier tenu compte du rapport qu'elle avait adopté au titre de l'ancien article 31 dans l'affaire des *Asiatiques d'Afrique orientale c. Royaume-Uni* (n[os] 4403/70-4419/70 et suiv., rapport de la Commission du 14 décembre 1973, Décisions et rapports 78-B, p. 62). Vu ses constats de violation de la Convention à maints égards, la Commission a noté que l'ensemble des ingérences tenues pour établies visaient exclusivement les Chypriotes grecs vivant dans le nord de Chypre et ce pour la raison même qu'ils appartenaient à ce groupe de personnes. La Commission a conclu que le traitement incriminé était manifestement discriminatoire à l'encontre des intéressés et se fondait sur leurs «origine ethnique, race et religion». En dépit d'améliorations récentes de la situation des Chypriotes grecs enclavés, les difficultés auxquelles ceux-ci avaient été confrontés au cours de la période considérée continuaient d'affecter leur vie quotidienne et atteignaient un degré de gravité constituant une atteinte à leur dignité humaine.

305. La Cour rappelle que, dans son arrêt *Abdulaziz, Cabales et Balkandali c. Royaume-Uni* du 28 mai 1985, série A n° 94, elle a adhéré à la thèse des requérantes selon laquelle, nonobstant l'applicabilité de l'article 14, un grief relatif à un traitement discriminatoire pouvait soulever une question distincte sous l'angle de l'article 3. Elle a conclu, sur le fond, que la différence de traitement litigieuse dans cette affaire ne dénotait aucun mépris ou manque de respect pour la personnalité des requérantes et ne tendait pas à les humilier ou les rabaisser, et ne l'avait pas fait (p. 42, §§ 90-92).

306. La Cour rappelle également que, dans sa décision en l'affaire susmentionnée des *Asiatiques d'Afrique orientale*, la Commission avait observé, concernant une allégation de discrimination raciale, qu'une importance particulière devait être attachée à la discrimination fondée sur la race et que le fait d'imposer publiquement à un groupe de personnes un régime particulier fondé sur la race pouvait, dans certaines circonstances, constituer une forme spéciale d'atteinte à la dignité humaine. La Commission avait ajouté que le régime particulier imposé à un groupe de personnes pour des motifs raciaux pourrait constituer un traitement dégradant là où une distinction fondée sur un autre élément ne soulèverait pas de question de ce genre (*loc. cit.*, p. 62, § 207).

307. Avec ces considérations à l'esprit, la Cour se doit de constater que, dans son rapport d'activité du 10 décembre 1995 sur le « rapport Karpas » (paragraphe 36 ci-dessus), le Secrétaire général des Nations unies précise que l'étude menée par l'UNFICYP sur les conditions de vie des Chypriotes grecs du Karpas confirmait que cette population était soumise à des restrictions très rigoureuses, qui limitaient l'exercice de ses libertés fondamentales et qui tendaient à ce que la communauté soit inexorablement condamnée, à terme, à disparaître. Le Secrétaire général mentionne que les autorités ne permettent pas aux Chypriotes grecs du Karpas de léguer leurs biens immobiliers aux membres de leur famille, fussent-ils leurs plus proches parents, si ceux-ci n'habitent pas également dans la partie nord de l'île, qu'il n'y a pas d'établissements d'enseignement secondaire dans le Nord et que les enfants chypriotes grecs qui choisissent de fréquenter une école secondaire située dans la partie sud de l'île n'ont plus le droit d'habiter la partie nord à partir de l'âge de seize ans pour les jeunes gens et de dix-huit ans pour les jeunes filles.

308. La Cour relève que l'étude humanitaire dont fait état le « rapport Karpas » porte sur les années 1994 et 1995, qui entrent dans la période considérée aux fins des griefs formulés dans la présente requête. Elle rappelle que les questions soulevées par le Secrétaire général des Nations unies dans son rapport d'activité l'ont amenée, dans le cadre de sa propre analyse, à conclure à des violations des droits reconnus par la Convention aux Chypriotes grecs enclavés. Elle constate également que les restrictions imposées à la liberté de circulation de cette communauté ont de lourdes conséquences sur la jouissance de la vie privée et familiale des membres de celle-ci (paragraphes 292-293 ci-dessus) et sur leur droit de pratiquer leur religion (paragraphe 245 ci-dessus). La Cour a conclu à un manquement aux articles 8 et 9 de la Convention à cet égard.

309. Pour la Cour, force est de constater que les ingérences litigieuses visent les Chypriotes grecs du Karpas pour la raison même qu'ils appartiennent à ce groupe. Le traitement qu'ils ont subi durant la période considérée ne peut s'expliquer que par les caractéristiques qui

les distinguent de la population chypriote turque, à savoir leurs origine ethnique, race et religion. La Cour note au surplus la politique de l'Etat défendeur consistant à poursuivre les discussions dans le cadre des pourparlers intercommunautaires sur la base de principes de bizonalité et de bicommunautarisme (paragraphe 16 ci-dessus). L'attachement de l'Etat défendeur à ces principes se reflète nécessairement dans la situation où les Chypriotes grecs du Karpas vivent et sont contraints de vivre: isolement, liberté de circulation restreinte, surveillance et aucune perspective de renouvellement ou d'élargissement de leur communauté. Les conditions dans lesquelles cette population est condamnée à vivre sont avilissantes et heurtent la notion même de respect de la dignité humaine de ses membres.

310. De l'avis de la Cour, pendant la période examinée, la discrimination a atteint un tel degré de gravité qu'elle constituait un traitement dégradant.

311. La Cour conclut qu'il y a eu violation de l'article 3 de la Convention en ce que les Chypriotes grecs vivant dans la région du Karpas, dans le nord de Chypre, ont subi une discrimination s'analysant en un traitement dégradant.

3. Article 14 de la Convention combiné avec l'article 3

312. Le gouvernement requérant affirme que, nonobstant la conclusion de la Commission, qu'il partage, concernant le grief sur le terrain de l'article 3, la Cour doit examiner séparément sous l'angle de l'article 14 de la Convention les mesures discriminatoires visant exclusivement les Chypriotes grecs vivant dans le Nord. Il soutient que le principe fondamental qui sous-tend l'article 14 est l'objet d'une pratique de violation, les Chypriotes grecs enclavés étant victimes de différences de traitement abusives et injustifiées fondées sur la race et la religion. Il fait valoir que la discrimination se caractérise notamment par les restrictions et contraintes systématiques composant la politique de nettoyage ethnique dans le Karpas, la politique d'homogénéité démographique menée par l'Etat défendeur, les violations continues des droits de propriété des Chypriotes grecs par suite de l'implantation systématique de colons, les restrictions à la liberté de circulation des Chypriotes grecs déplacés en tant qu'aspect de l'exclusivité ethnique, le transfert aux colons turcs de la possession des biens des Chypriotes grecs déplacés contraints de quitter la région du Karpas, et le fait que les Chypriotes grecs installés dans la zone occupée par la Turquie subissent une privation continue de leurs biens.

313. La Commission, pour sa part, n'a pas estimé nécessaire, vu sa conclusion au titre de l'article 3, d'examiner aussi ces griefs dans le cadre des obligations incombant à l'Etat défendeur aux termes de l'article 14.

314. La Cour souscrit à la conclusion de la Commission. Eu égard au raisonnement qui sous-tend son propre constat de violation de l'article 3, elle ne juge pas nécessaire de se prononcer séparément sur ce qui s'analyse en réalité en une répétition d'un grief ayant déjà fait l'objet d'un examen approfondi.

315. Partant, compte tenu de son constat sur le terrain de l'article 3 de la Convention, la Cour conclut qu'il n'y a pas lieu de rechercher si, pendant la période à l'étude, il y a eu violation de l'article 14 combiné avec l'article 3 dans le chef des Chypriotes grecs vivant dans le nord de Chypre.

4. Article 14 de la Convention combiné avec les autres articles pertinents

316. Le gouvernement requérant demande à la Cour de constater que les mesures prises par l'Etat défendeur à l'égard des Chypriotes grecs enclavés engendrent des violations de l'article 14 de la Convention combiné avec les dispositions pertinentes. Il soutient que la population concernée subit une discrimination fondée sur la race, la religion et la langue dans la jouissance des droits garantis par ces clauses.

317. La Cour considère que, compte tenu des circonstances particulières de l'espèce, il n'y a pas lieu de rechercher s'il y a eu pendant la période en cause violation de l'article 14 combiné avec les autres dispositions pertinentes de la Convention.

D. Violation alléguée de l'article 13 de la Convention

318. Le gouvernement requérant prétend que l'Etat défendeur ne fournit aucun recours effectif devant une instance nationale répondant aux critères de l'article 6 ou à d'autres exigences qui rendent le recours conforme aux conditions de l'article 13. Selon lui, il s'agit d'une pratique qui, de surcroît, s'inscrit dans la législation.

319. Il invoque l'article 13 à l'appui de ses allégations selon lesquelles les Chypriotes grecs vivant dans le nord de Chypre se voient refuser toute possibilité de contester les atteintes à leurs droits, y compris celles commises par des particuliers avec le consentement ou le soutien des autorités de la « RTCN ».

320. Il ne conteste pas le constat de violation de l'article 13 émis par la Commission en ce qui concerne les ingérences des autorités de la « RTCN » dans les droits des Chypriotes grecs vivant dans le nord de Chypre au titre des articles 3, 8, 9 et 10 de la Convention et des articles 1 et 2 du Protocole n° 1.

321. Toutefois, pour le gouvernement requérant, la Commission a versé dans l'erreur en concluant à la non-violation de l'article 13 s'agissant des atteintes de particuliers aux droits des Chypriotes grecs enclavés au respect de leur domicile (article 8) et de leurs biens (article 1 du

Protocole n° 1). Il souligne que ces conclusions ne tiennent pas compte, d'une part, de la non-conformité des juridictions de la «RTCN» aux exigences de l'article 6 de la Convention (paragraphes 83-85 ci-dessus) et, d'autre part, du critère de la preuve à appliquer pour établir l'existence d'une pratique administrative de violation des droits énoncés dans la Convention (paragraphe 114 ci-dessus). Sur ce dernier point, il affirme que la Commission s'est attachée à tort à rechercher si les personnes lésées disposaient de recours effectifs devant les juridictions de la «RTCN» au lieu d'examiner si elle possédait des «preuves suffisantes» démontrant que, systématiquement, les actes criminels dirigés contre la population concernée ne faisaient l'objet d'aucune instruction – ce qui était manifestement le cas. Le gouvernement requérant prétend que la Commission a en particulier omis de considérer que l'absence de recours effectifs, imputable à l'Etat défendeur, résulte de la tolérance par les autorités d'actes criminels répétés contre le domicile et les biens de la population chypriote grecque. Selon lui, l'on ne saurait exciper de l'hypothèse erronée que les juridictions de la «RTCN» offrent des recours pour justifier cette omission.

C'est pourquoi le gouvernement requérant invite la Cour à dire qu'il y a eu aussi un manquement à l'article 13 de la Convention à raison des troubles de la possession et des dommages aux biens occasionnés par des particuliers et des ingérences commises par ces mêmes personnes dans le droit des Chypriotes grecs au respect de leur domicile.

322. La Commission a rappelé sa conclusion relative au grief tiré de l'article 6 de la Convention (paragraphes 230-232 ci-dessus) ainsi que sa décision d'examiner, au regard de l'ancien article 26, la question de l'existence d'un recours effectif concernant les différentes allégations du gouvernement requérant (paragraphes 86-88 ci-dessus). Elle a alors conclu qu'il n'y avait pas eu violation de l'article 13 quant aux ingérences de particuliers dans les droits des Chypriotes grecs vivant dans le Nord au titre des articles 8 de la Convention et 1 du Protocole n° 1, mais qu'il y avait eu violation de cette disposition à raison des ingérences des autorités dans l'exercice des droits garantis par les articles 3, 8, 9 et 10 de la Convention et 1 et 2 du Protocole n° 1.

323. La Cour souscrit à la conclusion de la Commission. Elle rappelle que, pour les diverses allégations formulées par le gouvernement requérant, elle a examiné si les personnes concernées avaient disposé de recours existant à un degré suffisant de certitude, en pratique comme en théorie, et si des circonstances particulières dispensaient les intéressés de les épuiser (paragraphe 99 ci-dessus). Ce faisant, la Cour a tenu compte de la charge de la preuve et de sa répartition entre les parties en matière d'épuisement (paragraphe 116 ci-dessus). En l'absence du gouvernement défendeur dans la procédure devant elle, la Cour a notamment pris en considération les preuves écrites et orales présentées en l'espèce et a

tenu dûment compte des observations du gouvernement requérant soulignant des points et des éléments sur lesquels il est en désaccord avec les conclusions de la Commission, en particulier l'existence de recours internes.

324. Malgré les objections du gouvernement requérant à certaines conclusions de la Commission, les éléments du dossier amènent la Cour à réaffirmer ses conclusions précédentes, lesquelles, rappelle-t-elle, sont conformes à celles de la Commission. Elles sont résumées ci-après.

Premièrement, la Cour estime qu'aucune violation de l'article 13 de la Convention n'est établie quant aux ingérences de particuliers dans les droits des Chypriotes grecs vivant dans le nord de Chypre au titre des articles 8 de la Convention et 1 du Protocole n° 1. A cet égard, elle réitère que les éléments de preuve n'indiquent pas qu'il existait, au cours de la période à l'étude, une pratique administrative de la part des autorités de la «RTCN» consistant à tolérer les actes criminels dirigés contre le domicile et les biens de la population chypriote grecque enclavée; il n'a pas non plus été démontré au niveau de preuve requis qu'il existait une pratique administrative consistant à refuser aux personnes lésées l'accès à un tribunal devant lequel revendiquer des droits à cet égard. Devant la Commission, le gouvernement défendeur a présenté des éléments à l'appui de son allégation selon laquelle il existait des recours et a souligné que des justiciables chypriotes grecs avaient obtenu gain de cause dans un certain nombre d'actions. Tout en relevant que ni l'article 6 ni l'article 13 de la Convention ne garantissent une issue favorable à un requérant dans une procédure judiciaire, la Cour estime que le gouvernement requérant n'a pas réfuté les éléments soumis à la Commission indiquant que les Chypriotes grecs lésés avaient accès aux juridictions locales pour y intenter des actions au civil contre les auteurs d'actes illicites.

Deuxièmement, elle conclut à la violation de l'article 13 de la Convention quant aux ingérences des autorités dans les droits des Chypriotes grecs vivant dans le nord de Chypre au titre des articles 3, 8, 9 et 10 de la Convention et 1 et 2 du Protocole n° 1. Ces ingérences relevant d'une pratique administrative de violation des droits en question, les personnes lésées ne disposent d'aucun recours ou d'aucun recours effectif.

VI. SUR LA VIOLATION ALLÉGUÉE DU DROIT DES CHYPRIOTES GRECS DÉPLACÉS À TENIR DES ÉLECTIONS

325. Devant la Commission, le gouvernement requérant a allégué la violation de l'article 3 du Protocole n° 1 en ce que les Chypriotes grecs déplacés ne pouvaient jouir effectivement du droit d'élire librement des

représentants au sein du corps législatif de Chypre pour le territoire occupé. Le gouvernement requérant n'a pas maintenu ce grief devant la Cour, que ce soit dans son mémoire ou à l'audience.

326. Tout en constatant que la Commission n'a pas conclu, sur le fond, à la violation de la disposition en question, la Cour ne juge pas nécessaire d'examiner le grief, étant donné que le gouvernement requérant ne le réitère pas.

327. Partant, la Cour conclut qu'il ne s'impose pas d'examiner d'office si les faits révèlent une violation de l'article 3 du Protocole n° 1.

VII. SUR LES VIOLATIONS ALLÉGUÉES DES DROITS DES CHYPRIOTES TURCS, Y COMPRIS LES MEMBRES DE LA COMMUNAUTÉ TSIGANE, INSTALLÉS DANS LE NORD DE CHYPRE

328. Le gouvernement requérant allègue que les opposants chypriotes turcs au régime de la « RTCN » et les membres de la communauté tsigane qui résident dans le nord de Chypre sont victimes de graves violations des droits protégés par la Convention. Il prétend que ces violations participent d'une pratique administrative et qu'il n'existe aucun recours effectif pour obtenir réparation à cet égard.

329. Il invoque les articles 3, 5, 6, 8, 10, 11, 13 et 14 de la Convention et les articles 1 et 2 du Protocole n° 1, en distinguant, le cas échéant, les allégations relatives aux Chypriotes turcs de celles concernant la communauté tsigane.

A. Objet des griefs devant la Cour

1. Thèse du gouvernement requérant

330. Selon le gouvernement requérant, la Commission a exclu à tort de son examen au fond plusieurs plaintes essentielles au motif qu'elles n'avaient pas été formulées expressément au stade de la recevabilité et que la substance de ces griefs n'entrait donc pas dans le cadre de sa décision sur la recevabilité. Les griefs en question portaient notamment sur la discrimination systématique et le traitement dégradant, contraires à l'article 3, que subissait la communauté tsigane; le traitement dégradant des Chypriotes turcs, y compris l'arrestation et la détention d'opposants politiques et de personnes qui avaient demandé l'asile au Royaume-Uni en raison de violations des droits de l'homme, au mépris de l'article 3; l'octroi d'une large compétence aux juridictions militaires pour juger des civils, contrairement à l'article 6; et les violations du droit des Chypriotes turcs d'origine au respect de leur vie privée et familiale et

de leur domicile résultant d'une politique d'installation et de colonisation massive par des Turcs de Turquie, au mépris de l'article 8.

331. Le gouvernement requérant conteste l'interprétation par la Commission de la décision sur la recevabilité et, en particulier, le point de vue selon lequel les griefs susmentionnés n'ont été développés qu'au stade de l'examen au fond. Il affirme que l'ensemble des questions ci-dessus avaient été exposées, que ce soit explicitement ou comme conséquence logique, en tant que griefs au stade de la recevabilité. Selon lui, les éléments de preuve produits au stade de l'examen au fond ne soulevaient pas de questions nouvelles mais avaient trait aux questions ou chefs de plainte déjà présentés. A l'appui de sa thèse, il fait valoir que le gouvernement défendeur a répondu à ces griefs dans ses observations de novembre 1997 et que la Commission lui a imparti un délai jusqu'au 27 août 1998 pour soumettre des observations complémentaires en réponse à celles de Chypre datées du 1er juin 1998. Le gouvernement requérant ajoute que la Commission elle-même a défini l'objet des griefs à examiner dans le mandat qu'elle avait conféré à ses délégués le 15 septembre 1997. Il soutient que l'ensemble de ses griefs entraient dans ce cadre.

2. Réponse de la Cour

332. La Cour constate que la Commission a déclaré recevables les griefs présentés par le gouvernement requérant sur le terrain des articles 5, 6, 10, 11 et 13 de la Convention et de l'article 1 du Protocole n° 1 s'agissant des Chypriotes turcs. Ont également été déclarés recevables les griefs tirés des articles 3, 5 et 8 de la Convention concernant le traitement des Tsiganes chypriotes turcs ayant demandé l'asile au Royaume-Uni. La Cour relève que, pour l'ensemble de ces griefs, le gouvernement requérant s'est fondé sur une série de faits spécifiques pour étayer ses allégations. Au stade du fond, il a soumis d'autres éléments qui, selon lui, devaient préciser les faits initialement invoqués à l'appui des griefs déclarés recevables. Toutefois, la Commission y a vu l'introduction de nouveaux griefs qui n'avaient pas été examinés au stade de la recevabilité. Pour cette raison, elle a estimé ne pas pouvoir connaître de questions qu'elle a considérées être des «griefs supplémentaires». La Cour constate que les griefs désormais soulevés par le gouvernement requérant entrent dans cette catégorie.

333. La Cour n'aperçoit aucune raison de s'écarter de l'avis de la Commission sur l'objet de la décision sur la recevabilité. Elle constate à cet égard que la Commission a procédé à un examen approfondi des éléments soumis par le gouvernement requérant après le stade de la recevabilité et qu'elle a tenu à ne pas exclure d'autres allégations de faits pouvant raisonnablement passer pour entrer par essence dans sa décision

sur la recevabilité. Aussi la Commission a-t-elle à juste titre rattaché les observations présentées par le gouvernement requérant après le stade de la recevabilité sur divers aspects du traitement que subiraient les opposants politiques au grief qu'elle avait déclaré recevable sur le terrain de l'article 5 de la Convention quant à la violation du droit à la sûreté. Dans le même esprit, la Cour considère en outre que la Commission était fondée à rejeter les griefs qu'elle a manifestement jugés nouveaux, par exemple ceux ayant trait aux conséquences de la politique de l'Etat défendeur à l'égard des colons sur le droit des Chypriotes turcs d'origine au respect de leur vie privée.

334. La Cour rappelle qu'une décision de recevabilité rendue par la Commission fixe l'objet du litige déféré à la Cour. C'est seulement à l'intérieur du cadre ainsi tracé que celle-ci, une fois régulièrement saisie, peut connaître de toutes les questions de fait ou de droit surgissant au cours de l'instance (*Irlande c. Royaume-Uni* précité, p. 63, § 157, et *Philis c. Grèce*, arrêt du 27 août 1991, série A n° 209, p. 19, § 56). Par conséquent, ce sont les faits déclarés recevables par la Commission qui déterminent la compétence de la Cour (voir, par exemple, *Guerra et autres c. Italie*, arrêt du 19 février 1998, *Recueil* 1998-I, p. 223, § 44). Si la Cour est habilitée à donner à ces faits une qualification juridique différente de celle attribuée dans la procédure devant la Commission, sa compétence ne saurait s'étendre à l'examen de nouveaux griefs qui n'ont pas été étayés par des faits au stade de la recevabilité (*Findlay c. Royaume-Uni*, arrêt du 25 février 1997, *Recueil* 1997-I, pp. 277-278, § 63). La Cour n'est pas non plus convaincue par l'argument du gouvernement requérant selon lequel les chefs de plainte exposés dans sa requête initiale étaient étroitement liés à ceux qui ont été invoqués au stade du fond mais que la Commission a rejetés.

335. Par ces motifs, et eu égard aux faits et chefs de plainte présentés par le gouvernement requérant au stade de la recevabilité, la Cour confirme l'avis de la Commission quant à l'objet de sa décision sur la recevabilité. C'est pourquoi elle n'examinera aucun grief que cette dernière a estimé ne pas relever de cette décision.

B. Etablissement des faits

1. Thèse du gouvernement requérant

336. Le gouvernement requérant affirme que la Commission a appliqué un critère juridique erroné pour se prononcer sur l'existence d'une pratique administrative de violation de la Convention. A ce propos, il rappelle les constats de la Commission selon lesquels il n'a pas été établi «au-delà de tout doute raisonnable», premièrement, qu'il y avait de

la part des autorités et des tribunaux de la «RTCN» une pratique consistant à refuser toute protection juridique aux opposants politiques, deuxièmement, que le traitement discriminatoire de la communauté tsigane ou le déni de toute protection juridique à celle-ci relevaient d'une pratique et, troisièmement, qu'il existait une pratique consistant à tolérer des atteintes aux biens des Chypriotes turcs par des actes criminels ou à refuser à ces personnes toute protection juridique.

337. A ce sujet, le gouvernement requérant soutient qu'il suffit, au regard de la Convention, d'établir l'existence d'une pratique par des «preuves suffisantes», lesquelles avaient, selon lui, manifestement été fournies quant à ces trois allégations.

338. Quant à l'appréciation des éléments de preuve par la Commission, le gouvernement requérant prétend que la valeur de certains des constats de non-violation formulés par celle-ci se trouve affaiblie du fait des limites imposées par les délégués de la Commission au nombre de témoins pouvant être entendus et des conclusions qu'elle a tirées de la crédibilité des témoins qui ont effectivement déposé.

2. Réponse de la Cour

339. La Cour réitère d'emblée sa conclusion antérieure selon laquelle les limites fixées par les délégués de la Commission au nombre des témoins pouvant être entendus à l'appui de la thèse du gouvernement requérant n'ont pas porté atteinte au principe de l'égalité des armes entre les parties (paragraphe 110 ci-dessus). Selon le gouvernement requérant, en refusant d'entendre d'autres témoins, les délégués de la Commission se sont privés de la possibilité de s'informer pleinement du poids des éléments de preuve contre l'Etat défendeur. Toutefois, de l'avis de la Cour, la décision des délégués pouvait dûment se justifier eu égard à leur perception de la valeur et de la suffisance des éléments dont disposait la Commission au moment de l'audition des témoins. La Cour n'aperçoit aucune raison de douter que les délégués auraient accepté d'entendre d'autres témoins s'ils avaient estimé que des témoignages supplémentaires contribueraient à étayer les faits allégués par le gouvernement requérant. De plus, il n'apparaît pas que ce dernier ait insisté pour faire entendre d'autres témoins. Les principales critiques à l'égard des dispositions prises par les délégués pour l'audition des témoins ont été émises par le gouvernement défendeur (paragraphes 109-110 ci-dessus). Il s'agit là d'un facteur à mettre dans la balance.

340. La Cour est bien sûr consciente de ce que, contrairement à ce qu'elle a fait dans le cadre de l'enquête conduite sur la situation des Chypriotes grecs du Karpas, la Commission n'a pas pu recourir aux études circonstanciées des Nations unies pour établir les faits à l'origine de cette catégorie de griefs. La Commission s'est largement appuyée sur

les dépositions des témoins qui ont comparu devant les délégués. Pour la Cour, il n'apparaît pas que l'on puisse reprocher à la Commission de s'être montrée prudente dans l'appréciation des témoignages, vu la nature des allégations formulées par les témoins cités par le gouvernement requérant, la subjectivité dont sont inévitablement empreints le témoignage de personnes qui attaquent un régime avec lequel elles sont profondément en désaccord et celui de partisans de ce régime. La Cour estime que la Commission a décidé à juste titre de fonder son évaluation essentiellement sur les points communs qui se dégageaient des dépositions des divers témoins dans leur ensemble.

Elle ne voit aucune raison de s'écarter des faits établis par la Commission (paragraphes 52-55 ci-dessus).

341. La Cour examinera si les faits établis révèlent une violation des droits invoqués par le gouvernement requérant. Quant au critère de la preuve, elle rejette les arguments de ce dernier et appliquera celui de la preuve «au-delà de tout doute raisonnable».

C. Sur le bien-fondé des griefs du gouvernement requérant

1. Griefs relatifs aux opposants politiques chypriotes turcs

342. Le gouvernement requérant allègue que les opposants politiques chypriotes turcs au régime de la «RTCN» qui résident dans le nord de Chypre font l'objet d'arrestations et de détentions arbitraires, en violation de leurs droits garantis par l'article 5 de la Convention. De plus, ils sont victimes d'agressions, de menaces et de harcèlement de la part de tiers, au mépris de l'article 8 de la Convention. Invoquant l'article 10 de la Convention, le gouvernement requérant prétend en outre que les autorités ne protègent pas le droit à la liberté d'expression en ce qu'elles tolèrent les obstacles mis par des tiers à l'exercice de ce droit. Ces obstacles se manifestent, par exemple, par le refus d'un emploi aux opposants politiques ou par les menaces ou les voies de fait que ceux-ci subissent de la part de particuliers. Le gouvernement requérant soutient aussi que la politique générale de la «RTCN» en matière de liberté de circulation emporte violation du droit des opposants politiques à la liberté d'association du fait des atteintes à leur droit de se réunir avec des Chypriotes grecs et d'autres personnes à Chypre. Enfin, vu le contexte susmentionné, il affirme qu'il y a lieu de conclure que les opposants politiques au régime de la «RTCN» sont victimes de mauvais traitements ou de traitements dégradants contraires à l'article 3 de la Convention.

343. Le gouvernement requérant déclare qu'il existe une pratique administrative de violation des droits susmentionnés protégés par la

Convention, ce que confirment les nombreux témoignages recueillis par les délégués. Il fait valoir que les dépositions orales démontrent de manière générale et concordante l'existence de pratiques administratives de la part des autorités de la « RTCN » consistant à refuser de protéger les droits des opposants politiques aux partis au pouvoir, que les ingérences soient commises par des tiers ou par les autorités elles-mêmes.

344. Par ailleurs, le gouvernement requérant estime que la Commission a conclu à tort que les victimes d'arrestations et de détentions illégales auraient dû user de la procédure d'*habeas corpus*. Selon lui, ce recours ne saurait passer pour effectif dans les cas de courtes gardes à vue et détentions suivies d'une libération, ce d'autant plus que les détenus n'ont pas accès à un avocat. La possibilité de se prévaloir d'un recours ne saurait pas non plus empêcher *ipso facto* de constater l'existence d'une pratique administrative de violation des droits garantis par la Convention. Le gouvernement requérant soutient que la Commission aurait dû centrer son attention sur la tolérance par les autorités de violations répétées des droits des opposants politiques au titre des articles 5, 8, 10 et 11 de la Convention. D'après lui, la pratique alléguée découle de cette situation et non de l'absence de recours judiciaires.

345. La Commission a conclu qu'il n'y avait pas eu violation des droits invoqués par le gouvernement requérant pour défaut de protection de ces droits. Elle a observé que l'on ne saurait exclure qu'il y ait eu dans tel ou tel cas des atteintes de la part des autorités aux droits des Chypriotes turcs du fait de leur opposition politique aux partis au pouvoir dans le nord de Chypre. Toutefois, elle a constaté également que les intéressés n'avaient pas tenté de faire redresser leurs griefs, par exemple en usant du recours d'*habeas corpus* pour contester la légalité de leur arrestation ou détention. Pour la Commission, il n'a pas été démontré au-delà de tout doute raisonnable que toutes les voies de recours auraient été inopérantes.

346. La Cour se rallie à la conclusion de la Commission. Sa propre appréciation des éléments de preuve l'amène à croire qu'il a pu y avoir dans certains cas des ingérences dans les droits des opposants politiques. Cependant, elle ne saurait conclure sur la base de ces éléments de preuve qu'il existait, au cours de la période à l'étude, une pratique administrative consistant à juguler toute opposition dirigée contre les partis au pouvoir en « RTCN » ou une politique officielle de tolérance des atteintes commises par des sympathisants de la « RTCN » aux droits invoqués par le gouvernement requérant. La Cour doit tenir compte du fait que les griefs du gouvernement requérant s'inscrivent dans un contexte politique fragile soutenu par une forte présence militaire turque et caractérisé par des rivalités sociales entre les colons turcs et la population autochtone. Pareil climat engendre des tensions et,

malheureusement, des actes de la part des agents de la « RTCN » qui, dans certains cas, portent atteinte aux droits énoncés dans la Convention. La Cour estime néanmoins que ni les éléments de preuve produits par le gouvernement requérant devant la Commission ni les critiques de celui-ci au sujet de l'appréciation par la Commission de ces éléments ne permettent de contester la conclusion selon laquelle l'existence de la pratique alléguée durant la période considérée n'a pas été établie au-delà de tout doute raisonnable.

347. En outre, la Cour constate que, d'après la Commission, les particuliers lésés n'avaient pas éprouvé l'efficacité des recours disponibles dans le cadre du système judiciaire de la « RTCN » pour obtenir le redressement de leurs griefs. Pour sa part, la Cour estime que, dans ses observations à la Commission, le gouvernement défendeur a établi le bien-fondé de son argument selon lequel il existait des recours, notamment la procédure d'*habeas corpus*. Elle n'est pas convaincue, au vu des preuves en sa possession, qu'il ait été démontré que ces recours n'étaient ni adéquats ni effectifs quant aux faits dénoncés ou que des circonstances particulières dispensaient les intéressés de l'obligation de les exercer. En particulier, comme elle l'a constaté précédemment, les preuves ne démontrent pas de manière convaincante l'existence de la part des autorités de la « RTCN » d'une pratique administrative consistant à demeurer totalement passives face à des allégations sérieuses selon lesquelles des agents de l'Etat ou des particuliers jouissant de l'impunité ont commis des fautes ou causé un préjudice (voir, *mutatis mutandis*, *Akdivar et autres* précité, p. 1211, § 68, et le paragraphe 115 ci-dessus, *in fine*).

348. Eu égard aux considérations ci-dessus, la Cour ne juge pas établi qu'il existait, au cours de la période considérée, une pratique administrative de violation des droits des opposants chypriotes turcs au régime en place dans le nord de Chypre au titre des articles 3, 5, 8, 10 et 11 de la Convention, notamment à raison d'une pratique alléguée consistant à ne pas protéger les droits des intéressés consacrés par ces dispositions.

2. Griefs relatifs à la communauté tsigane chypriote turque

349. Le gouvernement requérant affirme que la communauté tsigane vivant dans le nord de Chypre est soumise à un traitement discriminatoire et dégradant d'une telle ampleur que de nombreux Tsiganes se voient contraints de demander l'asile politique au Royaume-Uni. Selon lui, ce traitement relève d'une pratique. Il invoque les articles 3, 5, 8 et 14 de la Convention.

350. Il soutient que la Commission s'est trompée en concluant que les membres de la communauté tsigane en butte à des difficultés n'avaient

pas épuisé les voies de recours internes. Il prétend que les témoignages recueillis par les délégués confirment que les intéressés n'ont pas les moyens d'ester en justice et qu'ils ne peuvent bénéficier de l'aide judiciaire au civil. Quoi qu'il en soit, l'allégation en question porte sur une pratique administrative continue de discrimination et de traitement dégradant visant la communauté tsigane, ce qui est étayé par de nombreuses preuves. La Commission s'est concentrée à tort sur l'accès aux recours en appliquant le critère de la preuve « au-delà de tout doute raisonnable » plutôt que de s'intéresser à la question essentielle de savoir si des preuves suffisantes démontraient l'existence d'une pratique administrative de discrimination et traitement dégradant à l'encontre de cette communauté.

351. La Commission a constaté que certains membres de la communauté tsigane avaient rencontré des difficultés pendant la période examinée. Elle a mentionné à cet égard la démolition de cabanes de la communauté tsigane près de Morphou sur les ordres des autorités locales, le refus des compagnies aériennes de transporter des Tsiganes n'ayant pas de visa et l'humiliation des enfants de cette communauté à l'école. Toutefois, elle a estimé que les personnes lésées n'avaient pas épuisé les voies de recours internes disponibles et qu'il n'avait pas été établi au-delà de tout doute raisonnable qu'il existait une pratique délibérée consistant à opérer une discrimination à l'encontre des Tsiganes ou à leur dénier toute protection contre la discrimination sociale. Partant, la Commission a conclu qu'il n'y avait pas eu violation des articles 3, 5, 8 et 14 de la Convention.

352. La Cour observe que des membres de la communauté tsigane chypriote turque se heurtent à des difficultés avec les autorités de la « RTCN ». A ce propos, elle se réfère aux cas relevés par la Commission (paragraphe 54 ci-dessus). Toutefois, elle estime que ces cas isolés ne corroborent pas l'allégation du gouvernement requérant selon laquelle une pratique administrative de violation des droits qu'il invoque avait cours durant la période considérée. En outre, il ne semble pas que tel ou tel membre de la communauté tsigane chypriote turque prétendant avoir subi un préjudice causé par les autorités de la « RTCN » ait tenté un recours devant les tribunaux locaux, par exemple une action en dommages-intérêts pour la démolition des cabanes près de Morphou. La Cour rejette l'argument du gouvernement requérant selon lequel l'impossibilité d'obtenir l'aide judiciaire en « RTCN » pour engager une action au civil dispense les personnes lésées de l'obligation d'exercer les recours internes. A cet égard, elle note que la Convention n'impose pas aux Etats contractants l'obligation en soi de mettre en œuvre un système d'aide judiciaire en matière civile au bénéfice des justiciables indigents. Ce qui importe, c'est qu'aucune procédure judiciaire n'ait, semble-t-il, été tentée quant aux faits dénoncés par le gouvernement requérant.

353. La Cour conclut qu'il n'est pas établi que, pendant la période à l'étude, il existait une pratique administrative de violation des droits des membres de la communauté tsigane chypriote turque au titre des articles 3, 5, 8 et 14 de la Convention, notamment à raison d'une pratique alléguée consistant à ne pas protéger les droits des intéressés garantis par ces dispositions.

3. Violation alléguée de l'article 6 de la Convention

354. Le gouvernement requérant dénonce une pratique administrative et législative de la part des autorités de la «RTCN» consistant à méconnaître l'article 6 de la Convention en ce qu'il est impossible de faire décider des droits et obligations de caractère civil et des accusations en matière pénale par un tribunal indépendant et impartial, établi par la loi, au sens de cette disposition. A cet égard, il réitère son point de vue quant à l'illégalité du contexte dans lequel fonctionnent les juridictions de la «RTCN» (paragraphes 83-85 ci-dessus).

355. En outre, le gouvernement requérant prétend que les autorités de la «RTCN» ont recours à des tribunaux militaires pour juger des civils devant répondre d'actes qualifiés d'infractions militaires. A son sens, il faut inférer de l'arrêt *Incal c. Turquie* rendu par la Cour le 9 juin 1998 (*Recueil* 1998-IV) qu'un civil jugé par une juridiction militaire est privé d'un procès équitable devant un tribunal indépendant et impartial. La compétence des tribunaux militaires en la matière est prévue par l'«article 156 de la Constitution de la RTCN», de sorte que leur composition ne peut être contestée. Le gouvernement requérant soutient que la Commission aurait dû constater une violation de l'article 6 du fait de l'existence d'une pratique législative de violation au lieu de s'attacher à rechercher des preuves attestant que des procédures spécifiques impliquant des civils se sont déroulées devant des juridictions militaires. A l'encontre de la conclusion de la Commission sur ce point, il souligne de surcroît que les éléments produits devant celle-ci fournissaient des exemples concrets de civils ayant été jugés et condamnés par des tribunaux militaires. Malheureusement, la Commission n'a pas tenu compte de ces éléments dans son appréciation.

356. La Commission n'a pas estimé établi au vu des faits que des civils aient été jugés par les tribunaux militaires durant la période considérée. Dès lors, elle a conclu à la non-violation de l'article 6 de la Convention.

357. La Cour estime qu'elle ne doit pas nécessairement être convaincue, au vu des éléments de preuve, de l'existence d'une pratique administrative consistant à traduire des civils devant les tribunaux militaires en «RTCN». Elle relève que le gouvernement requérant dénonce une pratique législative de violation de l'article 6, eu égard aux termes explicites de l'«article 156 de la Constitution de la RTCN» et du

«décret sur les zones militaires interdites» (paragraphe 355 ci-dessus). A ce propos, elle rappelle que, dans son arrêt *Irlande c. Royaume-Uni*, elle a estimé qu'à la différence de personnes physiques un Etat contractant avait qualité pour combattre *in abstracto* une législation sur le terrain de la Convention, l'ancien article 24 (article 33 actuel) habilitant chacun des Etats contractants à saisir la Commission de tout manquement à l'une quelconque des dispositions de la Convention et de ses Protocoles qu'il croira pouvoir être imputé à un autre Etat contractant (*Irlande c. Royaume-Uni* précité, p. 91, § 240). Dans le même arrêt, la Cour a constaté qu'une législation entraînait par sa seule existence pareil «manquement» si elle introduisait, commandait ou autorisait des mesures incompatibles avec les droits et libertés protégés. En outre, elle a déclaré qu'un manquement de ce genre ne pouvait être découvert que si la législation attaquée en vertu de l'ancien article 24 (article 33 actuel) usait de termes assez clairs et précis pour le révéler d'emblée; dans le cas contraire, il y avait lieu de statuer en fonction de la manière dont l'Etat défendeur interprétait et appliquait *in concreto* le ou les textes incriminés (*ibidem*).

358. L'examen *in abstracto* de la «disposition constitutionnelle» et du «décret sur les zones militaires interdites» litigieux amène la Cour à conclure que ces textes introduisent et autorisent manifestement les procès de civils devant les tribunaux militaires. Nul doute que ces tribunaux sont entachés du même manque d'indépendance et d'impartialité que celui qui a été mis en évidence dans l'arrêt *Incal* relativement aux cours de sûreté de l'Etat instaurées en Turquie par l'Etat défendeur (*loc. cit.*, pp. 1572-1573, §§ 70-72), compte tenu en particulier des liens structurels étroits entre le pouvoir exécutif et les militaires siégeant au sein des juridictions militaires de la «RTCN». Pour la Cour, les civils traduits devant ces tribunaux en «RTCN» pour des actes qualifiés d'infractions militaires pouvaient légitimement éprouver des doutes quant à l'indépendance et l'impartialité de ces tribunaux.

359. Pour les raisons qui précèdent, la Cour estime qu'il y a eu violation de l'article 6 de la Convention du fait d'une pratique législative autorisant les tribunaux militaires à juger des civils.

4. Violation alléguée de l'article 10 de la Convention

360. Devant la Commission, le gouvernement requérant a allégué la violation du droit des Chypriotes turcs vivant dans le nord de Chypre de recevoir des informations en raison de l'interdiction frappant la diffusion de journaux en langue grecque. Il n'a repris ce grief ni dans son mémoire ni à l'audience.

361. A propos d'un grief analogue soulevé dans le contexte des conditions de vie des Chypriotes grecs du Karpas, la Commission a

estimé que les restrictions alléguées à la diffusion de la presse en langue grecque dans le nord de Chypre n'étaient pas établies.

362. La Cour souscrit à la conclusion de la Commission, laquelle, relève-t-elle, concorde avec celle qu'elle a formulée sur la base des éléments de preuve relatifs à l'atteinte alléguée à l'article 10 dans le chef de la population chypriote grecque enclavée (paragraphes 253-254 ci-dessus).

363. Partant, la Cour conclut que n'est établie aucune violation de l'article 10 de la Convention à raison des restrictions alléguées du droit des Chypriotes turcs vivant dans le nord de Chypre de recevoir des informations par la presse en langue grecque.

5. Violation alléguée de l'article 11 de la Convention

364. Le gouvernement requérant déclare que la politique générale de la « RTCN » en matière de liberté de circulation se traduit depuis 1974 par une pratique administrative d'ingérence dans le droit des Chypriotes turcs vivant dans le Nord de rencontrer des Chypriotes grecs et d'autres personnes vivant à Chypre ou de se réunir avec eux, en particulier dans la zone tampon des Nations unies et dans la zone contrôlée par le gouvernement.

365. Il met en évidence plusieurs cas où des restrictions arbitraires ont été imposées à des personnes souhaitant participer à des réunions bicommunautaires, y compris à des manifestations sportives et musicales. En outre, il souligne que le gouvernement défendeur lui-même, dans ses observations sur la recevabilité et le bien-fondé de ce grief, a fourni à la Commission des éléments de preuve de l'existence d'une pratique administrative qui a consisté à imposer, sans discontinuer, de 1994 à 1996, des restrictions au droit des Chypriotes turcs de se rendre dans le Sud. Il rappelle qu'il s'agit de la période considérée.

366. Le gouvernement requérant reconnaît que le grief initialement formulé devant la Commission faisait état d'une pratique administrative d'ingérence dans le droit des Chypriotes turcs vivant dans le Nord à la liberté d'association. Il invite la Cour à examiner également le grief sous l'angle décrit ci-dessus. Quant aux restrictions frappant la liberté d'association, il affirme que les dépositions recueillies par les délégués révèlent clairement une violation de ce droit. A l'appui de cette allégation, il observe en outre que les « articles 12 et 71 de la Constitution de la RTCN » interdisent la création d'associations visant à défendre les intérêts de minorités. A son sens, l'existence d'une telle interdiction doit en soi être considérée comme contraire à l'article 11 de la Convention.

367. La Commission a constaté qu'on ne lui avait signalé aucun élément attestant de ce que les autorités aient entravé, pendant la période examinée, des tentatives faites par des Chypriotes turcs vivant dans le nord de Chypre pour constituer des associations avec des

Chypriotes grecs se trouvant dans les parties nord et sud de l'île. De ce fait, elle a estimé que ce grief n'était pas fondé.

368. Quant aux obstacles mis à la participation de Chypriotes turcs à des manifestations bicommunautaires, la Commission a noté que les documents pertinents des Nations unies indiquaient que des restrictions avaient été apportées à la tenue de réunions intercommunautaires à partir du deuxième semestre de 1996. De l'avis de la Commission, tout grief à cet égard portait sur des faits distincts postérieurs à la date de la décision sur la recevabilité et ne pouvait donc être retenu.

369. La Cour rappelle qu'elle a accepté les faits tels qu'ils ont été établis par la Commission (paragraphes 339-340 ci-dessus). Vu les éléments de preuve en sa possession, elle n'estime pas qu'il existait, durant la période en question, une pratique administrative consistant à entraver l'ensemble des contacts bicommunautaires entre les Chypriotes turcs vivant dans le Nord et les Chypriotes grecs installés dans le Sud. Elle constate que les autorités de la « RTCN » ont adopté une politique bien plus rigoureuse à propos de ces contacts après le second semestre de 1996 et sont même allées jusqu'à les interdire. Toutefois, comme l'a relevé la Commission, les violations alléguées des droits protégés par la Convention survenues au cours de cette période échappaient à l'objet de la décision sur la recevabilité (paragraphe 368 ci-dessus).

370. Quant à l'atteinte alléguée au droit à la liberté d'association des Chypriotes turcs vivant dans le Nord, la Cour observe que la Commission a conclu, au vu des éléments de preuve, que les autorités de la « RTCN » n'avaient pas tenté d'empêcher la création d'associations bicommunautaires dans le nord de Chypre. En l'absence de preuves concrètes du contraire, et eu égard au niveau de preuve requis pour établir l'existence d'une pratique administrative de violation d'un droit garanti par la Convention, la Cour conclut qu'il n'y a pas non plus eu violation de l'article 11 sous cet angle.

371. Dès lors, la Cour ne juge pas établie l'existence d'une pratique administrative de violation du droit à la liberté d'association ou de réunion consacré par l'article 11 de la Convention pour ce qui concerne les Chypriotes turcs vivant dans le nord de Chypre.

6. Violation alléguée de l'article 1 du Protocole n° 1

372. Devant la Commission, le gouvernement requérant a dénoncé une violation continue de l'article 1 du Protocole n° 1, premièrement, du fait que les autorités de la « RTCN » interdisaient aux Chypriotes turcs vivant dans le nord de Chypre d'accéder à leurs biens sis dans le Sud et, deuxièmement, à raison de la tolérance manifestée par ces mêmes autorités à l'égard d'infractions perpétrées par des particuliers contre les biens des Chypriotes turcs.

373. Devant la Cour, le gouvernement requérant affirme que la Commission a conclu à tort, quant au second grief, que l'existence d'une pratique administrative de la part des autorités de la « RTCN » consistant à tolérer systématiquement des atteintes de particuliers aux biens des Chypriotes turcs n'avait pas été démontrée. Il n'a réitéré le premier grief ni dans son mémoire ni à l'audience.

374. La Commission a noté qu'on ne lui avait signalé aucun cas où, pendant la période considérée, des Chypriotes turcs vivant dans le nord de Chypre aient tenté d'accéder à leurs biens dans le Sud et en aient été empêchés. Dès lors, elle a rejeté ce grief pour défaut de fondement. Pour ce qui est de l'allégation d'atteintes illégales aux biens des Chypriotes turcs vivant dans le nord de Chypre perpétrées par des particuliers, la Commission a estimé, premièrement, que des voies de recours suffisantes permettaient d'obtenir réparation et, deuxièmement, que l'existence d'une pratique administrative consistant à tolérer pareilles atteintes n'était pas établie.

375. La Cour fait sienne la conclusion de la Commission. En premier lieu, elle relève que le gouvernement requérant ne développe pas la thèse dont il a tenté d'établir le bien-fondé devant la Commission, à savoir que les autorités de la « RTCN » empêchaient les Chypriotes turcs de regagner leur domicile dans le Sud. Aucun autre élément n'a été produit devant la Cour indiquant que pendant la période considérée des Chypriotes turcs vivant dans le Nord aient été empêchés d'accéder à leurs biens dans le Sud du fait des restrictions imposées par la « RTCN » à la liberté de circulation.

376. En second lieu, quant aux atteintes aux biens des Chypriotes turcs qui seraient dues à des particuliers, la Cour estime que les éléments invoqués par le gouvernement requérant ne corroborent pas son allégation selon laquelle les autorités de la « RTCN » tolèrent, encouragent ou d'une quelconque façon approuvent cette forme de criminalité. Au vu des éléments de preuve, la Cour reconnaît que l'on ne saurait exclure que de tels incidents se soient produits. Toutefois, ces éléments n'étayent pas l'existence d'une pratique administrative de violation de l'article 1 du Protocole n° 1.

377. Eu égard à ce qui précède, la Cour conclut que n'est établie aucune violation de l'article 1 du Protocole n° 1 à raison d'une pratique administrative alléguée de violation de cette disposition, notamment faute d'assurer le respect, en ce qui concerne les Chypriotes turcs vivant dans le nord de Chypre, de leurs biens sis dans le Sud.

7. Violation alléguée de l'article 13 de la Convention

378. Le gouvernement requérant réfute la conclusion de la Commission selon laquelle il n'y a pas eu violation de l'article 13 de la Convention en ce que les Chypriotes turcs vivant dans le nord de Chypre

ne disposeraient pas de recours effectifs. Il réitère son point de vue (paragraphes 83-85 ci-dessus) d'après lequel les recours judiciaires censés s'offrir ne satisfont pas aux exigences fondamentales de l'article 6 et, en conséquence, ne sauraient passer pour «effectifs» au sens de l'article 13.

379. En outre, il réaffirme que, selon lui (paragraphes 336-337 ci-dessus), la Commission s'est fondée à tort sur le critère de la preuve «au-delà de tout doute raisonnable» pour se prononcer sur l'existence d'une pratique administrative consistant à refuser des recours judiciaires à certaines catégories de personnes. Si la Commission avait appliqué le bon critère, c'est-à-dire celui de la «preuve suffisante», une autre conclusion se serait imposée à elle.

380. Pour les raisons susmentionnées, le gouvernement requérant invite la Cour à s'écarter de la conclusion de la Commission et à dire que l'Etat défendeur suit une pratique administrative et législative consistant à enfreindre l'article 13 car il manque à l'obligation de fournir à la communauté tsigane et aux opposants à la politique menée par la Turquie à Chypre un recours effectif devant une instance nationale.

381. La Commission a estimé que, de manière générale, les recours offerts par l'ordre juridique de la «RTCN» semblaient suffire pour fournir aux intéressés un redressement de toute violation alléguée des droits garantis par la Convention, et que le gouvernement requérant n'avait pas étayé son allégation relative à l'existence d'une pratique de violation de l'article 13. Elle a donc conclu à la non-violation de l'article 13 pendant la période considérée.

382. Quant aux allégations se rapportant aux opposants politiques (paragraphes 342-344 ci-dessus) et à la communauté tsigane (paragraphes 349-350 ci-dessus), la Cour rappelle qu'elle a estimé que le gouvernement requérant n'avait pas réussi à réfuter, dans la procédure devant la Commission, les arguments du gouvernement défendeur selon lesquels l'ordre juridique de la «RTCN» offrait des recours aux personnes lésées. Elle n'a pas eu la conviction que toute tentative de se prévaloir d'un recours fût vouée à l'échec. De ce fait, la Cour ne saurait accepter l'allégation du gouvernement requérant quant à l'existence d'une pratique administrative consistant à refuser tout recours aux intéressés, au mépris de l'article 13 de la Convention. L'on ne saurait dire que les éléments de preuve dont dispose la Cour à cet égard établissent au-delà de tout doute raisonnable l'existence d'une telle pratique.

383. Partant, la Cour conclut que n'est établie aucune violation de l'article 13 de la Convention à raison d'une pratique administrative consistant à ne pas offrir de recours effectifs aux Chypriotes turcs vivant dans le nord de Chypre.

VIII. SUR LES VIOLATIONS ALLÉGUÉES DES ARTICLES 1, 17, 18 ET DE L'ANCIEN ARTICLE 32 § 4 DE LA CONVENTION

384. Le gouvernement requérant invite la Cour à conclure à la violation des articles 1, 17, 18 et de l'ancien article 32 § 4 de la Convention. L'article 1 se lit ainsi :

> « Les Hautes Parties contractantes reconnaissent à toute personne relevant de leur juridiction les droits et libertés définis au titre I de la (...) Convention : »

L'ancien article 32 § 4 de la Convention énonçait :

> « Les Hautes Parties Contractantes s'engagent à considérer comme obligatoire pour elles toute décision que le Comité des Ministres peut prendre en application des paragraphes précédents. »

385. Eu égard aux violations généralisées et massives de la Convention commises par l'Etat défendeur, le gouvernement requérant soutient que la Cour doit en l'espèce conclure à la violation de l'article 1.

386. Par ailleurs, il affirme que les faits révèlent que l'Etat défendeur a en réalité la mainmise sur les biens chypriotes grecs sis dans le Nord en application d'une politique de nettoyage ethnique. Le programme de relogement mis en œuvre par l'Etat défendeur est un autre exemple manifeste de cette politique. Cet Etat a toutefois tenté de dissimuler son véritable but en invoquant les restrictions autorisées par les articles 8 § 2 de la Convention et 1 du Protocole n° 1. Selon le gouvernement requérant, il y a lieu de considérer en l'occurrence que l'Etat défendeur a enfreint les articles 17 et 18 de la Convention.

387. Enfin, le gouvernement requérant fait valoir que l'Etat défendeur n'a pas mis un terme aux violations de la Convention constatées par la Commission dans son rapport de 1976, ainsi que l'avait demandé le Comité des Ministres dans sa décision du 21 octobre 1977 (paragraphe 17 ci-dessus). Il déclare que la Cour doit prendre acte de toute violation continue de la Convention qu'elle constatera avoir perduré après cette décision. De plus, toujours selon lui, la Cour doit considérer comme un autre facteur aggravant le fait que les violations de la Convention se soient poursuivies pendant plus de vingt ans et que, après la décision du Comité des Ministres, la politique officielle de l'Etat défendeur ait directement donné lieu à des violations.

388. La Cour estime qu'il ne s'impose pas en l'occurrence d'examiner ces griefs séparément. Quant aux allégations du gouvernement requérant sur le terrain des articles 17 et 18, elle rappelle en outre qu'elle est parvenue à la même conclusion s'agissant de griefs analogues relatifs aux ingérences dans les droits des Chypriotes grecs déplacés au respect de leurs biens (paragraphe 206 ci-dessus).

PAR CES MOTIFS, LA COUR

I. QUESTIONS PRÉLIMINAIRES

1. *Dit*, à l'unanimité, qu'elle a compétence pour connaître des questions préliminaires soulevées dans la procédure devant la Commission (paragraphes 56-58) ;

2. *Dit*, à l'unanimité, que le gouvernement requérant a qualité pour soumettre la requête (paragraphe 62) ;

3. *Dit*, à l'unanimité, que le gouvernement requérant a un intérêt juridique légitime à ce qu'elle statue sur le fond de la requête (paragraphe 68) ;

4. *Dit*, par seize voix contre une, que les faits litigieux en l'espèce entrent dans la «juridiction» de la Turquie au sens de l'article 1 de la Convention et engagent donc la responsabilité de l'Etat défendeur au regard de celle-ci (paragraphe 80) ;

5. *Dit*, par dix voix contre sept, qu'aux fins de l'ancien article 26 (article 35 § 1 actuel) de la Convention, les recours disponibles en «RTCN» peuvent passer pour des «recours internes» de l'Etat défendeur et qu'il y a lieu d'en évaluer le caractère effectif dans les circonstances particulières où la question se pose (paragraphe 102) ;

6. *Dit*, à l'unanimité, que les situations qui ont pris fin plus de six mois avant la date d'introduction de la présente requête (le 22 mai 1994) échappent à l'examen de la Cour (paragraphe 104).

II. VIOLATIONS ALLÉGUÉES DES DROITS DES CHYPRIOTES GRECS PORTÉS DISPARUS ET DE LEUR FAMILLE

1. *Dit*, à l'unanimité, qu'il n'y a pas eu violation de l'article 2 de la Convention à raison de la méconnaissance alléguée d'une exigence matérielle de cette disposition dans le chef de l'une quelconque des personnes disparues (paragraphe 130) ;

2. *Dit*, par seize voix contre une, qu'il y a eu violation continue de l'article 2 de la Convention en ce que les autorités de l'Etat défendeur n'ont pas mené d'enquête effective sur le sort des Chypriotes grecs qui ont disparu dans des circonstances mettant leur vie en danger, et sur le lieu où ils se trouvaient (paragraphe 136) ;

3. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 4 de la Convention (paragraphe 141) ;

4. *Dit*, par seize voix contre une, qu'il y a eu violation continue de l'article 5 de la Convention en ce que les autorités de l'Etat défendeur

n'ont pas mené d'enquête effective sur le sort des Chypriotes grecs disparus dont on allègue de manière défendable qu'ils étaient détenus sous l'autorité de la Turquie au moment de leur disparition, et sur le lieu où ils se trouvaient (paragraphe 150) ;

5. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 5 de la Convention à raison du fait que des Chypriotes grecs disparus se trouveraient réellement détenus (paragraphe 151) ;

6. *Dit*, à l'unanimité, qu'il n'y a pas lieu d'examiner les griefs soulevés par le gouvernement requérant sur le terrain des articles 3, 6, 8, 13, 14 et 17 de la Convention quant aux Chypriotes grecs portés disparus (paragraphe 153) ;

7. *Dit*, par seize voix contre une, qu'il y a eu violation continue de l'article 3 de la Convention dans le chef des familles des Chypriotes grecs disparus (paragraphe 158) ;

8. *Dit*, à l'unanimité, qu'il n'y a pas lieu de rechercher si les articles 8 et 10 de la Convention ont été violés dans le chef des familles des Chypriotes grecs disparus, eu égard à sa conclusion sur le terrain de l'article 3 (paragraphe 161).

III. VIOLATIONS ALLÉGUÉES DES DROITS DES PERSONNES DÉPLACÉES AU RESPECT DE LEUR DOMICILE ET AU RESPECT DE LEURS BIENS

1. *Dit*, par seize voix contre une, qu'il y a eu violation continue de l'article 8 de la Convention en raison du refus d'autoriser les Chypriotes grecs déplacés à regagner leur domicile dans le nord de Chypre (paragraphe 175) ;

2. *Dit*, à l'unanimité, qu'eu égard à son constat de violation continue de l'article 8 de la Convention, il n'y a pas lieu de rechercher s'il y a également eu violation de cette disposition du fait des modifications alléguées de l'environnement démographique et culturel du domicile des Chypriotes grecs déplacés dans le nord de Chypre (paragraphe 176) ;

3. *Dit*, à l'unanimité, qu'il y a lieu de considérer avec les allégations du gouvernement requérant portant sur les conditions de vie des Chypriotes grecs du Karpas le grief tiré par celui-ci de l'article 8 de la Convention en ce qui concerne l'ingérence dans le droit des Chypriotes grecs déplacés au respect de leur vie familiale du fait qu'ils ne sont pas autorisés à regagner leur foyer dans le nord de Chypre (paragraphe 177) ;

4. *Dit*, par seize voix contre une, qu'il y a eu violation continue de l'article 1 du Protocole n° 1 en ce que les Chypriotes grecs possédant des biens

dans le nord de Chypre se sont vu refuser l'accès à leurs biens, la maîtrise, l'usage et la jouissance de ceux-ci ainsi que toute réparation de l'ingérence dans leur droit de propriété (paragraphe 189) ;

5. *Dit*, par seize voix contre une, qu'il y a eu violation de l'article 13 de la Convention en ce que les Chypriotes grecs ne résidant pas dans le nord de Chypre ne disposaient d'aucun recours pour contester les atteintes à leurs droits garantis par les articles 8 de la Convention et 1 du Protocole n° 1 (paragraphe 194) ;

6. *Dit*, à l'unanimité, qu'il n'y a pas lieu de rechercher s'il y a eu en l'espèce violation de l'article 14 de la Convention combiné avec les articles 8 et 13 de la Convention et l'article 1 du Protocole n° 1 du fait d'un traitement discriminatoire allégué à l'encontre des Chypriotes grecs ne résidant pas dans le nord de Chypre en ce qui concerne leurs droits au respect de leur domicile, au respect de leurs biens et à un recours effectif (paragraphe 199) ;

7. *Dit*, à l'unanimité, qu'il n'y a pas lieu de rechercher si la discrimination dont seraient victimes les Chypriotes grecs déplacés emporte également violation de l'article 3 de la Convention, eu égard à sa conclusion sur le terrain des articles 8, 13 et 14 de la Convention et de l'article 1 du Protocole n° 1 (paragraphe 203) ;

8. *Dit*, à l'unanimité, qu'il n'y a pas lieu d'examiner séparément les griefs que le gouvernement requérant tire des articles 17 et 18 de la Convention, eu égard à ses conclusions au titre des articles 8 et 13 de la Convention et de l'article 1 du Protocole n° 1 (paragraphe 206).

IV. VIOLATIONS ALLÉGUÉES DÉCOULANT DES CONDITIONS DE VIE DES CHYPRIOTES GRECS DANS LE NORD DE CHYPRE

1. *Dit*, par seize voix contre une, que n'est établie aucune violation de l'article 2 de la Convention à raison d'une pratique alléguée consistant à refuser aux Chypriotes grecs et maronites vivant dans le nord de Chypre l'accès aux soins médicaux (paragraphe 221) ;

2. *Dit*, par seize voix contre une, qu'il n'y a pas eu violation de l'article 5 de la Convention (paragraphe 227) ;

3. *Dit*, par onze voix contre six, que n'est établie aucune violation de l'article 6 de la Convention dans le chef des Chypriotes grecs vivant dans le nord de Chypre à raison d'une pratique alléguée de déni de leur droit d'obtenir qu'un tribunal indépendant et impartial décide équitablement de leurs droits et obligations de caractère civil (paragraphe 240) ;

4. *Dit*, par seize voix contre une, qu'il y a eu violation de l'article 9 de la Convention dans le chef des Chypriotes grecs vivant dans le nord de Chypre (paragraphe 246) ;

5. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 9 de la Convention pour ce qui concerne la population maronite vivant dans le nord de Chypre (paragraphe 247) ;

6. *Dit*, par seize voix contre une, qu'il y a eu violation de l'article 10 de la Convention dans le chef des Chypriotes grecs vivant dans le nord de Chypre dans la mesure où les manuels destinés à leur école primaire ont été soumis à une censure excessive (paragraphe 254) ;

7. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 11 de la Convention à raison d'une pratique alléguée consistant à dénier aux Chypriotes grecs vivant dans le nord de Chypre le droit à la liberté d'association (paragraphe 263) ;

8. *Dit*, à l'unanimité, qu'il y a lieu de considérer dans le cadre de l'examen global de la question de la violation de cette disposition le grief tiré par le gouvernement requérant de l'article 8 de la Convention à raison d'une pratique alléguée de restrictions à la participation de Chypriotes grecs vivant dans le nord de Chypre à des événements bi- ou intercommunautaires (paragraphe 262) ;

9. *Dit*, par seize voix contre une, qu'il y a eu violation continue de l'article 1 du Protocole n° 1 dans le chef des Chypriotes grecs vivant dans le nord de Chypre en ce que, lorsqu'ils quittaient définitivement cette région, leur droit au respect de leurs biens n'était pas garanti et qu'en cas de décès les droits successoraux des parents du défunt résidant dans le Sud n'étaient pas reconnus (paragraphes 269-270) ;

10. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 1 du Protocole n° 1 à raison d'une pratique alléguée consistant à ne pas protéger les biens des Chypriotes grecs vivant dans le nord de Chypre contre les ingérences de particuliers (paragraphe 272) ;

11. *Dit*, par seize voix contre une, qu'il y a eu violation de l'article 2 du Protocole n° 1 dans le chef des Chypriotes grecs vivant dans le nord de Chypre dans la mesure où ils n'ont pas bénéficié d'un enseignement secondaire approprié (paragraphe 280) ;

12. *Dit*, par seize voix contre une, que, d'un point de vue global, il y a eu violation du droit des Chypriotes grecs vivant dans le nord de Chypre au respect de leur vie privée et familiale et de leur domicile garanti par l'article 8 de la Convention (paragraphes 296 et 301) ;

13. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 8 de la Convention à raison d'une pratique alléguée d'ingérence dans le droit des Chypriotes grecs vivant dans le nord de Chypre au respect de leur correspondance (paragraphe 298) ;

14. *Dit*, à l'unanimité, qu'il n'y a pas lieu d'examiner séparément le grief que le gouvernement requérant tire de l'article 8 de la Convention pour ce qui est des conséquences de la politique de colonisation prétendument menée par l'Etat défendeur sur l'environnement démographique et culturel du domicile des Chypriotes grecs, eu égard à l'examen d'ensemble des conditions de vie de cette population qu'elle a effectué sous l'angle de cette disposition (paragraphe 301) ;

15. *Dit*, par seize voix contre une, qu'il y a eu violation de l'article 3 de la Convention en ce que les Chypriotes grecs vivant dans la région du Karpas, dans le nord de Chypre, ont subi une discrimination s'analysant en un traitement dégradant (paragraphe 311) ;

16. *Dit*, à l'unanimité, qu'il n'y a pas lieu de rechercher s'il y a eu violation de l'article 14 de la Convention combiné avec l'article 3 dans le chef des Chypriotes grecs vivant dans le nord de Chypre, eu égard à sa conclusion sur le terrain de l'article 3 (paragraphe 315) ;

17. *Dit*, par quatorze voix contre trois, que, compte tenu des circonstances particulières de l'espèce, il n'y a pas lieu de rechercher s'il y a eu violation de l'article 14 de la Convention combiné avec les autres dispositions pertinentes (paragraphe 317) ;

18. *Dit*, par onze voix contre six, que n'est établie aucune violation de l'article 13 de la Convention à raison de l'absence alléguée de recours quant aux ingérences de particuliers dans les droits des Chypriotes grecs vivant dans le nord de Chypre au titre des articles 8 de la Convention et 1 du Protocole n° 1 (paragraphe 324) ;

19. *Dit*, par seize voix contre une, qu'il y a eu violation de l'article 13 de la Convention du fait de l'absence, relevant d'une pratique, de recours quant aux ingérences des autorités dans les droits des Chypriotes grecs vivant dans le nord de Chypre au titre des articles 3, 8, 9 et 10 de la Convention et 1 et 2 du Protocole n° 1 (paragraphe 324).

V. VIOLATION ALLÉGUÉE DU DROIT DES CHYPRIOTES GRECS DÉPLACÉS À TENIR DES ÉLECTIONS

Dit, à l'unanimité, qu'il ne s'impose pas d'examiner si les faits révèlent une violation du droit des Chypriotes grecs déplacés à tenir des élections libres, garanti par l'article 3 du Protocole n° 1 (paragraphe 327).

VI. VIOLATIONS ALLÉGUÉES DES DROITS DES CHYPRIOTES TURCS, Y COMPRIS LES MEMBRES DE LA COMMUNAUTÉ TSIGANE, INSTALLÉS DANS LE NORD DE CHYPRE

1. *Dit*, à l'unanimité, qu'elle décline sa compétence pour examiner les aspects des griefs du gouvernement requérant sur le terrain des articles 6, 8, 10 et 11 de la Convention concernant les opposants politiques au régime en place en «RTCN» ainsi que les griefs tirés des articles 1 et 2 du Protocole n° 1 quant à la communauté tsigane chypriote turque que la Commission a estimé ne pas relever de sa décision sur la recevabilité (paragraphe 335) ;

2. *Dit*, à l'unanimité, que n'est établie aucune violation des droits des opposants chypriotes turcs au régime en place dans le nord de Chypre au titre des articles 3, 5, 8, 10 et 11 de la Convention à raison d'une pratique administrative alléguée, notamment d'une pratique alléguée consistant à ne pas protéger les droits des intéressés garantis par ces dispositions (paragraphe 348) ;

3. *Dit*, par seize voix contre une, que n'est établie aucune violation des droits des membres de la communauté tsigane chypriote turque au titre des articles 3, 5, 8 et 14 de la Convention à raison d'une pratique administrative alléguée, notamment d'une pratique alléguée consistant à ne pas protéger les droits des intéressés garantis par ces dispositions (paragraphe 353) ;

4. *Dit*, par seize voix contre une, qu'il y a eu violation de l'article 6 de la Convention à raison d'une pratique législative autorisant des tribunaux militaires à juger des civils (paragraphe 359) ;

5. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 10 de la Convention à raison d'une pratique alléguée consistant à imposer des restrictions au droit des Chypriotes turcs vivant dans le nord de Chypre de recevoir des informations par la presse en langue grecque (paragraphe 363) ;

6. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 11 de la Convention à raison d'une pratique alléguée d'ingérence dans le droit à la liberté d'association et de réunion des Chypriotes turcs vivant dans le nord de Chypre (paragraphe 371) ;

7. *Dit*, à l'unanimité, que n'est établie aucune violation de l'article 1 du Protocole n° 1 à raison d'une pratique administrative alléguée, notamment d'une pratique alléguée de non-respect des biens sis dans le Sud des Chypriotes turcs vivant dans le nord de Chypre (paragraphe 377) ;

8. *Dit*, par onze voix contre six, que n'est établie aucune violation de l'article 13 de la Convention à raison d'une pratique alléguée consistant à ne pas offrir de recours effectifs aux Chypriotes turcs vivant dans le nord de Chypre (paragraphe 383).

VII. VIOLATIONS ALLÉGUÉES D'AUTRES ARTICLES DE LA CONVENTION

Dit, à l'unanimité, qu'il n'y a pas lieu d'examiner séparément les griefs soulevés par le gouvernement requérant sur le terrain des articles 1, 17 et 18 et de l'ancien article 32 § 4 de la Convention (paragraphe 388).

VIII. QUESTION DE L'ARTICLE 41 DE LA CONVENTION

Dit, à l'unanimité, que la question de l'éventuelle application de l'article 41 de la Convention ne se trouve pas en état et qu'elle en *ajourne* l'examen.

Fait en français et en anglais, puis prononcé en audience publique au Palais des Droits de l'Homme, à Strasbourg, le 10 mai 2001.

Luzius WILDHABER
Président

Michele DE SALVIA
Greffier

Au présent arrêt se trouve joint, conformément aux articles 45 § 2 de la Convention et 74 § 2 du règlement, l'exposé des opinions séparées suivantes :

– opinion en partie dissidente de M^me^ Palm, à laquelle se rallient MM. Jungwiert, Levits, Panţîru, Kovler et Marcus-Helmons ;
– opinion en partie dissidente de M. Costa ;
– opinion en partie dissidente de M. Fuad ;
– opinion en partie dissidente de M. Marcus-Helmons.

L.W.
M. de S.

OPINION EN PARTIE DISSIDENTE DE M^me^ LA JUGE PALM, À LAQUELLE SE RALLIENT MM. LES JUGES JUNGWIERT, LEVITS, PANŢÎRU, KOVLER ET MARCUS-HELMONS

(Traduction)

Tout en souscrivant à la plupart des conclusions dégagées par la Cour dans cette affaire complexe, je me sens tenue de faire part de mon désaccord au sujet d'une question fondamentale, à savoir l'importance qu'elle accorde à l'existence d'un système de recours au sein de la «RTCN». Selon moi, la Cour fait à cet égard fausse route au point que l'ensemble de l'arrêt s'en trouve affaibli. Pour les raisons que j'expose ci-dessous, cela est d'autant plus regrettable que la Cour avait la possibilité de s'acquitter de sa tâche en évitant cette chausse-trappe tout en restant parfaitement fidèle à ses principes et à sa jurisprudence.

Dans son arrêt *Loizidou c. Turquie* (fond) du 18 décembre 1996 (*Recueil des arrêts et décisions* 1996-VI), la Cour a jugé que l'article 159 de la Loi fondamentale devait passer pour dénué de validité juridique compte tenu du refus de la communauté internationale de considérer la «RTCN» comme un Etat au regard du droit international. Elle n'a pas estimé «souhaitable, encore moins nécessaire, d'énoncer (...) une théorie générale sur la légalité des actes législatifs et administratifs de la «RTCN» (p. 2231, §§ 44-45). La Cour tenait à l'évidence à limiter son raisonnement à ce qui était essentiel pour prendre sa décision dans l'affaire dont elle était saisie et à s'abstenir de s'aventurer sur le terrain particulièrement complexe et délicat de la «légalité» des actes d'un régime «hors-la-loi». Je suis fermement convaincue qu'en l'espèce la Cour devrait tout autant veiller à ne pas élaborer une théorie générale concernant la validité et l'effectivité des recours de la «RTCN», notamment si celle-ci repose sur les remarques minimalistes formulées par la Cour internationale de justice (CIJ) dans son avis consultatif en l'affaire de la Namibie, que la Cour a jugé dans l'arrêt *Loizidou* ne pas devoir interpréter ou expliciter plus que nécessaire.

Cette attitude de retenue judiciaire en la matière s'appuie principalement sur trois considérations. Premièrement, tout examen des recours donne lieu à une difficulté évidente: l'ensemble du système judiciaire de la «RTCN» tire son autorité juridique de dispositions constitutionnelles dont la Cour ne peut admettre la validité – pour les mêmes raisons que celles qui l'empêchaient d'accepter la validité de l'article 159 dans l'affaire *Loizidou* – sans conférer une certaine légitimité à une entité que la communauté internationale a refusé de reconnaître.

Une cour internationale ne devrait pas se considérer comme libre d'ignorer la pratique constante des Etats à cet égard ni les appels répétés de la communauté internationale en vue de ne pas permettre plus facilement à cette entité de s'affirmer comme Etat. Deuxièmement, la Cour ne saurait examiner les recours de la «RTCN» en faisant abstraction du contexte, comme s'il s'agissait d'une Partie contractante normale, pour laquelle on peut supposer que les tribunaux sont «établis par la loi» ou que les juges sont indépendants et impartiaux (en l'absence de preuve du contraire). Si elle attribue une validité juridique à des recours en justice, la Cour doit obligatoirement se prononcer sur le point de savoir si les tribunaux sont «établis par la loi» – ce qu'elle doit s'abstenir de faire si elle veut tenir compte de l'illégalité du régime de la «RTCN» et de la position déclarée de la communauté internationale. Il est vrai que la notion de tribunal «établi par la loi» est autonome. Cependant, la Cour devrait éviter de se mettre dans une situation où, pour des raisons censément louables, elle serait tentée de couvrir d'un semblant de légalité un état de choses à l'évidence illégal. Troisièmement, la Cour ne devrait jamais oublier que la Turquie elle-même ne prétend pas que les «recours» en question sont offerts par elle, puisqu'elle fait au contraire valoir dans toute cette affaire que la «RTCN» est un Etat indépendant responsable de son propre ordre juridique. La Cour se trouve donc confrontée à un paradoxe: l'Etat défendeur fait mention dans ses observations de «recours» censés appartenir à un autre ordre juridique. Le caractère artificiel de cette approche, qui traduit le fait que la «RTCN» n'a qualité ni dans la communauté internationale ni devant la Cour et n'est reconnue que par la Turquie, constitue une raison suffisante pour que la Cour se montre extrêmement prudente avant d'énoncer un principe général relatif au statut de ces «recours» au regard de la Convention.

Je reconnais naturellement que, même dans une situation d'illégalité, il est à l'évidence dans l'intérêt des habitants que soit mise en place une certaine forme de système judiciaire afin qu'une autorité puisse trancher les différends qui surgissent au quotidien. De plus, il ne faut pas exclure que les décisions de ces tribunaux, notamment en matière civile – divorce, garde, contrats, etc. – puissent être reconnues par les juridictions d'autres pays. Cela s'est d'ailleurs produit à l'occasion, surtout après que la situation d'illégalité a pris fin. Toutefois, c'est précisément en raison de l'importance de pareils arrangements pour la population locale – et si la situation permet d'y avoir recours – qu'une cour internationale ne doit procéder à l'examen de leur légalité que si cela est absolument nécessaire. Toute autre méthode risquerait au bout du compte de se révéler contraire à l'utilité de fait d'un tel système. Par exemple, un constat «d'illégalité» pourrait dissuader la population de s'adresser à de telles institutions pour le règlement des litiges. De même, en l'espèce, un

constat confirmant la légalité de pareils arrangements pourrait inciter le gouvernement chypriote légitime à appeler la communauté chypriote grecque à éviter ces tribunaux afin de ne pas porter préjudice à la thèse de l'illégalité qu'il fait valoir sur le plan international. La Cour ne devrait pas supposer trop rapidement qu'elle agit au profit de la population locale lorsqu'elle se penche sur la légalité de ces arrangements.

Je tiens cependant à souligner d'emblée que ce n'est pas parce que je reconnais l'utilité d'un système judiciaire local que la Cour doit exiger des requérants de Chypre du Nord se plaignant de violations des droits de l'homme qu'ils épuisent ces voies de recours possibles – ou celles qu'elle juge effectives – avant d'être compétente pour examiner leurs griefs. La reconnaissance ponctuelle accordée par des juridictions étrangères est une chose. L'exigence d'épuisement des recours en est une autre. Demander aux personnes soumises à l'autorité de l'occupant de s'adresser aux tribunaux avant que la Cour ne puisse examiner leurs griefs de violation des droits de l'homme est à n'en pas douter irréaliste étant donné le manque de confiance, évident et compréhensible, qu'inspire un tel système d'administration de la justice.

En l'espèce, la Cour s'est imprudemment engagée sur la voie de l'élaboration d'une théorie générale sur les recours de la «RTCN» centrée sur les brèves remarques formulées par la CIJ dans son avis consultatif en l'affaire de la Namibie (paragraphes 89-102 du présent arrêt), pour dégager une conclusion générale au paragraphe 102: «aux fins de l'ancien article 26 (...), les recours disponibles en «RTCN» doivent passer pour des «recours internes» de l'Etat défendeur». Or cette conclusion donne lieu à deux difficultés majeures. Tout d'abord, pareille théorie n'est en l'espèce absolument pas nécessaire puisque la Cour ne rejette en fait à aucun moment un grief en vertu de l'ancien article 26 pour non-épuisement des recours internes! Elle se borne à utiliser ces considérations indirectement lorsqu'elle évalue le caractère effectif des recours sous l'angle de l'article 13 ainsi que la question de la tolérance officielle comme un élément de la notion de pratique administrative. Le point 5 du dispositif relatif aux questions préliminaires est donc tout à la fois trop large et inutile.

Ce qui importe plus encore, une telle conclusion générale entraîne une conséquence directe: la Cour européenne des Droits de l'Homme peut reconnaître la validité juridique des décisions des tribunaux de la «RTCN» et donc, implicitement, les clauses de la Constitution instituant le système judiciaire. Pareille reconnaissance, nonobstant les affirmations constantes de la Cour en sens contraire, ne peut qu'affaiblir la position ferme adoptée par la communauté internationale qui, par l'intermédiaire du Conseil de sécurité des Nations unies, a déclaré que la proclamation de la «RTCN» était «juridiquement nulle» et a toujours refusé de reconnaître la «RTCN». Elle va également à l'encontre de la

position adoptée par le Comité des Ministres du Conseil de l'Europe (paragraphe 14 de l'arrêt et paragraphes 19-23 de l'arrêt *Loizidou*) ainsi que des termes des diverses résolutions appelant les Etats à «ne pas encourager ni aider d'aucune manière l'entité sécessionniste susmentionnée» (voir notamment les paragraphes 20 et 23 de l'arrêt *Loizidou*). A mon sens, une cour internationale devrait beaucoup hésiter à adopter une position aussi contraire à la pratique internationale – surtout lorsque cela n'est absolument pas nécessaire pour trancher l'affaire dont elle est saisie. La prudence dont fait preuve la Cour au paragraphe 45 de son arrêt *Loizidou* montre bien la sagesse de pareille conduite.

Il reste à expliquer pourquoi il n'est pas nécessaire que la Cour se prononce sur la validité juridique des recours disponibles dans le nord de Chypre aux fins de trancher la présente affaire. Je me propose à cet égard d'examiner les griefs pour lesquels la Cour a pris en compte l'existence de recours afin de parvenir à sa conclusion, à savoir ceux tirés des articles 6 et 13 concernant la communauté chypriote grecque vivant dans le nord de Chypre (paragraphes 233-240 et 324 de l'arrêt), ceux relatifs aux opposants politiques et Tsiganes chypriotes turcs (paragraphes 342-353 de l'arrêt) et la violation alléguée de l'article 13 au sujet de ces griefs (paragraphes 378-383 de l'arrêt).

1. Articles 6 et 13

La Cour conclut que n'est établie aucune violation de l'article 6 «à raison d'une pratique alléguée» s'agissant du grief selon lequel les Chypriotes grecs enclavés seraient privés du droit d'obtenir qu'un tribunal indépendant et impartial établi par la loi statue sur leurs droits et obligations de caractère civil (paragraphes 233-240 de l'arrêt). Ce faisant, elle se rallie à la Commission, qui conclut à partir des faits que rien, dans le cadre du système judiciaire de la «RTCN», ne permet de jeter le doute sur l'indépendance et l'impartialité des juges, et que ces tribunaux fonctionnent sur la base de la législation interne de la «RTCN».

Sans compter les difficultés qu'entraîne la reconnaissance du cadre de la «RTCN» que j'ai déjà mentionnées, cette conclusion ne s'accorde pas avec les constats généraux de violations graves et multiples des dispositions de la Convention (articles 3, 9, 10 de la Convention et 1 et 2 du Protocole n° 1) établis par la Cour à l'égard de la communauté chypriote grecque enclavée. La Cour admet que les Chypriotes grecs enclavés sont «contrain[ts] de vivre dans un environnement hostile où [ils] ne peuvent guère mener une vie privée et familiale normale» (paragraphe 300). Elle juge aussi que cette population est victime d'un traitement discriminatoire et dégradant fondé sur l'origine ethnique, la race et la religion, et que ses membres sont contraints de vivre dans les conditions suivantes: «isolement, liberté de circulation restreinte,

surveillance et aucune perspective de renouvellement ou d'élargissement de leur communauté» (paragraphe 309). Lorsqu'elle prend du recul par rapport aux détails du raisonnement juridique qui sous-tend ces conclusions, la Cour admet qu'il s'agit d'une communauté en nombre décroissant et âgée dont les membres ont subi de sérieuses atteintes à leurs droits garantis par la Convention sous couvert d'une politique de séparation ethnique. La Cour, de plus, souscrit aux observations du Secrétaire général des Nations unies selon lesquelles ces restrictions tendent à ce que la communauté soit inexorablement condamnée, à terme, à disparaître (paragraphe 307).

Dans un tel contexte, est-il réaliste de dire que les membres de cette communauté ont accès aux tribunaux pour y intenter des actions civiles? Est-il crédible d'avancer qu'il existe un havre de justice susceptible de défendre les droits de cette population assiégée en dépit de l'existence d'une politique officielle de restriction et d'oppression? J'aimerais beaucoup croire que les tribunaux peuvent fonctionner de cette manière, et qu'ils fonctionnent ainsi. Toutefois, en l'absence de preuves suffisantes du contraire – et non en tablant sur quelques affaires de dommages corporels ou de troubles de la possession menées avec succès devant les tribunaux[1] –, l'expérience et le bon sens nous enseignent que les tribunaux sont généralement impuissants dans ce genre de situation. Il faut également se rappeler que les habitants de cette région ne peuvent s'éloigner de plus de cinq kilomètres de leur habitation – ce qui n'est guère susceptible de favoriser le désir de porter les litiges devant les tribunaux. Il est donc tout à fait naturel et prévisible que cette population ne fasse pas réellement appel au système judiciaire.

La Cour doit tenir compte du contexte juridique et politique dans lequel se situent les recours ainsi que de la situation personnelle des requérants (*Akdivar et autres c. Turquie*, arrêt du 16 septembre 1996, *Recueil* 1996-IV, p. 1211, § 69). Il est plus conforme à la méthode habituelle de la Cour en matière de recours de conclure que, lorsqu'il existe une pratique de non-respect des dispositions de la Convention en application d'une politique particulière de l'Etat, les recours sont par voie de conséquence consentis sans conviction, incomplets ou vains (voir, *mutatis mutandis*, le rapport de la Commission dans l'«*Affaire grecque*», Annuaire 12, p. 194). Cette conclusion vaut aussi pour le grief tiré de l'article 13 relatif aux allégations d'ingérences dans les droits des Chypriotes grecs du nord de Chypre commises par des particuliers. Enfin, il est difficile de comprendre comment l'on peut dire qu'il est dans

1. La Cour a eu connaissance de plusieurs actions en justice menées avec succès mais n'a reçu aucune information quant à l'exécution ou non des jugements rendus. D'après le gouvernement requérant, la question de l'exécution est également liée aux actes d'intimidation auxquels se livreraient les colons turcs (paragraphe 229 de l'arrêt).

l'intérêt de la population locale – pour reprendre les termes maintes fois cités de l'avis consultatif en l'affaire de la Namibie – d'exiger des membres de ces communautés qu'ils épuisent les recours internes offerts par la «RTCN» avant que la Cour n'examine leurs griefs de violation des droits de l'homme.

En bref, la Cour aurait dû conclure à la violation de cette disposition, car pareil constat découle immanquablement de son appréciation générale de la situation difficile où se trouve cette communauté, sans se prononcer sur les questions relatives à l'ordre juridique de la «RTCN».

2. Griefs relatifs aux opposants politiques et Tsiganes chypriotes turcs

La Cour rejette les allégations d'existence d'une pratique administrative de violation des droits de ces deux catégories de personnes. Il est à mon sens utile de rappeler que, dans la jurisprudence de la Convention, la notion de pratique administrative suppose la présence de deux éléments distincts qui s'additionnent: la répétition des actes ou «une accumulation de manquements de nature identique ou analogue, assez nombreux et liés entre eux pour ne pas se ramener à des incidents isolés, ou à des exceptions, et pour former un ensemble ou système» (*Irlande c. Royaume-Uni*, arrêt du 18 janvier 1978, série A n° 25, p. 64, § 159), ainsi qu'une certaine «tolérance officielle» de la part des autorités de l'Etat car «on n'imagine pas que les autorités supérieures d'un Etat ignorent, ou du moins soient en droit d'ignorer, l'existence de pareille pratique» (*ibidem*). En outre, ces autorités «assument au regard de la Convention la responsabilité objective de la conduite de leurs subordonnés; elles ont le devoir de leur imposer leur volonté et ne sauraient se retrancher derrière leur impuissance à la faire respecter» (*ibidem*)[1]. La Cour se rallie à la conclusion de la Commission selon laquelle les allégations relatives à une ingérence aussi générale et étendue dans les droits des membres de ces groupes ne sont pas étayées par les faits (paragraphes 342-353). En conséquence, on ne saurait affirmer que le premier des deux éléments constitutifs d'une pratique

1. La Commission a défini la notion de tolérance officielle en ces termes: «Par tolérance officielle, il faut entendre que les actes de torture ou de mauvais traitements, quoique illégaux sont tolérés en ce sens que les supérieurs des personnes immédiatement responsables connaissent ces actes, mais ne font rien pour en punir les auteurs ou empêcher leur répétition; ou que l'autorité supérieure, face à de nombreuses allégations, se montre indifférente en refusant toute enquête sérieuse sur leur vérité ou leur fausseté, ou que le juge refuse d'entendre équitablement ces plaintes (...) Sur ce dernier point, la Commission ajoute que toute mesure prise par l'autorité supérieure doit être d'ampleur suffisante pour mettre fin à la répétition des actes ou provoquer une rupture dans l'ensemble ou dans le système» (*France, Norvège, Danemark, Suède et Pays-Bas c. Turquie*, n^os^ 9940-9944/82, décision de la Commission du 6 décembre 1983, Décisions et rapports 35, p. 191, § 19; voir également l'«*Affaire grecque*», Annuaire 12, pp. 195-196).

administrative – à savoir la répétition des actes – soit présent. Dans ces conditions, il est inutile d'aller plus loin et de dire que les membres de ces groupes n'ont pas utilisé les recours, comme la Cour le fait au paragraphe 352 de l'arrêt. Il est probable, bien que cela ne soit pas expressément indiqué, que la Cour a mentionné des recours dans ce contexte afin de démontrer que l'autre élément constitutif d'une pratique administrative, c'est-à-dire la tolérance officielle, faisait défaut. Toutefois, pour conclure à l'inexistence d'une telle pratique, il suffit que l'un des deux éléments, en l'espèce l'élément factuel, manque. Là encore, la Cour va au-delà de ce qui est absolument nécessaire pour conclure, ce qui est peu sage.

3. Article 13 pour ce qui est des griefs de la communauté chypriote turque

Quant à ce grief annexe, la Cour souscrit également à la conclusion de la Commission selon laquelle les tribunaux de la «RTCN» offrent des recours effectifs pour redresser les griefs de la communauté tsigane et des dissidents (paragraphes 378-383). A cet égard, on peut se demander si, après avoir rejeté les allégations d'existence d'une pratique administrative de violation des droits de ces groupes, il est bien nécessaire d'examiner ensuite la question de savoir s'il y avait une pratique consistant à leur refuser des recours effectifs. Selon moi, il n'y a lieu d'aborder cette question que si les preuves relatives à la pratique donnent naissance à un grief défendable quant à l'existence d'une telle pratique. Toutefois, même si tel était le cas, j'estime que c'est au gouvernement défendeur qu'il incomberait de prouver, en s'appuyant sur des affaires tranchées, que ces groupes avaient de réelles possibilités d'ester en justice et d'obtenir gain de cause. Compte tenu de la situation politique régnant en «RTCN», je suis loin d'être convaincue, pour des raisons similaires à celles exposées ci-dessus au sujet de l'article 6, que le système judiciaire soit en mesure de fournir des recours aux dissidents qui mettent en cause la politique de séparation ethnique sur laquelle repose l'entité ou aux Tsiganes indigents qui vivent aux marges de la société, ou soit autorisé à le faire.

En conséquence, la question des recours aurait pu être évitée dans ce contexte en concluant soit qu'il n'y avait pas lieu d'examiner l'article 13, soit, à titre subsidiaire, qu'il y avait aussi violation de cette disposition en raison de l'ineffectivité des recours, et ce sans se prononcer sur leur légalité.

Conclusion

La Cour a manqué de sagesse en élaborant, à l'instar de la Commission, une théorie générale relative à la validité et à l'effectivité des recours en «RTCN».

Elle a peut-être oublié le désaccord qui avait opposé la Commission et la Cour dans l'affaire *Loizidou* quant à la manière de traiter des questions soulevées par l'occupation continue du nord de Chypre par la Turquie. Dans un domaine politique tel que celui-là, la Cour devrait assurément prendre appui sur l'approche suivie fermement et sans relâche jusqu'à ce jour par la communauté internationale. Comme indiqué ci-dessus, la démarche adoptée par la Cour n'était pas nécessaire pour trancher les questions qui se posaient en l'espèce. Dans une affaire interétatique soulevant des questions qui ont des conséquences pour l'ensemble de la communauté internationale, dans ses relations tant avec les deux parties qu'avec la Cour, le principe de retenue judiciaire aurait dû jouer pleinement, comme la Cour l'a laissé entendre dans les extraits de l'arrêt *Loizidou* cités plus haut. Je regrette vivement que pareille prudence n'ait pas été de mise en l'espèce.

OPINION EN PARTIE DISSIDENTE DE M. LE JUGE COSTA

1. Les deux seuls points (par rapport à un dispositif d'une cinquantaine d'articles) sur lesquels j'ai un désaccord – soit sur son raisonnement soit sur sa conclusion – avec la majorité concernent la discrimination religieuse à l'encontre des Chypriotes grecs vivant dans la zone du Karpas, et la violation des droits de la communauté tsigane au sein des Chypriotes turcs.

2. Sur le premier point, je comprends bien que la majorité de la Cour ait jugé inutile, après avoir conclu à la violation de l'article 3 de la Convention au détriment de ces personnes, d'examiner si l'article 14, combiné avec d'autres stipulations, avait été également violé.

3. Je suis cependant gêné que cette conclusion de la Cour s'étende à l'article 14, combiné avec l'article 9. Sur un plan général, l'interdiction de la discrimination posée par l'article 14 ne me paraît pas faire double emploi avec la simple constatation qu'un droit garanti par la Convention a été violé. Par exemple, dans l'affaire ayant donné lieu à l'arrêt *Chassagnou et autres c. France* ([GC], nos 25088/94, 28331/95 et 28443/95, CEDH 1999-III) (où j'étais d'ailleurs minoritaire, mais cela est une autre question), la Cour n'a pas hésité à trouver une violation non seulement des articles 11 de la Convention et 1 du Protocole n° 1, pris isolément, mais aussi de ces articles combinés avec l'article 14 de la Convention. Pour une communauté enclavée, au sein d'une île divisée notamment sur le plan religieux, et n'ayant pas sa liberté de mouvement (paragraphe 245 du présent arrêt), il me semble que la liberté religieuse se trouve l'une des plus importantes, et qu'elle a été en l'espèce méconnue; je ne suis pas choqué, à titre personnel, d'en déduire une double violation, et de l'article 9 et de l'article 9 combiné avec l'article 14.

4. On pourra certes objecter que le constat d'une discrimination atteignant le seuil de gravité des traitements inhumains et dégradants que prohibe l'article 3 est suffisant. Peut-être. Mais je ne suis pas sûr qu'il faille que cet article absorbe tout, qu'il prime sur toutes les autres violations. La Convention forme un tout, mais il ne faut pas en déduire qu'une seule violation de la Convention dispense d'examiner s'il y en a eu d'autres, sauf dans des cas exceptionnels où ce sont exactement les mêmes faits qui recouvrent en totalité des griefs différents.

5. Quant aux Chypriotes turcs d'origine tsigane, l'arrêt, au paragraphe 352, considère qu'il n'a pas été établi qu'une pratique existait, consistant à ne pas protéger leurs droits. Pourtant, la Commission avait trouvé de nombreuses violations de ces droits, et des incidents particulièrement graves (paragraphe 54 du présent arrêt). Simplement, la Cour, sans nier ce constat, se fonde sur l'absence de tout

recours des victimes devant les tribunaux locaux. Mais ne faut-il pas distinguer entre la méconnaissance des droits et libertés des intéressés, qui n'est pas contestée, et le fait que, à tort ou à raison, ceux-ci n'aient pas cru possible, ou efficace, d'intenter des actions en justice? Et faut-il assimiler leur abstention à un défaut de preuve d'une pratique administrative, preuve de toute façon fort difficile à rapporter, et rarement admise par la jurisprudence de la Cour?

6. Il m'aurait paru plus simple d'admettre les faits constatés par la Commission, et de les qualifier de violation des droits garantis par la Convention et ses Protocoles. Je n'ai donc pas voté le point correspondant du dispositif.

7. Pour le reste, et sans autosatisfaction individuelle ou collégiale, je souscris très largement aux motifs et au dispositif de cet important arrêt.

OPINION EN PARTIE DISSIDENTE DE M. LE JUGE FUAD

(Traduction)

1. J'ai voté contre le constat de la majorité de la Cour selon lequel il y a eu violation continue de l'article 1 du Protocole n° 1 de la part de l'Etat défendeur à raison du fait que les Chypriotes grecs possédant des biens dans le nord de Chypre se sont vu refuser l'accès à ces biens ainsi que la maîtrise et la jouissance de ceux-ci, sans être indemnisés de l'atteinte à leur droit de propriété. A moins que la Cour, dans sa composition actuelle, ne soit convaincue que l'arrêt rendu par la majorité dans l'affaire *Loizidou* procédait d'une erreur, il fallait s'attendre à pareille décision.

2. A mon humble avis, la majorité n'a pas accordé suffisamment de poids aux causes et effets des événements regrettables et catastrophiques qui se sont produits à Chypre entre 1963 et 1974 (et ont littéralement déchiré l'île) pas plus qu'à l'évolution survenue depuis, notamment l'intervention des Nations unies. Je trouve que le raisonnement suivi dans certaines des opinions dissidentes jointes à l'arrêt *Loizidou c. Turquie* (fond) du 18 décembre 1996 (*Recueil des arrêts et décisions* 1996-VI) est extrêmement convaincant. Ces textes insistent sur le caractère unique et délicat de ce que l'on pourrait appeler le problème chypriote.

3. M. Bernhardt (auquel M. Lopes Rocha s'est rallié) a formulé un certain nombre d'observations au sujet de la situation actuelle à Chypre et de ses conséquences sur les questions soumises à la Cour. Il déclare :

> « 1. En l'espèce, il est impossible de dissocier la situation personnelle de la victime d'une évolution historique complexe et d'une situation actuelle qui ne l'est pas moins : il s'agit là d'une caractéristique unique de l'affaire. La décision de la Cour concerne en réalité non seulement M^me^ Loizidou, mais des milliers, voire des centaines de milliers de Cypriotes grecs qui possèdent – ou possédaient – une propriété dans le nord de Chypre. Elle pourrait également intéresser les Cypriotes turcs qui ne peuvent visiter ou occuper leurs biens dans le sud de Chypre. Elle pourrait même toucher des ressortissants de pays tiers qui se voient refuser l'autorisation de se rendre dans des lieux où ils possèdent des maisons et des terres. La frontière de fait séparant les deux parties de Chypre a pour effet déplorable et inhumain d'empêcher l'accès d'un grand nombre d'individus à leurs terres et à leurs anciennes maisons.
>
> A l'instar de la majorité des juges de la grande chambre, j'estime que la Turquie a une part importante de responsabilité dans la situation actuelle. Toutefois, d'autres acteurs et facteurs sont également impliqués dans ce drame. Ce dernier trouve son origine dans le coup d'Etat de 1974, suivi par l'invasion turque, le transfert de populations du nord au sud et inversement, et d'autres événements. Parmi ces derniers, il faut citer la proclamation de la « République turque de Chypre du Nord », Etat non reconnu par la

communauté internationale. Le résultat de ces divers événements et influences est la mise en place du «rideau de fer» qui existe depuis plus de deux décennies et se trouve placé sous le contrôle des forces de l'ONU. A ce jour, l'ensemble des négociations et propositions de négociations visant à réunifier l'île ont avorté. Qui est responsable de cet échec? L'une des parties seulement? Est-il possible de donner une réponse précise à ce genre de questions et de parvenir à une conclusion claire d'un point de vue juridique?

La situation de M^me^ Loizidou ne résulte pas d'une action isolée des troupes turques à l'encontre de ses biens et de sa liberté de mouvement, mais de la création et de la fermeture en 1974 et jusqu'à ce jour d'une ligne de frontière.»

4. Après avoir expliqué pourquoi il considérait comme fondée l'exception préliminaire soulevée par le gouvernement défendeur, le juge Bernhardt ajoute :

«3. Même si je pouvais suivre la majorité de la Cour à cet égard, je ne pourrais conclure à la violation de l'article 1 du Protocole n° 1. Je l'ai dit ci-dessus, la présence de troupes turques dans le nord de Chypre n'est qu'un élément d'une évolution et d'une situation complexes. Ainsi qu'il a été expliqué et décidé dans l'arrêt Loizidou sur les exceptions préliminaires (23 mars 1995, série A n° 310), la Turquie peut avoir à répondre d'actes concrets perpétrés par les troupes et les fonctionnaires turcs dans le nord de Chypre. En l'espèce, toutefois, nous avons affaire à une situation particulière: c'est l'existence de fait de la frontière, gardée par les forces de l'ONU, qui empêche les Cypriotes grecs d'accéder à leurs propriétés du nord de l'île et d'y résider. La présence de troupes turques et le soutien apporté par la Turquie à la «RTCN» constituent des facteurs importants dans la situation actuelle, mais je me sens incapable de fonder une décision de la Cour européenne des Droits de l'Homme exclusivement sur l'idée que la présence turque dans le nord de Chypre est illégale et que, par conséquent, la Turquie est responsable de pratiquement tout ce qui s'y passe.»

5. J'approuve également l'opinion dissidente de M. Pettiti. Celui-ci explique pourquoi il est d'avis d'accueillir certaines des exceptions préliminaires soulevées par la Turquie, puis observe :

«Après 1974, et alors que les Nations unies n'ont pas qualifié d'agression au sens du droit international l'intervention des forces turques en zone nord, diverses négociations ont été conduites aux fins de médiation par les Nations unies, le Conseil de l'Europe, l'Union européenne. La Cour n'a d'ailleurs pas examiné la question de la légalité de l'intervention (paragraphe 56 de l'arrêt). La décision d'installer des forces internationales à la ligne de séparation des deux communautés a entraîné l'impossibilité de libre circulation des personnes entre les deux zones, dont la responsabilité n'est pas imputable au seul gouvernement turc.

L'invocation par la Cour de l'estimation de la communauté internationale (paragraphe 42 de l'arrêt) concernant la République de Chypre et la «RTCN» n'est pas explicitée. Or peut-on en 1996 affirmer qu'il s'agit d'une estimation incontestée de cette «communauté internationale», alors que les dernières résolutions de l'Assemblée générale des Nations unies ou du Conseil de sécurité remontent à plusieurs années et que la Cour n'avait pas connaissance des missions des médiateurs internationaux? Or, pour la Cour, seule la Turquie serait «comptable» des conséquences du conflit de 1974! Une situation diplomatique d'une telle ampleur aurait nécessité, à mon sens, une enquête sur place, approfondie et de longue durée, par une délégation de la Commission portant sur le rôle des forces internationales, le fonctionnement des

juridictions, avant de se prononcer sur les imputabilités des responsabilités au titre de la juridiction visée à l'article 1 de la Convention.»

6. M. Pettiti conclut:

«Quelles que soient les responsabilités assumées en 1974 lors du coup d'Etat, celles se situant à l'arrivée des troupes turques la même année, quelles que soient les hésitations de la communauté internationale dans l'approche des problèmes internationaux relatifs, à partir de 1974, à Chypre, lors de la constitution de la «RTCN», comme lors de la déclaration de la Turquie auprès du Conseil de l'Europe, responsabilités qui sont d'origines diverses et de natures différentes, l'ensemble du problème des deux communautés (il ne s'agit pas de minorités nationales au sens du droit international) relève plus du politique et de la diplomatie que d'un examen juridictionnel européen, à partir de la situation isolée de M^me^ Loizidou au regard du Protocole n° 1. Comment ne pas noter qu'aucun recours interétatique n'est intervenu depuis 1990, qui aurait conduit à la saisine de la Cour sur l'ensemble de la situation de Chypre? Cela souligne que les Etats membres du Conseil de l'Europe ont voulu garder la prudence diplomatique face à des événements historiques chaotiques que la sagesse des nations peut faire évoluer positivement.»

7. Je partage également l'avis qu'exprime M. Gölcüklü dans son opinion dissidente. Celui-ci souligne que la Cour était saisie d'une situation politique et qu'il ne lui semblait pas possible de distinguer les aspects politiques de l'affaire de ses aspects juridiques. Il exprime son accord avec le point de vue de M. Bernhardt et fait ensuite remarquer:

«Le conflit cypriote entre les deux communautés turque et grecque trouve son origine tout particulièrement dans le coup d'Etat de 1974, réalisé par les Cypriotes grecs, avec l'intention manifeste et dans la perspective d'une fusion avec la Grèce (*enosis*), que le chef de l'Etat cypriote de l'époque a sévèrement et ouvertement blâmé devant les instances internationales. A la suite de ce coup d'Etat, la Turquie est intervenue pour assurer la sauvegarde de la République cypriote en vertu d'un accord de garantie conclu auparavant entre trois Etats intéressés (Turquie, Royaume-Uni et Grèce), accord qui leur conférait le droit d'intervenir séparément ou conjointement, lorsque la situation l'exigeait, et la situation l'a finalement exigé au mois de juillet 1974, du fait du coup d'Etat susmentionné. Tout ceci, soit dit en passant, abstraction faite des événements et incidents sanglants qui se succédaient depuis 1963.

Cette mise en œuvre d'une clause de l'accord de garantie a changé la situation politique antérieure et a entériné la séparation des deux communautés, séparation qui était perceptible déjà depuis 1963.

(...)

Après l'établissement de la zone tampon sous la surveillance des forces des Nations unies, le passage du nord au sud et vice versa a été interdit, et il y a eu l'échange des populations convenu d'un commun accord avec les deux administrations turque et cypriote: 80 000 Cypriotes turcs se sont déplacés du sud au nord de l'île.»

8. MM. Gölcüklü et Pettiti ont formulé d'autres observations au sujet de la situation actuelle à Chypre auxquelles je me permets de souscrire. Je pense qu'elles valent pour la question dont nous sommes saisis, même si

elles ont été exprimées dans l'arrêt relatif à la satisfaction équitable (*Loizidou c. Turquie* (article 50), arrêt du 28 juillet 1998, *Recueil* 1998-IV).

M. Gölcüklü déclare:

> «3. En effet dans cette affaire Loizidou il ne s'agit pas d'un cas isolé concernant seulement la requérante (l'intervention de l'administration cypriote grecque en est une preuve manifeste), mais au contraire tous les habitants de cette île, qu'ils soient d'origine turque ou grecque, qui ont été déplacés à la suite des événements de 1974, ce dont il ne faut pas s'étonner.
>
> Au fond de l'affaire Loizidou c. Turquie se trouve le statut politique futur d'un Etat – qui a malheureusement disparu –, une question qui est devant toutes les instances politiques internationales (Nations unies, Communauté européenne, Conseil de l'Europe, etc.) en vue d'une solution. Donc une question d'une telle dimension ne saurait jamais être réduite seulement et simplement à la notion de droit de propriété et ainsi tranchée par l'application d'une disposition d'une convention qui n'a ni la vocation ni la prétention de résoudre des problèmes de cette envergure.»

De son côté, M. Pettiti fait observer:

> «Or la situation politique réelle de Chypre ainsi que l'interprétation du droit international expliquaient mes premiers votes. Le fait que des forces internationales contrôlent la ligne «verte» et interdisent la libre circulation des personnes et l'accès aux biens d'une zone à l'autre, aurait dû à mon avis être pris en compte par la Cour. L'évolution politique actuelle démontre que le problème de Chypre dépasse cruellement celui d'un simple contentieux.»

9. Selon moi, tout ce qui a été dit dans les passages des opinions dissidentes que j'ai cités s'applique, *mutatis mutandis*, à la question dont nous avons à traiter. Depuis l'arrêt *Loizidou*, il ne s'est produit aucun événement de nature à rendre ces observations indéfendables ou à les priver de pertinence.

10. Il faut prendre les difficultés de front. La décision de la majorité de la Cour ne peut avoir qu'un sens: tant que tout Chypriote qui souhaite recouvrer ses biens ne pourra pas le faire, sur-le-champ et sans attendre qu'une solution soit trouvée au problème chypriote, en traversant si besoin est la zone tampon sous contrôle des Nations unies, il y aura violation de la Convention dans le chef de la personne qui ne peut réaliser ce souhait. La situation étant ce qu'elle est aujourd'hui (et, malheureusement, depuis un quart de siècle), une personne, munie de son seul titre de propriété, peut-elle demander à une unité de la Force des Nations unies chargée du maintien de la paix à Chypre de lui donner le droit de traverser la zone tampon pour reprendre possession de ses biens? Qui surveillerait l'opération? Quelle pourrait être l'attitude de l'occupant actuel de la propriété en question? Ne se produirait-il pas immanquablement des atteintes graves à l'ordre public? Qui procéderait à l'expulsion nécessaire pour que le propriétaire en titre puisse reprendre possession de ses biens?

11. Si des considérations de ce genre sont pertinentes (et je ne vois pas au nom de quoi les écarter), il faut à mon sens reconnaître qu'il n'est tout

simplement pas réaliste de permettre actuellement à Chypre à tout propriétaire dépossédé de demander à reprendre immédiatement possession de ses biens où qu'ils se trouvent. Selon moi, ces problèmes ne se résolvent pas en réconfortant ces personnes avec une réparation et/ou des dommages-intérêts du fait que, pour des raisons pratiques, il est impossible de les réintégrer dans leurs droits de propriété. Il faut regarder en face l'impact complet de la décision de la majorité: elle va bien au-delà de questions de réparation et de condamnation.

12. Les événements de ces quelque trente dernières années ont montré qu'en dépit des efforts assidus déployés par les Nations unies (par l'intermédiaire de ses Secrétaires généraux successifs et de leur secrétariat) et par d'autres organisations et gouvernements amis, aucune solution acceptable pour les deux parties n'a pu être trouvée. Il s'agit sûrement là d'un signe de la complexité et de la difficulté du problème chypriote. Ces efforts se poursuivent: des discussions étaient en cours à New York pendant que la Cour siégeait.

13. Malheureusement, il se peut que la solution qui sera enfin trouvée ne satisfasse pas au souhait compréhensible de tout Chypriote de regagner son domicile et récupérer ses terres, etc. Le Secrétaire général, en pensant à l'avenir, a envisagé cette possibilité avec réalisme. Il a par exemple inclus dès 1992 ce paragraphe dans son Ensemble d'idées:

> «Autres zones sous administration chypriote grecque et chypriote turque. Chaque communauté créera une agence chargée de régler toutes les questions se rapportant aux personnes déplacées. La propriété des biens des personnes déplacées, au sujet desquels ces personnes demandent une indemnisation, sera transmise à la communauté dans laquelle se trouvent ces biens. A cette fin, tous les titres de propriété seront échangés sur une base communautaire globale entre les deux agences à la valeur de 1974 additionnée de l'inflation. L'agence de leur communauté indemnisera les personnes déplacées avec des fonds provenant de la vente des biens transférés à l'agence, ou par l'échange de biens. Les sommes manquantes seront fournies par le gouvernement fédéral en puisant dans un fonds d'indemnisation constitué à partir de diverses sources possibles telles que les impôts inattendus perçus sur l'augmentation de la valeur des biens transférés par suite de l'accord global, et les économies sur les dépenses de défense. Les organisations gouvernementales et internationales seront également invitées à financer le fonds d'indemnisation. A cet égard, il y a également lieu d'envisager la possibilité de crédit-bail à long terme et autres arrangements commerciaux.
>
> Les personnes des deux communautés qui résidaient et/ou possédaient des biens dans l'Etat fédéré administré par l'autre communauté, ou leurs héritiers, pourront présenter des demandes d'indemnisation. Les personnes déplacées appartenant à la communauté chypriote turque après décembre 1963 ou leurs héritiers peuvent également présenter de telles demandes.»

14. Plus récemment, le Secrétaire général a prononcé une déclaration (parue dans la presse) à l'intention des deux communautés lors de la

session de pourparlers indirects tenue à Genève en novembre 2000. Cette déclaration contient le passage suivant :

> « Concernant la propriété, nous devons reconnaître qu'il existe des considérations de droit international auxquelles nous devons accorder de l'importance. La solution doit être juridiquement inattaquable. Les droits de propriété prévus par la loi doivent être respectés. En même temps, je pense que la solution devrait soigneusement réguler l'exercice de ces droits afin de protéger le caractère des « Etats composants ». Pour cela, il faudrait doser comme il convient réintégration, échanges et indemnisation. Pendant une durée à convenir, le nombre de Chypriotes grecs s'établissant dans le nord et celui de Chypriotes turcs s'établissant dans le sud pourraient être limités. Il vaut la peine de mentionner à cet égard que le choix du régime des biens aura également une influence sur l'ampleur de l'ajustement territorial, et réciproquement. »

15. Je ne suis pas convaincu que le gouvernement requérant ait établi que la Turquie était responsable des violations alléguées dans le chef des Chypriotes grecs possédant des biens.

16. Je ne puis pas non plus souscrire à la décision de la majorité de mes collègues au sujet des violations alléguées concernant les Chypriotes grecs disparus et leur famille. A l'instar de la Commission, la majorité a conclu que les faits ne révélaient pas une violation matérielle de l'article 2 étant donné que les preuves n'étaient pas suffisantes pour établir que la Turquie était responsable de la mort de l'une quelconque de ces personnes. La majorité a également accepté le constat de la Commission selon lequel aucune preuve ne venait étayer l'hypothèse voulant que l'une quelconque des personnes disparues se trouvait toujours détenue sous l'autorité de la Turquie pendant la période considérée dans des conditions contraires à l'article 4. Aucune violation de cet article n'a donc été établie.

17. En revanche, la majorité a conclu à la violation continue de l'article 5 en ce que les autorités turques n'ont pas mené d'enquête effective sur le sort des disparus dont on allègue de manière défendable qu'ils étaient détenus sous l'autorité de la Turquie au moment de leur disparition. Elle a constaté avec la Commission que la Turquie ne s'était pas acquittée de cette obligation en participant aux travaux d'enquête du Comité des personnes disparues (« le CMP »).

18. De plus, elle a dit que, la Turquie n'ayant pas procédé aux recherches nécessaires ni, en conséquence, fourni d'informations quant au sort des personnes disparues, les familles de ces dernières avaient subi un traitement inhumain interdit par l'article 3.

19. De très nombreux renseignements ont été soumis à la Commission et à la Cour quant à la formation, aux responsabilités et aux travaux du CMP. Le rapport de la Commission en contient un résumé complet. L'Assemblée générale des Nations unies a appelé à la création d'un organe d'enquête chargé de résoudre le cas des personnes disparues des deux communautés. Elle a demandé au Secrétaire général de soutenir,

avec la participation du Comité international de la Croix-Rouge (CICR), la création d'un tel organe, « qui soit en mesure de fonctionner de manière impartiale, effective et rapide afin de résoudre le problème dans un délai raisonnable ».

20. Il a en fin de compte été décidé que le CMP se composerait de trois membres, à savoir des représentants de la communauté grecque et de la communauté turque et un représentant du Secrétaire général nommé par le CICR. Il apparaît clairement que les Nations unies, pour des raisons évidentes, envisageaient la création d'un organe qui remplirait sa triste et difficile tâche de manière objective et sans préjugé. La composition du CMP a respecté ce qui était voulu par l'ONU. Très sagement, si je puis dire, le CICR a été sollicité afin que ses ressources et sa grande expérience dans ce domaine puissent être mises à contribution.

21. Depuis la création du CMP, je ne vois rien qui laisse entendre que le Secrétaire général, le CICR ou une autre organisation comme le groupe de travail de l'ONU sur les disparitions forcées et involontaires (Genève) ait envisagé qu'une enquête unilatérale de la Turquie, l'Etat contre lequel continuent d'être dirigées les allégations les plus graves concernant le traitement et le sort des disparus, puisse satisfaire qui que ce soit. Bien entendu, le CMP présente de plus l'avantage d'enquêter également sur le sort des Chypriotes turcs disparus, comme l'ONU l'a clairement prévu.

22. La position de la Turquie sur la question des personnes disparues est bien connue. Je ne vois aucune preuve de ce que la Turquie ait refusé de coopérer avec le CMP ou fait obstacle à ses travaux. Si le mandat, le règlement ou les directives qui en régissent le mode de fonctionnement ne sont pas satisfaisants, ils peuvent être amendés avec de la bonne volonté et l'aide du Secrétaire général. Je ne souscris pas à l'avis de mes collègues selon lequel les procédures du CMP ne répondent pas en elles-mêmes à l'exigence d'enquête effective découlant de l'article 2. Pour accompagner l'élaboration du règlement et des directives combinés avec le mandat, et avec la coopération pleine et entière des deux parties au CMP, une équipe a été mise sur pied pour mener des enquêtes effectives. Le groupe de travail de l'ONU sur les disparitions forcées et involontaires a reconnu que le CMP était l'organe approprié pour procéder aux enquêtes nécessaires.

23. Nonobstant la confiance, justifiée selon moi, que la Turquie a mise en la création et les responsabilités du CMP, j'estime que la majorité de la Cour n'a pas tiré les conséquences qu'il convient de la déclaration par laquelle la Turquie reconnaît la juridiction obligatoire de la Cour. Elle n'a reconnu cette juridiction que pour des « faits (...) s'étant déroulés après [le 22 juillet 1990] ».

24. Le concept de violation continue est bien établi et facile à comprendre. Dans une affaire simple, par exemple lorsqu'une personne a été arrêtée et détenue illégalement, il n'importe pas que sa détention

initiale ait eu lieu avant que le gouvernement défendeur ait signé la Convention (ou même avant l'entrée en vigueur de la Convention interdisant la violation). La Cour a compétence pour statuer sur la légalité de la détention de l'intéressé à condition qu'il soit toujours détenu à l'époque considérée.

25. En l'espèce, la situation n'est pas simple. Les événements que la majorité a jugés donner naissance à l'obligation de mener des enquêtes effectives se sont produits en juillet et août 1974, soit quelque quinze ans avant la date à laquelle a pris effet la déclaration de la Turquie. Ni la Commission ni la Cour n'ont trouvé de preuves suffisantes pour dire que les personnes disparues étaient toujours détenues sous l'autorité de la Turquie à l'époque considérée. Selon moi, il n'est pas correct de considérer que l'obligation qui découle de la Convention dans certaines circonstances, à savoir mener une enquête rapide et effective, vaille encore quinze ans après les événements ayant exigé une enquête, de sorte que, lorsque la Turquie est devenue liée par la Convention, le fait qu'elle n'ait pas mené d'enquête appropriée, comme cela est allégué, puisse passer pour une violation de la Convention. Selon moi, le concept de violation continue ne peut être invoqué pour obtenir pareil résultat. Il me semble que cette démarche reviendrait à appliquer rétroactivement une obligation imposée par la Convention et à priver d'effet la limitation temporelle figurant dans la déclaration.

26. Je ne suis pas convaincu qu'il ait été prouvé que l'Etat défendeur se soit rendu coupable d'une quelconque violation de la Convention s'agissant des personnes disparues ou de leur famille.

27. J'en viens aux violations des droits de l'homme qu'auraient entraînées les conditions de vie des Chypriotes grecs qui ont choisi de vivre dans la région du Karpas. Mes collègues, suivant le raisonnement de la majorité dans l'affaire *Loizidou*, ont estimé que toutes les violations jugées établies étaient imputables à la Turquie parce que celle-ci est responsable au regard de la Convention des politiques et actions menées par les autorités de la « RTCN » du fait qu'elle exerce par l'intermédiaire de son armée un contrôle global sur le nord de Chypre. Ils ont conclu, à l'instar de la Commission, que « le grand nombre de soldats participant à des missions actives dans le nord de Chypre » en attestait.

28. Je ne pense pas que l'on puisse aborder cet aspect de l'affaire sans prendre en compte les événements qui ont conduit à la division de Chypre. Ces événements ont un caractère unique. Les dispositions constitutionnelles résultant d'un équilibre délicat et approuvées par des traités solennels instituant des obligations, qui ont présidé à la création de la République de Chypre, ont été mises en échec de manière bien trop prématurée. Puis il y a eu le coup d'Etat de 1974, dont le but est notoirement connu. Il s'ensuivit une quasi-guerre, puis un cessez-le-feu et le déplacement de nombreuses personnes vers le nord ou vers le sud de

la zone tampon. Les Chypriotes turcs ont commencé dès 1963 à mettre en place leur propre administration. Ils ne se sont pas contentés de se reposer sur les institutions de la République turque ou d'appliquer ses lois. Beaucoup d'éléments montrent que, si l'on faisait une enquête, on pourrait bien s'apercevoir que la « RTCN » arbore tous les attributs d'un Etat (même s'il n'est reconnu que par la Turquie) exerçant un contrôle indépendant et effectif sur le nord de Chypre. On ne saurait supposer, sans procéder à une enquête correcte, que la « RTCN » est un régime fantoche dirigé par la Turquie ou une juridiction subordonnée de celle-ci.

29. Le fait que seule la Turquie ait reconnu la « RTCN » ne change rien à la réalité de la situation. La reconnaissance est, au fond, un acte politique. Lorsque furent irrémédiablement mises en échec les dispositions constitutionnelles complexes (assorties de tous les contrepoids conçus pour répondre aux préoccupations et inquiétudes de deux communautés méfiantes), il a dû se poser des questions difficiles en matière de reconnaissance. Les Etats étaient naturellement libres d'accorder ou non leur reconnaissance, mais on ne saurait dire que l'Etat reconnu soit la République bicommunautaire créée en 1960 en vertu de ces dispositions.

30. Je souscris aux observations formulées par M. Gölcüklü dans son opinion dissidente jointe à l'arrêt *Loizidou* (fond) :

> « 3) Qu'il me soit permis de souligner par ailleurs que non seulement la partie septentrionale de l'île ne relève pas de la juridiction de la Turquie, mais qu'en outre il y existe une autorité souveraine (politiquement et socialement), indépendante et démocratique. Peu importe qu'elle soit juridiquement ou non reconnue par la communauté internationale. Nous savons que dans l'application de la Convention, c'est la situation factuelle et matérielle qui constitue l'élément décisif. La Commission et la Cour ont affirmé plus d'une fois que la notion de « juridiction » au sens de l'article 1 de la Convention couvre tant la « juridiction de fait » que celle de « droit ». Dans le territoire septentrional de l'île, il n'y a ni « vide » juridique ni « vide » de fait : il y a une société politiquement organisée, peu importe le nom et la qualification qu'on lui attribue, avec son propre ordre juridique et son autorité étatique. Qui nierait aujourd'hui l'existence de Taïwan? Ainsi, dans son rapport Chrysostomos et Papachrysostomou, la Commission a examiné le droit en vigueur à Chypre-Nord *en tant que tel et non pas le droit turc* pour se prononcer sur la régularité de la détention des requérants (paragraphes 148, 149 et 174 dudit rapport). »

31. Je ne pense pas que les faits sur lesquels la Cour s'est fondée justifient de conclure que toute violation, quels qu'en soient la nature et l'auteur, est automatiquement imputable à l'Etat défendeur. Tout doit dépendre de la situation factuelle telle qu'elle a évolué entre 1963 et aujourd'hui et des circonstances régnant à l'époque où chacune des violations alléguées a été commise. Avec beaucoup de respect pour ceux qui ne sont pas de mon avis, j'estime, à la lumière des événements qui se sont produits (et qui n'ont d'équivalent nulle part ailleurs), qu'il est essentiel de prendre en compte le rôle des troupes à l'époque des faits ainsi que leur comportement.

32. Je précise que je ne suis pas impressionné par la thèse selon laquelle si la Turquie n'était pas tenue pour responsable des violations prétendument commises dans le Karpas, aucun autre Etat ne pourrait l'être, ce qui aurait comme conséquence que le système de la Convention serait privé d'effet dans cette région. Je ne pense pas que ce genre de considération doive influencer la Cour.

33. Je ne suis pas convaincu qu'il ait été établi avec le degré de certitude nécessaire que l'une quelconque des violations alléguées à l'égard des Chypriotes grecs vivant dans la région du Karpas, au nord de Chypre, soit imputable à la Turquie.

34. En ce qui concerne les tribunaux militaires, pour les raisons que je me suis efforcé de donner, je ne saurais admettre que la Turquie puisse être tenue pour responsable (aux fins de l'article 6) de l'une quelconque des lacunes du décret sur les zones militaires interdites promulgué par la « RTCN ».

OPINION EN PARTIE DISSIDENTE DE M. LE JUGE MARCUS-HELMONS

En ce qui concerne la plupart des décisions dans cette affaire, je partage l'opinion de la majorité des juges de la Cour. Tel n'est pas le cas cependant pour certains aspects de cet arrêt. C'est pourquoi je tiens à formuler les remarques suivantes.

Le problème essentiel réside, à mon avis, dans l'interprétation de l'article 35 de la Convention (l'ancien article 26) et dans la question de savoir si les «juridictions» établies par la «RTCN» dans le nord de Chypre peuvent être considérées comme des recours internes dont l'épuisement préalable est requis, pour autant que ces recours s'avèrent efficaces dans chaque cas d'espèce. Une majorité de juges a répondu affirmativement à cette question, en se référant notamment à la Cour internationale de justice (CIJ) dans son avis consultatif sur les conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (CIJ, Recueil 1971, vol. 16, p. 56, § 125).

J'estime qu'il y a là une erreur d'interprétation dans le chef de la majorité des juges de la Cour et la méconnaissance d'une grave question de principes.

L'avis consultatif sur la Namibie

1. Cité par la Commission et repris par la Cour, le paragraphe 125 de l'avis consultatif reconnaît des effets limités à certains actes posés par des autorités illégales, comme des déclarations de naissance, de mariage ou de décès, afin de ne pas gravement perturber la vie en société des populations locales. Néanmoins, ce paragraphe 125, il convient d'abord de le replacer dans son contexte. En effet, dans les paragraphes 117 à 124, la CIJ ne cesse de rappeler à tous les Etats le caractère illégal de la présence de l'Afrique du Sud en Namibie et le danger de tirer des conséquences de cette présence. En conclusion, pour nettement atténuer et limiter les propos tenus dans le paragraphe 125, la CIJ énonce clairement dans le paragraphe 126: «(...) la déclaration de l'illégalité de la présence sud-africaine en Namibie [est] opposable à tous les Etats en ce sens qu'elle [rend] illégale *erga omnes* une situation qui se prolonge en violation du droit international; en particulier *aucun Etat qui établit avec l'Afrique du Sud des relations concernant la Namibie ne peut escompter que l'Organisation des Nations unies ou ses membres reconnaîtront la validité ou les effets de ces relations ou les conséquences qui en découlent*» (italique ajouté par moi).

Si la CIJ admet la validité de certains actes illégaux du gouvernement sud-africain, comme l'inscription des naissances, mariages ou décès à l'état civil, c'est uniquement parce qu'«on ne pourrait [en] méconnaître

les effets qu'au détriment des habitants du territoire». Il s'agit donc, dans le chef de la Cour internationale, d'une mesure favorable aux habitants du territoire et d'un souci de ne pas aggraver la situation pour ces habitants. *A contrario*, jamais la CIJ n'aurait eu l'idée de reconnaître une quelconque validité à un acte illégal en vertu du droit international, si cet acte doit entraîner un désavantage pour les habitants du territoire.

Pour la CIJ, ce paragraphe 125 est bien une exception et non point la règle!

Or, en appliquant par analogie le raisonnement de la CIJ à l'article 35 de la Convention (ancien article 26), on se rend coupable d'un contre-sens. En effet, obliger les habitants de Chypre à épuiser les recours internes de la «RTCN» avant de saisir la Cour européenne des Droits de l'Homme, alors que l'on sait par ailleurs que ces recours sont inefficaces, c'est évidemment imposer un obstacle supplémentaire à ces habitants dans leur désir légitime d'obtenir la cessation de la violation d'un droit fondamental en se présentant à Strasbourg.

2. Se référer à l'avis consultatif sur la Namibie pour interpréter l'ancien article 26 de la Convention manque de justification, par ailleurs. En effet, cet avis ne se prononce en aucune façon ni sur une question d'épuisement des recours internes, ni sur la validité des juridictions établies par un gouvernement illégal. Il se contente, dans une situation d'absolue illégalité, d'établir une mesure conservatoire pour les habitants dans la stricte mesure où cela s'avère nécessaire.

3. La situation de la Namibie et celle du nord de Chypre sont entièrement différentes. Les autorités exerçant le pouvoir sur le territoire du Sud-Ouest africain étaient initialement légales en vertu d'un statut de mandat octroyé à l'Afrique du Sud par la SDN, puis modifié en régime de «tutelle» par l'ONU. Ces autorités ne sont devenues illégales que par la suite, lors de la proclamation de l'indépendance de la Namibie. Dans le cas du nord de Chypre, il y avait, avant l'invasion turque de 1974, des juridictions établies selon la loi. C'est seulement à la suite de cette invasion que de nouvelles juridictions évidemment illégales ont été établies.

4. D'ailleurs, dans l'arrêt *Loizidou c. Turquie* (fond) du 18 décembre 1996, *Recueil des arrêts et décisions* 1996-VI, la Cour européenne des Droits de l'Homme ne s'est pas référée à l'avis sur la Namibie dans la perspective de l'épuisement des recours internes selon l'ancien article 26 de la Convention. La Cour s'est uniquement référée à cet avis en tant que possibilité générale de reconnaître une certaine validité à des opérations affectant des individus dans un régime *de facto*.

5. En se référant à l'avis sur la Namibie dans la perspective de l'ancien article 26 de la Convention, on donnerait une interprétation extensive et dénuée de fondement à cet avis, interprétation qui n'a jamais été voulue par la CIJ. En effet, cette interprétation extensive aurait comme

conséquence de décider a) que la Cour européenne des Droits de l'Homme ne pourrait pas méconnaître les juridictions établies par la «RTCN», b) qu'il est dans l'intérêt de tous les habitants du nord de Chypre, y compris les Chypriotes grecs, de rechercher la protection de ces juridictions, c) que si la «RTCN» n'avait pas établi ces juridictions, elle aurait violé la Convention européenne, et d) qu'en conséquence les habitants de la «RTCN» avaient l'obligation d'épuiser les recours offerts par ces juridictions.

6. Les paragraphes 95 et 96 de l'arrêt me paraissent inopportuns. En effet, dans l'avis sur la Namibie, la CIJ a été claire et volontairement succincte; il ne paraît pas nécessaire «d'ajouter» au texte de la majorité de la CIJ en recourant aux opinions individuelles exprimées par certains juges et aux arguments avancés au cours des plaidoiries, surtout pour donner au paragraphe 125 de l'avis une portée plus large que celle voulue par la majorité des juges de la CIJ.

7. Enfin le paragraphe 97 de l'arrêt me semble tomber dans des conclusions hâtives et erronées en estimant qu'il s'agit d'une opinion généralisée en cette matière. Pour s'en convaincre, il suffit de jeter un regard notamment sur la jurisprudence de la Cour suprême des Etats-Unis lorsqu'il s'agit d'apprécier la validité des actes accomplis par les autorités confédérées du Sud, pendant la guerre de Sécession. Or, il convient de souligner que ces autorités du Sud étaient légales jusqu'au moment de leur sécession (on se trouve donc dans une situation toute différente de celle où des juridictions sont illégalement établies après une invasion militaire par un Etat voisin). Au lendemain de cette guerre, dans les affaires *Texas v. White*, 74 U.S. 227; 7 Wall. 700 (1868); *Horn v. Lockhart*, 21 L.ed. 658; 17 Wall. 570 (1873), et *Williams v. Bruffy*, 96 U.S. 178 (1878), la Cour suprême a reconnu, dans des limites très strictes, une certaine validité aux actes administratifs et aux jugements des instances confédérées, pour autant que leur but et leur exécution ne soient pas en opposition avec l'autorité du gouvernement national et pour autant qu'ils ne portent pas atteinte aux droits constitutionnels des citoyens. Ces effets limités accordés rétroactivement étaient strictement réservés à des actes usuels, nécessaires pour le bon fonctionnement de la vie en société. Dans un cas plus récent, *Adams v. Adams*, *Weekly Law Reports* 1970, vol. 3, p. 934, la *High Court* anglaise a refusé catégoriquement de reconnaître le moindre effet aux actes pris par le gouvernement sécessionniste en cause (l'ancien gouvernement rhodésien, à la suite de l'adoption d'une déclaration d'indépendance unilatérale).

La Convention européenne des Droits de l'Homme

1. Je tiens à rappeler que nous sommes ici dans une situation spéciale. La Convention est une *lex specialis* qui exige le respect de sa spécificité et

qui ne peut tolérer des raisonnements par analogie que pour autant que l'on se trouve dans une situation rigoureusement semblable (ce qui n'est évidemment pas le cas pour l'avis consultatif sur la Namibie).

2. Quand on analyse les travaux préparatoires de la Convention européenne (Doc. Conseil de l'Europe, confidentiel H (61) 4), on remarque que, si l'idée de l'épuisement des recours internes fut naturellement exigée préalablement à l'envoi des requêtes à Strasbourg, cette condition fut rapidement complétée et nuancée par le principe « tel qu'il est entendu en droit international généralement reconnu » (*ibidem*, notamment p. 462 et surtout p. 497). Cette formulation est devenue en définitive « tel qu'il est entendu selon les principes de droit international généralement reconnus ».

Pourquoi cette condition d'épuisement des recours internes et surtout cette référence aux principes de droit international généralement reconnus? S'il est naturel qu'il faut donner d'abord la possibilité aux juridictions internes de faire cesser la violation d'un droit fondamental, là où cette possibilité existe avec efficacité, il est tout aussi évident que les auteurs de la Convention n'ont pas voulu tomber dans un formalisme excessif et susciter des obstacles supplémentaires pour les requérants souhaitant se présenter à Strasbourg. Ces auteurs se voulaient rationnels, mais surtout efficaces et désireux d'offrir un recours rapide à Strasbourg quand aucune autre solution pratique n'est réalisable. Leur souci d'efficacité et d'équité s'est trouvé renforcé par le fait qu'il existe précisément en droit international des principes généralement reconnus en cette matière.

3. La Cour européenne des Droits de l'Homme a d'ailleurs procédé à plusieurs reprises à une interprétation de l'ancien article 26 de la Convention, interprétation qui est conforme à ces principes généralement reconnus en droit international: par exemple dans les arrêts *Open Door et Dublin Well Woman c. Irlande*, 29 octobre 1992, série A n° 246-A, p. 23, §§ 48 et 50, ou encore *Akdivar et autres c. Turquie*, 16 septembre 1996, *Recueil* 1996-IV, p. 1212, § 72.

Le droit international public

Quels sont les principes de droit international généralement reconnus en cette matière?

La doctrine est unanime à ce sujet.

L'épuisement des recours internes ne doit jamais devenir un obstacle théorique à une solution internationale (protection diplomatique ou instance internationale). Le droit international précise bien que, si l'épuisement des recours internes est la règle normale avant une solution internationale, cette condition ne doit jamais être respectée si ces recours internes sont fallacieux, inefficaces, théoriques, inexistants ou tout

simplement s'il existe une jurisprudence constante rendant le recours interne inutile.

1. Ch. Rousseau, *Droit international public*, Sirey, Paris, 1953, pp. 366-367.

2. D.P. O'Connell, *International Law*, Stevens, London, 1965, vol. II, pp. 1143-1144.

3. M. Sorensen ed., *Manual of Public International Law*, Macmillan, London, 1968, pp. 588-590.

4. N. Quoc Dinh, *Droit international public*, LGDJ, Paris, 1975, p. 644.

5. G. Schwarzenberger and E. Brown, *A Manual of International Law*, 6th ed., Professional Books Limited, Oxon, 1976, p. 144: "If a State lacks effective local remedies, this amounts to a breach of the minimum standard. *This omission itself constitutes an international tort and, in good faith, precludes the tortfeasor from invoking the local remedies rule.*" (italique ajouté par moi)

6. O. Schachter, *International Law in Theory and Practice*, M. Nijhoff Publishers, Dordrecht, 1991, p. 213: "Of course the requirement [of exhaustion of local remedies] cannot be imposed where domestic remedies are manifestly ineffective or where they do not exist..." "But it is not necessary to resort to local courts 'if the result must be a repetition of a decision already given'. An important exception in today's world is that the necessity to resort to local courts does not apply if the courts are completely subservient to the government."

7. E.J. de Aréchaga and A. Tanzi, "International State Responsibility", *in* M. Bedjaoui ed., *International Law: Achievements and Prospects*, Unesco, Paris, 1991, p. 375: "But even if there are remedies existing and available, the rule does not apply if these remedies are 'obviously futile' or 'manifestly ineffective'."

8. J.M. Arbour, *Droit international public*, 2e édition, Yvon Blaise, Québec, 1992, pp. 301-302.

9. J. Combacau et S. Sur, *Droit international public*, 4e édition, Montchrestien, 1999, p. 547 : l'épuisement des voies de recours internes « ne joue pas non plus quand le recours est « manifestement inutile » c'est-à-dire quand l'organe saisissable n'a pas effectivement le pouvoir de réparer le dommage subi ; aussi quand une pratique judiciaire (...) exclut tout succès au fond parce que les tribunaux s'estiment liés par les « décisions de l'exécutif » ou quand une jurisprudence constante décourage le recours ».

10. Après avoir déclaré que les juridictions du nord de Chypre sont des recours internes dans le sens de l'ancien article 26 de la Convention, le paragraphe 98 de l'arrêt précise que la question de leur efficacité doit être appréciée dans chaque cas d'espèce. Et puis, lors de l'analyse de chaque cas d'espèce, l'arrêt constate d'une manière ou d'une autre que le recours interne n'existait point ou s'avérait inefficace.

On pourrait donc estimer que le résultat est identique à ce qu'il aurait été si l'on avait interprété rigoureusement l'ancien article 26 selon «les principes de droit international généralement reconnus». J'estime cependant que, malgré ce résultat identique, la Cour devait faire l'économie d'un raisonnement hasardeux, comme il résulte de tous les arguments ci-dessus. D'autant plus qu'en agissant de la sorte la Cour européenne des Droits de l'Homme s'avance dangereusement dans une appréciation de la validité des actes accomplis par un gouvernement de fait alors que se multiplient des mouvements autonomistes, voire sécessionnistes, au sein de certains Etats membres du Conseil de l'Europe.

Au sujet du paragraphe 101 de l'arrêt

Ce paragraphe qui croit voir une contradiction me paraît particulièrement inopportun, voire fâcheux: il donne l'impression que la Cour ne perçoit pas la différence entre les deux violations que Chypre reproche à la Turquie. Car il s'agit en effet de deux cas bien différents, même s'il y a un seul événement à l'origine des deux violations.

Le droit pénal de tous les pays démocratiques connaît des situations identiques où une seule infraction peut entraîner plusieurs conséquences dont chacune prise isolément est condamnable. En envahissant Chypre et en créant des juridictions illégales, la Turquie a évidemment violé l'article 6 de la Convention européenne. C'est pourquoi, il n'y a pas lieu d'épuiser ces recours internes là, avant de présenter une requête à Strasbourg. Je ne vois là aucune contradiction!

Ce qui aurait été une contradiction de la part du gouvernement demandeur, c'est précisément l'inverse, c'est-à-dire, d'une part, reprocher à l'Etat défendeur d'être à l'origine de nombreuses violations des droits de l'homme par son occupation illégale du nord de Chypre et d'avoir notamment établi un régime illégal dans cette partie du pays, et, d'autre part, admettre que les tribunaux illégaux établis par la force militaire dans cette partie de Chypre peuvent apporter une solution juridiquement valable aux violations reprochées.

Ce raisonnement me paraît cartésien.

Par ailleurs, cette prétendue «contradiction» est d'autant plus erronée qu'il convient de se rappeler que la Turquie a toujours fait valoir que la «RTCN» est une entité différente et que les tribunaux de la «RTCN» n'appartiennent pas aux juridictions turques. Dès lors, par un simple raisonnement *ad hominem*, comment pourrait-on concevoir que les juridictions de la «RTCN» puissent servir de recours effectif pour faire cesser des violations reprochées à la Turquie?

Il n'y a donc aucune contradiction de la part du gouvernement demandeur dans ce cas-là.

C'est pourquoi, j'estime personnellement *mutatis mutandis* que des juridictions établies illégalement dans le nord de Chypre ne répondent pas aux conditions de l'article 6 de la Convention, qui exige notamment « (...) un tribunal (...) établi par la loi (...) ». Et, pour identité de motif, je suis d'avis qu'il n'existe point dans le nord de Chypre de « recours effectif devant une instance nationale », selon les exigences de l'article 13 de la Convention (voir notamment les paragraphes 324, premier alinéa, et 383).

Paragraphe 221 de l'arrêt

Dans ce paragraphe, la Cour estime qu'il n'y a aucune violation de l'article 2 de la Convention en raison du refus des autorités de la « RTCN » de permettre aux Chypriotes grecs et maronites vivant dans le nord de Chypre d'accéder aux soins médicaux dans une autre partie de l'île.

Je suis d'avis qu'à une époque où la liberté de circulation est considérée comme essentielle, surtout quand il s'agit d'obtenir les meilleurs soins, refuser cette liberté est, dans le chef de l'Etat, un manquement grave à ses obligations vis-à-vis de personnes relevant de sa juridiction. Je considère que cela peut s'apprécier comme une violation de l'article 2 de la Convention selon lequel l'Etat s'engage à protéger, par la loi, le droit de toute personne à la vie.

Nous vivons à une époque de rapide évolution scientifique et, d'un pays à l'autre ou dans un même pays, de grandes différences entre établissements peuvent exister en matière de traitement médical. Si un Etat empêche par la force une personne d'aller vers l'établissement où elle estime avoir les meilleures chances de guérir, cet acte me paraît hautement condamnable.

Par ailleurs, je regrette que la Cour européenne des Droits de l'Homme n'ait pas saisi cette occasion pour donner à l'article 2 une interprétation téléologique, comme elle le fit naguère pour d'autres articles (notamment dans l'affaire *Golder c. Royaume-Uni*, arrêt du 21 février 1975, série A n° 18, ou dans l'affaire *Young, James et Webster c. Royaume-Uni*, arrêt du 13 août 1981, série A n° 44).

En effet, avec la rapide évolution des techniques biomédicales, de nouveaux dangers peuvent naître pour la dignité humaine. La Convention sur les droits de l'homme et la biomédecine, signée à Oviedo en 1997, a pour but de tenir compte de certains de ces dangers. Mais seulement quelques Etats l'ont ratifiée à ce jour. De plus, cette convention n'accorde qu'une compétence consultative à la Cour européenne des Droits de l'Homme. Pour tenir compte de cette « quatrième génération de droits de l'homme », c'est-à-dire pour protéger la dignité humaine contre d'éventuels abus du développement scientifique, la Cour pourrait rappeler que, par l'article 2 de la

Convention européenne des Droits de l'Homme, les Etats se sont engagés à protéger par la loi le droit de toute personne à la vie.

Le droit à la vie peut évidemment s'interpréter de bien des manières, mais il englobe certainement la faculté de rechercher à bénéficier du meilleur traitement médical matériellement disponible.

Paragraphe 231 et paragraphes 235 à 240 de l'arrêt

Pour les motifs déjà longuement développés ci-dessus, je ne partage pas l'avis exprimé dans ces paragraphes relatifs aux articles 6 et 13.

Outre les arguments déjà avancés quant au caractère illégal de ces juridictions, il me semble qu'il y a encore un motif de bon sens. Concevoir que les juridictions établies dans les territoires occupés par les forces turques au nord de Chypre pourraient exercer une justice indépendante et impartiale, surtout envers des Chypriotes grecs et même à l'égard de Chypriotes turcs dans des domaines manifestement contraires aux principes découlant de l'occupation militaire turque, relève de la théorie pure.

Même si ces juridictions peuvent dire le droit d'une manière objective dans des conflits opposant des membres de la population locale, *jamais* ces juridictions n'oseraient prendre une décision impartiale dans un procès relatif à un événement trouvant son origine dans le fait de l'occupation militaire.

Paragraphe 317 de l'arrêt

Je ne partage pas l'avis de la majorité de la Cour à ce sujet. En effet, selon une jurisprudence fréquemment établie par la Cour, le fait de combiner l'article 14 de la Convention avec un autre article a toujours été écarté si cela faisait double emploi avec la constatation de la simple violation de cet autre article. En revanche, si la conjonction de l'article 14 avec cet autre article aboutissait à une violation supplémentaire ou à une violation plus grave de cet autre article, la jurisprudence de la Cour a toujours admis qu'il y avait aussi violation de cet autre article combiné avec l'article 14.

C'est exactement la situation dans ce cas-ci. Ne pas permettre la plénitude de l'exercice de la religion est déjà une violation, mais de surcroît imposer des restrictions supplémentaires en raison précisément de la religion, transforme cette mesure en une violation distincte.

Certains documents produits aux Nations unies

Je tiens à souligner que la Cour et la Commission ont fait preuve d'une grande prudence, que d'aucuns pourraient trouver excessive, quant aux preuves apportées par le gouvernement demandeur pour appuyer ses

allégations: par exemple le rapport du Secrétaire général des Nations unies (S/1995/1020, du 10 décembre 1995) fait clairement état d'atteintes à la liberté d'association des Chypriotes turcs vivant dans le nord et désireux de participer à la création d'associations bi-communautaires dans le nord de Chypre; ou encore un document du Conseil de sécurité du 23 mai 2000 (A/54/878-S/2000/462) faisant état d'une lettre du Représentant permanent de la Turquie aux Nations unies dont une annexe établit de manière indiscutable que, pour les autorités de la «RTCN», les Chypriotes grecs et les maronites résidant au nord de Chypre sont des étrangers.

ANNEXE

RAPPORT DE LA COMMISSION EUROPÉENNE DES DROITS DE L'HOMME[1,2]

(adopté le 4 juin 1999)

[La Commission siégeait dans la composition suivante :

MM. S. TRECHSEL, *président*,
E. BUSUTTIL,
GAUKUR JÖRUNDSSON,
A. WEITZEL,
J.-C. SOYER,
Mme G.H. THUNE,
M. C.L. ROZAKIS,
Mme J. LIDDY,
MM. M.P. PELLONPÄÄ,
B. MARXER,
M.A. NOWICKI,
I. CABRAL BARRETO,
B. CONFORTI,
I. BÉKÉS,
D. ŠVÁBY,
G. RESS,
A. PERENIČ,
P. LORENZEN,
K. HERNDL,
A. ARABADJIEV,
et Mme M.-T. SCHOEPFER, *secrétaire*.]

1. Traduction ; original anglais.
2. Extraits. Le texte intégral du rapport peut être obtenu au greffe de la Cour.

(...)

PREMIÈRE PARTIE

Considérations générales et liminaires

Chapitre 1

Locus standi *du gouvernement requérant*

68. A différents stades de la procédure, le gouvernement défendeur a contesté la qualité du gouvernement requérant pour présenter une requête en vertu de l'ancien article 24 de la Convention. Le gouvernement défendeur ne reconnaît pas le gouvernement requérant comme le gouvernement légal de la République de Chypre et le désigne par l'expression «administration chypriote grecque». Il fait valoir que cette administration est en place depuis 1963 en violation flagrante de la Constitution chypriote de 1960 et des accords internationaux sur lesquels se fonde l'indépendance de Chypre, notamment les dispositions relatives à la structure bicommunautaire du gouvernement et des autres organes centraux de l'Etat. Le gouvernement défendeur soutient donc que le gouvernement requérant ne saurait représenter valablement la République de Chypre. Son refus initial de participer à la procédure au fond découlait essentiellement de l'argument selon lequel le fait que la Commission retienne la requête soumise par ce gouvernement constituait un excès de pouvoir.

69. Le gouvernement requérant conteste les arguments du gouvernement défendeur. Il souligne que la communauté internationale l'a toujours reconnu comme le gouvernement de la République de Chypre, dont le territoire couvre la totalité de l'île. En ce qui concerne le non-respect des dispositions de la Constitution de 1960 et des clauses correspondantes des accords internationaux pertinents, il invoque la «théorie de la nécessité», c'est-à-dire la nécessité de réorganiser l'Etat sans les représentants de la communauté chypriote turque après que celle-ci eut refusé de continuer à participer aux structures bi-communautaires prévues par la Constitution.

70. La Commission rappelle que les parties avaient soulevé des arguments identiques dans le cadre des précédentes requêtes dirigées par Chypre contre la Turquie. De plus, en l'affaire *Loizidou c. Turquie*, la Cour a examiné des thèses similaires relatives à la qualité du gouvernement requérant pour porter une requête devant elle en vertu de l'ancien article 48 b) de la Convention. Tant la Commission que la Cour ont en fin de compte rejeté la thèse du gouvernement défendeur selon laquelle le gouvernement requérant n'avait pas de *locus standi*

(*Chypre c. Turquie*, nos 6780/74 et 6950/75, décision de la Commission du 26 mai 1975, Décisions et rapports (DR) 2, pp. 148-149, *Chypre c. Turquie*, n° 8007/77, décision de la Commission du 10 juillet 1978, DR 13, pp. 219-221, et Cour eur. DH, *Loizidou c. Turquie* (exceptions préliminaires), arrêt du 23 mars 1995, série A n° 310, p. 18, §§ 39-41).

71. En l'espèce, la Commission ne peut que confirmer les conclusions qu'elle-même et la Cour ont exprimées dans lesdites décisions. Elle relève en particulier ce qui suit.

– La République de Chypre est et reste un Etat et une Haute Partie contractante à la Convention.

– Le gouvernement requérant a été et continue d'être reconnu sur le plan international comme le gouvernement de la République de Chypre. Même en supposant l'existence d'une incompatibilité avec la Constitution de Chypre de 1960, il faut également tenir compte de l'application pratique de celle-ci, notamment depuis 1963. Les actes et instruments juridiques internationaux rédigés au cours de cette application au nom de la République de Chypre ont été reconnus, dans les relations diplomatiques et contractuelles, à la fois par d'autres Etats et par des organisations internationales, y compris le Conseil de l'Europe. Quoi qu'il en soit, eu égard à l'objet de l'ancien article 24 de la Convention, la protection des droits et libertés garantis au peuple de Chypre par la Convention ne doit pas être compromise par un éventuel vice constitutionnel de son gouvernement.

– Le fait que le gouvernement défendeur ne reconnaisse pas le gouvernement requérant ne prive pas ce dernier de la possibilité d'introduire une requête interétatique. La Convention n'envisage pas seulement des droits et obligations directs entre les Hautes Parties contractantes concernées, mais également des «obligations objectives» acceptées par lesdites Parties essentiellement envers les personnes soumises à leur juridiction. Ces obligations sont soumises à la «garantie collective» dont l'ancien article 24 est le véhicule et qui sert l'ordre public européen (*Autriche c. Italie*, n° 788/60, décision de la Commission du 11 janvier 1961, Annuaire 4, pp. 138-142). Le fait d'admettre qu'un gouvernement puisse éluder la «garantie collective» de la Convention visée à l'ancien article 24 en déclarant ne pas reconnaître le gouvernement de l'Etat requérant irait à l'encontre de l'objet de la Convention.

– Enfin, pour autant que l'ancien article 28 de la Convention entre en ligne de compte, cette clause ne requiert pas nécessairement de contacts directs entre les gouvernements concernés, de sorte que la non-reconnaissance par un gouvernement de l'autre gouvernement n'empêche pas la Commission de mener la procédure avec la participation des parties comme le prévoit cet article.

72. Dès lors, la Commission rejette les exceptions soulevées par le gouvernement défendeur.

Conclusion

73. La Commission conclut, à l'unanimité, que le gouvernement requérant avait bien qualité pour présenter au titre de l'ancien article 24 de la Convention une requête dirigée contre l'Etat défendeur.

Chapitre 2

Intérêt juridique du gouvernement requérant

74. Dans sa décision sur la recevabilité de la présente requête (*Chypre c. Turquie*, n° 25781/94, décision du 28 juin 1996, DR 86-B, p. 104), la Commission, en réponse à l'argument du gouvernement défendeur selon lequel celle-ci serait pour l'essentiel identique aux précédentes requêtes interétatiques soumises par Chypre contre la Turquie, a réservé pour la joindre au fond la question de savoir si et, le cas échéant, dans quelle mesure le gouvernement requérant peut avoir un intérêt juridique valable à obtenir une décision sur les violations continues de la Convention qu'il allègue pour autant que celles-ci ont déjà été traitées dans des rapports antérieurs de la Commission (*Chypre c. Turquie*, n^os^ 6780/74 et 6950/75, rapport du 10 juillet 1976 – « le rapport de 1976 », non publié ; et *Chypre c. Turquie*, n° 8007/77, rapport du 4 octobre 1983 – « le rapport de 1983 », DR 72, p. 5). En ce qui concerne les arguments d'autorité de chose jugée et d'abus de procédure invoqués par le gouvernement défendeur, la Commission a constaté en outre que leur examen présuppose de trancher la question de l'identité de la présente requête avec les précédentes, et ressortit donc également à la procédure au fond (décision sur la recevabilité précitée, pp. 134-135).

75. Dans ses observations relatives au fond, le gouvernement défendeur réaffirme que le gouvernement requérant n'a aucun intérêt juridique à soumettre indéfiniment des requêtes identiques pour obtenir une modification des résolutions pertinentes du Comité des Ministres du Conseil de l'Europe que le gouvernement requérant peut ne pas juger satisfaisantes, mais qui ont toutefois autorité de chose jugée à l'égard des procédures antérieures à janvier 1990, date à laquelle la Turquie a reconnu la juridiction obligatoire de la Cour. Il soutient qu'à l'exception des griefs tirés des articles 9, 10 et 11 de la Convention et de l'article 3 du Protocole n° 1, les faits présentés et les articles invoqués sont identiques à ceux des précédentes requêtes soumises par le gouvernement requérant et ne contiennent aucune information nouvelle ni n'indiquent de nouvelles victimes.

76. Le gouvernement requérant réfute ces arguments. Selon lui, certains de ses griefs sont entièrement nouveaux tandis que d'autres n'ont pas fait l'objet d'un constat définitif dans les précédents rapports

de la Commission. Même si tel avait été le cas, les griefs qu'il soumet maintenant se fondent sur de nouvelles informations et preuves et se rapportent à une période ultérieure au cours de laquelle une situation jugée contraire à la Convention s'est prolongée, ce qui aggrave cette violation. L'autorité de chose jugée ne se rapporte qu'à un droit, une question ou un fait présenté de manière distincte et sur lequel statue directement l'organe approprié, ce qui à son avis n'est pas le cas des résolutions du Comité des Ministres portant sur les précédentes requêtes interétatiques. Quoi qu'il en soit, selon lui, ces résolutions ne disposent pas pour l'avenir.

77. La Commission relève tout d'abord que certains des griefs soulevés par le gouvernement requérant (à savoir ceux tirés des articles 9, 10 et 11 de la Convention et de l'article 3 du Protocole n° 1 ainsi que ceux concernant la violation alléguée des droits des familles des personnes disparues, les conditions concrètes de vie des Chypriotes grecs dans le nord de Chypre et le traitement des Tsiganes également dans le nord de Chypre) sont nouveaux et n'ont pas été traités dans les rapports de 1976 et de 1983 sur les précédentes requêtes interétatiques dirigées par Chypre contre la Turquie. Le gouvernement défendeur a bien voulu l'admettre en partie (paragraphe 75 ci-dessus). Or l'intérêt juridique du gouvernement requérant à soumettre une requête au titre de l'ancien article 24 de la Convention ne pourrait être mis en doute à cet égard que si les questions qui y sont soulevées étaient susceptibles de faire aussi l'objet de requêtes individuelles au titre de l'ancien article 25 de la Convention (paragraphes 83-86 ci-dessous).

78. Pour autant que les arguments du gouvernement défendeur portent sur les violations continues qu'il allègue (à savoir les griefs concernant les disparus, le domicile et les biens des Chypriotes grecs déplacés, la séparation des familles Chypriotes grecques et la situation des Chypriotes turcs dans le nord de Chypre), la Commission rappelle avoir constaté au paragraphe 56 de son rapport de 1983 (précité, p. 75) que l'ancien article 27 § 1 b) de la Convention, sans s'appliquer aux affaires soumises en vertu de l'ancien article 24, exprime un principe juridique fondamental en matière de procédure qui intervient au stade de l'examen au fond des requêtes interétatiques: sauf circonstances particulières, un Etat ne peut prétendre avoir un intérêt juridique à obtenir de la Commission de nouvelles conclusions lorsque celle-ci a déjà adopté un rapport sur la question au titre de l'ancien article 31.

79. Dans la mesure où la Commission doit donc déterminer si, à titre exceptionnel, il existe des circonstances spécifiques justifiant en l'espèce un intérêt juridique de la part du gouvernement requérant, elle relève tout d'abord que, bien que certains des griefs formulés par ce dernier (comme ceux se rapportant à la situation des Chypriotes turcs) aient été soulevés dans les précédentes requêtes interétatiques, elle n'a pas rendu

de conclusions définitives à leur sujet dans ses rapports antérieurs faute de preuves. Etant donné que le gouvernement requérant lui demande maintenant de se prononcer sur la base des nouveaux éléments qu'il a soumis, la Commission reconnaît l'existence de son intérêt juridique (rapport de 1983 précité, pp. 75-76, § 58).

80. Quant aux griefs restants concernant les violations continues alléguées, la Commission prend note de l'argument du gouvernement requérant selon lequel ils ne sont pas identiques à ceux soulevés dans les requêtes précédentes en raison du temps écoulé depuis. La Commission admet que certaines au moins des personnes touchées par les violations alléguées de la Convention ne sont pas les mêmes que celles concernées par les requêtes précédentes. Même lorsque sont en jeu les droits de personnes précédemment concernées, l'examen des griefs que soulève maintenant le gouvernement requérant doit prendre en compte l'évolution de la situation dans le nord de Chypre, y compris la formation d'un nouveau cadre institutionnel découlant de la proclamation de la «République turque de Chypre-Nord» («RTCN») – qualifiée par le gouvernement défendeur de *novus actus interveniens* – et de l'application de mesures supplémentaires à l'égard de ces personnes. En outre, la Commission rappelle la jurisprudence selon laquelle le facteur temps peut en lui-même être constitutif de la violation de certains droits garantis par la Convention (concernant la privation de biens pendant une longue période, voir par exemple *Sporrong et Lönnroth c. Suède*, arrêt du 23 septembre 1982, série A n° 52, et *Papamichalopoulos et autres c. Grèce*, arrêt du 24 juin 1993, série A n° 260-B) ou aggraver une violation déjà constatée (s'agissant de la séparation de familles, voir le rapport de 1983 précité, p. 96, § 134).

81. Pour toutes ces raisons, on ne saurait dénier au gouvernement requérant un intérêt juridique à obtenir une décision constatant qu'une situation déjà jugée contraire à la Convention perdure plusieurs années après. En principe, cela vaut en l'espèce pour tous les griefs de violation continue au sujet desquels la Commission a constaté des violations de la Convention dans ses précédents rapports. Le facteur décisif permettant d'affirmer qu'il existe un intérêt juridique est la durée du délai écoulé depuis l'adoption de ces rapports sans qu'aucun changement significatif se soit produit dans la situation des personnes concernées, en dépit de modifications importantes survenues dans le cadre institutionnel.

82. A cet égard, la Commission prend également note du grief du gouvernement requérant selon lequel il y a eu violation de l'ancien article 32 § 4 de la Convention du fait que la Turquie n'a pas mis un terme aux violations de la Convention établies dans ses précédents rapports. Elle rappelle les conclusions figurant dans son rapport de 1983 (précité, p. 76, §§ 59-62) et dans sa décision sur la recevabilité de la présente requête (précitée, p. 134) : le gouvernement requérant ne peut

se voir dénier un intérêt juridique au motif que le Comité des Ministres aurait déjà adopté des résolutions au sujet des deux précédentes requêtes interétatiques. Toutefois, la Commission n'a pas compétence pour dire – dans cette affaire ou dans d'autres – que le gouvernement défendeur ne s'est pas acquitté des obligations lui incombant au titre de l'ancien article 32 de la Convention par suite de ces résolutions, car c'est au Comité des Ministres qu'il appartient d'en juger.

83. La Commission doit enfin rechercher si l'intérêt juridique du gouvernement requérant est annulé ou limité au motif que des requérants individuels ont soulevé devant elle des griefs similaires à ceux faisant l'objet de la présente affaire. Elle rappelle que la Turquie a reconnu le droit de recours individuel au titre de l'ancien article 25 de la Convention à compter de janvier 1987. Depuis lors, des requêtes individuelles peuvent être dirigées contre la Turquie notamment au sujet de la juridiction qu'elle exerce dans le nord de Chypre (*Chrysostomos, Papachrysostomou et Loizidou c. Turquie*, n^os^ 15299/89, 15300/89 et 15318/89, décision de la Commission du 4 mars 1991, DR 68, p. 253). Toutefois, le simple fait que des individus aient la possibilité de soumettre des requêtes au titre de l'ancien article 25 n'a aucune incidence sur le droit des Hautes Parties contractantes, au nombre desquelles figure Chypre, d'introduire une requête en vertu de l'ancien article 24 en vue de protéger ces mêmes individus. De surcroît, même lorsque des requêtes individuelles ont réellement été introduites, la Commission a admis en l'affaire *Donnelly et autres* que les requêtes interétatiques et les requêtes individuelles ne sont en principe pas mutuellement exclusives, car ni les requérants ni les griefs exprimés ne sont les mêmes (*Donnelly et autres c. Royaume-Uni*, n^os^ 5577/72 et 5583/72, décision du 5 avril 1973, Recueil de décisions 43, p. 149).

84. C'est ainsi qu'on ne saurait dire que le gouvernement requérant dans une affaire interétatique n'a pas d'intérêt juridique à obtenir une décision sur ses griefs du simple fait que certains des faits recoupent ceux faisant l'objet de requêtes individuelles qui ont été ou sont pendantes devant les institutions de la Convention. La Commission relève effectivement un certain chevauchement entre l'espèce et des requêtes individuelles ayant déjà fait l'objet d'une décision définitive du Comité des Ministres (affaire *Chrysostomos et Papachrysostomou c. Turquie*, n^os^ 15299/89 et 15300/89, rapport de la Commission du 8 juillet 1993, DR 86-B, p. 4) ou de la Cour (Cour eur. DH, *Loizidou c. Turquie* (fond), arrêt du 18 décembre 1996, *Recueil des arrêts et décisions* 1996-VI) ou qui se trouvent pendantes devant elle ou la Cour à différents stades de la procédure. Ces requêtes se rapportent toutefois à la situation particulière de chaque individu requérant tandis que l'espèce traite d'aspects plus généraux, notamment des mesures globales touchant plus de personnes que celles ayant soumis des requêtes individuelles. La Commission rappelle à cet égard que les individus ne peuvent se plaindre

de mesures législatives ou de pratiques administratives que dans la mesure où elles leur sont applicables, tandis que, dans une requête interétatique, les Hautes Parties contractantes peuvent contester des mesures législatives et pratiques administratives en tant que telles (Cour eur. DH, *Irlande c. Royaume-Uni*, arrêt du 18 janvier 1978, série A n° 25, p. 63, § 157, et p. 91, § 240).

85. La Commission comprend qu'en l'espèce le gouvernement requérant se plaint essentiellement des conséquences de mesures législatives (qu'il ne reconnaît pas comme telles) et de pratiques administratives ayant cours dans le nord de Chypre. Tout en fournissant à titre d'exemple une quantité considérable d'informations sur la manière dont ces mesures ont été ou sont appliquées à des individus donnés, il ne cherche pas à obtenir une décision au regard de la Convention sur ces cas individuels. Il se borne à demander de constater que les pratiques qu'il a décrites existent et qu'elles constituent par elles-mêmes des violations de la Convention. Dans ces conditions, la Commission n'aperçoit aucun motif de dire que le gouvernement requérant n'a pas d'intérêt juridique légitime parce que des requérants individuels ont déjà introduit des requêtes s'appuyant sur des faits identiques ou similaires.

86. Pour la présente affaire interétatique, la Commission doit tenir compte des éléments de preuve mis à sa disposition qui, par leur nature, concernent des cas individuels mais, pris globalement, sont susceptibles de constituer les pratiques administratives alléguées (arrêt *Irlande c. Royaume-Uni* précité, p. 63, § 157). En revanche, elle a jugé qu'il convenait d'exclure de l'enquête qu'elle mène au titre de l'ancien article 28 § 1 a) de la Convention les faits se trouvant à l'origine de requêtes individuelles qui seraient pendantes (paragraphe 33 ci-dessus). Le présent rapport ne préjuge donc en rien les conclusions qui seront rendues dans ces affaires.

Conclusion

87. La Commission conclut, à l'unanimité, que le gouvernement requérant a un intérêt juridique légitime à obtenir qu'elle examine la présente requête au fond.

Chapitre 3

Responsabilité de la Turquie au regard de la Convention

88. Dans sa décision sur la recevabilité de la présente requête, la Commission a rejeté les exceptions formulées par le gouvernement défendeur quant à l'absence de juridiction et de responsabilité de la Turquie s'agissant des actes dénoncés par le gouvernement requérant,

au motif qu'il n'avait pas été prouvé que, de manière générale, les actes incriminés n'étaient pas de prime abord susceptibles de relever de la juridiction de la Turquie au sens de l'article 1 de la Convention. Elle a toutefois ajouté que ce constat ne préjugeait en rien les questions à trancher au stade de l'examen du fond, notamment celle de savoir si les faits dénoncés étaient effectivement imputables à la Turquie et engageaient sa responsabilité au regard de la Convention (décision précitée, p. 131).

89. Au stade de l'examen au fond, le gouvernement défendeur a commencé par refuser de participer à la procédure au motif qu'en déclarant la requête recevable, la Commission avait commis un excès de pouvoir. Il a en fin de compte décidé de coopérer avec la Commission, mais en déclarant notamment agir ainsi sur la base de «l'effectivité de la juridiction chypriote turque dans le nord de Chypre» et de «l'absence de toute juridiction de la Turquie» par rapport aux allégations faisant l'objet de la requête. C'est pourquoi les observations sur le fond ont été présentées comme des «observations de la RTCN».

90. Dans ces observations puis de nouveau à l'audience consacrée au fond, on a fait valoir pour le compte du gouvernement défendeur que la requête «concernait des actes ou omissions non pas de la Turquie mais de la «RTCN», Etat indépendant établi par la communauté chypriote turque dans le nord de Chypre en application de son droit à l'autodétermination après l'échec des dispositions constitutionnelles bicommunautaires. La «RTCN» a été reconnue par la Turquie et exerce un pouvoir gouvernemental, c'est-à-dire le contrôle et l'autorité exclusifs sur le territoire situé dans le Nord de la zone tampon de l'ONU. La non-reconnaissance de la «RTCN» par d'autres Etats et organisations internationales ne permettrait pas de conclure que cet Etat n'a pas d'existence et ne présente pas tous les attributs d'un Etat. Selon les règles définies en droit international, il conviendrait de reconnaître que ses actes déploient leurs effets, ce qu'ont fait en pratique les tribunaux de plusieurs Etats. Quant à la Commission, dans son rapport sur l'affaire *Chrysostomos et Papachrysostomou*, ultérieurement approuvé par le Comité des Ministres (voir notamment p. 38, § 169), elle n'a trouvé aucun signe d'un contrôle des autorités turques sur l'administration des prisons ou l'administration de la justice effectué par les autorités chypriotes turques et a déclaré que les actes dénoncés en cette affaire avaient une base en droit interne et n'étaient pas imputables à la Turquie.

91. Le gouvernement défendeur considère que la Commission a conclu que la Turquie avait juridiction au titre de l'article 1 de la Convention dans le cadre des requêtes interétatiques n^{os} 6780/74 et 6950/75 essentiellement en raison de la présence des forces armées turques. Il rappelle ce que note la Commission dans son rapport de 1983 précité relatif à la requête n° 8007/77 : «l'existence d'une sorte d'administration

civile dans le nord de Chypre n'exclut pas la responsabilité de la Turquie» (précité, p. 77, § 64). Cependant, il combat la thèse selon laquelle l'existence d'une «juridiction» entraîne une présomption irréfragable de responsabilité. A son avis, cette dernière ne peut être établie sans tenir compte des acteurs et parties qui interviennent. L'imputabilité et, par voie de conséquence, la responsabilité exigent nécessairement un examen des circonstances de l'espèce et la preuve que la Haute Partie contractante concernée a participé aux actes ou omissions dont il est allégué qu'ils constituent des violations de la Convention, au lieu de se contenter de simples présomptions à cet égard.

92. A ce sujet, le gouvernement défendeur rejette catégoriquement la conclusion à laquelle la Cour est parvenue dans son arrêt *Loizidou* (fond) précité (pp. 2234-2235, § 52) : la «République turque de Chypre-Nord» est une «administration locale subordonnée» de la Turquie. Il conteste notamment la prémisse de ce constat, à savoir l'affirmation de la Cour selon laquelle «le gouvernement turc [a] reconnu que la perte, par la requérante, de la maîtrise de sa propriété provient de l'occupation de la partie septentrionale de Chypre par les troupes turques et l'établissement de la «RTCN» dans cette région» (*ibidem*, p. 2235, § 54). Il affirme n'avoir jamais émis pareille affirmation. La Cour devait avoir connaissance de l'évolution administrative et politique survenue dans le nord de Chypre et savoir que la Turquie ne pouvait exercer un contrôle direct par l'intermédiaire de ses forces armées dans cette partie de l'île. Il souligne en outre que l'autorité qu'exerce la «RTCN» dans le nord de Chypre ne lui a pas été déléguée par la Turquie mais repose sur la libre volonté de son peuple. Le système juridique de la «RTCN», qui reprend les éléments fondamentaux de la *common law* anglaise, est très différent du système en vigueur en Turquie. De plus, la «RTCN» n'est ni une province turque ni un protectorat turc. Le gouvernement défendeur affirme que la proclamation de la «RTCN» et l'adoption de sa législation sont un *novus actus interveniens* rendant caduque toute présomption de responsabilité de la Turquie à l'égard des actes incriminés. Il soutient enfin que l'affaire *Loizidou*, étant une affaire individuelle, a été jugée en fonction des circonstances qui lui sont propres ; l'arrêt rendu par la Cour à son sujet ne saurait donc être généralisé aux fins de la présente requête interétatique.

93. Le gouvernement requérant constate que le gouvernement défendeur récuse toute responsabilité en invoquant des règles et principes de droit public international. Sans nier leur pertinence, il estime qu'il faut les replacer dans le contexte de la Convention, et notamment de l'article 1 de celle-ci, qui est le droit applicable en l'espèce. En tant qu'accord interétatique, la Convention suppose un mode uniforme de responsabilité des Etats contractants en cas de violation par eux de leur obligation de reconnaître à toute personne relevant de leur juridiction les droits consacrés par la Convention, qui est

une obligation de résultat et non de moyens. La Turquie ne saurait se soustraire à cette responsabilité en prétendant que les actes incriminés sont imputables aux organes ou autorités de la «RTCN». L'occupation militaire du nord de Chypre résulte d'un recours illégal à la force; la politique turque consistant à susciter une sécession fondée sur une division raciale de Chypre a été condamnée sans appel par la communauté internationale. Lorsque cette politique a conduit à la proclamation de la «RTCN» en 1983, cette mesure ainsi que tous les actes sécessionnistes ont été réputés dénués de toute validité juridique par le Conseil de sécurité des Nations unies ainsi que par le Comité des Ministres du Conseil de l'Europe, dans une de ses résolutions. Sur le plan du droit international, cette absence de valeur juridique découle de deux principes de *jus cogens*: celui de la non-reconnaissance de changements résultant d'un recours illégal à la force ou de la menace de pareil recours et l'interdiction de toute discrimination raciale. Selon le gouvernement requérant, le caractère illégal de l'administration de la «RTCN» a également été confirmé par la Cour en l'affaire *Loizidou* (arrêt au fond précité, pp. 2230-2231, §§ 42 et 44).

94. De l'avis du gouvernement requérant, l'illégalité intrinsèque de l'administration du nord de Chypre interdit à la Turquie d'invoquer une quelconque justification légale de ses actes et de sa politique fondés sur la discrimination. La Turquie n'a certes aucun titre légal sur les zones occupées, mais elle assume bel et bien la responsabilité légale, ou l'obligation de rendre des comptes, pour ce qui s'y passe. Cela découle du fait que la Turquie détient le contrôle global et exclusif sur ces zones, qu'elle ne partage avec aucun autre Etat. A ce sujet, le gouvernement requérant renvoie à l'avis consultatif émis par la Cour internationale de justice (CIJ) en l'affaire de la Namibie, où celle-ci a déclaré qu'un Etat occupant un territoire sans titre est investi de la responsabilité internationale à l'égard de ce territoire (CIJ, Recueil 1971, p. 118, § 54). Le gouvernement requérant affirme qu'il existe des preuves surabondantes de la présence des forces armées turques dans les zones occupées et du contrôle qu'elles y exercent. Si la Turquie ne pouvait être tenue pour responsable de la situation régnant dans le nord de Chypre, aucune autre personne juridique ne pourrait l'être, ce qui aurait pour effet de saper l'efficacité du système de la Convention et l'ordre public en Europe.

95. Enfin, le gouvernement requérant observe que, selon l'arrêt *Loizidou* (exceptions préliminaires) (précité, p. 24, § 62), le fait que la Turquie agisse dans une certaine mesure par l'intermédiaire d'une administration locale subordonnée n'influe en rien sur les conséquences légales découlant du contrôle qu'elle exerce sur les zones occupées. S'il est vrai qu'un Etat peut déléguer la gestion administrative aux agents d'une administration locale subordonnée établie dans certaines régions, cela ne le relève nullement de l'obligation de veiller au respect des droits

de l'homme dans ces régions. Un Etat ne peut se retrancher derrière une délégation, fût-elle authentique, pour se défausser de ses responsabilités en cas de manquement aux devoirs qui lui incombent de par le droit international. En l'espèce, la Turquie est tenue de veiller au respect des droits et libertés protégés par la Convention et d'empêcher toute violation de ceux-ci dans les zones qu'elle contrôle. Le gouvernement requérant fait valoir que, dans ces conditions, il existe une forte présomption que la Turquie soit responsable de toutes les violations de la Convention qui se sont produites dans les zones occupées, présomption qui revêt, en pratique, un caractère irréfragable.

96. La Commission rappelle tout d'abord que, dans ses rapports relatifs aux précédentes affaires interétatiques (rapport de 1976 précité, p. 32, §§ 83-85, et p. 33, § 87, cinquième tiret, et rapport de 1983 précité, pp. 76-77, §§ 63-65), elle a établi une distinction entre, d'une part, les actes des forces armées turques et autres autorités turques – pour lesquels l'Etat défendeur a été tenu responsable – et, d'autre part, les actes des autorités chypriotes turques – qui n'ont pas été imputés à l'Etat défendeur. En conséquence, pour chacun des griefs soulevés par le gouvernement requérant, ces rapports traitent la question de l'imputabilité séparément, suivant qu'il y a eu ou non une réelle participation des autorités ou des officiers turcs. En cas de participation, il a été considéré qu'elle entraînait la responsabilité de l'Etat défendeur au regard de la Convention, même si la plupart des actes incriminés se sont produits en dehors du territoire national turc.

97. La Commission a suivi dans les grandes lignes la même approche dans ses rapports du 8 juillet 1993 relatifs aux affaires *Chrysostomos et Papchrysostomou* (précité, pp. 25-27, §§ 90-102, et pp. 36-38, §§ 161-171), et *Loizidou* (série A n° 310, avis de la Commission, p. 46, §§ 48-51, et p. 53, §§ 94-95), en établissant une distinction supplémentaire entre la «zone frontalière» ou «zone tampon», où elle a considéré que les forces turques exercent un contrôle global, et les autres parties du nord de Chypre, où elle a reconnu que les autorités chypriotes turques pouvaient exercer certains pouvoirs sans engager la responsabilité de la Turquie (*Chrysostomos et Papachrysostomou*, rapport précité, pp. 34-35, §§ 146-156, et *Loizidou*, rapport précité, pp. 50-51, §§ 76-83).

98. La Commission considère qu'il n'est plus possible de conserver ces distinctions après l'adoption par la Cour de ses deux arrêts *Loizidou* précités (exceptions préliminaires et fond). Dans le premier, sur lequel la Commission s'est déjà appuyée dans sa décision sur la recevabilité de la présente requête, la Cour indique (p. 24, § 62):

> «Compte tenu de l'objet et du but de la Convention, une Partie contractante peut également voir engager sa responsabilité lorsque, par suite d'une action militaire – légale ou non –, elle exerce en pratique le contrôle sur une zone située en dehors de son territoire national. L'obligation d'assurer dans une telle région le respect des

droits et libertés garantis par la Convention découle du fait de ce contrôle, qu'il s'exerce directement, par l'intermédiaire des forces armées de l'Etat concerné ou par le biais d'une administration locale subordonnée.»

La Cour a conclu (*ibidem*, § 64) que les actes dénoncés en cette affaire (perte par la requérante de sa maîtrise sur ses biens) étaient de nature à relever de la «juridiction» de la Turquie au sens de l'article 1 de la Convention. Toutefois, elle a jugé que la question de savoir si les faits incriminés étaient imputables à la Turquie et engageaient la responsabilité de l'Etat serait tranchée au stade de l'examen au fond.

99. Dans son arrêt au fond, la Cour a statué sur la question comme suit (arrêt précité, pp. 2235-2236, § 56):

«Il ne s'impose pas de déterminer si, comme la requérante et le gouvernement chypriote l'avancent, la Turquie exerce en réalité dans le détail un contrôle sur la politique et les actions des autorités de la «RTCN». Le grand nombre de soldats participant à des missions actives dans le nord de Chypre (...) atteste que l'armée turque exerce en pratique un contrôle global sur cette partie de l'île. D'après le critère pertinent et dans les circonstances de la cause, ce contrôle engage sa responsabilité à raison de la politique et des actions de la «RTCN» (...). Les personnes touchées par cette politique ou ces actions relèvent donc de la «juridiction» de la Turquie aux fins de l'article 1 de la Convention. L'obligation qui lui incombe de garantir à la requérante les droits et libertés définis dans la Convention s'étend en conséquence à la partie septentrionale de Chypre.

Cette conclusion dispense la Cour de se prononcer sur les arguments (...) concernant la légalité ou l'illégalité prétendue au regard du droit international de l'intervention militaire de la Turquie dans l'île en 1974 puisque (...) l'établissement de la responsabilité de l'Etat sur le terrain de la Convention ne commande pas pareil examen (...). Il suffit de rappeler à ce propos sa constatation selon laquelle la communauté internationale estime que la République de Chypre est l'unique gouvernement légitime de l'île et a toujours refusé d'admettre la légitimité de la «RTCN» en tant qu'Etat au sens du droit international (...)»

100. La Commission estime qu'elle doit en la matière suivre la décision de la Cour, qu'il y a lieu de considérer, du point de vue du droit international, comme la décision de l'organe compétent de la Convention faisant autorité. Le fait que le Comité des Ministres semble avoir implicitement admis le point de vue de la Commission, qui est différent, en entérinant le rapport relatif à *Chrysostomos et Papachrysostomou* ne change rien à l'affaire car cette résolution (DH (95) 245 du 19 octobre 1995, reprise dans DR 86-B, p. 51) ne renferme aucune référence expresse à la question de la responsabilité de la Turquie. Quoi qu'il en soit, l'arrêt *Loizidou* est la dernière décision en date.

101. Pour conclure ainsi, la Commission a pris en compte les arguments soumis par les parties à la procédure dans le cadre de la présente requête, notamment ceux du gouvernement défendeur selon lequel il n'aurait jamais formulé la déclaration mise en avant dans l'arrêt *Loizidou*, et cet arrêt se limitait en tout état de cause aux circonstances propres à l'affaire et ne se prêtait pas à une généralisation aux fins de la

présente requête interétatique. La Commission ne souscrit pas à ces thèses. Elle observe que la procédure de la Cour en l'affaire *Loizidou* et celle conduite par elle-même en l'espèce ont été menées en parallèle et que les parties ont dans les deux cas présenté des arguments largement identiques. Même en supposant que, comme il l'affirme, le gouvernement défendeur n'ait jamais formulé de déclaration dans les termes repris par la Cour, celle-ci a pris en compte un grand nombre d'autres faits et arguments pour étayer sa conclusion précitée. De plus, la Cour a expressément dit que, pour parvenir à pareille conclusion, il n'était pas nécessaire de déterminer si la Turquie exerçait en réalité dans le détail un contrôle sur la politique et les actions de la « RTCN ». La Commission n'a donc pas non plus jugé utile en l'espèce de procéder à cette détermination et de mener une enquête sur cet aspect de l'affaire, comme le demandait le gouvernement requérant.

102. Enfin, la Commission note que les conclusions de la Cour quant à la responsabilité qu'assume la Turquie par rapport aux événements survenus dans le nord de Chypre sont exprimées en termes tellement généraux dans l'arrêt *Loizidou* qu'il y a lieu de les traiter comme l'énoncé d'un principe global. Dès lors, la Commission estime que la responsabilité de la Turquie est engagée pour tous les actes de la « RTCN », qui est une administration locale subordonnée de la Turquie en place dans le nord de Chypre. Cette responsabilité ne se limite pas à des questions de propriété telles que celles traitées dans l'affaire *Loizidou*, mais couvre toute la gamme des griefs soulevés par le gouvernement requérant dans la présente requête, qu'ils se rapportent à des actes ou omissions des autorités turques ou bien des autorités chypriotes turques. Par conséquent, la Commission ne procédera pas dans le présent rapport à un examen différentiel de l'imputabilité pour chacun des divers griefs en cause.

Conclusion

103. La Commission conclut, à l'unanimité, que les faits dénoncés dans la présente requête relèvent de la « juridiction » de la Turquie au sens de l'article 1 de la Convention et, dès lors, engagent la responsabilité de l'Etat défendeur au regard de la Convention.

Chapitre 4

Recours internes

104. Dans sa décision sur la recevabilité de la présente requête, la Commission n'a pas tranché la question de l'épuisement des voies de recours internes pour autant qu'il s'agissait des recours devant les

autorités chypriotes turques, estimant que celle-ci était étroitement liée à celle de la juridiction de la Turquie dans la partie nord de Chypre, qui ne pouvait être examinée qu'au stade de l'examen au fond (décision précitée, p. 141). Or la Commission venant de conclure qu'il y a lieu de considérer la «RTCN» comme une administration locale subordonnée de la Turquie, dont les actes et omissions relèvent de manière générale de la responsabilité de l'Etat défendeur au regard de la Convention, il lui incombe maintenant de rechercher si cela implique que les recours de la «RTCN» doivent aussi être considérés comme des recours «internes» au sens de l'ancien article 26 de la Convention. En d'autres termes, la Commission doit rechercher si cette disposition exige, pour chacun des griefs concernant des mesures prises par les autorités de la «RTCN», que les recours disponibles dans cette «République» aient été épuisés pour qu'elle puisse procéder à l'examen au fond du grief en question.

105. La pratique habituelle de la Commission veut que celle-ci étudie la question de l'épuisement des recours internes séparément pour chacun des griefs soulevés. La Commission n'entend pas s'écarter de cette pratique en l'espèce, ce pourquoi elle étudiera les recours particuliers invoqués par le gouvernement défendeur en temps utile dans le cadre de la deuxième partie ci-après. Cependant, la question de savoir s'il y a lieu de prendre en compte le moment venu les recours disponibles dans la «RTCN» revêt un caractère plus général et doit donc être traitée de manière globale.

106. Le gouvernement défendeur affirme que le système judiciaire mis en place dans la «RTCN» fournit des garanties institutionnelles effectives et adéquates. Le droit normatif et procédural comprend non seulement la «Constitution de la RTCN» et les lois adoptées en application de celle-ci, mais également certaines des lois promulguées sous la Constitution de 1960 et restées en vigueur ainsi que – essentiellement en matière de droit pénal et civil – la *common law* britannique et les théories de l'équité dans la mesure où elles ne sont pas en contradiction avec la Constitution. La «RTCN» bénéficie d'un réseau complet de tribunaux indépendants. L'indépendance des juges est garantie par la «Constitution de la RTCN» et toute ingérence dans la compétence des tribunaux est considérée comme une atteinte à l'autorité de la justice (*contempt of court*). Cette infraction peut également être retenue contre l'administration, notamment lorsqu'un organe administratif n'exécute pas comme il le doit une décision de justice. L'organisation des tribunaux remonte pour l'essentiel à la Constitution de 1975 de «l'Etat fédéré turc de Chypre», dont les dispositions pertinentes ont été mises en application dans la loi de 1976 sur les tribunaux et reprises dans la «Constitution de la RTCN» de 1985. Les juridictions de premier degré regroupent les cours d'assises (composées de trois juges de district qui se réunissent sans jury pour juger des infractions majeures, notamment celles punies de la peine de mort),

les tribunaux de district (compétents en matière civile et pénale), les tribunaux familiaux et les tribunaux pour enfants. La seule juridiction de deuxième degré est la Cour suprême, qui se compose d'un président et de sept juges et remplit plusieurs fonctions : Cour constitutionnelle suprême (cinq juges), cour d'appel (quorum de trois juges) et Haute Cour administrative (juge unique en première instance et formation de trois juges en appel).

107. Hormis quelques autres attributions, la Cour constitutionnelle est seule compétente pour statuer sur la constitutionnalité des lois et de certains autres textes. Il lui incombe donc de statuer sur la constitutionnalité des lois ou décisions de l'assemblée législative, sur saisine du président de la République, avant leur promulgation, sur des actions en annulation de lois et de certaines autres normes générales (mais non des décisions prises en Conseil des ministres) dont la conformité à la Constitution est attaquée par le président, les partis politiques, des groupes politiques, neuf députés ou associations concernées et – ce qui est le plus important – sur saisine des tribunaux, sur des questions ayant trait à la constitutionnalité des lois et autres normes (décisions des organes législatifs et administratifs) dont les juridictions ont besoin pour se prononcer (les parties à la procédure ont le droit de demander pareille saisine et les tribunaux n'ont pas compétence pour trancher eux-mêmes la question de la constitutionnalité et sont liés par la décision de la Cour constitutionnelle et donc contraints de ne pas tenir compte des dispositions jugées inconstitutionnelles).

108. La cour d'appel connaît au second degré des affaires civiles et pénales. Toutes les décisions des tribunaux de district et des cours d'assises sont de droit susceptibles d'appel. En matière pénale, il est possible de faire appel d'une condamnation et/ou d'une peine. Dans les affaires d'assises, le procureur général peut également faire appel d'un acquittement. En matière pénale comme civile, les appels sont examinés dans le cadre d'une nouvelle audience. La cour d'appel peut également émettre des ordonnances d'*habeas corpus*, de *mandamus*, d'interdiction, de *certiorari* et de *quo warranto*. Au contraire de ce qui se produit dans le cadre du système anglais de *common law* dont elles sont les héritières, ces ordonnances revêtent moins d'importance dans le nord de Chypre pour le contrôle par le juge d'actes de l'administration car elles ne peuvent être employées lorsque sont disponibles d'autres recours plus spécifiques, ce qui est en général le cas en raison de la compétence exclusive de la Haute Cour administrative en matière administrative.

109. En fait, la Haute Cour administrative a compétence pour contrôler les actes, décisions et omissions de tout organe, toute autorité ou toute personne exerçant un pouvoir exécutif ou administratif. En pratique, cela vaut non seulement pour les organes de l'Etat au sens strict, mais également pour les institutions semi-officielles (agence de

l'électricité, agence des télécommunications, sociétés publiques de radiodiffusion et de télévision), pour les actes administratifs individuels uniquement. Les actes de nature législative (comme les règlements adoptés en Conseil des ministres) ou judiciaire (par exemple les décisions du bureau du cadastre portant sur des conflits de bornage et de propriété foncière) ne sont pas considérés comme des actes administratifs relevant du contrôle de la Haute Cour administrative. Toutefois, les décisions prises par les commissions compétentes en vertu de la loi de 1977 sur le logement, la réinsertion et les biens d'égale valeur (s'appliquant à la distribution aux Chypriotes turcs des biens «abandonnés» par les Chypriotes grecs) sont considérées comme des actes administratifs. Tous ces actes peuvent être attaqués pour inconstitutionnalité, illégalité et excès ou abus de pouvoir. La Haute Cour administrative peut annuler l'acte ou la décision administrative et, en cas d'omission, déclarer que celle-ci n'aurait pas dû être commise et que ce qui a été omis aurait dû être accompli. Toutefois, elle ne peut substituer sa propre décision à celle de l'organe administratif compétent ni réviser la décision de ce dernier, la question étant normalement renvoyée à l'organe en question pour réexamen. La Haute Cour administrative ne peut pas non plus allouer de réparation à la personne lésée, celle-ci pouvant en revanche intenter une action en indemnisation devant le tribunal de district.

110. Enfin, le système judiciaire de la «RTCN» prévoit deux degrés de juridiction pour les tribunaux militaires, qui sont en place depuis 1983 : le «tribunal des forces de sécurité de la RTCN» (qui se compose de deux membres des forces de sécurité désignés par le commandement de ces forces et de deux juges civils désignés par le conseil supérieur de la magistrature) et la «cour d'appel des forces de sécurité» (qui se compose de deux membres des forces de sécurité désignés par le commandant de ces forces et de deux juges de la Cour suprême désignés par le conseil supérieur de la magistrature). Ces juridictions connaissent des infractions pénales et disciplinaires commises par les membres des forces de sécurité. Elles ont aussi compétence pour examiner les infractions commises dans des zones militaires, au cours du service militaire et concernant des biens militaires. Elles n'ont aucune autre compétence à l'égard des civils.

111. Le gouvernement défendeur affirme que tout habitant de la «RTCN» a accès à des tribunaux indépendants. S'agissant des Chypriotes turcs vivant dans le nord de Chypre, leurs droits sont parfaitement protégés par la Constitution et les lois de la «RTCN», et garantis par des tribunaux indépendants et impartiaux. Aucun élément n'a été avancé pour prouver qu'il n'existe pas de recours ou que les recours disponibles sont insuffisants ou inutilisables. Le gouvernement défendeur soutient en outre que les Chypriotes grecs et maronites vivant dans le nord de Chypre sont considérés comme des citoyens de la «RTCN»

et bénéficient donc des mêmes droits et recours que les Chypriotes turcs. En particulier, leurs biens immeubles ne rentrent pas dans le cadre des biens «abandonnés», ce pourquoi aucune restriction ne vient entraver l'utilisation et la jouissance de ces biens de la part de leur propriétaire. Les Chypriotes grecs de la péninsule du Karpas ayant par le passé intenté des actions en justice pour se plaindre d'une occupation et/ou d'une détention illégale de leurs biens en vertu de la loi sur les actes dommageables ont obtenu gain de cause. Dans ces affaires, le procureur général de la «RTCN» a été assigné en tant que codéfendeur représentant l'Etat, parce que l'occupation des biens en question avait résulté d'une attribution ou d'une autorisation erronée des organes de l'Etat concernés.

112. Le gouvernement défendeur fait cependant valoir que «l'administration chypriote grecque» dissuade activement les Chypriotes grecs et maronites installés dans le nord de Chypre de reconnaître, ou sembler reconnaître, les institutions et autorités chypriotes turques, ce qui les empêche de demander réparation dans le cadre du système juridique du Nord. De la sorte, ils ne peuvent conclure de transactions auprès des services gouvernementaux chypriotes turcs ni s'adresser aux autorités de la «RTCN» pour obtenir le droit de transférer des biens et/ou d'en hériter. Si le tribunal chypriote turc compétent était saisi d'une demande d'octroi de l'administration de la succession d'un Chypriote grec décédé, il n'y aurait aucune raison qu'il n'y fasse pas droit pour permettre d'hériter des biens. A cet égard, le gouvernement défendeur renvoie également à la conclusion de la Commission en l'affaire *Chrysostomos et Papachrysostomou* (rapport précité, § 174) selon laquelle les requérants ne souhaitaient pas se prévaloir des recours existants.

113. Le gouvernement requérant fait valoir que la Commission ne saurait s'appuyer sur les arguments présentés par le gouvernement défendeur au sujet du système judiciaire de la «RTCN», car ils sont tendancieux et ne présentent que les dispositions prévues en théorie par la «Constitution» et les «lois» de la «RTCN» en négligeant la totale illégalité dans laquelle cette «Constitution» et ces «lois» ont été créées et fonctionnent. Pour le gouvernement requérant, ces arguments ne sont qu'une «tentative visant à créer une légalité, une régularité et des recours judiciaires illusoires», voire «une tentative de faire passer des dispositions irrégulières pour un «système juridique». Selon lui, ces dispositions sont contraires au droit international, ainsi que l'indiquent les Résolutions 541 (1983) et 550 (1984) du Conseil de sécurité des Nations unies, contraires au Traité de garantie de 1960 – et résultent de l'agression perpétrée par la Turquie contre la République de Chypre –, contraires à la réglementation municipale de la République de Chypre et, enfin, résultent de violations du droit du Conseil de l'Europe, qui interdit les violations systématiques des droits de l'homme ainsi que leurs conséquences. Elles

suscitent aussi la fausse impression que la «RTCN», sa «Constitution» et son «système juridique» sont l'œuvre des seuls Chypriotes turcs, passant sous silence le rôle que l'Etat défendeur lui-même a joué dans la mise en place des institutions de la partie nord de Chypre. Le gouvernement requérant fait observer que cette manière de procéder vise à affirmer que les institutions chypriotes turques ne peuvent être assimilées aux «autorités nationales» de la Turquie, puisque le gouvernement défendeur a expressément nié que la Turquie exerce quelque responsabilité que ce soit à l'égard de la «RTCN» et de ses institutions.

114. Le gouvernement requérant fait remarquer que, selon l'argumentation du gouvernement défendeur, la «Constitution de la RTCN» est le texte fondamental dans le nord de Chypre, raison pour laquelle il n'existe pas de recours contre des actions conformes à cette «Constitution» ou dictées par elle. Les rapports entre la «Constitution de la RTCN» et la Convention européenne des Droits de l'Homme, incorporée dans le droit de la République de Chypre en 1962, n'ont pas fait l'objet d'explications de la part du gouvernement défendeur. Le droit de la Convention était directement applicable à Chypre, mais il a été remplacé par la «Constitution de la RTCN», dont la portée est moindre. Etant donné que cette «Constitution» ne garantit les droits fondamentaux qu'aux «citoyens de la RTCN», les «non-citoyens» et notamment les Chypriotes grecs non résidants ne peuvent s'en réclamer. En tout état de cause, le gouvernement requérant affirme qu'en raison du comportement des «fonctionnaires» et des «policiers», qui jouent un rôle fondamental pour l'ouverture de procédures de recours, il existe des pratiques administratives de violation systématique des droits que la Convention garantit aux Chypriotes grecs du Karpas et aux Chypriotes turcs (dont les Tsiganes), pour lesquelles il n'y a pas lieu d'épuiser les voies de recours internes.

115. Le gouvernement requérant considère l'Etat défendeur comme responsable dans la mesure où le «système juridique» mis en place dans le nord de Chypre ne garantit pas le respect des droits énoncés dans la Convention, ce qui conduit soit à des violations de ces droits soit au non-respect des obligations positives découlant de la Convention. Le fait que les actes d'institutions créées par la Turquie puissent engager sa responsabilité n'a pas pour corollaire que ces institutions doivent être traitées comme des institutions que la Turquie est tenue de mettre en place au titre de divers articles de la Convention, tels que les articles 6 et 13 (d'autres arguments du gouvernement requérant relatifs au respect de ces articles sont exposés aux paragraphes 323, 353-354 et 525). Etre responsable d'organes subordonnés ne signifie pas non plus que ces organes sont investis du pouvoir de «reconnaître» les droits protégés par la Convention au sens de l'article 1 de celle-ci. Partant, il ne saurait être nécessaire d'épuiser des «recours» devant de tels organes aux fins de

l'ancien article 26 de la Convention. Même si, en exerçant leurs fonctions de contrôle, ces organes ne violent pas la Convention ou empêchent des violations de se produire, le cadre dans lequel ils fonctionnent ne peut être approuvé. Il y aurait sinon le risque qu'un régime illégal, reconnu comme tel par la communauté internationale, soit indirectement légitimé. Voilà pourquoi le gouvernement requérant estime qu'il n'y a pas équivalence entre la responsabilité de l'Etat et l'exécution des obligations imposées par la Convention.

116. Le gouvernement requérant renvoie à la jurisprudence de la Cour, laquelle stipule qu'il faut tenir compte de manière réaliste non seulement des recours prévus en théorie dans le système juridique de la Partie contractante concernée, mais également du contexte juridique et politique dans lequel ils se situent (Cour eur. DH, *Akdivar et autres c. Turquie*, arrêt du 16 septembre 1996, *Recueil* 1996-IV, p. 1211, § 69). Il fait valoir que les violations dénoncées en l'espèce sont indissolublement liées à la nature du régime en vigueur dans la partie occupée de Chypre et à la politique déclarée de ce régime. Celui-ci est une administration locale subordonnée, soumise au contrôle des forces militaires turques. Il exprime et s'efforce d'appliquer les objectifs et la politique que la Turquie veut pour Chypre, à savoir diviser l'île en deux Etats distincts, l'un peuplé et administré par les Chypriotes grecs et l'autre par les Chypriotes turcs. Sous un régime d'occupation militaire, il est totalement irréaliste et inconcevable de penser que les autorités administratives ou judiciaires locales peuvent émettre des décisions effectives à l'encontre des personnes exerçant l'autorité avec le soutien de l'armée d'occupation, en vue de redresser des violations des droits de l'homme commises à l'occasion de l'application de la politique générale définie par le régime en place dans la zone occupée.

117. Invoquant la décision sur la recevabilité de la requête n° 8007/77 (précitée, p. 152, § 34), le gouvernement requérant affirme qu'on ne peut s'attendre à ce que les victimes de violations des droits de l'homme dans le territoire occupé usent de recours sur le territoire national du pays occupant. Les recours disponibles sur le territoire occupé, en revanche, ne peuvent être considérés comme des «recours internes» de l'Etat occupant et, même s'ils l'étaient, il convient selon lui de distinguer les recours légaux de ceux qui ne le sont pas, seuls les premiers, c'est-à-dire ceux qui n'ont pas été mis en place par le régime illégal, correspondant à ce qui est prévu à l'article 26 de la Convention. Il serait en effet absurde de considérer que la Convention, qui défend la prééminence du droit et de la démocratie, exige des personnes que ses dispositions visent à protéger qu'elles recourent à des procédures illégales afin de pouvoir bénéficier de ladite protection.

118. C'est pourquoi le gouvernement requérant soutient que la Turquie n'est pas en mesure d'offrir des recours légaux dans le nord de

Chypre, puisque le régime militaire qui y est établi est antidémocratique et illégal. Les tribunaux turcs fonctionnant à Chypre, notamment, sont illégaux car les mesures prises par la Turquie pour modifier le système judiciaire ont enfreint le Traité de garantie. Les dispositions pertinentes du droit international interdisent même à un occupant de modifier le système juridique du territoire occupé. Il avance qu'en tout état de cause les dispositions de la Convention l'emportent sur les règles du droit international public s'agissant de la situation de la puissance occupante, la Convention étant une *lex specialis* en matière de droits de l'homme.

119. Dès lors, le gouvernement requérant considère aussi comme inapplicable la décision de la Cour internationale de justice en l'affaire de la Namibie (voir ci-dessus), déclarant que l'absence de validité des actes d'un Etat qui occupe illégalement un territoire ne doit pas avoir pour conséquence de priver les habitants de ce territoire des avantages découlant de la coopération internationale, ce qui veut dire que cette absence de validité ne s'attache pas aux actes tels que l'inscription à l'état civil des naissances, décès et mariages, dont on ne pourrait méconnaître les effets qu'au détriment desdits habitants. Il fait observer que la décision sur la Namibie a été citée dans l'arrêt *Loizidou* rendu par la Cour, mais que celle-ci s'est refusée à énoncer une théorie générale sur la légalité des actes législatifs et administratifs de la «RTCN» (arrêt au fond précité, p. 2231, § 45). La Cour européenne de justice n'a pas appliqué la décision sur la Namibie en l'affaire Ministère de l'Agriculture, de la Pêche et de l'Alimentation, *ex parte* S.P. Anastassiou (Pissouris) Ltd c. Sunzest Products, pas plus que la *US 7th Circuit Court* dans *Autocephalos Greek Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts (917 Fed. Reporter 2nd series 278 (7th Cir.) 1990)*. Le gouvernement requérant n'exclut pas que certaines dispositions prises dans le cadre du «système juridique de la RTCN» touchant les personnes privées (comme un divorce ou un testament) puissent être jugées légitimes, mais estime que cela n'est pas incompatible avec la position générale, dictée par des considérations impérieuses d'ordre public, selon laquelle les prétendus «recours» sont illégaux et ne sont pas à prendre en considération aux fins de la Convention.

120. La Commission souligne tout d'abord qu'elle ne saurait avoir pour tâche en l'espèce de se prononcer sur le statut de la «RTCN» et la validité des actes de son administration au regard des dispositions générales du droit international. Sa seule fonction dans le présent contexte consiste à rechercher dans quelle mesure il y a lieu de prendre en compte aux fins de l'ancien article 26 de la Convention les recours invoqués par le gouvernement défendeur. Ce dernier ayant seulement cité les recours présentés comme offerts par le «système juridique de la RTCN», force est de supposer qu'il n'en existe pas d'autres, en particulier

en Turquie, susceptibles de fournir un redressement des différents griefs soulevés. Même s'il existait de tels recours, la Commission n'a pas à en tenir compte dans la mesure où le gouvernement défendeur n'a pas déclaré qu'ils auraient dû être épuisés.

121. S'agissant donc des recours disponibles dans la «RTCN», il semble que les deux parties conviennent qu'il ne faut pas les considérer comme des recours «internes» au sens de l'ancien article 26. Cependant, elles adoptent ce point de vue pour des raisons différentes. Le gouvernement défendeur ne considère pas les recours en question comme «internes» car il affirme de manière générale que la Turquie n'est pas responsable des actions de la «RTCN» qui, selon lui, est un Etat indépendant distinct de la Turquie. La Commission a déjà rejeté cette thèse en déclarant que la Turquie doit être tenue pour responsable en raison du contrôle global qu'elle exerce sur la «RTCN», qui est une administration locale subordonnée de la Turquie. Le gouvernement requérant, qui admet cette définition de la «RTCN», fait toutefois valoir que les «recours de la RTCN» ne sont pas des recours «internes» à la Turquie, puisque les «autorités de la RTCN» n'ont pas la capacité juridique de s'acquitter des obligations contractées par la Turquie en vertu de la Convention.

122. La Commission juge cette distinction artificielle. La question de savoir si la Turquie peut s'acquitter des obligations qui lui incombent en vertu de certains articles de la Convention tels que les articles 6 ou 13 au travers d'institutions créées dans le cadre de l'administration locale subordonnée du nord de Chypre ressortit au fond des questions qui se posent sous l'angle de ces articles, et n'a rien à voir avec l'exigence procédurale de caractère général énoncée à l'article 26 de la Convention, voulant que les griefs soumis à la Commission aient auparavant été exposés devant les «autorités internes» susceptibles d'offrir un redressement effectif. De l'avis de la Commission, dire que la «RTCN» est une administration locale subordonnée de la Turquie implique nécessairement de considérer les recours disponibles devant les institutions de la «RTCN» comme des «recours internes» de l'Etat défendeur aux fins de l'ancien article 26 de la Convention.

123. Quant à l'autre argument du gouvernement requérant selon lequel ces recours ne sont pas pertinents parce qu'ils fonctionnent dans l'illégalité la plus totale, la Commission note que la création de la «RTCN» a de fait été réputée illégale et non valide dans des résolutions du Conseil de sécurité des Nations unies et du Comité des Ministres du Conseil de l'Europe et que celle-ci n'a été reconnue par aucun Etat à l'exception de la Turquie. Il est également évident que la proclamation de l'indépendance de la «RTCN» est incompatible avec les accords internationaux ayant présidé à l'indépendance de Chypre et avec la Constitution chypriote de 1960. Néanmoins, on ne peut nier l'existence

du régime de la «RTCN» ni que celui-ci exerce une autorité *de facto* sur la partie nord de Chypre, sous le contrôle global de la Turquie. S'il est vrai que le gouvernement de la République de Chypre demeure l'unique gouvernement légitime de Chypre, et qu'en conséquence certaines dispositions au moins de la «Constitution de la RTCN» ne peuvent se voir attribuer de validité juridique aux fins de la Convention (arrêt *Loizidou* (fond) précité, p. 2231, § 44), la Cour a admis que «le droit international reconnaît en pareil cas la légitimité de certains arrangements et transactions juridiques (...) «dont on ne pourrait méconnaître les effets qu'au détriment des habitants du territoire» (*ibidem*, § 45, avec une référence à la décision de la CIJ sur la Namibie).

124. La Commission note que la disposition particulière de la «Constitution de la RTCN» jugée non valide par la Cour visait à priver les individus concernés d'un droit garanti par la Convention. Toutefois, concernant les recours offerts par le «système juridique de la RTCN», le gouvernement défendeur soutient essentiellement qu'ils sont bénéfiques pour la population du nord de Chypre dans la mesure où ils servent à prévenir les violations dont elle serait victime ou à redresser ces violations. La Commission admet que telle est bien la fonction des recours en cause bien que le cadre dans lequel ils ont été créés et fonctionnent soit illégal du point de vue du droit international. Toutefois, cette illégalité au plan international n'est pas en soi suffisante pour priver ces recours de leur caractère effectif. Pour autant qu'ils sont réellement effectifs, ils fournissent aux personnes concernées un moyen pratique d'améliorer leur situation tout en permettant dans le même temps aux autorités de mettre en place la situation qu'elles jugent appropriée et qui doit former la base sur laquelle elles engagent leur responsabilité internationale, notamment la responsabilité au regard de la Convention qui, en l'espèce, doit être imputée à la Turquie.

125. Sachant que la Convention est un instrument visant à protéger les droits de l'homme de manière pratique et effective et connaissant également le caractère subsidiaire du mécanisme de contrôle international établi par la Convention, la Commission considère qu'elle se doit en principe de prendre en compte, aux fins de l'ancien article 26, tout recours effectif que l'administration locale subordonnée de la Turquie en place dans le nord de Chypre tient à la disposition des victimes de violations alléguées de la Convention. Cette approche est également conforme à celle adoptée par elle dans l'affaire *Chrysostomos et Papachrysostomou*, où elle a considéré que certains recours de la «RTCN» étaient valides (même si à l'époque elle n'attribuait pas de responsabilité globale à la Turquie ; rapport précité, p. 35, § 152).

126. Seuls les recours effectifs doivent être épuisés. La question de savoir si un recours donné peut ou non passer pour effectif doit être examinée par rapport au grief en cause. Il est vrai qu'en l'espèce les

griefs du gouvernement défendeur se rapportent essentiellement à un certain nombre de pratiques administratives alléguées, pour lesquelles il n'est pas exigé d'épuiser les recours internes. Toutefois, la question même de savoir s'il existe ou non une pratique administrative est fonction de l'absence de recours effectifs pour redresser les actes constitutifs de cette pratique, raison pour laquelle la Commission doit examiner la question des recours disponibles là où il convient dans la deuxième partie ci-après. Compte tenu des conclusions qui précèdent, elle prendra à chaque fois en considération les recours de la « RTCN ».

127. La Commission ne considère pas que le fait d'exiger des victimes des violations alléguées qu'elles épuisent les recours disponibles dans la « RTCN » vaille reconnaissance indirecte de la légitimité d'un régime non admis en droit international. Le statut de la « RTCN » au regard du droit international reste celui d'une administration locale subordonnée de la Turquie, dont les actes engagent la responsabilité de la seule Turquie au titre de la Convention.

Conclusion

128. La Commission conclut, par dix-neuf voix contre une, qu'aux fins de l'ancien article 26 de la Convention, les recours disponibles dans le nord de Chypre doivent passer pour des « recours internes » de l'Etat défendeur et qu'elle doit procéder à l'évaluation de leur caractère effectif dans les circonstances spécifiques où la question se pose.

Chapitre 5

Respect de la règle des six mois

129. Dans sa décision sur la recevabilité, la Commission a également réservé la question du respect de la règle des six mois énoncée à l'ancien article 26 de la Convention s'agissant des allégations de violations continues de certains articles de la Convention (décision précitée, p. 142). Les parties n'ont soumis aucun argument à ce sujet au stade de l'examen au fond.

130. La Commission relève que les violations continues alléguées se produisent dans le cadre de pratiques administratives pour lesquelles, par définition, aucun recours interne n'a besoin d'être épuisé et où, par conséquent, le délai mentionné à l'ancien article 26 ne commence pas à courir à partir de la date de la décision définitive, mais de celle où se sont produits les actes incriminés. La Commission a donc principalement pour tâche de vérifier si les pratiques administratives alléguées sont toujours en vigueur. A cet égard, elle ne peut tenir compte que des pratiques qui

ont continué à avoir cours jusqu'à six mois au moins avant l'introduction de la requête pour autant qu'elles se sont poursuivies après cette date. Les pratiques qui ont cessé plus tôt ne peuvent absolument pas être prises en compte. Voilà pourquoi la Commission a décidé d'exclure du champ de l'enquête qu'elle a menée au titre de l'ancien article 28 § 1 a) de la Convention toute situation ayant pris fin avant le 22 mai 1994 (paragraphe 33 du rapport).

Conclusion

131. La Commission conclut, à l'unanimité, qu'aucune autre question ne se pose quant au respect de la règle des six mois prévue à l'ancien article 26 de la Convention.

Chapitre 6

Evaluation des preuves

132. Avant d'examiner les allégations du gouvernement requérant au titre de chacun des articles de la Convention invoqués, la Commission juge approprié de rappeler les principes qui doivent en l'espèce la guider dans sa tâche d'établissement des faits en vertu de l'ancien article 28 § 1 a) de la Convention, notamment en ce qui concerne l'appréciation des preuves qui lui ont été fournies par les parties ou que ses délégués ont rassemblées lors de l'enquête qu'ils ont menée avec les représentants des parties.

133. D'après la jurisprudence des organes de la Convention, les faits doivent être prouvés «au-delà de tout doute raisonnable». Une telle preuve peut résulter d'un faisceau d'indices, ou de présomptions non réfutées, suffisamment graves, précis et concordants. En outre, le comportement des parties lors de la recherche des preuves peut entrer en ligne de compte (*Irlande c. Royaume-Uni* précité, p. 65, § 161). En outre, s'agissant d'établir l'existence de pratiques administratives, les institutions de la Convention ne s'inspirent pas de l'idée que la charge de la preuve pèse sur l'un des deux gouvernements en cause. La Commission doit au contraire examiner tous les éléments qui lui ont été soumis, quelle que soit leur origine (*ibidem*, p. 64, § 160).

134. En l'espèce, la Commission ne se heurte pas à des difficultés provoquées par l'absence de coopération du gouvernement défendeur, comme cela avait été le cas avec les précédentes requêtes interétatiques. Elle ne pense pas qu'il convienne de tirer de conclusions de l'absence de coopération de ce dernier lors des premières étapes de la procédure au fond. C'est pourquoi elle s'appuiera sur les éléments vérifiés dans le cadre d'une procédure contradictoire, quelle que soit la partie dont ils émanent. Elle n'a ainsi pas été contrainte de recourir à des précautions particulières pour pallier les éventuelles carences dues au fait que les preuves ne proviendraient que d'une partie (rapport de 1976 précité, p. 31, § 81, et rapport de 1983 précité, p. 85, § 90, et p. 86, § 95) ni de classer les faits établis en fonction de leur degré de certitude (rapport de 1976 précité, p. 31, § 82). Toutefois, ayant fait en l'espèce de nombreuses références aux conclusions formulées par elle dans les précédentes requêtes interétatiques, elle les prendra en compte là où il le faut. Elle souligne à cet égard que, les précautions précédemment décrites ayant été prises au moment voulu, le caractère fiable de ces conclusions ne saurait être mis en doute.

135. Certes, comme dans les affaires précédentes, l'une des difficultés que pose la présente requête tient au nombre de violations de la Convention alléguées et à la multiplicité de domaines couverts par les éléments de preuve soumis. La Commission estime que les documents présentés par les parties touchent pratiquement tous les aspects de l'affaire. Dans certains cas, cependant, une partie a élevé des objections à l'encontre des éléments fournis par la partie adverse en vue d'obtenir de la Commission qu'elle n'en tienne pas compte, pour des raisons soit de forme, soit d'équité de la procédure. Le gouvernement requérant s'est ainsi opposé aux éléments soumis par le gouvernement défendeur le 24 novembre 1997 au motif qu'ils l'avaient été après l'expiration du délai imparti au nom de la «RTCN»; il a de plus critiqué le dépôt par le gouvernement défendeur le 9 juin 1998 de la version révisée de l'une des annexes à ces éléments, au motif qu'à cette époque la Commission avait déjà indiqué aux parties qu'elle n'accueillerait plus d'observations de leur part, ce qui l'a privé de la possibilité de répondre. Pour les mêmes raisons, le gouvernement défendeur s'est opposé à la soumission par le gouvernement requérant de documents volumineux en accompagnement de ses observations du 1er juin 1998 ainsi que de documentation sur les personnes disparues lors de l'audience du 7 juillet 1998. Enfin, le gouvernement requérant a critiqué le dépôt par le gouvernement défendeur le 2 octobre 1998 d'un aide-mémoire, après que la Commission eut pris le 14 septembre 1998 la décision de ne pas recevoir de nouvelles observations des parties (paragraphe 61 du rapport).

136. La Commission n'a pas jugé approprié de soustraire à son examen les documents fournis par les parties, à l'exception de l'aide-

mémoire précité, soumis hors délai, et des documents se rapportant au décès d'un témoin, transmis par le gouvernement requérant le 2 mai 1999 (paragraphe 62 du rapport). Quant aux documents soumis le 24 novembre 1997, la Commission relève que l'agent du gouvernement défendeur les a remis en réponse à une demande de la Commission. Le non-respect du délai de réponse initialement fixé par la Commission s'explique par l'évolution de la procédure; en effet, le gouvernement défendeur n'a décidé que tardivement de coopérer avec la Commission. Le fait que la documentation en question ait été préparée par les autorités de la «RTCN», administration locale subordonnée de la Turquie, n'annule pas sa valeur probante. A cet égard, la Commission souligne que le fait que la «RTCN» soit le pays d'origine n'a aucune incidence sur la qualité d'Etat défendeur de la Turquie. Enfin, le fait que l'une des annexes à cette documentation ait ultérieurement été remplacée par une version plus complète et mise à jour n'a pas privé le gouvernement requérant de la possibilité d'y répondre. De fait, pour mettre en pratique le principe d'équité de la procédure entre les parties, la Commission a également pris en compte les observations fournies spontanément par le gouvernement requérant le 31 août 1998.

137. Pour ce qui est de la documentation fournie par le gouvernement requérant le 1er juin 1998, la Commission estime qu'elle va au-delà des simples «observations» que la Commission lui avait demandées. Toutefois, le délai supplémentaire accordé par elle a été respecté. Eu égard à la nature et au volume desdits documents, elle a autorisé le gouvernement défendeur à répondre même après l'audience, ce qui a été fait le 27 août 1998. L'équité de la procédure a donc été respectée autant que faire se peut. La Commission est cependant consciente que, par manque de temps, le gouvernement défendeur n'a peut-être pas pu s'exprimer pleinement et de manière détaillée sur tous les faits mentionnés. De même, s'agissant des documents relatifs aux personnes disparues soumis par le gouvernement requérant à l'audience du 7 juillet 1998, le gouvernement défendeur a inclus dans sa lettre du 5 août 1998 quelques remarques à leur sujet, mais n'a pas réellement pu s'exprimer à loisir. Dans un souci d'équité, la Commission ne peut qu'accorder une valeur probante limitée à ces deux séries de documents fournis par le gouvernement requérant.

138. Au nombre des documents dont elle dispose figure un rapport des Nations unies sur la situation humanitaire des Chypriotes grecs dans la péninsule du Karpas, le «rapport Karpas», remis par le gouvernement requérant en deux exemplaires. La Commission ne savait pas au départ que ce document était confidentiel, que l'ONU ne l'avait pas publié et n'avait d'ailleurs pas l'intention de le faire. Elle ne l'a appris que lorsque ses délégués ont par la suite entendu les auteurs de ce rapport, MM. Manzl

et O'Sullivan, qui, en dépit de certaines limitations dues à leur devoir de réserve, ont communiqué dans leur déposition de précieuses informations sur les circonstances dans lesquelles ce rapport ainsi que deux autres du même ordre concernant la situation des maronites dans le nord de Chypre et celle des Chypriotes turcs dans le sud de Chypre avaient été rédigés. Le gouvernement requérant a ensuite demandé à la Commission de se procurer ces autres rapports auprès de l'ONU. Les services compétents de cette organisation étaient prêts à le faire à condition que les deux parties donnent leur accord. Le gouvernement défendeur ayant formulé des objections, la Commission n'a pas demandé ces rapports. Elle relève toutefois que les objections du gouvernement défendeur ne se rapportaient pas au «rapport Karpas», dont elle disposait déjà à l'époque. Elle peut donc l'utiliser comme élément de preuve bien que, puisqu'il ne s'agit pas d'un document public de l'ONU, elle ne puisse en citer des passages. Elle s'abstiendra également de tirer quelque déduction que ce soit du refus du gouvernement défendeur de consentir à la divulgation des deux autres rapports.

139. Cela mis à part, la Commission dispose des éléments de preuve suivants:

– un film de Michael Kakoyiannis, *Attila 1974*, et divers documents, livres, mémoires, articles, comptes rendus de presse, etc., donnant des informations sur les événements survenus à Chypre au moment de l'intervention turque; la Commission constate que ces éléments ne contiennent rien qui soit directement en rapport avec les pratiques administratives dénoncées en l'espèce; elle n'entend donc pas les étudier comme des éléments de preuve;

– de nombreuses déclarations écrites émanant de témoins (certaines anonymes, d'autres accompagnées de documents officiels, photos, etc.); la Commission ne voit pas de raison de douter de leur authenticité mais, ne connaissant pas les circonstances particulières dans lesquelles elles ont été préparées, notamment la mesure dans laquelle les agents du Gouvernements seraient intervenus lorsqu'elles ont été recueillies, elle se doit de les utiliser avec précaution;

– un jeu complet de rapports de l'ONU (secrétariat général et conseil de sécurité) sur la question chypriote depuis 1974 couvrant notamment le mandat de la Force des Nations unies chargée du maintien de la paix à Chypre («UNFICYP»), le développement des pourparlers inter-communautaires et les travaux du Comité des personnes disparues des Nations unies («le CMP»); ces rapports concernant des actes dont il est allégué qu'ils constituent des violations de la Convention, il convient de les considérer comme une source objective d'information d'importance;

– un certain nombre de rapports d'ONG sur les événements de Chypre; certains émanant de sources indépendantes ont une valeur

probante considérable; cependant, dans la mesure où les ONG en question sont des groupes d'intérêt impliqués dans le conflit chypriote, la valeur probante de leurs rapports apparaît amoindrie;

– des comptes rendus de presse et transcriptions d'émissions de radio (de source Chypriote grecque, Chypriote turque, turque, grecque et internationale); dans la mesure où ils traitent de faits précis en rapport avec l'affaire, ils sont susceptibles de contenir des indications utiles, sans toutefois constituer une preuve complète quant aux faits rapportés;

– la «Constitution de la RTCN» et des extraits de la législation, de traités et autres instruments juridiques de la «RTCN»; pour la Commission, il y a lieu de supposer que ces textes constituent bien la «loi» de l'administration locale subordonnée de la Turquie en place dans le nord de Chypre; toutefois, l'existence de ces instruments juridiques ne prouve pas qu'ils sont appliqués de manière réelle et effective ni qu'il n'existe pas d'autres règlements ou pratiques pouvant entrer en conflit avec eux;

– plusieurs recueils et aperçus d'arrêts rendus par les tribunaux chypriotes turcs; leur authenticité ne fait aucune doute; ils constituent donc la preuve que les affaires en cause ont bien été tranchées de la manière indiquée;

– divers autres éléments, notamment des rapports, mémoires, statistiques, etc., gouvernementaux, qui doivent être évalués à chaque fois dans leur contexte.

140. Bien que les documents qu'elle a reçus à titre de preuve couvrent un très vaste domaine, la Commission a jugé qu'il lui fallait procéder à sa propre enquête sur certains faits, mais sans aller jusqu'à une investigation complète sur tous les aspects de l'affaire. C'est ainsi qu'elle a exclu du champ de l'enquête la question des personnes disparues et celles se rapportant aux biens, estimant qu'elle pouvait à cet égard se fonder en partie sur les conclusions énoncées dans ses précédents rapports et en partie sur les documents fournis permettant de se représenter la situation actuelle avec un degré suffisant de certitude. Son enquête a donc porté sur les questions se posant sur le terrain de la Convention ayant trait, d'une part, aux conditions de vie des Chypriotes grecs «enclavés» et, d'autre part, à la situation des Chypriotes turcs, notamment les dissidents politiques et les membres de la minorité tsigane dans le nord de Chypre. La Commission disposant aussi sur ces questions d'une abondance de preuves, elle n'a pas conçu son enquête comme un exercice poussé de recherches sur le terrain en vue d'établir la totalité des circonstances de la cause. Elle a plutôt concentré ses efforts sur des points qui n'étaient pas présentés avec suffisamment de clarté dans les autres éléments disponibles et sur des faits faisant l'objet d'une controverse entre les parties. Cette enquête a permis à la Commission de

rassembler de nombreuses preuves supplémentaires qui, en raison des impressions que les délégués ont pu retirer sur place quant à certaines situations pertinentes et à la crédibilité des témoins, revêtent une importance décisive pour l'appréciation des faits incriminés.

141. Les délégués ont visité certaines localités (le point de passage de la ligne de démarcation à Ledra Palace, un tribunal dans le nord de Nicosie et des villages chypriotes grecs dans la péninsule du Karpas) et recueilli les dépositions orales d'un certain nombre de témoins et de fonctionnaires ainsi que de personnes rencontrées dans la péninsule du Karpas. Les conditions dans lesquelles ces témoins et autres personnes ont été entendus ont fait l'objet d'une description détaillée plus haut. La Commission rappelle notamment que la majorité des témoins a utilisé les langues grecque ou turque et que leurs propos ont dû être interprétés pour être compris. Toutes les dépositions des témoins ont été enregistrées dans des comptes rendus intégraux et les déclarations entendues pendant la visite dans la péninsule du Karpas ont fait l'objet de comptes rendus sommaires. Les délégués, mais aussi la Commission plénière, ont eu recours à ces comptes rendus. La Commission a pris note des corrections apportées par les parties aux comptes rendus intégraux ainsi que des objections, en partie de nature linguistique, suscitées par ces corrections. Elle est consciente des difficultés que présente l'évaluation de preuves rassemblées oralement par le truchement d'interprètes et a donc accordé une attention particulière à la signification et au poids qu'il convenait d'attribuer aux déclarations prononcées par les témoins entendus par ses délégués.

142. La Commission note en outre que plusieurs des témoins entendus par les délégués sur proposition du gouvernement requérant ont conservé l'anonymat ; les délégués ont donc appliqué des mesures de protection qui permettaient aux représentants des parties de suivre l'interrogatoire seulement à partir de l'interprétation vers l'anglais. Cela a peut-être créé des difficultés linguistiques supplémentaires mais, pour compenser, les parties ont ultérieurement reçu une transcription intégrale des débats en langue originale, qu'elles ont pu commenter. La Commission a autorisé l'audition de témoins non identifiés et l'usage de mesures de protection principalement en raison des appréhensions subjectives ressenties par les témoins, qui craignaient de subir des pressions ou des représailles. La Commission estime que le fait que le gouvernement requérant ait demandé la non-divulgation de l'identité des témoins en question démontre bien l'existence de pareilles appréhensions subjectives, ce qu'a confirmé à chaque fois l'attitude des témoins lors de leur comparution. Cela ne veut toutefois pas dire que la Commission considère les appréhensions subjectives des témoins comme objectivement justifiées.

143. Le gouvernement défendeur fait valoir que, sur le plan procédural, il a été désavantagé par le fait même qu'un nombre important de témoins cités par le gouvernement requérant ont conservé l'anonymat et que certains d'entre eux n'ont accepté de le lever qu'à la toute dernière minute. Selon lui, cela a empêché ses représentants de préparer correctement leur contre-interrogatoire desdits témoins et donc de leur poser des questions utiles. La Commission fait toutefois observer qu'avait auparavant été diffusé un descriptif sommaire des témoins et des questions sur lesquelles ils étaient censés s'exprimer. Il ne faut donc pas surestimer les inconvénients procéduraux que les représentants du gouvernement défendeur auraient éprouvés. On ne peut cependant pas nier que ces inconvénients ont bel et bien existé et que la crédibilité des témoins en question n'a pas toujours pu être contrôlée, par exemple en leur soumettant certains faits précis contredisant leur témoignage. Cela dit, la Commission a préféré adopter une attitude de prudence dans son appréciation des dépositions des témoins non identifiés en jaugeant leur valeur probante en fonction de la nature particulière de chacune de leurs déclarations.

144. La Commission observe enfin que le gouvernement défendeur a pour sa part cité deux témoins (probablement des maronites vivant dans le nord de Chypre) souhaitant conserver l'anonymat. Les délégués avaient prévu de les entendre dans les mêmes conditions que les autres témoins non identifiés. Ils furent convoqués mais, finalement, ne se présentèrent pas devant les délégués pour des raisons qui n'ont pas été élucidées. La Commission n'a toutefois pas jugé approprié d'en tirer de déduction.

145. En conclusion, la Commission indique que, mis à part les éléments cités au premier tiret du paragraphe 139, elle a utilisé la totalité des preuves qui lui ont été soumises, tout en étant parfaitement consciente que, eu égard à la nature et au volume de ces preuves, elle s'est trouvée devant une tâche particulièrement difficile. Elle s'est efforcée d'affecter à chaque élément la valeur probante qui convenait en tenant compte notamment du degré d'objectivité et/ou de crédibilité de la source et de la situation des parties quant à la possibilité de contester ces preuves. S'agissant des faits controversés, les délégués se sont efforcés de rechercher les éclaircissements nécessaires, raison pour laquelle la Commission accorde une importance décisive à cet égard aux conclusions qu'ils ont formulées, car ils ont pu se former une impression personnelle et directe concernant les témoins et la situation générale régnant dans la partie nord de Chypre.

146. En s'acquittant de ses fonctions au titre de l'ancien article 28 § 1 a) de la Convention, la Commission s'attachera donc à fixer la valeur de chaque élément de preuve en tenant compte de la nature de cet élément et de la procédure par laquelle il a été recueilli.

DEUXIÈME PARTIE

Les griefs

Chapitre I

Chypriotes grecs portés disparus

A. Griefs

147. La Commission a déclaré recevables les griefs du gouvernement requérant selon lesquels, si des Chypriotes grecs portés disparus se trouvaient toujours détenus sous l'autorité de la Turquie vingt ans après la fin des hostilités, cela constituerait :

– une forme d'esclavage ou de servitude contraire à l'article 4 de la Convention ;

– une grave atteinte à leur droit à la liberté et à la sûreté tel que garanti à l'article 5 de la Convention.

148. En outre, la Commission a déclaré recevables les griefs du gouvernement requérant selon lesquels le fait que la Turquie n'ait jamais fourni à leur famille d'informations sur le sort de ces personnes constitue :

– un traitement inhumain au sens de l'article 3 de la Convention ;

– une ingérence dans le droit des membres de la famille au respect de leur vie familiale garanti à l'article 8 de la Convention ;

– une ingérence dans leur droit à recevoir des informations consacré par l'article 10 de la Convention.

149. Au stade de l'examen au fond, le gouvernement requérant a de plus allégué des violations des articles suivants de la Convention :

– dans le chef des personnes disparues elles-mêmes, violations des articles 2 (droit à la vie), 3 (traitement inhumain ou dégradant à raison de la durée de la détention ou de mauvais traitements systématiques), 6 (droit à un procès public et équitable dans un délai raisonnable), 8 (respect de la vie privée et familiale), 13 (droit à un recours effectif), 14 (discrimination fondée sur l'origine ethnique) et 17 (actes visant à la destruction des droits garantis aux Chypriotes grecs par la Convention) ;

– dans le chef des membres de la famille des personnes disparues, violations des articles 2, 3, 4 et 5 (pour autant que ces dispositions supposent le droit à une enquête adéquate) et de l'article 13.

150. La Commission doit en conséquence rechercher :

– s'il existe des violations continues des articles 4 et 5 de la Convention s'agissant des personnes disparues ;

– si les articles 2, 3, 6, 8, 13, 14 et 17 de la Convention peuvent aussi être pris en compte s'agissant des personnes disparues et, si oui, s'il y a eu violation dans leur chef des droits garantis par ces dispositions ;

– s'il existe des violations continues des articles 3, 8 et 10 de la Convention s'agissant des membres de la famille des personnes disparues;

– si les articles 2, 3, 4, 5 de la Convention (pour autant qu'ils supposent le droit à une enquête adéquate) et l'article 13 peuvent également être pris en compte s'agissant des membres de la famille des personnes disparues et, si oui, s'il y a eu violation dans leur chef des droits garantis par ces dispositions.

(...)

D. Avis de la commission

1. Sur les violations alléguées des droits des personnes portées disparues

a) Article 4 de la Convention

192. L'article 4 de la Convention dispose notamment que:

« 1. Nul ne peut être tenu en esclavage ni en servitude. »

193. Le gouvernement requérant affirme que, si une personne portée disparue se trouvait toujours détenue du fait de la Turquie vingt ans après les événements de 1974, cela constituerait un cas d'esclavage ou de servitude interdit par l'article 4.

194. Le gouvernement défendeur nie que des Chypriotes grecs soient demeurés en détention de son fait après décembre 1974.

195. La Commission relève le caractère hypothétique du grief du gouvernement requérant. Elle constate qu'aucun des éléments de preuve ne vient étayer l'hypothèse selon laquelle, au cours de la période considérée en l'espèce (paragraphe 130 ci-dessus), l'une quelconque des personnes portées disparues se trouvait toujours en garde à vue sous l'autorité de la Turquie et était tenue en esclavage ou en servitude.

Conclusion

196. La Commission conclut, à l'unanimité, qu'il n'y a pas eu violation de l'article 4 de la Convention.

b) Article 5 de la Convention

197. Aux termes de l'article 5 de la Convention:

« 1. Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas suivants et selon les voies légales:

(...) »

198. Le gouvernement requérant affirme que, si des personnes disparues devaient toujours se trouver détenues sous l'autorité de la

Turquie vingt ans après les événements de 1974, cela emporterait une violation grave de l'article 5.

199. Le gouvernement défendeur nie que des Chypriotes grecs soient demeurés en détention de son fait après décembre 1974.

200. La Commission constate que ce grief est lui aussi de caractère hypothétique et qu'aucun des éléments de preuve ne vient étayer l'hypothèse selon laquelle l'un quelconque des Chypriotes grecs portés disparus se trouvait toujours détenu par les autorités turques ou chypriotes turques pendant la période considérée en l'espèce.

201. Il s'ensuit que rien ne permet de conclure à la violation de l'article 5 au motif que des personnes portées disparues se trouveraient réellement en détention.

202. Cependant, le gouvernement requérant affirme aussi qu'il existe une violation continue de l'article 5 au motif que les Chypriotes grecs toujours portés disparus étaient détenus sous l'autorité de la Turquie en 1974, ce qui entraîne une présomption de responsabilité de la Turquie pour le sort de ces personnes, comme le reconnaît la Commission dans son rapport de 1983; elle y indique aussi que toute disparition non expliquée d'un détenu doit être considérée comme une violation particulièrement grave de l'article 5, lequel peut être compris également comme une garantie contre ce genre de disparitions (rapport précité, p. 38, §§ 117 et 119). Néanmoins, en dépit du temps écoulé depuis lors et de l'apparition de faits qui auraient nécessité une reprise des investigations, le gouvernement défendeur n'a pas enquêté de manière sérieuse et effective sur ces affaires.

203. Le gouvernement défendeur affirme principalement que cette question a déjà été traitée dans le rapport de 1983, quoique sur la base d'une enquête partiale et d'informations non fiables; il est donc inutile en l'espèce de chercher à tirer de nouvelles conclusions qui seraient établies dans les mêmes conditions. Il affirme aussi que la Commission n'a pas à se saisir du problème car le CMP s'en occupe déjà.

204. La Commission constate que les éléments de preuve soumis en l'occurrence corroborent les conclusions de son rapport de 1983: certaines des personnes portées disparues se trouvaient détenues sous l'autorité de la Turquie au moment de leur disparition. Cela a notamment été confirmé par la déclaration télévisée de M. Denktaş, citée par le gouvernement requérant, et dont le gouvernement défendeur n'a pas contesté la teneur. La situation décrite, à savoir que des personnes arrêtées par l'armée turque ont par la suite été remises aux forces paramilitaires chypriotes turques qui les ont tuées, relève à l'évidence de la responsabilité de l'Etat défendeur, tout comme les cas où la mise en détention a été directement le fait des forces chypriotes turques collaborant avec l'armée turque, comme décrit dans le rapport Dillon. L'argument initialement avancé par le gouvernement requérant, selon

lequel il faut présumer que toutes les personnes portées disparues se trouvaient en détention sous l'autorité de la Turquie, ne peut toutefois être maintenu. La Commission n'a pu contrôler le nombre, communiqué par le gouvernement requérant, de personnes portées disparues dont on peut valablement dire que, lorsqu'elles ont été vues pour la dernière fois en vie, elles étaient détenues par les autorités turques ou chypriotes turques. Malgré cela, un nombre suffisant d'éléments montre que le nombre de personnes relevant de cette catégorie est considérable.

205. La Commission réaffirme le point de vue qu'elle avait exprimé dans son rapport de 1983 précité: le fait de placer des personnes en garde à vue crée une responsabilité quant à leur sort, et la disparition inexpliquée de telles personnes constitue une violation particulièrement grave de l'article 5. La Cour a confirmé la validité de ce principe juridique dans son arrêt *Kurt c. Turquie*, en soulignant l'importance fondamentale que revêtent les garanties de l'article 5 pour protéger de la détention arbitraire, y compris de mesures mettant la vie en danger ou de mauvais traitements graves. La Cour a déclaré:

> «(...) Sont en jeu ici la protection de la liberté physique des individus ainsi que la sûreté de la personne dans une situation qui, faute de garanties, pourrait saper la prééminence du droit et soustraire les détenus à l'empire des formes les plus rudimentaires de protection juridique.
>
> (...) [L]a détention non reconnue d'un individu constitue une totale négation de ces garanties et une violation extrêmement grave de l'article 5. Les autorités qui ont mis la main sur un individu sont tenues de révéler l'endroit où il se trouve. C'est pourquoi il faut considérer que l'article 5 leur fait obligation de prendre des mesures effectives pour pallier le risque d'une disparition et mener une enquête rapide et efficace dans l'hypothèse d'une plainte plausible selon laquelle une personne a été appréhendée et n'a pas été revue depuis.» (Cour eur. DH, *Kurt c. Turquie*, arrêt du 25 mai 1998, *Recueil* 1998-III, p. 1185, §§ 123-124)

206. En l'espèce, les autorités de l'Etat défendeur se trouvent donc dans l'obligation de mener «une enquête rapide et efficace» sur le sort de toute personne au sujet de laquelle il a été avancé de manière plausible qu'elle se trouvait au moment de sa disparition en 1974 détenue sous l'autorité de la Turquie. Pour faire naître cette obligation, il n'est pas nécessaire que la détention soit prouvée au-delà de tout doute raisonnable, mais il suffit qu'il existe une plainte plausible dénonçant la détention. Lorsque les circonstances de la détention sont obscures, elles doivent faire partie des éléments sur lesquels enquêter.

207. La Commission rappelle qu'en 1983, lorsqu'elle a adopté son rapport sur la requête n° 8007/77, elle a conclu à la violation de l'article 5 car à cette époque, le gouvernement défendeur n'avait fourni aucune information sur le sort des Chypriotes grecs portés disparus alors qu'ils se trouvaient détenus sous l'autorité de la Turquie. Pour la Commission, cette violation se poursuit tant que tous

les renseignements disponibles n'auront pas fait l'objet d'investigations et n'auront pas été révélés par le gouvernement défendeur. L'obligation d'enquêter et d'informer ne saurait faire l'objet d'aucune limitation dans le temps, surtout parce que l'on ne saurait exclure que les personnes détenues qui ont disparu aient pu être victimes des violations les plus graves, comme des crimes de guerre ou des crimes contre l'humanité. Cette obligation ne saurait non plus être soumise à des conditions telles que la tenue préalable d'enquêtes sur les disparitions par la partie adverse, ou sur des disparitions survenues dans un autre contexte, par exemple à l'occasion du coup d'Etat.

208. En 1983, à l'époque où elle a rédigé son rapport, le CMP avait déjà été créé mais n'avait pas encore commencé à fonctionner. A l'heure actuelle, plus de quinze années après, le gouvernement défendeur affirme que le CMP est l'organisme le mieux placé pour enquêter sur le sort des personnes portées disparues. Comme la Commission l'a dit dans sa décision sur la recevabilité de la présente requête, le CMP créé sous les auspices de l'ONU n'équivaut pas à un compromis spécial au sens de l'ancien article 62 de la Convention et ne prive donc pas la Commission de sa compétence (décision précitée, p. 138). Toutefois, l'argument du gouvernement défendeur selon lequel il considère le CMP comme l'organisme le plus adéquat peut aussi se comprendre comme signifiant que c'est en fait par l'intermédiaire de cet organisme que l'Etat défendeur s'acquitte de son obligation d'enquête précitée. De fait, les procédures concernant les personnes portées disparues semblent pendantes uniquement devant cet organisme qui, de plus, a été créé avec l'accord du gouvernement requérant.

209. La Commission considère en principe qu'un Etat peut aussi s'acquitter de son obligation d'enquêter sur la disparition de personnes détenues avec l'aide d'un organisme international créé à cette fin. Cette façon de procéder introduit un élément d'objectivité et d'appréciation neutre des preuves, ce qui est sans nul doute hautement souhaitable à propos de questions aussi délicates. En l'espèce, la Commission constate que les procédures du CMP sont menées séparément par chaque partie, sous la responsabilité du membre concerné et avec l'aide des autorités compétentes. En ce qui concerne les Chypriotes grecs disparus dans le nord de Chypre, ce sont donc les autorités chypriotes turques qui participent à la procédure. Ces dernières devant être considérées comme une administration locale subordonnée de la Turquie, elles sont en principe en mesure de s'acquitter des responsabilités contractées par cet Etat au regard de la Convention. Le fait que cette procédure prévoie en outre la présence du troisième membre du CMP n'entre pas en ligne de compte à cet égard, car on ne saurait présumer que cette personne empêche en quoi que ce soit les autorités compétentes d'accomplir les tâches que la Convention leur impose.

210. Il se pose tout de même la question de savoir si, compte tenu du mandat du CMP et de la pratique qui en découle, les enquêtes menées par cet organisme satisfont aux exigences posées par l'article 5 de la Convention. La Commission relève notamment que les enquêtes du CMP se limitent à rechercher si une personne portée disparue est vivante ou morte. Le CMP n'est pas habilité à établir la cause de la mort ni les responsabilités. Il s'est même efforcé à promettre l'impunité aux témoins qui, par leurs déclarations, risqueraient d'accuser eux-mêmes ou autrui d'actes qui, en fin de compte, semblent être des crimes particulièrement graves. De surcroît, la compétence territoriale du CMP se limite à l'île de Chypre, ce qui lui interdit d'enquêter en Turquie même, où il a été allégué que certaines disparitions se seraient produites. Enfin, il est pour le moins douteux que le CMP puisse étendre ses investigations aux actes commis par les militaires ou fonctionnaires turcs sur le territoire chypriote.

211. Eu égard à ces limites, la Commission considère que les procédures du CMP – tout en étant indéniablement utiles pour atteindre l'objectif humanitaire qui a présidé à leur création – ne sont pas en elles-mêmes suffisantes pour satisfaire aux exigences de l'article 5 de la Convention en matière d'enquête effective. Dans ces conditions, la Commission ne juge pas utile de se prononcer sur la question de savoir si l'une ou l'autre partie est responsable du retard que connaissent les enquêtes du CMP et du fait qu'à ce jour, celui-ci n'a obtenu aucun résultat concret. La portée des enquêtes du CMP étant trop limitée et, en l'absence d'enquête complémentaire qui aurait permis d'élucider totalement le sort des Chypriotes grecs portés disparus ayant fait l'objet d'une plainte plausible selon laquelle ils se trouvaient détenus sous l'autorité de la Turquie en 1974, il existe une violation continue de l'article 5, dont l'Etat défendeur doit être jugé responsable.

Conclusions

212. La Commission conclut, à l'unanimité, qu'il n'y a pas eu pendant la période considérée violation de l'article 5 de la Convention du fait de la détention effective de Chypriotes grecs portés disparus.

213. La Commission conclut, à l'unanimité, qu'il y a eu pendant la période considérée une violation continue de l'article 5 de la Convention du fait que les autorités de l'Etat défendeur n'ont pas mené d'enquête efficace sur le sort des Chypriotes grecs portés disparus ayant fait l'objet d'une plainte plausible selon laquelle ils se trouvaient détenus sous l'autorité de la Turquie au moment de leur disparition.

c) Griefs tirés des articles 2, 3, 6, 8, 13, 14 et 17 de la Convention

i. Compétence de la Commission pour examiner ces griefs

214. Au stade de l'examen au fond, le gouvernement requérant a invoqué les articles 2, 3, 6, 8, 13, 14 et 17 de la Convention en faisant valoir qu'il y avait également eu violation de ces dispositions dans le chef des Chypriotes grecs portés disparus car l'obligation d'enquête sur les cas de disparition ne se déduisait pas du seul article 5. Il renvoyait notamment à la situation des Chypriotes grecs portés disparus dont on ne pouvait prouver de manière fiable qu'ils se trouvaient détenus sous l'autorité de la Turquie à l'époque de leur disparition dans des zones contrôlées par l'armée turque.

215. Le gouvernement défendeur n'a formulé aucune observation particulière à cet égard.

216. Etant donné que le gouvernement requérant ne s'est pas réclamé des articles de la Convention précités pour ce qui est des personnes portées disparues au stade de la recevabilité, la Commission doit tout d'abord établir si elle a compétence pour les prendre en compte. Elle rappelle à cet égard sa pratique constante selon laquelle la décision sur la recevabilité d'une affaire portée devant elle définit les faits ou ensembles de faits ainsi que le fond des griefs se rapportant à ces faits sur lesquels elle statuera au stade de l'examen au fond. Toutefois, les institutions de la Convention ne sont pas liées par la qualification juridique des faits de la cause telle qu'elle a été faite par les parties; il leur est loisible d'examiner les questions définies dans la décision sur la recevabilité à la lumière de la Convention dans son ensemble (Cour eur. DH, *Assenov et autres c. Bulgarie*, arrêt du 28 octobre 1998, *Recueil* 1998-VIII, p. 3295, § 132, assorti d'autres renvois).

217. En l'occurrence, la Commission a retenu les griefs formulés par le gouvernement requérant au sujet de tous les Chypriotes grecs disparus sur le territoire contrôlé par l'Etat défendeur et au sujet desquels ce dernier n'avait fourni aucune information. Il a aussi été clairement établi au stade de la recevabilité que la possibilité que ces personnes aient été tuées sur le territoire contrôlé par l'Etat défendeur constituait un aspect des griefs du gouvernement requérant à cet égard, même si celui-ci a toujours affirmé que les personnes portées disparues devaient être présumées en vie en l'absence de preuve du contraire. A partir de là, le gouvernement requérant suggérait implicitement une autre hypothèse, à savoir que toutes ces personnes se trouveraient toujours détenues sous l'autorité de la Turquie.

218. La Commission n'a trouvé aucune preuve confirmant cette dernière thèse. Elle considère toutefois que les éléments qui lui ont été remis dès le stade de la recevabilité sont suffisants pour justifier qu'elle se saisisse de la question de savoir si le droit à la vie des personnes

disparues a été méconnu, au mépris de l'article 2 de la Convention, au moins en raison de l'absence d'enquête efficace sur les circonstances dans lesquelles elles ont pu être tuées. Selon la Commission, cet aspect de l'affaire est couvert par la décision sur la recevabilité. Par contre, les autres griefs du gouvernement requérant se rapportant à une ingérence alléguée dans les droits que les articles 3, 6, 8, 13, 14 et 17 de la Convention reconnaissent aux personnes disparues ne relèvent pas de cette décision, raison pour laquelle elle ne saurait les examiner.

ii. Examen sous l'angle de l'article 2 de la Convention

219. Ayant conclu qu'elle pouvait étudier la question des personnes disparues sur le terrain de l'article 2 de la Convention, la Commission doit commencer par rechercher si cette disposition s'applique aux faits dénoncés et, si oui, dans quelle mesure. L'article 2 est ainsi libellé :

« 1. Le droit de toute personne à la vie est protégé par la loi. La mort ne peut être infligée à quiconque intentionnellement, sauf en exécution d'une sentence capitale prononcée par un tribunal au cas où le délit est puni de cette peine par la loi.

2. La mort n'est pas considérée comme infligée en violation de cet article dans les cas où elle résulterait d'un recours à la force rendu absolument nécessaire :

a) pour assurer la défense de toute personne contre la violence illégale ;

b) pour effectuer une arrestation régulière ou pour empêcher l'évasion d'une personne régulièrement détenue ;

c) pour réprimer, conformément à la loi, une émeute ou une insurrection. »

220. La jurisprudence indique clairement que l'article 2 garantit non seulement le droit à la vie mais expose aussi les circonstances dans lesquelles infliger la mort peut se justifier ; il se place à ce titre parmi les articles primordiaux de la Convention. Il ne définit pas avant tout les situations dans lesquelles il est permis d'infliger intentionnellement la mort, mais décrit celles où il est possible d'avoir « recours à la force », ce qui peut conduire à donner la mort de façon involontaire. Le recours à la force doit cependant être rendu « absolument nécessaire » pour atteindre l'un des objectifs mentionnés aux alinéas a), b) ou c) de l'article 2. En outre, une loi interdisant de manière générale aux agents de l'Etat de procéder à des homicides arbitraires serait en pratique inefficace s'il n'existait pas de procédure permettant de contrôler la légalité du recours à la force meurtrière par les autorités de l'Etat. L'obligation de protéger le droit à la vie qu'impose cette disposition, combinée avec le devoir général incombant à l'Etat en vertu de l'article 1 de la Convention de « reconna[ître] à toute personne relevant de [sa] juridiction les droits et libertés définis [dans] la (...) Convention », implique et exige de mener une forme d'enquête efficace lorsque le recours à la force, notamment par des agents de l'Etat, a entraîné mort d'homme (Cour eur. DH,

McCann et autres c. Royaume-Uni, arrêt du 27 septembre 1995, série A n° 324, pp. 45-46, §§ 146-150, et p. 49, § 161).

221. Dans son rapport consacré à cette même affaire, la Commission a traité des exigences minimales requises pour pareille enquête en ces termes (*ibidem*, avis de la Commission, p. 79, § 193) :

> « (...) La nature et le niveau d'un examen qui satisfasse au seuil minimum doivent (...) dépendre des circonstances de l'espèce. Des affaires peuvent se présenter dans lesquelles les faits entourant un homicide sont clairs et incontestés et où l'examen inquisitoire subséquent peut légitimement se réduire à une formalité minimale. Mais, de la même manière, d'autres situations peuvent se présenter dans lesquelles une victime meurt dans des circonstances troubles, auquel cas l'absence de toute procédure effective permettant d'enquêter sur la cause de l'homicide pourrait par elle-même soulever une question au titre de l'article 2 de la Convention. »

222. Dans des affaires ultérieures, la Commission et la Cour ont dit que, pour donner naissance à l'obligation de mener une enquête approfondie, il suffit que les circonstances de la mort manquent de netteté, notamment lorsqu'on ne sait pas si la mort était naturelle ou résultait d'une action de l'Etat ou encore d'autres causes, comme des actes criminels de terroristes ou d'inconnus (voir, par exemple, Cour eur. DH, *Kaya c. Turquie*, arrêt du 19 février 1998, *Recueil* 1998-I, p. 326, § 91, et l'avis de la Commission, p. 349, § 180, ainsi que *Güleç c. Turquie*, arrêt du 27 juillet 1998, *Recueil* 1998-IV, pp. 1732-1733, §§ 79-81). La Cour a également dit clairement que l'obligation d'enquête ne vaut pas seulement pour les cas où il a été établi que la mort avait été provoquée par un agent de l'Etat et où plainte a été déposée à ce sujet ; le simple fait que les autorités aient été informées de l'assassinat ou de la tentative d'assassinat donnait *ipso facto* naissance à cette obligation (Cour eur. DH, *Ergi c. Turquie*, arrêt du 28 juillet 1998, *Recueil* 1998-IV, p. 1778, § 82, et *Yaşa c. Turquie*, arrêt du 2 septembre 1998, *Recueil* 1998-VI, p. 2438, § 100 ; sur les obligations positives découlant de l'article 2 à raison de risques vitaux provenant des actes criminels d'un particulier, voir aussi Cour eur. DH, *Osman c. Royaume-Uni*, arrêt du 28 octobre 1998, *Recueil* 1998-VIII, pp. 3159 et 3163, §§ 115 et 123).

223. En l'espèce, il n'existe aucune certitude quant au sort des personnes portées disparues. Le gouvernement requérant affirme qu'il faut présumer qu'elles sont vivantes tant qu'il n'y a pas de preuve du contraire. Le gouvernement défendeur soutient pour sa part qu'elles sont mortes. La Commission estime qu'elle n'a pas pour tâche de spéculer sur ce qu'est réellement la situation à ce sujet. Selon elle, l'article 2 exige seulement de constater qu'on a perdu la trace des personnes portées disparues dans des circonstances qui mettaient sans aucun doute leur vie en danger. De fait, cela a été reconnu par les deux parties. Il y a également lieu de noter l'existence de preuves montrant qu'à cette époque des meurtres ont été perpétrés à grande échelle et que, dans certains cas, ces

meurtres ne résultaient pas d'actes de guerre, mais d'un comportement criminel en dehors des zones de combat. La Commission renvoie à cet égard aux conclusions figurant dans ses rapports consacrés aux précédentes affaires interétatiques. Elle estime que, dans ces circonstances, l'article 2 imposait aux autorités l'obligation positive de mener des enquêtes efficaces et que cette obligation est toujours valable du fait que les personnes disparues ont peut-être perdu la vie en raison de crimes imprescriptibles.

224. Comme pour les cas traités sous l'angle de l'article 5 de la Convention, on peut comprendre que le gouvernement défendeur affirme que l'obligation d'enquête est assurée par l'intermédiaire des procédures engagées par le CMP. Là encore, la Commission n'exclut pas que l'obligation d'enquêter et d'informer découlant de l'article 2 de la Convention puisse aussi être remplie avec l'aide d'un organisme international d'enquête. Cependant, comme elle l'a déjà dit, les procédures du CMP se limitent en l'espèce à rechercher si les personnes en question sont vivantes ou mortes, sans enquêter sur les causes de la mort ni établir les responsabilités. Des personnes qui pourraient être responsables se sont même vu promettre l'impunité. Dans ces conditions, la Commission estime que les enquêtes en question n'ont pas une portée suffisante pour satisfaire aux exigences de l'article 2 de la Convention. Elle ne dispose d'aucune information indiquant que ces investigations seraient complétées par d'autres enquêtes plus efficaces.

Conclusion

225. La Commission conclut, à l'unanimité, qu'elle a compétence pour examiner la question des Chypriotes grecs portés disparus sous l'angle de l'article 2 de la Convention, que cette disposition est applicable et qu'elle a été violée du fait que les autorités de l'Etat défendeur n'ont pas mené d'enquête effective.

2. Sur les violations alléguées des droits des proches parents des personnes portées disparues

226. Le gouvernement requérant affirme que, dans les circonstances de la cause, les proches parents des personnes portées disparues ont subi des traitements inhumains contraires à l'article 3 de la Convention et des violations des droits garantis par les articles 8 (respect de la vie familiale) et 10 (liberté de recevoir des informations). Il soutient de plus qu'ils ont subi des violations des droits protégés par les articles 2, 3, 4, 5 (pour autant que des dispositions impliquent le droit à une enquête adéquate) et l'article 13.

227. Le gouvernement défendeur n'a pas formulé d'observation particulière à ce sujet.

228. La Commission relève tout d'abord que les griefs initiaux du gouvernement requérant concernant les droits des proches parents de personnes portées disparues étaient tirés des seuls articles 3, 8 et 10 de la Convention. Les autres doléances, d'une autre nature, ont été soulevées pour la première fois après la décision sur la recevabilité, raison pour laquelle la Commission ne peut les examiner. Elle considère en tout état de cause que, dans la mesure où ils recoupent les questions déjà traitées ci-dessous sous l'angle des articles 5 et 2 de la Convention pour ce qui est des personnes portées disparues elles-mêmes, ces nouveaux griefs ne posent aucune question distincte. Il est évident que l'obligation d'enquête découlant de ces dispositions bénéficiera en premier lieu aux familles des personnes portées disparues.

229. Concernant les griefs initialement tirés par le gouvernement requérant des articles 3, 8 et 10 de la Convention, ils sont étroitement liés puisqu'ils se rapportent aux effets qu'a eus sur les proches parents des personnes portées disparues l'absence d'informations quant au sort de ces dernières.

230. L'article 3 dispose que :

> « Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants. »

L'article 8 garantit le droit au respect de la vie privée et familiale[1] et l'article 10, qui a trait à la liberté d'expression, énonce notamment le droit de recevoir des informations[2]. Les droits garantis par ces deux dernières dispositions ne peuvent faire l'objet de restrictions légales que pour autant que ces restrictions sont nécessaires dans une société démocratique.

231. En ce qui concerne l'article 3, la jurisprudence de la Convention établit que pour tomber sous le coup de cette disposition un mauvais traitement doit atteindre un minimum de gravité. La Cour a de plus dit que les souffrances causées doivent atteindre une certaine intensité avant d'être qualifiées d'inhumaines. L'appréciation de ce minimum est relative et dépend de l'ensemble des données de la cause, notamment de la durée du traitement et de ses effets physiques ou mentaux (*Irlande c. Royaume-Uni*, arrêt précité, p. 65, § 162).

232. La Commission et la Cour ont dit que, lorsque les autorités ne se sont pas correctement acquittées de leur obligation de mener une enquête sur des disparitions, l'incertitude, le doute et l'angoisse prolongés ressentis par les proches parents des disparus provoquent chez eux une

1. Le texte complet de l'article 8 de la Convention figure au paragraphe 261 ci-dessous.
2. Le texte complet de l'article 10 de la Convention figure au paragraphe 456 ci-dessous.

profonde détresse morale telle qu'elle constitue un traitement inhumain (*Kurt* précité, pp. 1187-1188, §§ 133-134, Cour eur. DH, *Çakıcı c. Turquie* [GC], n° 23657/94, avis de la Commission, §§ 272-276, CEDH 1999-IV, *Timurtaş c. Turquie*, n° 23531/94, rapport de la Commission du 29 octobre 1998, §§ 305-310, non publié).

233. En l'espèce, les proches parents des personnes portées disparues n'ont reçu aucune information au sujet de ces dernières pendant une période de vingt-cinq ans. Compte tenu des circonstances dans lesquelles ces personnes ont disparu, à savoir à la suite d'une intervention militaire au cours de laquelle beaucoup de personnes ont été tuées ou faites prisonnières et où la zone où se sont produites les disparitions a par la suite été fermée et rendue inaccessible aux familles, celles-ci ont indéniablement dû ressentir les plus grandes angoisses. Si leur détresse a été la plus aiguë dans les premiers temps qui ont suivi les événements de 1974, elle ne s'est pas effacée avec le temps. Comme le gouvernement requérant l'a fait observer, la vie des proches parents a ensuite dans bien des cas été marquée par les conséquences de la disparition. Les preuves écrites fournies montrent aussi que les familles ont créé des organisations en vue d'adopter une méthode commune pour tenter de recevoir les informations nécessaires. Les familles ont parfois connu un regain d'espoir, par exemple avec la procédure devant le CMP, mais également de nouvelles craintes, comme lorsqu'elles ont appris la teneur des déclarations de M. Denktaş et de M. Yalçın Küçük. Voilà pourquoi les familles des disparus n'ont à ce jour pas encore pu tourner la page. Même si l'argument du gouvernement défendeur selon lequel cette question a été exploitée à des fins de propagande politique était avéré, la Commission estime que les familles ont des motifs légitimes de préoccupation.

234. La Commission considère que, pendant la période en cause en l'espèce, le traitement subi par les proches parents des personnes portées disparues a atteint un degré de gravité tel qu'il constitue un traitement inhumain au sens de l'article 3 de la Convention.

235. Dans ces conditions, la Commission ne juge pas nécessaire d'examiner les autres griefs que le gouvernement requérant tire des articles 8 et 10 de la Convention, qui se rapportent en substance aux mêmes doléances des familles des personnes portées disparues.

Conclusions

236. La Commission conclut, à l'unanimité, qu'il y a eu violation continue de l'article 3 de la Convention dans le chef des familles des personnes portées disparues.

237. La Commission conclut, à l'unanimité, qu'il n'y a pas lieu de rechercher s'il y a eu violation des articles 8 et/ou 10 de la Convention dans le chef des familles des personnes portées disparues.

Chapitre 2

Domicile et biens des personnes déplacées

A. Griefs

238. La Commission a déclaré recevables les griefs du gouvernement requérant suivants :

– le refus constant et continu d'autoriser les Chypriotes grecs déplacés à retourner chez eux et dans leur famille dans le nord de Chypre emporte une violation des droits que leur reconnaît l'article 8 de la Convention ;

– le fait d'empêcher les Chypriotes grecs déplacés d'accéder à leurs biens se trouvant dans le nord de Chypre et d'en user, l'attribution de ces biens à des Chypriotes turcs et colons, l'absence de réparation et la tentative de légalisation de cette expropriation *de facto* au moyen de la suppression des titres de propriété détenus par les Chypriotes grecs, emportent une violation continue de l'article 1 du Protocole n° 1 ;

– les Chypriotes grecs déplacés ne disposent d'aucun recours interne effectif contre ces violations de la Convention, au mépris de l'article 13 de la Convention ; et

– le refus continu d'autoriser les Chypriotes grecs déplacés à retourner chez eux et dans leur famille dans le nord de Chypre et la privation continue de leurs biens constituent des discriminations contraires à l'article 14 de la Convention.

B. Sur l'article 8 de la Convention

(...)

3. Avis de la Commission

261. L'article 8 de la Convention est ainsi libellé :

« 1. Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.

2. Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui. »

262. Le gouvernement requérant se plaint de ce que le refus continu d'autoriser les personnes déplacées à retourner chez elles dans le nord de Chypre constitue une violation continue et aggravée de leur droit au respect de leur domicile garanti par l'article 8 de la Convention et que

les modifications délibérément apportées à l'environnement desdits domiciles est à l'origine d'un chef distinct de violation de cette disposition.

263. Le gouvernement défendeur, à titre principal, nie que la Turquie soit responsable des mesures prises par les autorités chypriotes turques et affirme, à titre subsidiaire, que ces mesures sont nécessaires à la sûreté publique et se justifient donc sous l'angle de l'article 8 § 2.

264. La Commission observe en premier lieu que le gouvernement défendeur n'a aucunement avancé que les personnes concernées n'avaient pas épuisé les voies de recours internes. De fait, aucun recours ne semble exister pour contester le refus des autorités de permettre aux Chypriotes grecs de pénétrer dans la partie nord de Chypre. A cet égard, la Commission relève que la réglementation régissant l'entrée dans la «RTCN» et les principes gouvernant leur mise en œuvre se fondent sur des décisions du «Conseil des ministres de la RTCN», pour lesquels le système juridique de la «RTCN» ne prévoit aucun contrôle juridictionnel. De même, ce refus résulte d'une politique reconnue par les autorités et constitue de ce fait une pratique administrative qui, selon la jurisprudence constante des institutions de la Convention, n'exige pas l'épuisement de quelque recours interne que ce soit. Dès lors, la Commission est appelée à examiner le fond des griefs.

265. La Commission rappelle avoir examiné la question du déplacement de personnes sous l'angle de l'article 8 de la Convention dans ses rapports de 1976 et de 1983 précités. Dans le premier, elle a considéré (paragraphe 208) «que le fait d'empêcher physiquement les réfugiés chypriotes grecs de rentrer dans leur foyer dans le Nord représente une violation, imputable à la Turquie, de leur droit au respect de leur domicile», qui ne peut se justifier par aucun des motifs visés au paragraphe 2 de l'article 8. La Commission a également considéré (paragraphe 210), en ce qui concerne les transferts de Chypriotes grecs vers le Sud aux termes de divers accords intercommunautaires, que le fait d'empêcher physiquement ces Chypriotes grecs de rentrer dans leur foyer représentait une atteinte à leur droit au respect de leur domicile garanti par l'article 8 § 1, atteinte imputable à la Turquie et non justifiée au regard du paragraphe 2. Dans son rapport de 1983 (p. 96, §§ 133-135), la Commission a constaté que cette situation perdurait et que cette persistance constituait un facteur aggravant. Elle a donc confirmé ses constats antérieurs et conclu que la Turquie continuait à violer l'article 8.

266. La Commission estime que la situation des Chypriotes grecs déplacés demeure en substance inchangée car ils ne sont toujours pas autorisés à retourner dans leur foyer dans le nord de Chypre. Le fait qu'après l'adoption du rapport de 1983, la «RTCN» ait été fondée dans cette partie de l'île et que les mesures contestées émanent, d'après le gouvernement défendeur, des autorités de celle-ci, n'a aucune incidence sur la responsabilité de l'Etat défendeur car lesdites autorités sont une

administration locale subordonnée de la Turquie. Il n'y a donc pas lieu de rechercher si, au cours de la période considérée en l'espèce, l'armée turque ou d'autres autorités turques ont continué à participer à la mise en œuvre de la politique consistant à refuser d'autoriser les Chypriotes grecs à retourner dans le nord de Chypre pour autre chose que des visites à leur famille ou des pèlerinages au monastère d'Apostolos Andreas. Ce qui importe, c'est qu'à l'heure actuelle les Chypriotes grecs déplacés, et eux seuls, sont effectivement empêchés par les autorités en place de se rendre dans leurs anciennes maisons, et à plus forte raison de demander à retourner s'y installer de manière définitive.

267. Même les personnes qui ont quitté la partie nord dans le cadre d'accords de transfert humanitaire n'ont pas d'autre solution que d'abandonner leur foyer sans condition, faute d'une possibilité de réexamen de leur dossier au cas où elles souhaiteraient finalement y retourner. De même, les enfants qui ont déménagé dans le Sud pour y faire leurs études secondaires se voyaient interdire jusqu'à très récemment de retourner dans le Nord lorsqu'ils avaient atteint un certain âge. Cette interdiction vaut toujours pour les Chypriotes grecs de sexe masculin âgés de plus de seize ans et les étudiants des deux sexes qui ont terminé leurs études avant l'entrée en vigueur de la décision prise en «Conseil des Ministres de la RTCN» le 11 février 1998, car cette disposition n'a pas d'effet rétroactif. Même en supposant que, dans certains cas, les Chypriotes grecs souhaitant retourner dans le nord de Chypre ne peuvent prétendre y avoir un «domicile» établi (arrêt *Loizidou* (fond) précité, p. 2238, §§ 65-66), la Commission estime que certains cas où il y a une ingérence continue dans le droit de la personne déplacée au respect de son domicile, notamment certains cas récents, justifient de reprendre l'examen de la question, même si elle a déjà établi des conclusions dans ses précédents rapports.

268. Quant à la justification de ces mesures, la Commission prend note des arguments du gouvernement défendeur selon lesquels: 1. la question de la réglementation de la liberté d'installation s'inscrit dans le cadre plus général de la question chypriote et constitue à ce titre l'un des thèmes des pourparlers intercommunautaires, 2. l'introduction d'une sorte de système de quota est envisagée à cet égard et, 3. dans cette attente, les mesures actuellement appliquées seraient nécessaires à la sûreté publique.

269. La Commission a déjà exprimé l'avis que les dispositions prises en vue de pourparlers intercommunautaires ne constituent pas un compromis spécial au sens de l'ancien article 62 de la Convention l'empêchant d'accomplir sa tâche au regard de la Convention. Ces pourparlers, même s'ils visent en fin de compte une solution satisfaisante au problème, ne sauraient être invoqués pour justifier le maintien de mesures dénuées de justification au titre de la Convention. Comme le

Comité des Ministres du Conseil de l'Europe l'a reconnu dans sa Résolution DH (79) 1 (paragraphe 7 du rapport), les pourparlers intercommunautaires doivent être considérés comme un instrument destiné à mettre un terme aux violations susceptibles de continuer, mais les négociations, même si elles se poursuivent activement, n'effacent pas ces violations. S'il est vrai que certaines propositions ont été formulées en vue du retour dans leur foyer de quelques-unes au moins des personnes déplacées – la Commission pense à cet égard à l'Ensemble d'idées émises par le Secrétaire général des Nations unies en 1992 et aux propositions de 1993 pour la réoccupation de Varosha dans le cadre de mesures destinées à instaurer la confiance – il apparaît que les pourparlers intercommunautaires sont très loin d'avoir produit des résultats concrets en ce domaine.

270. Cela étant, la Commission doit se pencher sur l'argument du gouvernement défendeur selon lequel les mesures en cause sont nécessaires à la sûreté publique. Il s'agit certes d'un but légitime figurant à l'article 8 § 2 de la Convention; ce paragraphe prévoit toutefois que les restrictions aux droits garantis par l'article 8 ne se justifient que si elles sont « prévues par la loi » et « nécessaires dans une société démocratique ». Or le gouvernement défendeur n'a pas indiqué sur quelle loi se fonderait la mesure générale qui interdit aux Chypriotes grecs déplacés de se rendre dans le nord de Chypre. On ne saurait soutenir que pareille exclusion de caractère général est proportionnée à la défense de la sécurité, ainsi que l'affirme le gouvernement défendeur. Il s'ensuit que, ne serait-ce que pour ces raisons, les mesures incriminées ne satisfont pas aux exigences de l'article 8 § 2 de la Convention.

271. Le gouvernement requérant dénonce en outre une violation de l'article 8 à raison des modifications apportées à l'environnement démographique et culturel des foyers des personnes déplacées. Le gouvernement défendeur, pour sa part, invoque la nécessité de reloger les Chypriotes turcs déplacés du Sud et ceux qui, après avoir émigré, sont revenus dans le nord de Chypre après 1974. En substance, les mesures en question seraient donc nécessaires au bien-être économique du pays. Cependant, eu égard à sa conclusion ci-dessus relative à l'article 8 de la Convention et aux considérations qui suivent concernant l'article 1 du Protocole n° 1, la Commission estime qu'il n'y a pas lieu d'examiner cet autre aspect de l'affaire sous l'angle de l'article 8.

Conclusions

272. La Commission conclut, à l'unanimité, qu'il y a eu au cours de la période considérée une violation continue de l'article 8 de la Convention à raison du refus d'autoriser les Chypriotes grecs déplacés à retrouver leur domicile dans le nord de Chypre.

273. La Commission conclut, à l'unanimité, qu'il n'y a pas lieu de rechercher s'il y a eu une violation supplémentaire de l'article 8 de la Convention à raison des modifications apportées à l'environnement démographique et culturel des domiciles des personnes déplacées dans le nord de Chypre.

C. Sur l'article 1 du Protocole n° 1

(...)

3. Avis de la Commission

310. L'article 1 du Protocole n° 1 est ainsi libellé :

> « Toute personne physique ou morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.
>
> Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etats de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes. »

311. Le gouvernement requérant dénonce une violation continue de cette disposition du fait que les propriétaires chypriotes grecs ne peuvent avoir accès à leurs biens situés dans le nord de Chypre, ni en avoir la maîtrise, l'usage et la jouissance. Ces biens ont en effet été attribués à d'autres personnes et leurs propriétaires chypriotes grecs n'ont reçu aucune indemnisation de l'ingérence dans leur droit de propriété.

312. Le gouvernement défendeur soutient que la Turquie n'est pas responsable de l'ingérence alléguée au regard de la Convention, car les droits de propriété dans la partie nord de Chypre sont définis par la législation de la « RTCN ». Quoi qu'il en soit, les restrictions imposées sont d'après lui nécessaires à l'intérêt public, en vue de satisfaire les besoins en logement des Chypriotes turcs déplacés dans l'attente de l'aboutissement des pourparlers intercommunautaires, qui portent notamment sur la question de l'indemnisation et que, dans l'intérêt public, il y a lieu de ne pas préjuger.

313. La Commission constate que les griefs du gouvernement requérant portent essentiellement sur la « législation » et la pratique administrative reconnue des autorités du nord de Chypre. En tant que tels, ils n'impliquent pas que les personnes concernées se saisissent des recours internes qui pourraient exister. De fait, le gouvernement défendeur n'a pas laissé entendre, et il ne ressort pas non plus de la « législation de la RTCN » invoquée par lui, qu'il existe des recours dont pourraient se prévaloir les Chypriotes grecs privés de leurs propriétés

dans le nord de Chypre. Il semble que de tels recours n'existent que pour les ressortissants étrangers («étrangers non chypriotes grecs») qui ont fait l'acquisition avant 1974 de biens dans le nord de Chypre par un acte de vente (loi n° 7/1980) et pour les Chypriotes grecs résidant toujours dans le nord de Chypre et dont les biens ont fait l'objet d'une ingérence par erreur (paragraphe 468 ci-dessous). La Commission est en conséquence tenue d'examiner le grief au fond, d'autant que l'article 24, en vertu duquel sont soumises les requêtes interétatiques, l'habilite à examiner la conformité avec la Convention de mesures législatives et pratiques administratives en tant que telles, ce qui n'est pas le cas de l'article 25 qui réglemente la soumission de requêtes individuelles.

314. La compétence de la Commission pour connaître de la législation et de la pratique administrative attaquées n'est en rien affectée par le fait qu'en l'occurrence, elles ont été adoptées par les autorités de la «RTCN»; en effet, ces dernières constituent une administration locale subordonnée de la Turquie et l'Etat défendeur est responsable des actes de celle-ci au regard de la Convention. C'est pourquoi la Commission ne saurait accueillir l'argument du gouvernement défendeur selon lequel la proclamation de la «RTCN» et l'adoption de sa «Constitution» et de sa «législation» constituent un *novus actus interveniens* influant sur la responsabilité de l'Etat défendeur. La Commission ne juge pas non plus utile dans ce cadre d'examiner les arguments du gouvernement requérant selon lesquels les autorités turques continueraient d'intervenir directement dans l'élaboration et l'application de la législation de la «RTCN» sur l'attribution des terres.

315. La Commission a déjà traité des origines de la situation présente dans les précédentes affaires interétatiques. Elle rappelle la conclusion qu'elle a tirée dans son rapport de 1976, précité (p. 151, § 486): «de nombreuses atteintes au droit de propriété des Chypriotes grecs ont été commises, atteintes dont il est difficile de déterminer l'ampleur exacte. Ces atteintes doivent être imputées à la Turquie au regard de la Convention, et il n'a pas été montré qu'elles aient été justifiées par l'un quelconque des motifs visés à l'article 1 du Protocole n° 1.» Elle rappelle que, comme elle en a conclu dans son rapport de 1983, précité (p. 102, §§ 154-155), la confirmation par la législation de l'occupation antérieure de biens immeubles et les nouvelles confiscations de biens meubles constituent des violations de l'article 1 du Protocole n° 1.

316. Le gouvernement défendeur soutient qu'en vertu de la «législation de la RTCN», les personnes concernées ont perdu leurs titres de propriété sur les biens situés dans le nord de Chypre, raison pour laquelle aucun grief ne peut être soulevé en leur nom. Le gouvernement requérant affirme pour sa part que la Cour a tranché la question de manière définitive dans son arrêt *Loizidou* (fond) précité (p. 2232, § 47) en déclarant que la requérante, qui est l'une des

personnes concernées, doit toujours être tenue pour la propriétaire légale des terres. Le gouvernement défendeur déclare que les motifs étayant cette conclusion (*ibidem*, pp. 2230-2232, §§ 42 et 46) se limitaient à la question de savoir si la requérante avait perdu son titre de propriété par suite de l'adoption de «l'article 159 de la Constitution de la RTCN». La Cour s'est délibérément abstenue de trancher la question de la manière dont la privation de propriété aurait pu se produire avant l'adoption de cette disposition constitutionnelle et a déclaré que «le gouvernement turc n'a avancé aucun autre fait emportant perte du titre de propriété relatif aux biens de l'intéressée, et la Cour n'en a point constaté». Voilà pourquoi le gouvernement défendeur considère que l'arrêt *Loizidou* ne saurait être généralisé pour s'appliquer à l'espèce.

317. Il apparaît que le gouvernement défendeur affirme maintenant que la perte du titre de propriété provient de la pratique administrative consistant à émettre des titres de propriété au nom des nouveaux occupants des biens concernés, pratique qui est en vigueur depuis juin 1989 et s'est vue confirmée par la «loi n° 52/1995». Toutefois, comme le gouvernement requérant le fait remarquer à juste titre, cette «loi» visait seulement à donner effet à «l'article 159 de la Constitution de la RTCN» qui, pour les raisons indiquées par la Cour en l'arrêt *Loizidou* (pp. 2231-2232, §§ 43-46), ne saurait revêtir de validité légale aux fins de la Convention. Alors que la Cour n'a pas souhaité élaborer de théorie générale au sujet de la légalité des actes législatifs et administratifs de la «RTCN», il doit à tout le moins être clair que des mesures prises pour mettre en œuvre une disposition constitutionnelle illégitime ne sauraient revêtir une validité supérieure à celle de cette disposition. Il s'ensuit qu'en dépit de la pratique administrative introduite dans la «RTCN» postérieurement aux faits à l'origine de l'affaire *Loizidou*, les Chypriotes grecs dont les biens ont été touchés par ces mesures doivent toujours être tenus pour leurs propriétaires légaux.

318. Quant à la nature de l'ingérence alléguée dans les droits de propriété de ces personnes, la Commission conclut qu'elle est en substance identique à celle dénoncée par M^me^ Loizidou dans sa requête. A cet égard, la Cour a déclaré (arrêt précité, pp. 2237-2238):

> «63. (...) du fait qu'elle se voit refuser l'accès à ses biens depuis 1974, l'intéressée a en pratique perdu toute maîtrise de ceux-ci ainsi que toute possibilité d'usage et de jouissance. Le déni continu de l'accès doit donc passer pour une ingérence dans ses droits garantis par l'article 1 du Protocole n° 1. Dans les circonstances exceptionnelles de la cause invoquées par l'intéressée et le gouvernement chypriote (...) cette ingérence ne saurait s'analyser ni en une privation de propriété ni en une réglementation de l'usage des biens au sens des premier et second alinéas de l'article 1 du Protocole n° 1. Ingérence dans le droit au respect des biens, elle relève en revanche manifestement de la première phrase de cette disposition. La Cour note à cet égard qu'un obstacle de fait peut enfreindre la Convention à l'égal d'un obstacle juridique (...)

64. Hormis une référence à la théorie de la nécessité pour justifier les actes de la «RTCN» et au fait que les droits de propriété ont été l'objet de pourparlers intercommunautaires, le gouvernement turc ne tente pas d'avancer des arguments justifiant l'ingérence susmentionnée, imputable à la Turquie, dans les droits de propriété de la requérante.

Il n'explique pas en quoi la nécessité de reloger des réfugiés chypriotes turcs déplacés dans les années qui suivirent l'intervention turque dans l'île en 1974 peut justifier la négation totale des droits de propriété de la requérante par le refus absolu et continu de l'accès et une prétendue expropriation sans réparation.

La circonstance que les droits de propriété aient été l'objet de pourparlers intercommunautaires auxquels participèrent les deux communautés de Chypre ne peut pas, elle non plus, justifier cette situation au regard de la Convention.

Cela étant, la Cour conclut qu'il y a eu et continue d'y avoir violation de l'article 1 du Protocole n° 1.»

319. La Commission relève que l'affaire *Loizidou* concerne un exemple particulier de la pratique administrative générale dénoncée en l'espèce. Les considérations exposées dans cet arrêt s'appliquent donc forcément à la pratique administrative en tant que telle.

320. Quant aux justifications désormais invoquées par le gouvernement défendeur, elles ne diffèrent pas fondamentalement de celles présentées en l'affaire *Loizidou*. En particulier, la Commission n'estime pas que les explications détaillées fournies par le gouvernement défendeur à propos de la nécessité de satisfaire les besoins en logement des Chypriotes turcs déplacés et de relancer l'économie chypriote turque justifient de s'écarter des conclusions de la Cour reprises plus haut. Même s'il s'agissait là de buts légitimes défendant l'ordre public, les moyens employés pour les atteindre sont disproportionnés et on ne saurait dire qu'un juste équilibre a été ménagé entre l'intérêt public et les droits fondamentaux des individus lorsque ces derniers se voient totalement privés de leurs droits. Avec cette négation, les autorités ont outrepassé la marge d'appréciation que la Convention leur reconnaît.

321. Le fait qu'une solution globale de la question chypriote, y compris l'indemnisation des propriétaires des deux bords et un éventuel retour de certains d'entre eux, soit recherchée dans le cadre des pourparlers intercommunautaires ne justifie en rien une négation totale de leurs droits dans l'intervalle. Les pourparlers intercommunautaires durent maintenant depuis des décennies sans aucun résultat concret, alors qu'ils devraient conduire à mettre fin aux violations des droits de l'homme qui se produisent à Chypre. Tant que ce but n'aura pas été atteint, la Commission ne cessera pas de dénoncer de telles violations si elles continuent.

Conclusion

322. La Commission conclut, à l'unanimité, qu'il y a eu au cours de la période considérée une violation continue de l'article 1 du Protocole n° 1 du fait que les propriétaires chypriotes grecs de biens dans le nord de Chypre sont privés de l'accès, de la maîtrise, de l'usage et de la jouissance de leurs biens et de toute indemnisation pour l'atteinte à leurs droits de propriété.

D. Sur l'article 13 de la Convention

323. Le gouvernement requérant dénonce des violations continues de l'article 13 de la Convention quant à ses griefs précités tirés de l'article 8 de la Convention (refus d'autoriser les Chypriotes grecs déplacés à retourner dans leur foyer dans le nord de Chypre) et de l'article 1 du Protocole n° 1 (ingérence dans le droit des Chypriotes grecs au respect de leurs biens dans le nord de Chypre). Il soutient que les Chypriotes grecs concernés ne peuvent disposer d'un recours effectif parce que la «Constitution de la RTCN» elle-même vise précisément à légaliser les violations dénoncées, de sorte que les «tribunaux» appliquant cette «Constitution» ne sauraient offrir de recours. De plus, les griefs se rapportent à des pratiques administratives pour lesquelles il n'existe par définition aucun recours effectif. Enfin, il considère qu'il est impossible de solliciter un recours pour redresser une violation d'un droit garanti par la Convention auprès des «tribunaux» d'une entité qui n'est ni un Etat ni une Haute Partie contractante à la Convention.

324. Le gouvernement défendeur n'a formulé aucun argument quant à la disponibilité de recours pour redresser les griefs précités, tirés de l'article 8 de la Convention et de l'article 1 du Protocole n° 1.

325. L'article 13 de la Convention est libellé comme suit :

> «Toute personne dont les droits et libertés reconnus dans la (...) Convention ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles.»

326. La Commission relève en premier lieu que les griefs que le gouvernement requérant tire de l'article 13 de la Convention ont trait à des pratiques administratives appliquées à des Chypriotes grecs déplacés en ce qui concerne leur droit de retourner dans leur foyer dans le nord de Chypre (article 8 de la Convention) et l'exercice de leur droit de propriété dans le nord de Chypre (article 1 du Protocole n° 1). Ces pratiques administratives sont au moins pour partie incorporées dans la «législation» de la «RTCN». A cet égard, la Commission rappelle que l'article 13, tel qu'interprété par les institutions de la Convention,

n'exige pas que des recours existent pour contester la législation en elle-même. Selon elle, ce principe vaut également en l'espèce, nonobstant l'avis du gouvernement requérant selon lequel, en raison de l'illégalité de la «RTCN», ses «lois» ne peuvent passer pour une «législation» au sens de la Convention.

327. En l'occurrence toutefois, les pratiques administratives en cause vont au-delà de l'adoption de la «législation» en question. En particulier, les «lois» pertinentes omettent l'un des aspects fondamentaux des ingérences dénoncées, à savoir l'exclusion physique des Chypriotes grecs du nord de Chypre, ce qui les empêche de retourner chez eux et d'avoir accès à leurs biens. De fait, la «législation de la RTCN» ne prévoit aucun recours dont pourraient se prévaloir les individus concernés pour contester cette exclusion. Ceux-ci ne disposent pas non plus d'un quelconque recours qui leur permettrait au moins d'obtenir que les lois soient correctement appliquées à des biens particuliers, comme ceux ouverts aux étrangers qui ne sont pas des Chypriotes grecs et aux Chypriotes grecs résidant dans le nord de Chypre.

Conclusion

328. La Commission conclut, à l'unanimité, qu'il y a eu violation de l'article 13 de la Convention du fait que les Chypriotes grecs ne résidant pas dans le nord de Chypre n'ont bénéficié d'aucun recours pour contester les ingérences dans les droits que leur garantissent l'article 8 de la Convention et l'article 1 du Protocole n° 1.

E. Sur l'article 14 de la Convention

329. Le gouvernement requérant dénonce une violation de l'article 14 de la Convention combiné avec l'article 8 de la Convention et l'article 1 du Protocole n° 1 dans la mesure où les pratiques administratives précitées sont exclusivement appliquées aux Chypriotes grecs ne résidant pas dans le nord de Chypre, lesquels sont donc l'objet d'une discrimination. Selon lui, la politique des autorités turques se fonde sur la discrimination raciale et l'apartheid et est donc incompatible avec le droit international général. De plus, les «lois» donnant effet à cette politique, y compris les dispositions «constitutionnelles» invoquées, expriment par leurs termes mêmes une discrimination envers les Chypriotes grecs, ce qui constitue une raison supplémentaire de les considérer comme non valables sur le plan du droit international. En dépit de leur libellé, où il est question de «personnes étrangères» (article 2 de la loi n° 32/1975), en pratique seuls les Chypriotes grecs ne sont pas habilités à acquérir des biens dans la «RTCN»; en effet, les autres «étrangers», comme les citoyens

britanniques ou turcs, ne sont pas traités ainsi. En revanche, les bénéficiaires exclusifs de cette «législation» discriminatoire sont les Chypriotes turcs et colons turcs devenus «citoyens de la RTCN».

330. Le gouvernement requérant soutient que pareille discrimination fondée sur des motifs raciaux ou ethniques représente non seulement une violation de l'article 14 de la Convention, mais aussi un traitement inhumain ou dégradant proscrit pas l'article 3. S'appuyant sur le rapport établi par la Commission dans l'affaire des *Asiatiques d'Afrique orientale c. Royaume-Uni* (n[os] 4403-4419/70 et suiv., rapport du 14 décembre 1973, DR 78-B, p. 62, §§ 207-209), il fait valoir qu'un traitement s'appliquant sélectivement à certaines catégories de personnes pour des motifs raciaux ou ethniques et entraînant pour elles de grandes souffrances, en niant les droits que leur garantit la Convention ou en y portant atteinte, et ce de manière sélective et publique, constitue un affront à leur dignité tel qu'il représente un traitement inhumain au sens de l'article 3 de la Convention.

331. Le gouvernement défendeur n'a pas formulé d'argument sur ce point.

332. L'article 14 de la Convention est libellé en ces termes:

> «La jouissance des droits et libertés reconnus dans la (...) Convention doit être assurée, sans distinction aucune, fondée notamment sur le sexe, la race, la couleur, la langue, la religion, les opinions politiques ou toutes autres opinions, l'origine nationale ou sociale, l'appartenance à une minorité nationale, la fortune, la naissance ou toute autre situation.»

333. La Commission rappelle que, dans son rapport de 1976 (p. 156, § 503), elle a conclu à la violation d'un certain nombre d'articles de la Convention et constaté que les actes constitutifs des violations étaient exclusivement dirigés contre les membres de l'une des deux communautés chypriotes, à savoir la communauté chypriote grecque. Elle a conclu que la Turquie avait ainsi failli à son obligation d'assurer la jouissance des droits et libertés reconnus dans ces articles sans distinction fondée sur l'origine ethnique, la race et la religion, comme l'exige l'article 14 de la Convention. Dans son rapport de 1983, la Commission n'a pas jugé nécessaire d'ajouter quoi que ce soit aux conclusions qu'elle avait dégagées dans la précédente affaire (p. 103, § 162).

334. En l'occurrence, la Commission estime que les ingérences précitées dans les droits garantis par l'article 8 de la Convention et l'article 1 du Protocole n° 1 ont exclusivement touché les Chypriotes grecs ne résidant pas dans le nord de Chypre, et ce précisément en raison de leur appartenance à cette catégorie de personnes. Dans ces conditions, le traitement dénoncé revêt à l'évidence un caractère discriminatoire, contraire à l'article 14 de la Convention combiné avec les deux articles susmentionnés.

335. La Commission constate que l'autre grief du gouvernement requérant, à savoir que cette discrimination s'analysait également en un traitement inhumain ou dégradant au sens de l'article 3 de la Convention du fait qu'elle se fonde sur des motifs raciaux ou ethniques, n'a été exprimé qu'à un stade tardif de la procédure au fond. Eu égard à sa conclusion ci-dessus relative à l'article 14 de la Convention, elle ne juge pas nécessaire d'examiner ce grief supplémentaire.

Conclusions

336. La Commission conclut, par dix-neuf voix contre une, qu'il y a eu violation de l'article 14 de la Convention combiné avec l'article 8 de la Convention et avec l'article 1 du Protocole n° 1 à raison des discriminations qu'ont subies les Chypriotes grecs ne résidant pas dans le nord de Chypre pour ce qui est de leur droit au respect de leur domicile et de leurs biens.

337. La Commission conclut, à l'unanimité, qu'il n'y a pas lieu de rechercher si pareille discrimination constitue aussi un traitement inhumain ou dégradant au sens de l'article 3 de la Convention.

Chapitre 3

Conditions de vie des Chypriotes grecs dans le nord de Chypre

A. Griefs

338. La Commission a déclaré recevables les griefs suivants s'agissant des Chypriotes grecs « enclavés » :

– violation de l'article 2 de la Convention à raison de l'absence de protection du droit à la vie de personnes nécessitant un traitement médical d'urgence ;

– violation de l'article 5 de la Convention du fait des menaces pesant sur le droit à la sûreté des Chypriotes grecs et de l'absence d'action officielle de la Turquie pour empêcher cela ;

– violation de l'article 6 de la Convention du fait que les Chypriotes grecs ayant subi une atteinte à leurs droits de caractère civil n'ont pu être entendus équitablement et publiquement par un tribunal indépendant et impartial ;

– violation de l'article 8 de la Convention à raison d'atteintes au droit au respect de la vie privée et familiale, du domicile et de la correspondance ;

– violation de l'article 9 de la Convention à raison d'atteintes à la liberté de religion ;

– violation de l'article 10 de la Convention à raison d'atteintes au droit de recevoir et de communiquer des informations et des idées ;

– violation de l'article 11 de la Convention à raison des restrictions à la liberté d'association, empêchant les divers groupes de personnes enclavées, d'une part, et les personnes enclavées et les Chypriotes grecs vivant dans la zone contrôlée par le gouvernement, d'autre part, de fonder des associations ;

– violation de l'article 13 de la Convention à raison de l'absence de recours effectifs ;

– violation de l'article 14 de la Convention faute d'avoir assuré la jouissance des droits reconnus dans la Convention aux Chypriotes grecs sans discrimination fondée sur la race, la religion, l'origine nationale ou l'appartenance à la communauté chypriote grecque ou maronite ;

– violation de l'article 1 du Protocole n° 1 pour privation de propriété et ingérence dans le droit au respect des biens ;

– violation de l'article 2 du Protocole n° 1 pour déni du droit à l'instruction secondaire et non-respect du droit des parents d'assurer l'éducation de leurs enfants conformément à leurs convictions religieuses et philosophiques.

339. La Commission a en outre retenu le grief du gouvernement requérant selon lequel il y a eu violation de l'article 3 de la Convention dans le chef des Chypriotes grecs «enclavés» dans la péninsule du Karpas au motif que, eu égard à l'âge avancé de nombre des personnes concernées et au caractère systématique des actions menées contre elles, le cumul des restrictions et pressions exercées sur elles pour les amener à quitter la région, y compris le recours à des méthodes coercitives, constitue un traitement inhumain et dégradant.

(...)

D. Avis de la Commission

430. La Commission rappelle d'abord que dans son rapport de 1976 précité, elle a examiné la situation des personnes enclavées sous l'angle de l'article 5 de la Convention. Elle a conclu aux paragraphes 235-236 que les restrictions qui auraient été appliquées ne s'analysaient pas en une «privation» de liberté au sens de l'article 5, mais relevaient plutôt de l'article 2 du Protocole n° 4 que ni Chypre ni la Turquie n'avaient ratifié. Le rapport de 1976 traitait aussi de la question de l'éclatement des familles qu'entraînait le refus d'autoriser des personnes déplacées à rentrer chez elles et chez les membres de leur famille dans le nord de Chypre et elle y voyait un manquement à l'article 8 de la Convention (*ibidem*, § 211). Elle a confirmé cette conclusion dans le rapport de 1983 précité (p. 42, §§ 135-136).

431. En l'espèce, la Commission est saisie d'un grand nombre de griefs concernant divers aspects des conditions de vie des Chypriotes grecs qui sont demeurés dans le nord de Chypre, le gouvernement requérant prétendant qu'il y a lieu de les examiner séparément sous l'angle de chacun des articles pertinents de la Convention et, de plus, sous une perspective globale sous l'angle de l'article 3 de la Convention. La Commission suivra en substance la démarche suggérée par le gouvernement requérant: elle traitera d'abord des griefs spécifiques pour examiner ensuite si l'effet combiné des mesures dénoncées sur les conditions de vie des personnes enclavées s'analyse en un manquement à la Convention. Toutefois, dans les circonstances particulières de la cause, la Commission juge bon d'examiner cette question non seulement à la lumière de l'article 3 de la Convention, mais aussi sur le terrain des articles 8 et 14. Pour chaque grief, la Commission doit aussi rechercher s'il s'offrait des voies de recours internes et si celles-ci ont été épuisées (paragraphe 126 ci-dessus) et, enfin, en dernier lieu, elle examinera si et, dans l'affirmative, dans quelle mesure les recours effectifs voulus par l'article 13 de la Convention ont fait défaut.

1. Examen successif des différents griefs

a) Article 2 de la Convention[1]

432. Le gouvernement requérant allègue la violation de l'article 2 de la Convention du fait que le droit à la vie des personnes enclavées et ayant besoin d'urgence d'un traitement médical n'a pas été protégé. Le gouvernement défendeur conteste cette allégation.

433. La Commission estime que la responsabilité de l'Etat défendeur au regard de l'article 2 de la Convention serait bien engagée si le système d'autorisation que son administration locale subordonnée applique dans le nord de Chypre aux déplacements des Chypriotes grecs qui souhaitent consulter un médecin avait été appliqué d'une manière mettant la vie et la santé de ceux-ci en danger. Or la Commission n'a constaté au cours de la période considérée aucun indice d'une pratique administrative dont on puisse dire qu'elle a de tels effets. Des insuffisances ont pu se produire dans tel ou tel cas, mais de manière générale les intéressés ont accès aux services médicaux, y compris les hôpitaux du sud de Chypre. La Commission note aussi que depuis lors une autorisation n'est plus nécessaire non plus pour consulter un médecin dans le nord de Chypre. Quant aux difficultés que le docteur Moutiris a rencontrées pour prêter une assistance médicale humanitaire à la communauté maronite, elles ont résulté pour l'essentiel de son refus de se conformer à une formalité

1. Pour le texte de l'article 2 de la Convention, se reporter au paragraphe 219 ci-dessus.

administrative. Quoi qu'il en soit, bien que ses patients aient perdu des avantages considérables lorsqu'il ne fut plus autorisé à pratiquer, on ne les a pas laissés sans possibilité médicale du tout dans leur voisinage. Le grief du gouvernement requérant quant à l'existence d'une pratique administrative contraire à l'article 2 de la Convention n'a donc pas été établi.

434. Compte tenu de ce constat, la Commission n'estime pas devoir examiner si, quant à ce grief, les voies de recours internes qui pouvaient exister en « RTCN » ont été ou non épuisées.

Conclusion

435. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation de l'article 2 de la Convention du fait que les Chypriotes grecs et les maronites résidant dans le nord de Chypre se seraient vus privés de l'accès aux services médicaux.

b) Article 5 de la Convention[1]

436. Le gouvernement requérant allègue une violation de l'article 5 de la Convention en ce que des menaces pèseraient sur la sécurité de la personne des Chypriotes grecs et faute de mesures officielles pour l'empêcher. Le gouvernement défendeur n'a pas formulé d'observations sur ce grief.

437. La Commission rappelle son constat du rapport de 1976 d'après lequel la situation d'enclavement ne constitue pas en soi une privation de liberté au sens de l'article 5 (paragraphe 430 ci-dessus). Elle prend acte de ce que le gouvernement requérant admet qu'au cours de la période considérée, aucun cas de détention effective de Chypriotes grecs enclavés ne s'est présenté. Les allégations de menaces pour la sécurité de la personne n'ont pas elles non plus été établies. Dans ces conditions, la question de l'épuisement des voies de recours internes ne se pose pas.

Conclusion

438. La Commission conclut, à l'unanimité, que durant la période considérée il n'y a pas eu violation de l'article 5 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre.

c) Article 6 de la Convention

439. Le gouvernement requérant allègue que l'article 6 de la Convention se trouve violé en ce que les Chypriotes grecs résidant dans le nord de Chypre dont les droits de caractère civil ont été enfreints ne peuvent

1. Pour le texte de l'article 5 de la Convention, se reporter au paragraphe 197 ci-dessus.

prétendre à ce que leur cause soit entendue équitablement et publiquement par un tribunal indépendant et impartial. Le gouvernement défendeur rétorque qu'il existe dans le nord de Chypre un système judiciaire effectif auquel les Chypriotes grecs ont accès.

440. Les passages pertinents de l'article 6 § 1 de la Convention sont ainsi libellés :

> « Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement (...) par un tribunal indépendant et impartial, établi par la loi, qui décidera (...) des contestations (...) sur ses droits et obligations de caractère civil (...) »

441. La Commission note d'abord que les Chypriotes grecs résidant dans le nord de Chypre sont fort réticents à saisir les juridictions de la « RTCN ». D'après le gouvernement défendeur, pas une seule instance civile n'a été engagée devant ces tribunaux depuis que la présente requête a été introduite devant la Commission. Partant, la question peut se poser de savoir si les voies de recours internes ont été épuisées pour ce grief, comme l'exige l'article 26 de la Convention. La Commission relève toutefois qu'au moins dans certains cas des actions judiciaires ont été entamées auparavant et que le gouvernement requérant prétend que, eu égard à la manière dont elles ont été examinées, il y a une pratique consistant à dénier aux Chypriotes grecs résidant dans le nord de Chypre l'accès aux tribunaux et à une procédure équitable. Si c'était exact, les intéressés seraient relevés de l'obligation d'épuiser les voies de recours internes en engageant de nouvelles procédures. La Commission estime dès lors devoir examiner au fond la question de savoir s'il existe une pratique des juridictions de la « RTCN » comme le gouvernement requérant l'allègue.

442. Or les faits constatés par la Commission démontrent que les Chypriotes grecs habitant le nord de Chypre ne sont pas empêchés d'intenter des actions civiles devant ces juridictions. En particulier, aucune décision judiciaire ne dément le *locus standi* des Chypriotes grecs résidant dans cette région à cause de leur statut particulier. Il se peut que dans certains cas le droit matériel applicable de la « RTCN » ne vienne pas appuyer une plainte au civil que ces personnes pourraient souhaiter faire valoir, par exemple la revendication d'après laquelle il faut les autoriser à léguer ou à céder leurs biens à des Chypriotes grecs résidant dans le sud de Chypre. Si l'existence de lois comme celles-là peut soulever des questions sur le terrain d'autres dispositions de la Convention, l'article 6 ne peut être invoqué à ce sujet eu égard à la jurisprudence constante des organes de la Convention d'après laquelle cette disposition n'entend pas réglementer la teneur du droit positif des Hautes Parties contractantes (*Dyer c. Royaume-Uni*, n° 10475/83, décision de la Commission du 9 octobre 1984, DR 39, pp. 261 et suiv., et la jurisprudence ultérieure de la Commission, par exemple, *H. c. Norvège*, n° 17004/90, décision du 19 mai

1992, DR 73, p. 170; voir aussi Cour eur. DH, *Skärby c. Suède*, arrêt du 28 juin 1990, série A n° 180-B, p. 36, § 27). De même, il n'a pas été démontré que les juridictions de la «RTCN» déclineraient leur compétence en pareil cas au lieu de rejeter la revendication sur la base de lois qu'elles sont tenues d'appliquer. En conséquence, il n'a pas été démontré qu'existe en «RTCN» une pratique consistant à refuser aux Chypriotes grecs résidant en «RTCN» l'accès aux tribunaux afin d'y intenter une action civile.

443. Reste la question de savoir si les juridictions de la «RTCN» satisfont aux exigences de l'article 6, c'est-à-dire si elles peuvent être tenues pour des «tribunaux indépendants et impartiaux établis par la loi». Le gouvernement requérant soutient que, comme ils fonctionnent dans le cadre d'un «système juridique» dans son ensemble illégal du point de vue du droit international et discriminatoire de surcroît, ces tribunaux ne sauraient être «indépendants» et «impartiaux» à l'égard des Chypriotes grecs, et la Turquie, bien que responsable au regard de la Convention des actes de son administration locale subordonnée dans le nord de Chypre, ne peut en principe s'acquitter des obligations découlant pour elle notamment de l'article 6 de la Convention en instaurant des institutions illégales telles que les «tribunaux» en cause (paragraphe 115 ci-dessus). Le gouvernement défendeur prétend par contre que le système judiciaire instauré en «RTCN» donne des garanties institutionnelles adéquates et effectives, puisque l'indépendance des tribunaux, qui sont aussi impartiaux, se trouve garantie par «la Constitution de la RTCN».

444. La Commission relève que la «Constitution de la RTCN» garantit l'indépendance des tribunaux et que de fait rien dans le cadre institutionnel prévu par le système juridique de la «RTCN» tel que le décrit le gouvernement défendeur n'est de nature à jeter le doute sur l'indépendance et l'impartialité «objective» des juridictions civiles. En particulier, celles-ci ne recourent pas à des modalités ou des procédures particulières lorsqu'elles connaissent d'affaires de Chypriotes grecs résidant dans le nord de Chypre. Il faut présumer l'impartialité «subjective» des juges sauf preuve d'exemples concrets de partialité, preuve qui n'a pas été apportée en l'espèce faute de toute procédure pendant la période considérée. En outre, le fait que par le passé plusieurs actions aient abouti ne vient pas étayer la thèse d'après laquelle les juges de la «RTCN» témoignent de manière générale de partialité envers les Chypriotes grecs résidant dans cette région.

445. De l'avis de la Commission, la question déterminante en ce qui concerne la conformité des tribunaux de la «RTCN» aux exigences de l'article 6 est donc celle de savoir si ceux-ci peuvent être considérés comme «établis par la loi» au sens de cette disposition. Il ne fait aucun doute qu'ils reposent sur une base juridique suffisante dans le cadre du système légal et constitutionnel de la «RTCN», mais la légalité de ce

système du point de vue du droit international général et des obligations spécifiques nées de traités que la Turquie a assumées au moment de la création d'un Etat chypriote indépendant est sujette à caution. La réponse à la question ci-dessus dépend donc du point de savoir si la condition posée par l'article 6 et voulant que les tribunaux soient «établis par la loi» doit s'interpréter par seule référence à la base juridique interne du système judiciaire d'un territoire donné, ou s'il faut aussi prendre en compte la légalité au regard du droit international.

446. La Commission estime que l'expression «établi par la loi» figurant à l'article 6 § 1 de la Convention doit s'entendre comme visant essentiellement la base juridique interne du système judiciaire. Ce point de vue se trouve conforté par l'avis consultatif de la Cour internationale de justice dans l'affaire de la Namibie (*Recueil* de la CIJ 1971, vol. 16, p. 56, § 125) auquel l'arrêt *Loizidou* (fond) précité se réfère lui aussi (*loc. cit.*, p. 2231, § 45); celui-ci dit que dans une situation analogue à celle de la «RTCN», le droit international reconnaît la «légitimité de certains arrangements et transactions juridiques (...) dont on ne pourrait méconnaître les effets qu'au détriment des habitants du territoire». Ce qui implique que, dans les limites de l'applicabilité de ce principe du moins, les institutions devant lesquelles se déroulent de pareilles transactions, notamment les tribunaux, doivent passer pour légitimes du point de vue du droit international également. De fait, si les habitants du territoire dont il s'agit peuvent revendiquer leurs droits de caractère civil devant les tribunaux, cela leur est bénéfique. Certes, les tribunaux étrangers ne reconnaissent pas toujours les décisions des tribunaux de la «RTCN», mais ce n'est pas une pratique universelle que le droit international commande de suivre sans exception. De fait, il peut y avoir des domaines du droit où l'on donne et doive donner effet aux décisions de ces tribunaux hors le territoire de la «RTCN».

447. La Commission rappelle en outre son rapport dans l'affaire *Chrysostomos et Papachrysostomou* précitée, p. 35, § 152, et p. 38, § 169, où elle a estimé, à propos de l'article 5 de la Convention, que la condition de «régularité» renvoie pour l'essentiel au droit national et que, en ce qui concerne le fondement juridique de la détention des requérants et la procédure dirigée contre eux, le système judiciaire de Chypre-Nord se fonde sur le système anglais de procédure et d'administration de la preuve, tel qu'il était applicable à l'entièreté de l'île de Chypre en 1963. Si la Commission ne peut confirmer la conclusion qu'elle avait tirée dans ce même rapport, à savoir que la procédure devant les juridictions de la «RTCN» ne pouvait être imputée à la Turquie (*ibidem*, § 170), elle n'en considère pas moins que ses constats sur le système judiciaire de Chypre-Nord étaient corrects en substance et peuvent se transposer au domaine de l'article 6 en ce qui concerne les procédures devant les juridictions civiles. Elle note en particulier que les tribunaux ordinaires appelés à

connaître d'affaires civiles, s'ils ont d'un point de vue formel été établis par la législation chypriote turque après les événements de 1974, reposent en substance sur la tradition anglo-saxonne de l'organisation judiciaire. Ils ne se distinguent donc pas essentiellement de ceux qui fonctionnaient auparavant dans la région dont il s'agit ni de ceux qui existent dans la partie sud de Chypre.

Conclusion

448. La Commission conclut, par dix-sept voix contre trois, que pendant la période considérée il n'y a pas eu violation de l'article 6 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre.

d) Article 9 de la Convention

449. Le gouvernement requérant allègue qu'il y a violation de l'article 9 de la Convention à raison de l'ingérence dans la liberté des Chypriotes grecs enclavés de manifester leur religion. Il relève que quatre églises seulement demeurent ouvertes, les autres ayant été confisquées et converties à un autre usage; qu'il n'y a qu'un seul prêtre dans toute la région du Karpas car les autorités n'acceptent pas d'en désigner d'autres; que les services religieux dans le monastère Apostolos Andreas ainsi que l'accès à celui-ci sont soumis à des restrictions, et qu'enfin l'assistance à des obsèques religieuses ainsi que la diffusion de manuels scolaires à teneur religieuse font elles aussi l'objet de restrictions. Le gouvernement défendeur conteste ces allégations et soutient que les Chypriotes grecs résidant dans le nord de Chypre jouissent pleinement de la liberté de culte.

450. L'article 9 de la Convention est ainsi libellé:

> « 1. Toute personne a droit à la liberté de pensée, de conscience et de religion; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.
>
> 2. La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui. »

451. La Commission se bornera à examiner la question de l'exercice, par les Chypriotes grecs résidant encore dans le nord de Chypre, du droit à la liberté religieuse. Elle n'a pas à envisager ici la dépossession des biens ecclésiastiques se trouvant dans les parties du nord de Chypre où ne réside plus aucun Chypriote grec, puisque c'est là une question qu'elle a déjà considérée à propos de l'article 1 du Protocole n° 1 (chapitre 2 ci-dessus).

452. La Commission note que dans les villages du Karpas où résident des Chypriotes grecs, les églises fonctionnent toujours et rien n'indique

qu'il y ait entrave au culte religieux en soi, bien que la célébration de cérémonies religieuses soit rendue difficile par le fait que l'ensemble de la région ne soit desservi que par un prêtre et aussi parce que, jusqu'à une date récente du moins, l'accès au centre religieux le plus important de ce secteur, le monastère Apostolos Andreas, était soumis à des restrictions. Les autorités n'ont pas consenti à la désignation d'autres prêtres, mais cette question n'a semble-t-il fait l'objet d'aucune décision administrative qui eût pu être contestée par la voie d'un recours s'offrant en «RTCN». Il ne semble pas davantage que des recours effectifs contre les restrictions appliquées en ce qui concerne l'accès au monastère aient existé. La Commission doit donc connaître du bien-fondé des griefs susmentionnés sous l'angle de l'article 9 de la Convention.

453. La Commission estime que les mesures litigieuses ne résultent pas simplement de la politique générale des autorités chypriotes turques en matière de liberté de circulation, mais s'analysent aussi en une restriction spécifique à la liberté religieuse des Chypriotes grecs résidant dans la partie nord de Chypre. Elles empêchent l'organisation normale et régulière de célébrations religieuses orthodoxes grecques et s'analysent donc en une ingérence dans l'exercice par les Chypriotes grecs résidant dans cette région de leur liberté de religion, ingérence qui ne saurait se justifier au regard du paragraphe 2 de l'article 9. D'ailleurs, il n'a pas été démontré que ces mesures reposent sur une base juridique suffisante ni qu'elles soient nécessaires dans une société démocratique à l'un des buts légitimes énoncés par cette disposition.

Conclusion

454. La Commission conclut, à l'unanimité, que pendant la période considérée il y a eu violation de l'article 9 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre.

e) Article 10 de la Convention

455. Le gouvernement requérant allègue la violation de l'article 10 de la Convention à raison d'une ingérence dans le droit des Chypriotes grecs résidant dans la partie septentrionale de Chypre à recevoir et communiquer des informations et des idées. Il dénonce en particulier l'interdiction frappant l'importation et la diffusion de journaux et livres chypriotes grecs (ou rédigés dans une autre langue grecque), la censure des manuels scolaires et l'interdiction de recevoir des émissions de radio et de télévision émises dans la zone contrôlée par le gouvernement. Le gouvernement défendeur dément cette allégation; il affirme qu'aucune restriction ne pèse sur l'importation des journaux chypriotes grecs ni sur la réception des émissions et que, pour ce qui est des livres et des manuels scolaires, seul est prohibé le matériel de propagande.

456. L'article 10 de la Convention dispose :

« 1. Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontière. Le présent article n'empêche pas les Etats de soumettre les entreprises de radiodiffusion, de cinéma ou de télévision à un régime d'autorisations.

2. L'exercice de ces libertés comportant des devoirs et des responsabilités peut être soumis à certaines formalités, conditions, restrictions ou sanctions prévues par la loi, qui constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à l'intégrité territoriale ou à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui, pour empêcher la divulgation d'informations confidentielles ou pour garantir l'autorité et l'impartialité du pouvoir judiciaire. »

457. Selon la Commission, il n'a pas été établi qu'au cours de la période considérée des restrictions aient été imposées, comme le gouvernement requérant le prétend, à l'importation de journaux et à la réception d'émissions de radio et de télévision. La Commission note toutefois l'absence d'un système de distribution pour les journaux Chypriotes grecs dans la région du Karpas proprement dite. A cet égard elle estime que, si l'article 10 ne garantit pas que soit offert un système de distribution particulier en ce qui concerne les produits de la presse, le refus d'autoriser toute solution gérable de distribution aux personnes intéressées dans une région donnée pourrait en fait passer pour une ingérence dans le droit de celles-ci à recevoir des informations et des idées. Or, en l'espèce, la Commission n'a pas connaissance de tentatives concrètes visant à la mise en place d'un système de distribution périodique de la presse chypriote grecque dans la région du Karpas pas plus que de mesures administratives empêchant l'instauration de pareil système. Il n'est pas davantage établi qu'aucun recours effectif n'aurait existé en « RTCN » contre un tel refus. Il s'ensuit qu'aucune violation de l'article 10 n'a été démontrée sur ce point.

458. Quant aux autres griefs concernant l'accès des Chypriotes grecs résidant dans le nord de Chypre aux livres en langues chypriote grecque ou grecque, la Commission n'a en sa possession aucun élément suffisant d'après lequel aurait été appliquée pendant la période considérée une pratique administrative consistant à frapper d'une interdiction générale l'importation ou la détention de pareils livres. Toutefois, une procédure d'agrément est appliquée aux manuels scolaires que le gouvernement requérant fournit aux écoles chypriotes grecques du nord de Chypre. Le gouvernement requérant l'a acceptée dans le cadre des mesures d'instauration de la confiance qu'a proposées l'UNFICYP et les personnes concernées (les enseignants et les parents d'élèves) ne disposaient apparemment d'aucun recours pour contester l'issue de cette procédure. Celle-ci comportait un contrôle unilatéral de la teneur des

manuels en question opéré par les autorités chypriotes grecques qui, dans un grand nombre de cas, se sont opposées à la diffusion de ces ouvrages au motif qu'ils risquaient de susciter l'hostilité entre les communautés ethniques. Les mesures prises sont dès lors imputables à l'administration locale subordonnée de la Turquie dans le nord de Chypre.

459. A partir des listes annexées à la déclaration écrite de M. Toumazos (paragraphe 380 du rapport) et de la déposition de M. Laoutaris (paragraphe 394 du rapport), la Commission note que les autorités chypriotes turques ont formulé des objections à un nombre considérable d'ouvrages qui leur avaient été soumis. Ainsi, 84 ouvrages seulement sur les 152 soumis pour l'année scolaire 1996-1997 ont été approuvés par elles et ont pu être distribués aux écoles. La déclaration de M. Laoutaris se réfère semble-t-il à l'année scolaire 1997-1998, pour laquelle seulement 102 livres sur les 148 proposés furent autorisés. Ceux qui furent censurés ou écartés comportaient des matières telles que la langue grecque, l'anglais, l'histoire, la géographie, la religion, l'instruction civique, les sciences, les mathématiques et la musique. Il se peut que dans cette catégorie il y ait eu des éléments indiquant la conception que le gouvernement requérant a de l'histoire et de la culture de l'île de Chypre. Si tel est le cas, ce serait au gouvernement défendeur qu'il appartiendrait de démontrer que la censure ou la rétention, qu'il ne conteste pas, des ouvrages était «prévue par la loi» et poursuivait un but légitime, telle la défense de l'ordre. Ce serait donc à lui qu'il appartiendrait de démontrer que les mesures de censure étaient nécessaires dans une société démocratique, à savoir qu'elles répondaient à un besoin social impérieux et que leur ampleur – celle de la censure par exemple – n'était pas disproportionnée au but poursuivi. Or il n'a rien fait de tel. En outre, on ne peut pratiquement pas imaginer des circonstances dans lesquelles des manuels reconnus devant servir à l'enseignement en primaire des mathématiques, des sciences ou du christianisme représenteraient pour l'ordre public une menace telle que la censure se justifierait au regard du paragraphe 2 de l'article 10. Le gouvernement défendeur n'a assurément pas fourni d'éléments et une explication à ces actes qui permettent aux institutions de la Convention de vérifier si les motifs avancés par les autorités nationales sont «pertinents et suffisants» (Sunday Times *c. Royaume-Uni (n° 1)*, arrêt du 26 avril 1979, série A n° 30, p. 38, § 62). Dès lors, il y a eu violation de l'article 10 en ce qui concerne les manuels scolaires.

Conclusion

460. La Commission conclut, à l'unanimité, qu'au cours de la période considérée il y a eu violation de l'article 10 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre en ce que les manuels

destinés à leurs écoles primaires ont fait l'objet de mesures de censure excessives.

f) Article 11 de la Convention

461. Selon le gouvernement requérant, il y a violation de l'article 11 de la Convention à raison des restrictions frappant la liberté d'association, en particulier des divers groupes de personnes enclavées, d'une part, et des personnes enclavées et des Chypriotes grecs de la zone contrôlée par le gouvernement, d'autre part. Le gouvernement défendeur le conteste; il prétend que si la loi sur les associations en vigueur en «RTCN», adoptée par la Chambre de la communauté turque avant 1963, se limite aux associations de Chypriotes turcs, les lois de la «RTCN» ne renferment aucune disposition qui empêcherait des Chypriotes grecs résidant dans le nord de Chypre de fonder des associations ou de s'y affilier. Il prétend aussi qu'ils pourraient contester devant les tribunaux de la «RTCN» toute mesure qui viendrait restreindre leur liberté d'association.

462. L'article 11 de la Convention est ainsi libellé:

> «1. Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.
>
> 2. L'exercice de ces droits ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui. Le présent article n'interdit pas que des restrictions légitimes soient imposées à l'exercice de ces droits par les membres des forces armées, de la police ou de l'administration de l'Etat.»

463. La Commission relève que, telles qu'elles sont exposées dans les détails de la présente requête, les allégations du gouvernement requérant semblent se fonder sur un concept de l'«association» signifiant la simple possibilité de se réunir, sans le faire nécessairement sous telle ou telle forme organisée. Il est clair que les restrictions à la circulation des Chypriotes grecs enclavés (et des personnes souhaitant leur rendre visite) a conduit à un certain isolement et à l'interruption de nombreux contacts sociaux. Toutefois, selon la Commission, l'article 11 de la Convention ne peut s'appliquer qu'à des obstacles juridiques ou de fait empêchant de fonder des associations, de s'y affilier ou de prendre part à leurs activités. Dans un cas donné, il faut un minimum de structure organisationnelle qui fasse l'objet d'une ingérence. En l'espèce, aucune ingérence précise de la sorte n'a été alléguée. Il n'a en particulier pas été démontré qu'au cours de la période considérée les tentatives déployées par des Chypriotes grecs pour établir leurs propres associations ou des associations mixtes avec des Chypriotes turcs aient été entravées, ou

qu'on ait empêché des Chypriotes grecs de participer aux activités de telle ou telle association. Même si pour des raisons historiques la loi en vigueur en «RTCN» se limite dans ses termes aux associations de Chypriotes turcs, il n'est pas exclu que, comme le prétend le gouvernement défendeur, la possibilité juridique existe aussi de fonder des associations chypriotes grecques. La Commission estime donc que les allégations du gouvernement requérant n'ont pas été établies.

464. Le gouvernement requérant ne formule aucun grief spécifique quant à l'ingérence dans le droit à la liberté de réunion, lui aussi garanti par l'article 11, des Chypriotes grecs enclavés. Certains de ses arguments pourraient se comprendre comme impliquant des griefs à cet égard, en particulier en ce qui concerne les obstacles prétendus à la participation des Chypriotes grecs enclavés aux manifestations bicommunautaires organisées par les Nations unies. La Commission note que les documents des Nations unies y afférents mentionnent en fait des obstacles de ce genre mis aux réunions intercommunautaires à partir du second semestre de 1996. Cela se rapporte toutefois à des incidents distincts qui se sont produits après la date de la décision sur la recevabilité en l'occurrence et ne sont donc pas couverts par celle-ci. La Commission ne saurait en conséquence connaître de ce grief.

465. Dans ces conditions, il n'y a pas lieu d'envisager si les voies de recours internes qui auraient pu s'offrir ont été épuisées s'agissant des griefs ci-dessus.

Conclusion

466. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation du droit à la liberté d'association prévu à l'article 11 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre.

g) Article 1 du Protocole n° 1[1]

467. Le gouvernement requérant allègue la violation de l'article 1 du Protocole n° 1 dans le chef des Chypriotes grecs résidant dans le nord de Chypre pour privation de biens et ingérence dans le droit au respect des biens. Il prétend en particulier que lorsque les Chypriotes grecs enclavés décèdent ou quittent leur maison située dans le nord de Chypre, leurs biens sont attribués à des colons turcs et que, d'autre part, il n'existe pas de protection contre les infractions à l'encontre des biens des Chypriotes grecs enclavés commises par des colons turcs. Le gouvernement défendeur conteste ces allégations. Il soutient que les biens des Chypriotes grecs du

1. Pour le texte de l'article 1 du Protocole n° 1, se reporter au paragraphe 310 ci-dessus.

nord de Chypre ne sont pas considérés comme «des biens abandonnés» au sens de la législation sur l'attribution des terres et qu'il existe des voies de recours effectives en cas d'infractions dirigées contre ces biens. En ce qui concerne l'ingérence alléguée dans les droits successoraux, il affirme que ceux-ci pourraient eux aussi être revendiqués devant les cours et tribunaux de la «RTCN». Il affirme donc que les voies de recours internes n'ont pas été épuisées en ce qui concerne les griefs qui précèdent.

468. La Commission note que, par le passé aussi, les biens-fonds de Chypriotes grecs enclavés ont été saisis et distribués en vertu de la législation sur l'attribution des terres, mais que les juridictions chypriotes turques ont décidé dans un certain nombre d'affaires que cette législation ne s'appliquait pas, que l'attribution à autrui des biens dont il s'agissait avait été irrégulière et que ceux-ci devaient être restitués aux propriétaires chypriotes grecs. Rien ne prouve qu'après ces décisions de justice on ait continué à appliquer la législation sur l'attribution des terres aux biens des Chypriotes grecs résidant dans le nord de Chypre. Rien n'indique en particulier qu'au cours de la période considérée en l'espèce tel ou tel cas d'«affectation irrégulière» de biens de Chypriotes grecs à autrui se soit produit. La Commission admet donc que conformément aux dispositions applicables en «RTCN», les biens des Chypriotes grecs résidents ne sont pas tenus pour des «biens abandonnés».

469. En revanche, les éléments du dossier montrent clairement qu'au cours de la période considérée on a continué à appliquer la notion de «biens abandonnés» aux biens des Chypriotes grecs qui décèdent ou qui quittent définitivement le territoire de la «RTCN». La Commission considère en particulier comme établi que les Chypriotes grecs quittant le Nord ne sont plus considérés comme les propriétaires légaux des biens qu'ils y laissent. A ce propos, même le gouvernement défendeur ne prétend pas que des voies de recours existent dont les intéressés pourraient se prévaloir pour revendiquer leurs droits patrimoniaux. D'après les lois de la «RTCN», leur situation semble donc analogue à celle des personnes qui furent déplacées durant ou peu après les événements de 1974 que la Commission a déjà examinée au chapitre 2 ci-dessus. Il y a donc une violation continue de l'article 1 du Protocole n° 1 à cet égard.

470. La Commission note l'argument du gouvernement défendeur d'après lequel il en va différemment dans le cas des Chypriotes grecs résidents qui viennent à décéder. Les héritiers de ceux-ci auraient à leur disposition une procédure judiciaire qui leur permettrait de revendiquer leurs droits à héritage. Après avoir pris connaissance des rapports pertinents des Nations unies, la Commission relève qu'une procédure de ce genre pourrait en fait s'offrir si les héritiers résident eux-mêmes dans la partie nord de Chypre. Par contre, s'ils résident dans le Sud, la Commission doute sérieusement qu'il leur soit tant soit peu loisible d'engager une procédure devant les juridictions de la «RTCN». Même si

l'accès formel aux tribunaux n'était pas dénié aux intéressés, les tribunaux n'en devraient pas moins appliquer la législation de la «RTCN» sur les biens «abandonnés» que les autorités administratives de la «RTCN» du moins semblent considérer comme pertinente. Certes, l'exactitude de cette position juridique n'a pas été vérifiée devant les cours et tribunaux de la «RTCN», mais le gouvernement défendeur soutient lui-même que cette législation s'applique. La Commission estime dès lors que les voies de recours que le gouvernement défendeur invoque n'ont pas fait la preuve de leur effectivité. Elle estime en outre que les restrictions qui ont continué *de facto* à frapper d'un bout à l'autre de la période considérée les droits d'hériter dans le nord de Chypre des biens de Chypriotes grecs décédés sont incompatibles avec la lettre et l'esprit de l'article 1 du Protocole n° 1 en ce qu'elles n'observent pas le principe même du droit au respect des biens.

471. La Commission doit examiner enfin le grief du gouvernement requérant d'après lequel les biens des Chypriotes grecs résidant dans le nord de Chypre ne sont pas protégés de manière effective contre les intrusions et les dommages causés par des tiers. Les éléments de preuve révèlent que du moins par le passé de telles intrusions et de tels dommages se sont produits à une assez large échelle. Il s'agit toutefois là d'actes de particuliers qui n'engagent donc pas en tant que telle la responsabilité de l'Etat défendeur. Ce dernier ne pourrait être tenu pour responsable sur le terrain de la Convention que si les autorités étaient impliquées elles-mêmes dans ces actes ou n'assuraient pas le respect des biens par le jeu d'une pratique administrative consistant à bloquer les voies de recours effectives contre de tels actes. Rien n'indique qu'au cours de la période considérée des intrusions dans les biens des Chypriotes grecs dans le nord de Chypre aient eu lieu ou que des dommages leur aient été causés avec la participation ou l'encouragement des autorités de la «RTCN». Il a été démontré au contraire que des actions civiles ou des plaintes au pénal portées devant les juridictions de la «RTCN» à propos de pareils incidents ont abouti dans un certain nombre de cas et notamment que les poursuites pénales se sont multipliées récemment bien que les Chypriotes grecs résidant dans le nord de Chypre se montrent de manière générale réticents à s'adresser aux autorités de la «RTCN». Dans ces conditions, la Commission n'estime pas établi qu'il y ait en «RTCN» une pratique administrative consistant à ne pas assurer de recours effectifs aux Chypriotes grecs du nord de Chypre contre des ingérences de particuliers dans leurs droits de propriété.

Conclusions

472. La Commission conclut, à l'unanimité, qu'au cours de la période considérée il y a eu une violation continue de l'article 1 du Protocole n° 1

dans le chef des Chypriotes grecs résidant dans le nord de Chypre en ce que leur droit au respect de leurs biens n'a pas été garanti dans le cas où ils quittent définitivement ce territoire et en ce que, s'ils viennent à décéder, les droits successoraux des personnes résidant dans le Sud ne sont pas reconnus.

473. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation de l'article 1 du Protocole n° 1 en ce que les biens des Chypriotes grecs résidant dans le nord de Chypre ne seraient pas protégés contre les ingérences de particuliers.

h) Article 2 du Protocole n° 1

474. Le gouvernement requérant allègue la violation de l'article 2 du Protocole n° 1, l'enseignement secondaire étant refusé aux enfants des Chypriotes grecs résidant dans le nord de Chypre et le droit des parents à assurer l'éducation de leurs enfants conformément à leurs convictions religieuses et philosophiques n'étant pas respecté. Le gouvernement défendeur dément ces allégations; il soutient que les moyens pédagogiques aux niveaux primaire et secondaire sont accessibles aux Chypriotes grecs dans les écoles chypriotes turques, qu'un enseignement primaire en grec est en réalité assuré et que l'on ne saurait escompter qu'un enseignement secondaire spécial soit dispensé en grec, faute d'un nombre d'élèves suffisant. En revanche, les élèves dont il s'agit peuvent fréquenter les écoles de la partie sud de Chypre.

475. Aux termes de l'article 2 du Protocole n° 1 :

> « Nul ne peut se voir refuser le droit à l'instruction. L'Etat, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques. »

476. La Commission rappelle la jurisprudence: cette disposition n'oblige pas un Etat à créer un système d'enseignement donné, mais uniquement à garantir aux personnes placées sous la juridiction des Parties contractantes le droit de se servir, en principe, des moyens d'instruction existant à un moment donné. Quant à l'étendue de ces moyens et à la manière de les organiser ou de les subventionner, la Convention n'impose pas d'obligation déterminée. En particulier, la première phrase de l'article 2 ne spécifie pas la langue dans laquelle l'enseignement doit être dispensé pour que le droit à l'instruction soit respecté. Toutefois, le droit à l'instruction serait vide de sens s'il n'impliquait pas, pour ses titulaires, le droit de recevoir un enseignement dans la langue nationale ou dans une des langues nationales, selon le cas. Ce droit appelle de par sa nature même une réglementation par l'Etat, réglementation qui peut varier dans le temps et dans l'espace en fonction des besoins et des ressources de la communauté et des individus. Il va de

soi qu'une telle réglementation ne doit jamais entraîner d'atteinte à la substance de ce droit, ni se heurter à d'autres droits consacrés par la Convention (*Affaire relative à certains aspects du régime linguistique de l'enseignement en Belgique* (fond), arrêt du 23 juillet 1968, série A n° 6, pp. 31-32, §§ 3-5).

477. En l'occurrence, la Commission constate que les autorités chypriotes grecques permettent que cet enseignement soit dispensé en langue grecque aux enfants des Chypriotes grecs du nord de Chypre au niveau du primaire. Les problèmes qu'avait posés à cet égard la vacance de postes d'enseignants ont été résolus dans l'intervalle. Les autres problèmes qu'a posés la fourniture de manuels scolaires ont été examinés plus haut sur le terrain de l'article 10 de la Convention. Selon la Commission, ils n'interfèrent pas avec la substance du droit à l'instruction et ne soulèvent donc aucune question distincte sur le terrain de l'article 2 du Protocole n° 1. La Commission estime donc qu'au niveau de l'enseignement primaire il n'y a pas eu atteinte au droit à l'instruction des Chypriotes grecs résidant dans le nord de Chypre.

478. Quant à l'enseignement secondaire, il n'est pas dispensé dans le nord de Chypre en langue grecque bien que les autorités chypriotes turques sachent parfaitement qu'en pratique tous les Chypriotes grecs concernés préfèrent recevoir un enseignement dans leur propre langue. Certes, il est peut-être exact, comme le gouvernement défendeur l'affirme, que les établissements secondaires qui fonctionnent dans le nord de Chypre en langue turque ou anglaise sont accessibles aux Chypriotes grecs résidant dans cette région. Cependant, l'enseignement qui y est dispensé ne répond pas aux besoins des personnes concernées, qui souhaitent légitimement préserver l'identité ethnique et culturelle qui leur est propre. Si l'article 2 du Protocole n° 1 garantit l'accès uniquement aux moyens d'enseignement existants, il y a lieu de noter en l'espèce que ces moyens éducatifs existaient en réalité dans le passé mais que les autorités chypriotes turques les ont supprimés. D'ailleurs, la Commission croit comprendre que, comme pour le primaire, le gouvernement requérant serait disposé à ouvrir aussi des établissements secondaires pour les Chypriotes grecs résidant dans le nord de Chypre en dépit du nombre limité d'élèves et que les autorités chypriotes turques l'en empêchent malgré une disposition en ce sens de l'Accord intercommunautaire conclu à Vienne en 1975. Selon la Commission, le fait que les autorités autorisent les élèves concernés à fréquenter des établissements secondaires dans le sud de Chypre ne saurait pas non plus compenser l'absence totale d'établissements secondaires appropriés pour les Chypriotes grecs résidant dans le nord de Chypre. De fait, cette autorisation n'est pas sans condition en ce que, jusqu'il y a peu de temps, tous les élèves n'étaient pas autorisés à rentrer chez eux une fois leurs études terminées et qu'aujourd'hui encore les élèves de sexe masculin de

plus de seize ans ne sont pas autorisés à le faire. Dans ces conditions, la pratique des autorités chypriotes turques emporte déni de la substance du droit à l'instruction.

Conclusion

479. La Commission conclut, à l'unanimité, que pendant la période considérée il y a eu violation de l'article 2 du Protocole n° 1 envers les Chypriotes grecs résidant dans le nord de Chypre faute d'établissements d'enseignement secondaire appropriés.

2. *Examen d'ensemble des conditions de vie des Chypriotes grecs dans le nord de Chypre*

a) Article 8 de la Convention

480. Le gouvernement requérant allègue la violation continue de l'article 8 de la Convention à raison d'une ingérence dans le droit des Chypriotes grecs résidant dans le nord de Chypre au respect de leur vie privée et familiale, de leur domicile et de leur correspondance. Tout en admettant que les intéressés vivent dans des conditions difficiles, le gouvernement défendeur dément qu'il y ait ingérence dans leurs droits au regard de cette disposition.

481. Comme elle l'a dit plus haut, la Commission estime approprié, vu les circonstances particulières de l'espèce, d'envisager globalement les conditions de vie des Chypriotes grecs dans le nord de Chypre à la lumière de l'article 8 de la Convention. Sans perdre de vue les divers aspects de cette disposition, elle estime justifiée une approche d'ensemble en particulier parce que le gouvernement requérant affirme que la multitude de restrictions imposées à ces personnes participent d'une politique délibérée consistant à instaurer des conditions de vie insupportables pour elles afin de les amener pour finir à quitter le nord de Chypre. Certes, le gouvernement requérant invoque essentiellement l'article 3 de la Convention à ce propos, mais la Commission considère que ces griefs, de par leur nature, soulèvent aussi des questions sur le terrain de l'article 8.

482. Cette disposition est ainsi libellée :

« 1. Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.

2. Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui. »

483. La Commission rappelle d'abord les constats de ses rapports de 1976 et 1983 d'après lesquels la séparation des familles qu'entraîne le refus d'autoriser le retour des Chypriotes grecs déplacés dans leur famille enclavée dans le nord de Chypre constitue une violation aggravée de l'article 8 (paragraphe 430 ci-dessus). La Commission note que les Chypriotes grecs qui ont définitivement quitté le nord de Chypre, dont les émigrants récents, ne sont toujours pas autorisés à y retourner même s'ils y ont une famille. Si les visites des familles des Chypriotes grecs résidant dans le sud de Chypre à leurs parents dans le Nord comme celles des Chypriotes grecs résidant dans le nord de Chypre à leurs parents du Sud sont facilitées par plusieurs mesures prises pour la plupart au cours de la période à considérer aux fins de la présente requête, certaines restrictions administratives telles que la limitation aux parents au premier degré, les conditions de visa et de taxes d'entrée et de sortie leur sont toujours appliquées. Il y a peu de temps encore, de sévères limitations frappaient aussi le nombre et la durée des visites. Ces restrictions étaient aussi appliquées aux élèves chypriotes grecs ayant dépassé un certain âge qui fréquentaient des établissements secondaires dans le sud de Chypre et qui, à l'instar de tout autre émigrant, n'étaient pas autorisés à rentrer définitivement dans leur famille dans le nord de Chypre une fois la limite d'âge atteinte. Cette pratique s'applique toujours aux élèves ayant terminé leurs études avant l'entrée en vigueur du nouveau règlement de février 1998 et aux Chypriotes grecs de sexe masculin âgés de plus de seize ans.

484. La Commission estime établi que ces mesures sont à l'origine de nouveaux cas d'éclatement familial au cours de la période considérée et que la possibilité pour les Chypriotes grecs habitant le nord de Chypre de mener une vie familiale normale a continué à s'en trouver affectée d'autres manières au cours de cette période. Pour la Commission, les personnes concernées ne disposent d'aucun moyen pour contester les mesures litigieuses. Elle estime que, prises dans leur ensemble, celles-ci constituent une grave ingérence dans le droit des intéressés au respect de leur vie familiale, ingérence qui ne saurait se justifier au regard de l'article 8 § 2 de la Convention, faute d'une base juridique claire ainsi que d'un but légitime et en raison du caractère manifestement disproportionné des mesures dénoncées.

485. La Commission estime en outre établi que dans leur intégralité les mesures qui ont continué à s'appliquer à la population enclavée au cours de la période considérée sont allées bien au-delà d'une restriction à sa liberté de circulation au sens de l'article 2 du Protocole n° 4, que la Turquie n'a pas ratifié. En particulier, les restrictions à la liberté de circulation s'accompagnaient il y a peu de temps encore de mesures de contrôle policier strict qui s'appliquaient même aux visites aux villages ou aux villes voisins, obligation étant apparemment faite aux intéressés

d'indiquer le but de leurs visites: se rendre chez des amis, dans des magasins ou chez le médecin, participer à des manifestations religieuses, etc. Les intéressés devaient signaler régulièrement leurs déplacements à la police lorsqu'ils en effectuaient à l'intérieur du territoire de la partie nord ou dans la partie sud de Chypre, et les visiteurs qu'ils recevaient non seulement devaient faire de même, mais étaient de plus accompagnés physiquement par des policiers qui, du moins dans certains cas, restaient avec eux à l'intérieur du domicile des Chypriotes grecs enclavés. Le personnel de l'UNFICYP qui a rendu visite aux Chypriotes grecs dans la région du Karpas à des fins humanitaires était lui aussi, il y a peu de temps encore, accompagné par la police chypriote turque qui pénétrait dans les maisons, ce qui empêchait toute conversation en particulier.

486. La Commission considère qu'il n'existe pas non plus à cet égard de voies de recours dans le nord de Chypre et que la pratique administrative dont il s'agit s'analyse en une ingérence manifeste dans le droit des Chypriotes grecs enclavés au respect de leur vie privée et de leur domicile, ingérence qui ne saurait se justifier sur le terrain de l'article 8 § 2. Notamment, les mesures dénoncées ne trouvant aucune base légale ou réglementaire accessible aux intéressés, ces derniers se sont trouvés dans une situation de totale insécurité juridique qui a persisté même après la levée des mesures puisqu'ils n'en ont pas été avertis. D'ailleurs, la Commission ne voit pas que ces mesures, dont l'étendue était excessive quel que soit le point de vue duquel on se place, aient pu servir quelque but légitime que ce soit reconnu par la Convention.

487. Compte tenu de ce constat, la Commission ne juge pas devoir examiner les autres griefs du gouvernement requérant d'après lesquels il y a eu aussi ingérence dans le droit des Chypriotes grecs enclavés au respect de leur domicile du fait que l'environnement démographique et culturel de leurs habitations a été modifié et du fait qu'on ne les a pas protégés contre les actes de personnes privées, en particulier des colons turcs, qui ont troublé la jouissance de leur domicile. Il semble que les personnes concernées disposent sur ce dernier point du moins de recours devant les juridictions chypriotes turques.

488. La Commission a aussi recherché si, pendant la période à l'examen, il y avait eu des atteintes injustifiées au droit des Chypriotes grecs enclavés au respect de leur correspondance. Elle note que, même à ce jour, il n'existe aucune liaison postale ou téléphonique directe entre les deux parties de Chypre, mais que, depuis l'installation récente de lignes téléphoniques au domicile des Chypriotes grecs dans le nord de Chypre, les intéressés peuvent effectuer des appels en passant par le standard des Nations unies au Ledra Palace. Ne se trouvent établies ni l'allégation d'après laquelle les appels de ce genre sont écoutés ni celle d'après laquelle c'est la police et non le service postal chypriote turc qui délivre

le courrier destiné aux Chypriotes grecs du Nord et d'après laquelle la police ouvre le courrier. L'on dispose de quelques indices que des fouilles ont été pratiquées sur des personnes se rendant d'une partie de Chypre à l'autre afin de découvrir si elles transportaient des lettres, mais ces indices ne suffisent pas à établir l'existence d'une pratique systématique à cet effet. La Commission estime que l'absence de liaisons directes entre les deux parties de Chypre, qui n'incombe apparemment pas exclusivement à l'Etat défendeur, ne saurait s'analyser en une ingérence, de la part de cet Etat, dans le droit au respect de la correspondance au sens de l'article 8. Quant aux autres aspects de ce droit envisagés ci-dessus, la Commission considère que les éléments dont elle dispose ne l'autorisent pas à conclure qu'au cours de la période à l'examen il y a eu une pratique administrative consistant à faire fi du droit des Chypriotes grecs résidant dans le nord de Chypre au respect de leur correspondance.

489. La Commission observe enfin que, prise dans son ensemble, la vie quotidienne des Chypriotes grecs du nord de Chypre se caractérise par une multitude de circonstances adverses. L'absence de moyens de communication normaux, l'impossibilité pratique de se procurer la presse chypriote grecque, le nombre insuffisant de prêtres, le choix difficile auquel parents et élèves se trouvent confrontés en ce qui concerne l'enseignement secondaire, les restrictions et les formalités imposées à la liberté de circulation, l'impossibilité de sauvegarder des droits patrimoniaux en cas de départ ou de décès et les diverses autres restrictions engendrent chez les personnes concernées le sentiment d'être contraintes de vivre dans un environnement hostile où elles ne peuvent guère mener une vie privée et familiale normale. Ces circonstances contraires étant dans une large mesure la conséquence directe de la politique officielle menée par l'Etat défendeur et son administration locale subordonnée, elles constituent des facteurs aggravant l'atteinte constatée plus haut aux droits des Chypriotes grecs enclavés au regard de l'article 8 de la Convention.

Conclusions

490. La Commission conclut, à l'unanimité, que pendant la période considérée il y a eu violation du droit des Chypriotes grecs résidant dans le nord de Chypre au respect de leur vie privée et familiale et au respect de leur domicile, garanti par l'article 8 de la Convention.

491. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation du droit des Chypriotes grecs résidant dans le nord de Chypre au respect de leur correspondance, garanti par l'article 8 de la Convention.

b) Article 3 de la Convention[1]

492. Le gouvernement requérant se plaint, sur le terrain de l'article 3 de la Convention, de ce que les diverses mesures appliquées aux Chypriotes grecs résidant dans la région du Karpas, dans le nord de Chypre, révèlent un mode systématique d'actes discriminatoires dirigés contre eux visant à les inciter à quitter le secteur, et que ces mesures, prises dans leur ensemble, s'analysent en une «épuration ethnique» et donc en un traitement inhumain et dégradant. Il invoque à cet égard le rapport de la Commission dans l'affaire des *Asiatiques d'Afrique orientale* précitée, p. 62, §§ 207-209).

493. Le gouvernement défendeur soutient que les faits de la présente affaire doivent se distinguer de ceux qui sous-tendaient le rapport dans l'affaire des *Asiatiques d'Afrique orientale*. Il affirme en particulier qu'un ensemble de faits dont chacun ne constitue pas en soi une violation de la Convention ne sauraient être envisagés cumulativement sous l'angle de l'article 3.

494. La Commission rappelle toutefois que la question de savoir si «le refus d'un droit qui n'est pas comme tel protégé par la Convention peut néanmoins dans certaines circonstances enfreindre un autre droit qui s'y trouve déjà énoncé» a en réalité déjà été envisagée dans le rapport sur l'affaire des *Asiatiques d'Afrique orientale*. La Commission y a déclaré qu'«en retenant les présentes requêtes sur le terrain de l'article 3 comme sur celui d'autres dispositions de la Convention, la Commission a implicitement admis que le constat de pareilles violations n'était pas exclu» (*ibidem*, p. 54, § 185). La Commission estime qu'en l'occurrence aussi, ni le fait qu'elle ait déjà constaté que certaines des mesures dénoncées étaient contraires à la Convention ni celui qu'elle n'ait pas abouti au même constat pour certaines autres mesures ne l'empêchent d'examiner en outre si, par le biais de toutes ces mesures, n'a pas été menée une politique de discrimination raciale qui peut passer en soi pour une violation de l'article 3 de la Convention.

495. La Commission rappelle à cet égard le paragraphe 207 du rapport précité (*ibidem*, p. 62) où elle a confirmé que «la discrimination fondée sur la race peut dans certains cas, constituer en soi un traitement dégradant au sens de l'article 3 de la Convention». «Il est généralement reconnu qu'une importance particulière doit être attachée à la discrimination fondée sur la race; que le fait d'imposer publiquement à un groupe de personnes un régime particulier fondé sur la race peut, dans certaines circonstances, constituer une forme spéciale d'atteinte à la dignité humaine; et que le régime particulier imposé à un groupe de personnes pour des motifs raciaux pourrait constituer un traitement dégradant là où une distinction fondée sur un autre élément ne soulèverait pas de questions de ce genre.»

1. Pour le texte de l'article 3 de la Convention, se reporter au paragraphe 230 ci-dessus.

496. La Commission rappelle que, dans son rapport de 1976 précité (§ 503), elle a constaté l'existence de violations d'un certain nombre d'articles de la Convention, et note que les actes contraires à la Convention avaient été commis exclusivement à l'encontre des membres de l'une des deux communautés à Chypre, à savoir la communauté chypriote grecque. La Commission en a alors conclu que la Turquie n'a donc pas assuré la jouissance des droits et libertés reconnus dans ces articles, sans distinction aucune, fondée sur l'origine ethnique, la race et la religion, comme l'exige l'article 14. Dans son rapport de 1983 précité, la Commission n'a pas estimé nécessaire d'ajouter quoi que ce soit à la conclusion à laquelle elle était arrivée au titre de l'article 14 dans la précédente affaire (p. 103, § 162).

497. En ce qui concerne les faits de la présente cause, la Commission a constaté ci-dessus que, pendant la période considérée, il y avait eu une ingérence dans les droits des Chypriotes grecs résidant dans le nord de Chypre au titre de plusieurs dispositions de la Convention. Elle a constaté en particulier (paragraphe 489 ci-dessus) que les conditions générales de vie des Chypriotes grecs du nord de Chypre sont telles que le droit de ceux-ci au respect de leur vie privée et familiale et de leur domicile subit une ingérence aggravée. La Commission note que, aussi pendant la période considérée en l'espèce, toutes ces ingérences ont été commises exclusivement à l'encontre des Chypriotes grecs résidant dans le nord de Chypre et ne leur ont été infligées que pour la simple raison qu'ils appartenaient à cette catégorie de personnes. Dans ces conditions, le traitement dénoncé était manifestement discriminatoire à leur encontre et se fondait sur leurs «origine ethnique, race et religion». Si l'élément qui prédomine ici est la discrimination ethnique, la Commission considère que le principe énoncé dans l'affaire des *Asiatiques d'Afrique orientale* à propos de la discrimination raciale fondée sur la couleur s'applique de la même manière.

498. Ce principe n'a toutefois pas été énoncé en termes absolus, la Commission étant parvenue dans l'affaire des *Asiatiques d'Afrique orientale* à un constat de violation de l'article 3 de la Convention à la lumière des circonstances particulières de cette cause-là. En réalité, dans cette affaire-là comme dans toute autre où l'article 3 s'applique, on ne peut conclure à l'existence d'une violation de cette disposition que si le traitement litigieux atteint le minimum de gravité requis. En l'occurrence, la Commission note que les conditions de vie générales des Chypriotes grecs du nord de Chypre leur ont été imposées en application d'une politique reconnue tendant à la séparation des groupes ethniques sur l'île dans le cadre d'un accord bicommunautaire et bizonal. Cette politique a eu pour résultat de confiner la population chypriote grecque résidant encore dans le nord de Chypre (autre que les maronites) dans un petit secteur de la péninsule du Karpas. Cette population diminue régulièrement par suite de mesures spécifiques

qui l'empêchent de se renouveler. Qui plus est, ses biens sont confisqués si les propriétaires décèdent ou quittent la région. Comme les auteurs de l'étude humanitaire des Nations unies (paragraphe 387 du rapport) l'ont noté, les restrictions frappant ces personnes tendent à ce que « inexorablement au fil du temps, ces communautés cessent d'exister dans la partie septentrionale de l'île ». La Commission estime qu'en dépit d'améliorations récentes sur certains points les difficultés auxquelles les Chypriotes grecs résidant dans la région du Karpas, dans le nord de Chypre ont été confrontés au cours de la période considérée affectaient encore leur vie quotidienne au point que l'on est fondé à conclure que le traitement discriminatoire dénoncé atteignait un degré de gravité tel qu'il constitue une offense à la dignité humaine des intéressés.

Conclusion

499. La Commission conclut, à l'unanimité, que pendant la période considérée il y a eu violation de l'article 3 de la Convention en ce que les Chypriotes grecs résidant dans la région du Karpas, dans le nord de Chypre, ont fait l'objet d'une discrimination s'analysant en un traitement dégradant.

c) Article 14 de la Convention[1]

500. Le gouvernement requérant allègue que les diverses mesures restrictives qui frappent les Chypriotes grecs résidant dans le nord de Chypre revêtent un caractère discriminatoire et emportent donc violation de l'article 14 de la Convention, combiné avec les autres articles pertinents de celle-ci. Le gouvernement défendeur dément ces allégations ; il affirme que si une différence est faite entre Chypriotes grecs et Chypriotes turcs, elle résulte uniquement de la structure bicommunautaire de Chypre où certaines questions concernant les deux communautés sont réglées séparément afin de préserver l'identité ethnique de celles-ci.

501. A la lumière de sa conclusion ci-dessus au titre de l'article 3 de la Convention (paragraphe 499), la Commission n'estime pas nécessaire d'examiner aussi la question de la discrimination des Chypriotes grecs habitant dans le nord de Chypre sous l'angle de l'article 14.

Conclusion

502. La Commission conclut, à l'unanimité, qu'il ne s'impose pas d'examiner si au cours de la période considérée il y a eu violation de

1. Pour le texte de l'article 14 de la Convention, se reporter au paragraphe 332 ci-dessus.

l'article 14 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre.

d) Article 13 de la Convention[1]

503. Le gouvernement requérant se plaint enfin d'une violation de l'article 13 de la Convention car les Chypriotes grecs résidant dans le nord de Chypre ne disposeraient pas de recours effectifs pour dénoncer toutes les restrictions à leurs droits au titre de la Convention envisagées ci-dessus. Le gouvernement défendeur rétorque que le système judiciaire de la « RTCN » leur fournit en fait des recours effectifs.

504. La Commission rappelle sa conclusion ci-dessus au titre de l'article 6 de la Convention selon laquelle il n'y a pas lieu de prendre en compte la légalité au regard du droit international du système judiciaire de la « RTCN » pour déterminer si les juridictions de la « RTCN » sont « établies par la loi » (paragraphes 446-447 ci-dessus). La même considération doit s'appliquer pour toutes les autres voies de recours prévues par le système judiciaire de la « RTCN ».

505. La Commission a examiné plus haut, à la lumière de l'article 26 de la Convention, s'il existait des recours effectifs pour chaque grief concernant les Chypriotes grecs qui résident dans le nord de Chypre. Cette question ne se pose toutefois pas pour les griefs qu'elle n'a pas jugés établis (c'est-à-dire ceux tirés des articles 2, 5, 6 et 11 de la Convention). Quant aux autres griefs, la Commission rappelle ses conclusions ci-dessus d'après lesquelles il existe des recours effectifs contre les intrusions dans les biens-fonds des personnes privées et les dommages qui leur sont causés (paragraphe 471 ci-dessus) et contre les ingérences de particuliers dans le droit au respect du domicile des Chypriotes grecs (paragraphe 487 ci-dessus). En revanche, il n'existe pas de recours effectifs pour les autres griefs concernant les atteintes commises par les autorités aux droits des Chypriotes grecs au titre des articles 8, 9 et 10 de la Convention et 1 et 2 du Protocole n° 1. Il n'existe pas davantage de recours contre la discrimination dirigée contre les Chypriotes grecs résidant dans le nord de Chypre et le traitement dégradant contraire à l'article 3 de la Convention qui en résulte.

Conclusions

506. La Commission conclut, par dix-huit voix contre deux, qu'il n'y a pas eu violation de l'article 13 de la Convention en ce qui concerne les ingérences commises par des particuliers dans les droits des Chypriotes

1. Pour le texte de l'article 13 de la Convention, se reporter au paragraphe 325 ci-dessus.

grecs résidant dans le nord de Chypre au titre des articles 8 de la Convention et 1 du Protocole n° 1.

507. La Commission conclut, à l'unanimité, qu'il y a eu violation de l'article 13 de la Convention en ce qui concerne les ingérences commises par les autorités dans les droits des Chypriotes grecs résidant dans le nord de Chypre au titre des articles 3, 8, 9 et 10 de la Convention et 1 et 2 du Protocole n° 1.

Chapitre 4

Le droit des Chypriotes grecs déplacés à tenir des élections libres

A. Griefs et arguments des parties

508. Le gouvernement requérant se plaint d'une violation de l'article 3 du Protocole n° 1 en ce que, étant déplacés et se voyant refuser la possibilité de rentrer chez eux, les Chypriotes grecs déplacés ne peuvent jouir effectivement du droit d'avoir des représentants librement élus au sein du corps législatif de Chypre pour le territoire occupé. Bien que dans la zone contrôlée par le gouvernement des élections soient organisées pour l'ensemble du territoire de Chypre, elles sont privées de sens et d'effet puisqu'il n'existe en pratique aucune représentation de la zone sous occupation turque et qu'aucune législation effective pour cette zone ne peut être adoptée.

509. Le gouvernement défendeur dément la violation alléguée de l'article 3 du Protocole n° 1. Il soutient en particulier que le gouvernement requérant continue à tenir des élections pour les circonscriptions de Kyrenia et Famagouste et que les Chypriotes grecs du nord de Chypre souhaitant voter y sont autorisés. Il reproche au gouvernement requérant de ne pas prendre en compte les accords d'échange de population jetant la base d'une fédération bicommunautaire et bizonale.

510. Aucun élément de preuve particulier n'a été produit à propos de ce grief, si ce n'est un compte rendu de presse rapportant une déclaration du premier ministre adjoint de la « RTCN » selon laquelle tout Chypriote grec enclavé de la région du Karpas qui serait élu au Parlement chypriote aux élections de mai 1996 serait expulsé de la « RTCN ».

B. Avis de la Commission

511. L'article 3 du Protocole n° 1 est ainsi libellé :

> « Les Hautes Parties contractantes s'engagent à organiser, à des intervalles raisonnables, des élections libres au scrutin secret, dans les conditions qui assurent la libre expression de l'opinion du peuple sur le choix du corps législatif. »

512. La Commission relève que le système électoral de Chypre repose depuis toujours sur le principe de la représentation par ethnie. L'organisation d'élections libres pour tous les Chypriotes grecs (y compris ceux du nord de Chypre) est possible et a de fait lieu dans la partie sud de l'île. Le gouvernement requérant ne contredit pas l'assertion du gouvernement défendeur à cet égard, à savoir que des élections sont aussi organisées pour les circonscriptions du nord de Chypre et que les Chypriotes grecs demeurant toujours là peuvent y prendre part. Le seul obstacle tient au fait que le gouvernement requérant soit dépossédé de la base territoriale dans le nord de Chypre tant pour l'organisation des élections (les Chypriotes grecs qui résident dans cette région doivent voter dans le Sud) que pour la mise en œuvre de la législation adoptée par le corps législatif. Selon la Commission, c'est là simplement la conséquence de la situation politique générale régnant à Chypre depuis 1974, ce qui n'implique pas une ingérence spécifique dans le système électoral chypriote en tant que tel.

513. La Commission estime peu satisfaisant que le système électoral qui fonctionne dans les deux parties de Chypre ne fasse pas une juste place aux Chypriotes grecs résidant dans le Nord. Bien qu'ils puissent prendre part aux élections dans le Sud, le corps législatif y est incapable *de facto* de régler tel ou tel de leurs problèmes. Par contre, il semble que les Chypriotes grecs du Nord, bien que considérés comme «citoyens de la RTCN», ne puissent participer aux élections de la «RTCN» en raison du principe du vote ethnique. Toutefois, le principe valant des deux côtés, les Chypriotes turcs de la zone contrôlée par le gouvernement se trouvent dans la même position et la Commission estime qu'aucune responsabilité particulière ne peut être imputée à l'Etat défendeur à cet égard.

514. La Commission a examiné l'allégation concernant des mesures particulières qui seraient prises à l'encontre des Chypriotes grecs enclavés qui se présentent aux élections et réussissent à être élus. Il faut assurément voir dans de pareilles mesures un obstacle à la libre expression de l'opinion du peuple dans le choix de son corps législatif. Toutefois, le seul élément dont la Commission dispose à cet égard est un compte rendu de presse dont elle n'a pas pu vérifier l'exactitude. On ne l'a pas non plus informée d'une mesure concrète éventuelle qui aurait eu l'effet indiqué dans le compte rendu de presse. Il n'est donc pas établi que, pendant les élections dont il s'agit, des pressions soient en effet exercées sur la libre expression de la volonté du peuple.

Conclusion

515. La Commission conclut, à l'unanimité, qu'il n'y a pas eu violation du droit des Chypriotes grecs déplacés à organiser des élections libres tel que le garantit l'article 3 du Protocole n° 1.

Chapitre 5

Griefs relatifs aux Chypriotes turcs

A. Griefs

516. La Commission a déclaré recevables les griefs suivants qui concernent les Chypriotes turcs résidant dans le nord de Chypre :

– il y a violation de l'article 5 de la Convention parce que la sécurité des personnes n'est pas assurée ;

– il y a violation de l'article 6 de la Convention, les intéressés étant traduits devant des «juridictions militaires», ce qui ne leur garantit pas que les accusations dirigées contre eux seront examinées par un tribunal indépendant et impartial ;

– il y a violation de l'article 10 de la Convention à raison de l'interdiction frappant la diffusion dans le nord de Chypre de journaux en langue grecque ;

– il y a violation de l'article 11 de la Convention à raison du déni de leur droit à s'associer librement avec des Chypriotes grecs ;

– il y a violation de l'article 1 du Protocole n° 1 faute pour eux d'être autorisés à retourner dans leurs propriétés dans le sud de Chypre.

517. La Commission a déclaré en outre recevables les griefs tirés des articles 3, 5 et 8 de la Convention en ce qui concerne le traitement des Tsiganes chypriotes turcs qui demandaient l'asile au Royaume-Uni.

518. La Commission a enfin déclaré recevable le grief d'après lequel il y a violation de l'article 13 de la Convention en ce que les Chypriotes turcs ne disposent pas de recours pertinents ou suffisants quant à l'ingérence dans les droits susmentionnés garantis par la Convention.

519. Au stade de l'examen au fond, le gouvernement requérant a en outre allégué les violations suivantes de la Convention :

– le traitement dégradant non seulement de la communauté tsigane mais encore des Chypriotes turcs et des résidants turcs de Chypre-Nord qui se sont vus en conséquence contraints de demander asile au Royaume-Uni (article 3) ;

– l'arrestation et la détention irrégulières de personnes politiquement opposées à la politique turque dans le nord de Chypre (article 5) ;

– les soldats turcs échappent à la juridiction des « tribunaux civils » ; les personnes arrêtées ou les personnes qui intentent des actions civiles se voient dénier un procès équitable en ce qui concerne les doléances qu'elles formulent contre des membres de l'armée turque du continent, la « police » de l'administration locale subordonnée de la Turquie, les colons et leurs opposants politiques qui leur infligent des lésions corporelles (article 6) ;

– l'ingérence dans le droit au respect de la vie privée et familiale et du domicile (article 8) à cause

a) de la politique de colonisation massive du continent menée par la Turquie ;

b) des voies de fait et des menaces pour la vie des Chypriotes turcs opposés à la politique de la Turquie dans la zone occupée, telles que voies de fait commises par la « police », des personnes liées à la « police » et l'« ambassade » turque, ou tolérées par les fonctionnaires turcs, ces personnes fermant aussi les yeux sur les violences commises par des immigrants entrant en masse dans la zone occupée que la Turquie a encouragés à venir à Chypre. Certaines voies de fait et menaces sont d'une telle gravité qu'elles tombent sous le coup de l'article 3 de la Convention. Elles ont amené des personnes à demander l'asile au Royaume-Uni ;

c) du déni du regroupement familial avec des Chypriotes turcs qui ont quitté la zone occupée et se trouvent désormais dans la zone contrôlée par le gouvernement. Les personnes qui ont réussi par la suite à rentrer dans la zone occupée ont été agressées par la « police » ;

d) du refus de la possibilité d'être employé par l'« Etat » et de la tolérance de pratiques impliquant le refus d'emploi dans le secteur privé pour les personnes n'appuyant pas politiquement le régime ;

e) du refus d'autoriser dans la zone contrôlée par le gouvernement un traitement médical chez des spécialistes du voisinage ;

– l'ingérence dans la liberté d'expression (article 10) commise par les forces turques, la « police » ou des personnes agissant en liaison avec elles, qui font barrage à l'exercice des droits de recevoir ou de communiquer des informations ;

– l'ingérence dans les manifestations pacifiques de personnes opposées à la politique de la Turquie dans la zone occupée (article 11) ;

– la discrimination opérée dans la reconnaissance des droits garantis par la Convention aux membres de la communauté tsigane, en particulier en combinaison avec le démenti du droit des enfants tsiganes à l'instruction prévu par l'article 2 du Protocole n° 1, et la discrimination dirigée contre les Kurdes alevi résidant dans la zone occupée (article 14) ;

– l'ingérence dans le droit au respect des biens et l'aval donné aux atteintes aux biens des membres de partis politiques opposés au régime de M. Denktaş (article 1 du Protocole n° 1) ;

– le déni *de facto* du droit à l'instruction des enfants tsiganes en raison des fautes de conduite systématiques des enseignants, du fait qu'on ne dispense pas à ces enfants un enseignement répondant à leurs besoins et qu'on ne les met pas à l'abri de l'humiliation et d'un traitement dégradant (article 2 du Protocole n° 1).

520. La Commission doit rechercher en conséquence si elle peut prendre en compte les griefs mentionnés en dernier lieu dans le cadre de son examen au fond de la présente requête telle qu'elle l'a retenue.

(...)

D. Avis de la Commission

1. Objet de l'examen de la Commission

569. La Commission rappelle la requête n° 8007/77, qui avait porté devant elle des plaintes du gouvernement requérant contre des violations continues des droits des Chypriotes turcs résidant dans le nord de Chypre, dont des actes de violence systématique, des menaces, des insultes et autres actes d'oppression par les colons turcs venus de Turquie encouragés et stimulés par la présence des troupes turques, et contre le fait que l'on empêchât tout retour des Chypriotes turcs à leur foyer et à leurs biens dans la zone contrôlée par le gouvernement. Le gouvernement requérant prétendait que ces actes constituaient des violations permanentes des articles 3, 5, 6 et 8 de la Convention et 1 du Protocole n° 1 (rapport de 1983 précité, p. 104, § 163). Le gouvernement défendeur qualifiait ces allégations de propagande (*ibidem*, § 164). La Commission, eu égard aux éléments dont elle disposait, a estimé n'avoir pas suffisamment de preuves pour arriver à une quelconque conclusion sur ce grief (*ibidem*, p. 50, § 165).

570. Vu ce constat, le gouvernement requérant a produit ici de nombreux éléments sur la situation des Chypriotes turcs dans le nord de Chypre, éléments dont il prétend qu'ils suffisent à établir des violations de la Convention sur plusieurs points. La Commission note toutefois que les griefs initialement formulés par le gouvernement requérant dans la présente requête diffèrent quelque peu de ceux de la requête précédente et qu'ils ont été notablement étoffés au stade de l'examen au fond (paragraphe 519 ci-dessus). La Commission doit donc rechercher dans quelle mesure elle peut connaître des griefs du gouvernement requérant tels que celui-ci les a développés après la décision sur la recevabilité (paragraphe 520 ci-dessus).

571. La Commission renvoie à cet égard à ses considérations ci-dessus (paragraphe 216) : la décision sur la recevabilité d'une affaire portée devant elle définit les faits ou ensembles de faits sur lesquels elle statuera au stade de l'examen au fond, sans être liée par leur qualification juridique initiale. A partir de là, la Commission estime désormais, quant aux questions à l'examen ici, ne pouvoir connaître de la plupart des griefs supplémentaires exposés au paragraphe 519 ci-dessus puisqu'ils n'entraient aucunement dans le cadre de la décision sur la recevabilité. La Commission englobera

en revanche les aspects de la situation actuelle des Chypriotes turcs à Chypre-Nord qui peuvent passer pour entrer par essence dans la décision sur la recevabilité, comme le précise le mandat donné aux délégués de la Commission s'agissant de l'objet de leur enquête (paragraphe 521 du rapport). Autrement dit, la Commission examinera en particulier divers aspects du traitement qui aurait été réservé aux opposants politiques (mauvais traitements, détention effective, harcèlement et ingérence dans la vie familiale, restrictions à la liberté d'expression et de réunion) qui lui avaient d'abord été présentés simplement comme une question relevant de la «sûreté de la personne» garantie par l'article 5 de la Convention. La Commission envisagera ensuite les allégations relatives à la communauté tsigane chypriote turque (dont l'allégation de discrimination, déjà mentionnée au stade de la recevabilité) et enfin le surplus des griefs.

2. Griefs relatifs aux opposants politiques

572. Le gouvernement requérant se plaint de pratiques administratives dirigées contre les Chypriotes turcs qui sont des opposants politiques aux partis au pouvoir dans le nord de Chypre et dont l'application aurait fait subir aux intéressés des traitements inhumains ou dégradants (article 3 de la Convention), et comporterait une atteinte à leur sûreté (article 5), à leur vie privée et familiale (article 8) et à leur liberté d'expression (article 10) et de réunion (article 11). Sans présenter d'arguments spécifiques quant à ces doléances particulières, le gouvernement défendeur dément la substance de ces allégations.

573. La Commission a constaté des éléments dignes de foi indiquant qu'avant et pendant la période considérée certains activistes des partis politiques d'opposition se sont bien heurtés à des difficultés en raison de leurs activités politiques. Elle ne saurait exclure qu'il y ait eu dans tel ou tel cas des ingérences dans les droits des intéressés au titre des articles de la Convention susmentionnés. Toutefois, nombre de ces ingérences sont le fait de particuliers contre lesquels les intéressés n'ont pas introduit de recours devant les juridictions de la «RTCN». Dans les hypothèses où les intéressés ont – parfois à plusieurs reprises – été placés en détention pour de courtes périodes, ils n'ont pas usé de la procédure d'*habeas corpus*. De même, ils n'ont pas introduit de recours judiciaires contre les autres actes prétendument illicites de la police ou des autorités administratives de la «RTCN». La Commission considère qu'il n'est pas démontré au-delà de tout doute raisonnable que toutes ces voies de recours auraient été inopérantes et qu'il y aurait donc de la part des autorités de la «RTCN», dont les tribunaux, une pratique administrative consistant à refuser toute protection judiciaire aux personnes concernées. La Commission rappelle à ce propos qu'en cas de doute sur l'efficacité de tel ou tel recours, les victimes de violations alléguées de la Convention sont tenues d'en user.

Conclusion

574. La Commission conclut, par dix-neuf voix contre une, qu'il n'y a pas eu violation des droits des Chypriotes turcs opposants au régime du nord de Chypre au titre des articles 3, 5, 8, 10 et 11 de la Convention pour manquement à la protection de ces droits voulue par ces dispositions.

3. Griefs relatifs à la communauté tsigane chypriote turque

575. Selon le gouvernement requérant, les pratiques administratives en matière d'éducation, de logement, d'emploi, de transport et d'attribution de biens font subir à la communauté tsigane chypriote turque une grave discrimination. Le gouvernement requérant mentionne aussi des cas de détention arbitraire et de mauvais traitements et allègue des violations des articles 3 (traitements inhumains ou dégradants), 5 (sûreté de la personne), 8 (ingérence dans le domicile et la vie privée et familiale) et 14 de la Convention (discrimination dans la jouissance des droits garantis par la Convention) ainsi que des articles 1 (droit au respect des biens) et 2 du Protocole n° 1 (droit à l'éducation). Le gouvernement défendeur dément ces allégations.

576. La Commission dispose d'éléments attestant qu'en fait de nombreux membres de la communauté tsigane du nord de Chypre vivent dans de très mauvaises conditions et rencontrent des difficultés comme celles dont le gouvernement requérant fait état. La plupart des incidents que les témoins ont rapportés se sont toutefois produits avant la période considérée en l'espèce. Certes, au cours de cette période, certaines personnes ont traversé des épreuves: démolition des maisons d'une communauté tsigane près de Morphou sur ordre des autorités locales, refus des compagnies aériennes de transporter des Tsiganes n'ayant pas de visa, et humiliation des enfants tsiganes à l'école. Il semble toutefois que dans tous ces cas les voies de recours internes disponibles n'aient pas été épuisées. D'ailleurs, la Commission n'estime pas établi au-delà de tout doute raisonnable qu'il y ait une pratique délibérée des autorités du nord de Chypre d'opérer une discrimination contre les Tsiganes ou de leur refuser une protection contre la discrimination sociale. Elle relève au surplus qu'elle ne saurait connaître des griefs que le gouvernement requérant articule sur le terrain des articles 1 et 2 du Protocole n° 1 puisqu'ils ne furent introduits qu'au stade de l'examen au fond et n'entrent pas par essence dans le cadre de la décision sur la recevabilité.

Conclusion

577. La Commission conclut, par treize voix contre sept, qu'il n'y a pas eu violation des droits des membres de la communauté tsigane chypriote

turque au titre des articles 3, 5, 8 et 14 de la Convention pour manquement à la protection due à ces droits.

4. Le surplus des griefs

a) Article 6 de la Convention[1]

578. Sous l'angle de l'article 6 de la Convention, le gouvernement requérant prétend que les tribunaux militaires du nord de Chypre, compétents aussi pour connaître de certaines questions concernant les civils, ne sont pas indépendants et impartiaux comme le veut cette disposition. Le gouvernement défendeur ne formule aucun argument spécifique quant à ce grief. A propos du système judiciaire de la « RTCN », il a toutefois fourni certains renseignements sur l'organisation des tribunaux militaires dans le nord de Chypre (paragraphe 110 ci-dessus).

579. A la lumière de ces informations, la Commission note que les militaires désignés par le commandement des forces de l'ordre (première instance) ou le commandant des forces de l'ordre (seconde instance) siègent à ces juridictions aux côtés de magistrats civils. Vu la composition des juridictions en question la Commission éprouve des doutes quant à leur conformité aux exigences de l'article 6 (Cour eur. DH, *Incal c. Turquie*, arrêt du 9 juin 1998, *Recueil* 1998-IV, pp. 1571-1573, §§ 65-73). Toutefois, il n'est pas établi que pendant la période considérée en l'espèce une quelconque procédure, et en particulier une procédure dirigée contre des civils, se soit effectivement déroulée devant ces juridictions. La Commission estime dès lors non établi qu'il y ait eu au cours de cette période violation de l'article 6 à cet égard.

580. La Commission note qu'après la décision sur la recevabilité le gouvernement requérant a formulé des griefs supplémentaires sur le terrain de l'article 6. Il allègue en substance que l'on accorde une immunité excessive par rapport à la compétence civile des tribunaux de la « RTCN », les membres des forces armées turques ne pouvant être poursuivis que devant les juridictions militaires de la Turquie. Le gouvernement requérant prétend en outre que l'on s'emploie activement à dissuader les civils chypriotes turcs d'intenter une action civile contre les membres des forces armées et la police. La Commission ne peut toutefois connaître de ces griefs, qui sortent du champ d'application de la décision sur la recevabilité.

Conclusion

581. La Commission conclut, à l'unanimité, qu'au cours de la période considérée il n'y a pas eu violation de l'article 6 de la Convention en ce que

1. Pour le texte de l'article 6 de la Convention, se reporter au paragraphe 440 ci-dessus.

des civils chypriotes turcs résidant dans le nord de Chypre auraient été jugés par des juridictions militaires manquant d'indépendance et d'impartialité.

b) Article 10 de la Convention[1]

582. Le gouvernement requérant se plaint d'une violation de l'article 10 de la Convention en ce que l'interdiction de la diffusion de journaux en langue grecque porte atteinte au droit des Chypriotes turcs résidant dans le nord de Chypre de recevoir des informations. Le gouvernement défendeur dément l'existence de pareilles restrictions.

583. La Commission renvoie à sa conclusion ci-dessus (paragraphe 457) d'après laquelle l'existence de restrictions frappant la diffusion de journaux en langue grecque dans le nord de Chypre ne se trouve pas établie.

584. La Commission relève qu'au stade de l'examen au fond le gouvernement requérant a invoqué l'article 10 aussi sur d'autres points, en faisant en particulier état de l'effet de baillon qu'auraient sur la presse des mesures d'oppression prises contre des journalistes chypriotes turcs se livrant à des critiques, comme l'assassinat de M. Adali, dont les autorités seraient les instigatrices ou qu'elles auraient toléré. Ces griefs ne ressortissent toutefois pas à la décision sur la recevabilité. L'assassinat de M. Adali, en particulier, constitue un fait distinct postérieur à la date de cette décision et échappant dès lors à l'objet de celle-ci. Pour autant que le gouvernement requérant allègue aussi une ingérence dans la liberté d'expression des opposants politiques au régime de Chypre-Nord, la Commission renvoie à sa conclusion du paragraphe 573 ci-dessus.

Conclusion

585. La Commission conclut, à l'unanimité, qu'au cours de la période considérée il n'y a pas eu violation de l'article 10 de la Convention à raison de restrictions au droit des Chypriotes turcs résidant dans le nord de Chypre de recevoir des informations par la presse en langue grecque.

c) Article 11 de la Convention[2]

586. Le gouvernement requérant se plaint d'une violation de l'article 11 de la Convention à raison de restrictions imposées au droit des Chypriotes turcs habitant le nord de Chypre de s'associer librement avec des Chypriotes grecs et d'autres personnes de la zone contrôlée par le

1. Pour le texte de l'article 10 de la Convention, se reporter au paragraphe 456 ci-dessus.
2. Pour le texte de l'article 11 de la Convention, se reporter au paragraphe 462 ci-dessus.

gouvernement. Le gouvernement défendeur conteste la substance de cette allégation.

587. La Commission renvoie à ses observations ci-dessus concernant des griefs analogues relatifs aux Chypriotes grecs habitant le nord de Chypre (paragraphe 463). Aucun élément ne lui a été signalé qui atteste de ce que les autorités auraient, pendant la période considérée, empêché les tentatives faites par des Chypriotes turcs résidant dans le nord de Chypre pour constituer des associations avec des Chypriotes grecs se trouvant dans les parties nord ou sud de Chypre. La Commission considère dès lors que ce grief n'est pas établi.

588. La Commission note qu'au stade de l'examen au fond, le gouvernement requérant a aussi formulé des griefs concernant les restrictions au droit à la liberté de réunion des Chypriotes turcs habitant le nord de Chypre. Il a en particulier allégué que ceux-ci avaient été empêchés de prendre part à des manifestations bicommunautaires. La Commission note que les documents pertinents des Nations unies font effectivement état d'obstacles qui ont été mis à des réunions intercommunautaires à partir du second semestre de 1996. Il s'agit toutefois là de faits distincts postérieurs à la date de la décision sur la recevabilité en l'espèce et n'entrant donc pas dans son objet. La Commission ne peut en conséquence connaître de ce grief.

Conclusion

589. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation de l'article 11 de la Convention à raison d'une ingérence dans le droit à la liberté d'association des Chypriotes turcs résidant dans le nord de Chypre.

d) Article 1 du Protocole n° 1[1]

590. Le gouvernement requérant dénonce une violation continue de l'article 1 du Protocole n° 1, les Chypriotes turcs habitant le nord de Chypre ne pouvant retourner sur leur propriété dans la partie méridionale de Chypre. Il s'en prend aussi à une atteinte permanente aux droits des Chypriotes turcs au respect de leurs biens en raison d'actes criminels que les autorités tolèrent selon lui. Le gouvernement défendeur dément ces allégations; il affirme en particulier qu'il est irréaliste de supposer que tel ou tel Chypriote turc habitant le nord de l'île souhaite véritablement retourner dans la partie sud et que les autorités de l'Etat requérant l'autoriseraient à y réclamer la restitution des biens qui lui appartiennent. Il soutient aussi que les voies de recours

1. Pour le texte de l'article 1 du Protocole n° 1, se reporter au paragraphe 310 ci-dessus.

effectives de la «RTCN» s'offrent de manière générale aux Chypriotes turcs.

591. La question de savoir si l'Etat défendeur commet une ingérence dans les droits de propriété des Chypriotes turcs dans le sud de Chypre n'est pas le pendant de la question analogue qui a été soulevée à l'égard des Chypriotes grecs déplacés (paragraphes 311-322 ci-dessus). Les mesures que les autorités de l'Etat requérant ont prises quant à l'administration des biens des Chypriotes turcs dans le Sud (dont le gouvernement défendeur prétend qu'elles sont analogues à celles appliquées aux biens chypriotes grecs dans le Nord) ne se trouvent pas en cause ici. La Commission relève toutefois qu'en raison du système d'attribution des terres appliqué dans le nord de Chypre, les Chypriotes turcs résidant dans cette région ont en général transféré leurs droits patrimoniaux dans le sud de Chypre à la «RTCN» contre des biens qu'ils se sont vu attribuer dans le Nord. Le gouvernement requérant affirme qu'ils l'ont fait sous la contrainte et qu'aux fins de la Convention ils doivent donc toujours être considérés comme les propriétaires légaux des biens qu'ils ont laissés derrière eux dans le sud de Chypre. Si tel était le cas, les mesures prises par les autorités chypriotes du Nord n'auraient pas valablement privé les propriétaires chypriotes turcs de la maîtrise de leurs biens se trouvant dans le Sud et comme le gouvernement requérant ne reconnaît pas la validité juridique de leurs transactions avec les autorités du Nord, ils pourraient effectivement exercer aussi cette maîtrise s'ils le souhaitaient. Le seul obstacle dont la responsabilité puisse être imputée à cet égard aux autorités de l'Etat défendeur est l'entrave à l'accès des intéressés aux biens se trouvant dans le sud de Chypre, pour autant que la liberté des Chypriotes turcs de se rendre dans le Sud soit restreinte. A supposer que l'impossibilité d'accéder à sa propriété par suite des restrictions à la liberté de mouvement puisse faire relever lesdites restrictions de l'article 1 du Protocole n° 1 (arrêt *Loizidou* (fond) précité), la Commission note que quoi qu'il en soit on ne lui a signalé aucun cas où, pendant la période considérée ici, des Chypriotes turcs résidant dans le nord de Chypre aient tenté d'accéder à leurs biens dans le sud de Chypre et en aient été empêchés. La Commission estime dès lors que le grief ci-dessus ne se trouve pas établi.

592. Quant à l'autre grief relatif aux atteintes illégales commises par des particuliers aux biens de Chypriotes turcs habitant le nord de Chypre, la Commission relève que s'il n'a pas été mentionné expressément dans la décision sur la recevabilité, il a déjà été présenté au stade de la recevabilité de la procédure. Elle estime toutefois que des voies de recours suffisantes existent dans le nord de Chypre à cet égard. Quoi qu'il en soit, elle n'estime pas établi qu'il y ait de la part des autorités une pratique administrative consistant à tolérer systématiquement de telles atteintes.

Conclusion

593. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation de l'article 1 du Protocole n° 1 en ce que l'on n'aurait pas respecté les biens des Chypriotes turcs résidant dans le nord de Chypre.

e) Article 13 de la Convention[1]

594. Le gouvernement requérant dénonce une violation de l'article 13 de la Convention en ce que les Chypriotes turcs résidant dans le nord de Chypre ne disposeraient pas de voies de recours pertinentes ou suffisantes s'agissant des atteintes à leurs droits au titre de la Convention mentionnés ci-dessus. Le gouvernement défendeur affirme que des voies de recours effectives s'offrent de manière générale aux Chypriotes turcs de Chypre-Nord.

595. La Commission rappelle les informations que le gouvernement défendeur lui a fournies sur le système judiciaire de la «RTCN» (paragraphes 106-111 ci-dessus). Elle estime que de manière générale les recours qu'offre ce système judiciaire semblent suffire pour fournir un redressement à toute violation alléguée des droits que confère la Convention. En particulier, lorsqu'elle a examiné les divers griefs que la présente requête soulève à propos des droits des Chypriotes turcs, elle a jugé non établie l'allégation de pratiques administratives consistant à refuser à certains groupes de personnes une protection judiciaire. Par ailleurs, les considérations spéciales qui ont amené la Commission à conclure à l'absence de voies de recours effectives dans le nord de Chypre pour certains griefs des Chypriotes grecs (paragraphe 505 ci-dessus) ne valent pas pour les Chypriotes turcs. Il y a donc lieu d'écarter ce grief.

Conclusion

596. La Commission conclut, par dix-neuf voix contre une, que pendant la période considérée il n'y a pas eu violation de l'article 13 de la Convention en ce que les Chypriotes turcs résidant dans le nord de Chypre ne disposeraient pas de voies de recours effectives.

1. Pour le texte de l'article 13 de la Convention, se reporter au paragraphe 325 ci-dessus.

Récapitulation des conclusions

A. Considérations générales et liminaires

597. La Commission conclut, à l'unanimité, que le gouvernement requérant avait bien qualité pour présenter au titre de l'ancien article 24 de la Convention une requête dirigée contre l'Etat défendeur (paragraphe 73).

598. La Commission conclut, à l'unanimité, que le gouvernement requérant a un intérêt juridique légitime à obtenir qu'elle examine la présente requête au fond (paragraphe 87).

599. La Commission conclut, à l'unanimité, que les faits dénoncés dans la présente requête relèvent de la «juridiction» de la Turquie au sens de l'article 1 de la Convention et, dès lors, engagent la responsabilité de l'Etat défendeur au regard de la Convention (paragraphe 103).

600. La Commission conclut, par dix-neuf voix contre une, qu'aux fins de l'ancien article 26 de la Convention, les recours disponibles dans le nord de Chypre doivent passer pour des «recours internes» de l'Etat défendeur et qu'elle procédera à l'évaluation de leur caractère effectif dans les circonstances spécifiques où la question se pose (paragraphe 128).

601. La Commission conclut, à l'unanimité, qu'aucune autre question ne se pose quant au respect de la règle des six mois prévue à l'ancien article 26 de la Convention (paragraphe 131).

B. Chypriotes grecs portés disparus

602. La Commission conclut, à l'unanimité, qu'il n'y a pas eu violation de l'article 4 de la Convention (paragraphe 196).

603. La Commission conclut, à l'unanimité, qu'il n'y a pas eu pendant la période considérée violation de l'article 5 de la Convention du fait de la détention effective de Chypriotes grecs portés disparus (paragraphe 212).

604. La Commission conclut, à l'unanimité, qu'il y a eu pendant la période considérée une violation continue de l'article 5 de la Convention du fait que les autorités de l'Etat défendeur n'ont pas mené d'enquête efficace sur le sort des Chypriotes grecs portés disparus ayant fait l'objet d'une plainte plausible selon laquelle ils se trouvaient détenus sous l'autorité de la Turquie au moment de leur disparition (paragraphe 213).

605. La Commission conclut, à l'unanimité, qu'elle a compétence pour examiner la question des Chypriotes grecs portés disparus sous l'angle de l'article 2 de la Convention, que cette disposition est applicable et qu'elle a été violée du fait que les autorités de l'Etat défendeur n'ont pas mené d'enquête effective (paragraphe 225).

606. La Commission conclut, à l'unanimité, qu'il y a eu violation continue de l'article 3 de la Convention dans le chef des familles des personnes portées disparues (paragraphe 236).

607. La Commission conclut, à l'unanimité, qu'il n'y a pas lieu de rechercher s'il y a eu violation des articles 8 et/ou 10 de la Convention dans le chef des familles des personnes portées disparues (paragraphe 237).

C. Domicile et biens des personnes déplacées

608. La Commission conclut, à l'unanimité, qu'il y a eu au cours de la période considérée une violation continue de l'article 8 de la Convention à raison du refus d'autoriser les Chypriotes grecs déplacés à retrouver leur domicile dans le nord de Chypre (paragraphe 272).

609. La Commission conclut, à l'unanimité, qu'il n'y a pas lieu de rechercher s'il y a eu une violation supplémentaire de l'article 8 de la Convention à raison des modifications apportées à l'environnement démographique et culturel des domiciles des personnes déplacées dans le nord de Chypre (paragraphe 273).

610. La Commission conclut, à l'unanimité, qu'il y a eu au cours de la période considérée une violation continue de l'article 1 du Protocole n° 1 du fait que les propriétaires chypriotes grecs de biens dans le nord de Chypre sont privés de l'accès, de la maîtrise, de l'usage et de la jouissance de leurs biens et de toute indemnisation pour l'atteinte à leurs droits de propriété (paragraphe 322).

611. La Commission conclut, à l'unanimité, qu'il y a eu violation de l'article 13 de la Convention du fait que les Chypriotes grecs ne résidant pas dans le nord de Chypre n'ont bénéficié d'aucun recours pour contester les ingérences dans les droits que leur garantissent l'article 8 de la Convention et l'article 1 du Protocole n° 1 (paragraphe 328).

612. La Commission conclut, par dix-neuf voix contre une, qu'il y a eu violation de l'article 14 de la Convention combiné avec l'article 8 de la Convention et avec l'article 1 du Protocole n° 1 à raison des discriminations qu'ont subies les Chypriotes grecs ne résidant pas dans le nord de Chypre pour ce qui est de leur droit au respect de leur domicile et de leurs biens (paragraphe 336).

613. La Commission conclut, à l'unanimité, qu'il n'y a pas lieu de rechercher si pareille discrimination constitue aussi un traitement inhumain ou dégradant au sens de l'article 3 de la Convention (paragraphe 337).

D. Conditions de vie des Chypriotes grecs dans le nord de Chypre

614. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation de l'article 2 de la Convention du fait que les Chypriotes grecs et les maronites résidant dans le nord de Chypre se seraient vus privés de l'accès aux services médicaux (paragraphe 435).

615. La Commission conclut, à l'unanimité, que durant la période considérée il n'y a pas eu violation de l'article 5 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre (paragraphe 438).

616. La Commission conclut, par dix-sept voix contre trois, que pendant la période considérée il n'y a pas eu violation de l'article 6 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre (paragraphe 448).

617. La Commission conclut, à l'unanimité, que pendant la période considérée il y a eu violation de l'article 9 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre (paragraphe 454).

618. La Commission conclut, à l'unanimité, qu'au cours de la période considérée il y a eu violation de l'article 10 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre en ce que les manuels destinés à leurs écoles primaires ont fait l'objet de mesures de censure excessives (paragraphe 460).

619. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation du droit à la liberté d'association prévu à l'article 11 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre (paragraphe 466).

620. La Commission conclut, à l'unanimité, qu'au cours de la période considérée il y a eu une violation continue de l'article 1 du Protocole n° 1 dans le chef des Chypriotes grecs résidant dans le nord de Chypre en ce que leur droit au respect de leurs biens n'a pas été garanti dans le cas où ils quittent définitivement ce territoire et en ce que, s'ils viennent à décéder, les droits successoraux des personnes résidant dans le Sud ne sont pas reconnus (paragraphe 472).

621. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation de l'article 1 du Protocole n° 1 en ce que les biens des Chypriotes grecs résidant dans le nord de Chypre ne seraient pas protégés contre les ingérences de particuliers (paragraphe 473).

622. La Commission conclut, à l'unanimité, que pendant la période considérée il y a eu violation de l'article 2 du Protocole n° 1 envers les Chypriotes grecs résidant dans le nord de Chypre faute d'établissements d'enseignement secondaire appropriés (paragraphe 479).

623. La Commission conclut, à l'unanimité, que pendant la période considérée il y a eu violation du droit des Chypriotes grecs résidant dans le nord de Chypre au respect de leur vie privée et familiale et au respect de leur domicile, garanti par l'article 8 de la Convention (paragraphe 490).

624. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation du droit des Chypriotes grecs résidant dans le nord de Chypre au respect de leur correspondance, garanti par l'article 8 de la Convention (paragraphe 491).

625. La Commission conclut, à l'unanimité, que pendant la période considérée il y a eu violation de l'article 3 de la Convention en ce que les

Chypriotes grecs résidant dans la région du Karpas, dans le nord de Chypre, ont fait l'objet d'une discrimination s'analysant en un traitement dégradant (paragraphe 499).

626. La Commission conclut, à l'unanimité, qu'il ne s'impose pas d'examiner si au cours de la période considérée il y a eu violation de l'article 14 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre (paragraphe 502).

627. La Commission conclut, par dix-huit voix contre deux, qu'il n'y a pas eu violation de l'article 13 de la Convention en ce qui concerne les ingérences commises par des particuliers dans les droits des Chypriotes grecs résidant dans le nord de Chypre au titre des articles 8 de la Convention et 1 du Protocole n° 1 (paragraphe 506).

628. La Commission conclut, à l'unanimité, qu'il y a eu violation de l'article 13 de la Convention en ce qui concerne les ingérences commises par les autorités dans les droits des Chypriotes grecs résidant dans le nord de Chypre au titre des articles 3, 8, 9 et 10 de la Convention et 1 et 2 du Protocole n° 1 (paragraphe 507).

E. Droit des Chypriotes grecs déplacés à tenir des élections libres

629. La Commission conclut, à l'unanimité, qu'il n'y a pas eu violation du droit des Chypriotes grecs déplacés à organiser des élections libres tel que le garantit l'article 3 du Protocole n° 1 (paragraphe 515).

F. Griefs relatifs aux Chypriotes turcs

630. La Commission conclut, par dix-neuf voix contre une, qu'il n'y a pas eu violation des droits des Chypriotes turcs opposants au régime du nord de Chypre au titre des articles 3, 5, 8, 10 et 11 de la Convention pour manquement à la protection de ces droits voulue par ces dispositions (paragraphe 574).

631. La Commission conclut, par treize voix contre sept, qu'il n'y a pas eu violation des droits des membres de la communauté tsigane chypriote turque au titre des articles 3, 5, 8 et 14 de la Convention pour manquement à la protection due à ces droits (paragraphe 577).

632. La Commission conclut, à l'unanimité, qu'au cours de la période considérée il n'y a pas eu violation de l'article 6 de la Convention en ce que des civils chypriotes turcs résidant dans le nord de Chypre auraient été jugés par des juridictions militaires manquant d'indépendance et d'impartialité (paragraphe 581).

633. La Commission conclut, à l'unanimité, qu'au cours de la période considérée il n'y a pas eu violation de l'article 10 de la Convention à raison de restrictions au droit des Chypriotes turcs résidant dans le nord de

Chypre de recevoir des informations par la presse en langue grecque (paragraphe 585).

634. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation de l'article 11 de la Convention à raison d'une ingérence dans le droit à la liberté d'association des Chypriotes turcs résidant dans le nord de Chypre (paragraphe 589).

635. La Commission conclut, à l'unanimité, que pendant la période considérée il n'y a pas eu violation de l'article 1 du Protocole n° 1 en ce que l'on n'aurait pas respecté les biens des Chypriotes turcs résidant dans le nord de Chypre (paragraphe 593).

636. La Commission conclut, par dix-neuf voix contre une, que pendant la période considérée il n'y a pas eu violation de l'article 13 de la Convention en ce que les Chypriotes turcs résidant dans le nord de Chypre ne disposeraient pas de voies de recours effectives (paragraphe 596).

M.-T. SCHOEPFER
Secrétaire de la Commission

S. TRECHSEL
Président de la Commission

OPINION PARTIELLEMENT DISSIDENTE DE M. TRECHSEL SUR L'ARTICLE 14 DE LA CONVENTION

(Traduction)

Contrairement à la majorité de la Commission, j'estime que l'article 14 ne s'applique nullement dans une affaire où il y a déjà eu un constat de violation de la Convention. De fait, la Commission est appelée à choisir entre deux possibilités: soit il y a eu violation d'une garantie donnée de la Convention, soit il n'y en a pas eu. Si l'on constate la violation de l'une des garanties énoncées par les dispositions normatives de la Convention ou de ses Protocoles, l'on ne peut constater de surcroît que la violation se trouve aggravée par un élément discriminatoire.

Je concède qu'une discrimination peut en soi porter un tort qui s'analyse en une violation d'un droit de l'homme. Comme la Commission l'a dit en l'occurrence, le type de comportement des autorités chypriotes turques à Chypre a, du fait d'une discrimination, enfreint le droit que l'article 3 de la Convention confère à l'ensemble de la communauté chypriote grecque dans le nord du pays. Toutefois, l'article 14 n'interdit la discrimination que dans «la jouissance des droits et libertés énoncés» dans la Convention. Il faut entendre par là que c'est seulement si une distinction déraisonnable est opérée entre des individus jouissant de part et d'autre, bien qu'à des degrés divers, des droits et libertés énoncés dans la Convention, qu'il peut y avoir discrimination. Ce pourrait être le cas par exemple en cas d'ingérence différenciatrice dans l'un des droits énoncés aux articles 8 à 11 dans des conditions relevant du paragraphe 2 de ces articles. Dès lors qu'il y a violation de la Convention, la notion même de discrimination/distinction raisonnable perd toutefois son sens.

OPINION PARTIELLEMENT DISSIDENTE DE M. BUSUTTIL

(Traduction)

Je m'écarte de la conclusion à laquelle la majorité parvient au paragraphe 448 du rapport et d'après laquelle il n'y a pas eu violation de l'article 6 de la Convention dans le chef des Chypriotes grecs résidant dans le nord de Chypre.

L'article 6 exige que les tribunaux soient «établis par la loi» pour satisfaire aux exigences de la Convention. La question déterminante ici est de savoir si les juridictions du nord de Chypre sont des tribunaux «établis par la loi», compte tenu du statut juridique international précaire de la «RTCN».

A mon sens, dans l'expression «établi par la loi», loi ne peut s'entendre simplement du droit interne, notamment lorsqu'il est question d'une affaire interétatique comme celle-ci. La légalité du système judiciaire en cause doit nécessairement se concilier avec les principes du droit international général comme, en l'occurrence, avec les obligations spécifiques que la Turquie a souscrites en vertu d'un traité à l'époque de la création en 1960 d'un Etat de Chypre indépendant.

Le terme «loi» figurant à l'article 6 doit s'interpréter à la lumière de l'affirmation hardie des Etats contractants telle qu'elle figure dans le préambule de la Convention: la prééminence du droit est partie intégrante de leur patrimoine commun. S'il en est bien ainsi, il me paraît impossible de distinguer entre la prééminence du droit, notion interne, et prééminence du droit, notion internationale commune dans un cadre européen. Les deux se fondent immanquablement dans une notion indivisible.

Au paragraphe 444, la majorité s'appuie sur la «Constitution de la RTCN»; elle y voit le droit établi au nord de Chypre, mais, dans son arrêt sur le fond dans l'affaire *Loizidou c. Turquie* (arrêt du 18 décembre 1996, *Recueil des arrêts et décisions* 1996-VI), la Cour européenne a dit que «la communauté internationale estime que la République de Chypre est l'unique gouvernement légitime de l'île et a toujours refusé d'admettre la légitimité de la «RTCN» en tant qu'Etat au sens du droit international» (pp. 2235-2236, § 56).

Pour moi cela peut signifier une seule chose: les systèmes légal et judiciaire établis par la «RTCN» et actuellement en vigueur dans le nord de Chypre sont l'émanation d'un régime illégal incapable d'engendrer la légalité. Tout en tenant compte de l'opinion exprimée par la Cour internationale de justice dans son avis consultatif dans l'affaire de la Namibie, à savoir que le droit international reconnaît la légitimité de

certains arrangements et transactions juridiques, par exemple pour l'enregistrement des naissances, décès et mariages dont on ne pourrait ignorer les effets qu'au détriment des habitants du territoire concerné, l'on peut sérieusement douter que cette exception limitée puisse s'appliquer de manière générale à l'instauration sur un tel territoire d'un pouvoir judiciaire appelé à fonctionner dans un environnement «légal», lequel est lui-même préjudiciable aux habitants en ce que – la majorité l'a déjà constaté dans le présent rapport – plusieurs droits fondamentaux de ceux-ci ont été violés.

OPINION PARTIELLEMENT DISSIDENTE DE M. ROZAKIS

(Traduction)

Je souscris à la plupart des constats et conclusions de la Commission en ce qui concerne les griefs du gouvernement requérant, mais je ne puis marquer mon accord avec cinq des conclusions, à savoir celles selon lesquelles a) pendant la période considérée, il n'y a pas eu violation de l'article 6 de la Convention envers les Chypriotes grecs résidant dans le nord de Chypre; b) il n'y a pas eu violation de l'article 13 s'agissant de l'ingérence de particuliers dans les droits de Chypriotes grecs résidant dans le nord de Chypre au titre des articles 8 de la Convention et 1 du Protocole n° 1; c) il n'y a pas eu violation des droits des Chypriotes turcs opposants au régime de Chypre-Nord au titre des articles 3, 5, 8, 10 et 11 de la Convention faute de protection de ces droits; d) que l'absence de recours effectifs pour les Chypriotes turcs résidant dans le nord de Chypre n'a pas emporté violation de l'article 13 de la Convention; et e) enfin, qu'il n'y a pas eu violation des droits de la communauté tsigane chypriote turque au titre de l'article 8 de la Convention faute de protection de ces droits. Pour ce dernier grief, je me suis rallié à l'opinion dissidente de M^me^ Liddy, dont je partage pleinement le raisonnement.

Mon dissentiment quant aux quatre premières conclusions auxquelles la Commission est parvenue et que je mentionne plus haut a pour point de départ le fait que je ne puisse admettre que les moyens de recours offerts par la Turquie soient considérés comme effectifs pour les Chypriotes grecs résidant dans la partie nord de Chypre ou les Chypriotes turcs résidant dans la même région et s'opposant au même régime; ces recours sont inopérants parce que pour ces deux catégories de la population locale, ils manquent d'indépendance et d'impartialité.

J'incline pour un constat de violation en ce qui concerne les griefs précités. Je m'explique. D'abord, je suis d'accord avec la Commission (qui a sur ce point suivi la jurisprudence de la Cour européenne des Droits de l'Homme, amorcée par l'affaire *Loizidou c. Turquie*: la Turquie est responsable sur le terrain de la Convention pour tous les faits dénoncés dans cette affaire interétatique, puisqu'ils relèvent tous de sa juridiction au sens de l'article 1 de la Convention. Je partage aussi son constat d'après lequel «la Convention est un instrument visant à protéger les droits de l'homme de manière concrète et effective (...)» et qu'elle «se doit en principe de prendre en compte, aux fins de l'ancien article 26, tout recours effectif que l'administration locale subordonnée de la Turquie en place dans le nord de Chypre tient à la disposition des victimes de violations alléguées de la Convention» (paragraphe 125 du rapport). L'interprétation que je donne à cette phrase – et c'est la raison

qui m'a conduit à voter pour le constat en question – est que dans l'hypothèse d'une occupation militaire qui dure depuis fort longtemps, la puissance occupante a l'obligation soit de permettre aux institutions existantes qui sont au service de la population du territoire occupé de fonctionner sans entrave soit de prendre des mesures, lorsque le fonctionnement normal de ces organes ne peut être assuré en pratique, afin d'établir des institutions analogues qui serviront les intérêts des gens habitant cette région. Que l'Etat occupant opte pour la première ou la seconde solution – en fonction des circonstances – il demeure, au regard du droit international et de la Convention européenne des Droits de l'Homme, responsable des actes ou omissions de ces autorités, cela va sans dire. A quoi il faut ajouter que le fait qu'un Etat occupant le territoire d'un autre Etat établisse une administration locale qui y exercera le pouvoir ne saurait en aucun cas légitimer, au regard du droit international, l'acte consistant à s'emparer par la force du territoire d'un autre Etat.

J'admets dès lors que les autorités du nord de Chypre (que la Commission appelle «l'administration locale subordonnée de la Turquie») sont, par le jeu d'une fiction juridique, les autorités turques. On ne peut faire aucune distinction entre les autorités turques œuvrant sur le territoire de la Turquie continentale et celles œuvrant sur le territoire occupé de la République de Chypre. C'est pourquoi les moyens de recours prévus par cette dernière peuvent passer, aux fins des articles 6 et 13 de la Convention, pour les «voies de recours internes» de la Turquie.

Pourtant, le fait que la Commission ait admis que les moyens de recours qu'offrent les autorités locales subordonnées dans le nord de Chypre sont des voies de recours internes turques ne les rend pas automatiquement effectives ou – en conséquence – n'obligent pas à les épuiser avant d'introduire une requête à Strasbourg. Pour qu'une voie de recours puisse être qualifiée d'effective, il faut que plusieurs conditions préalables soient remplies. Parmi elles, celle que le recours soit établi par la loi; une autre, sur laquelle je fonde mon dissentiment, est la condition d'indépendance et d'impartialité objective – surtout de la part du pouvoir judiciaire, dans les circonstances de l'espèce.

Lorsqu'elle examine (aux paragraphes 439 et suivants du rapport) le grief du gouvernement requérant au titre de l'article 6 de la Convention, la disposition qui pose les plus grandes exigences en matière de recours, la Commission recherche à la fois si les tribunaux de la partie nord de Chypre, lorsqu'ils ont à connaître des droits de caractère civil de Chypriotes grecs, sont «établis par la loi» et peuvent passer pour indépendants et impartiaux. La Commission a estimé qu'il était satisfait aux exigences de l'article 6 sur l'un et l'autre points.

J'ai des doutes quant à la question de savoir si, dans les circonstances de la présente affaire, nous pouvons admettre que se trouve remplie la

condition de l'article 6 voulant qu'un tribunal soit établi par la loi, et je partage ces doutes avec mes autres collègues dissidents; je considère cependant – bien que la Commission dévalorise cette question – que le principal problème à trancher ici est de savoir si l'on peut considérer les tribunaux locaux comme indépendants et objectivement impartiaux.

En vérité, si on lit le rapport de la Commission dans son intégralité, l'on se rend compte que la Commission conclut elle-même, à partir d'un raisonnement puissant, qu'il y a eu des violations des droits prévus par la Convention étroitement liées à la question essentielle de l'indépendance et de l'impartialité des tribunaux. La Commission conclut par exemple qu'il y a eu des violations de l'article 1 du Protocole n° 1 du fait que les propriétaires chypriotes grecs de biens dans le nord de Chypre sont privés de l'accès, de la maîtrise, de l'usage et de la jouissance de leurs biens (paragraphe 322); de l'article 13 du fait que les Chypriotes grecs ne résidant pas dans le nord de Chypre n'ont bénéficié d'aucun recours pour contester les ingérences dans les droits que leur garantissent l'article 8 de la Convention et l'article 1 du Protocole n° 1 (paragraphe 328); de l'article 14 de la Convention combiné avec l'article 8 de la Convention et de l'article 1 du Protocole n° 1 à raison des discriminations qu'ont subies les Chypriotes grecs ne résidant pas dans le nord de Chypre pour ce qui est de leur droit au respect de leur domicile et de leurs biens (paragraphe 336); de l'article 9 à l'égard des Chypriotes grecs résidant dans le nord de Chypre (paragraphe 454); de l'article 10 à l'égard des Chypriotes grecs résidant dans le nord de Chypre en ce que les manuels scolaires destinés à leurs écoles primaires ont fait l'objet de mesures de censure excessives (paragraphe 460); de l'article 1 du Protocole n° 1 envers les Chypriotes grecs résidant dans le nord de Chypre en ce que leur droit au respect de leurs biens n'est pas garanti s'ils quittent définitivement ce territoire et du fait qu'en cas de décès les droits successoraux de personnes résidant dans le sud de Chypre ne sont pas reconnus (paragraphe 472); de l'article 8 à l'égard du même groupe s'agissant du respect de la vie privée et du domicile (paragraphe 490); et, enfin, de l'article 3 en ce que les Chypriotes grecs résidant dans le nord de Chypre ont subi des discriminations s'analysant en un traitement dégradant (paragraphe 499).

Le raisonnement qui conduit la Commission à constater des violations est particulièrement développé, pour chaque grief, dans les différents paragraphes que je viens de mentionner. Cependant, les passages consacrés à la violation de l'article 3 résument avec une admirable précision les motifs à la base de ce constat:

> «497. En ce qui concerne les faits de la présente cause, la Commission a constaté ci-dessus que pendant la période considérée, il y avait eu une ingérence dans les droits des Chypriotes grecs résidant dans le nord de Chypre au titre de plusieurs dispositions de la Convention. Elle a constaté en particulier (paragraphe 489 ci-dessus) que les conditions

générales de vie des Chypriotes grecs du nord de Chypre sont telles que le droit de ceux-ci au respect de leur vie privée et familiale et de leur domicile subit une ingérence aggravée. La Commission note que, aussi pendant la période considérée en l'espèce, toutes ces ingérences ont été commises exclusivement à l'encontre des Chypriotes grecs résidant dans le nord de Chypre et ne leur ont été infligées que pour la simple raison qu'ils appartenaient à cette catégorie de personnes. Dans ces conditions, le traitement dénoncé était manifestement discriminatoire à leur encontre et se fondait sur leurs «origine ethnique, race et religion». Si l'élément qui prédomine ici est la discrimination ethnique, la Commission considère que le principe énoncé dans l'affaire des *Asiatiques d'Afrique orientale* à propos de la discrimination raciale fondée sur la couleur s'applique de la même manière.

498. (...) En l'occurrence, la Commission note que les conditions de vie générales des Chypriotes grecs du nord de Chypre leur ont été imposées en application d'une politique reconnue tendant à la séparation des groupes ethniques sur l'île dans le cadre d'un accord bicommunautaire et bizonal. Cette politique a eu pour résultat de confiner la population chypriote grecque résidant encore dans le nord de Chypre (autre que les maronites) dans un petit secteur de la péninsule du Karpas. Cette population diminue régulièrement par suite de mesures spécifiques qui l'empêchent de se renouveler. Qui plus est, ses biens sont confisqués si les propriétaires décèdent ou quittent la région. Comme les auteurs de l'étude humanitaire des Nations unies (paragraphe 387 du rapport) l'ont noté, les restrictions frappant ces personnes tendent à ce que «inexorablement au fil du temps, ces communautés cessent d'exister dans la partie septentrionale de l'île». La Commission estime qu'en dépit d'améliorations récentes sur certains points, les difficultés auxquelles les Chypriotes grecs résidant dans la région du Karpas, dans le nord de Chypre, ont été confrontés au cours de la période considérée affectaient encore leur vie quotidienne au point que l'on est fondé à conclure que le traitement discriminatoire dénoncé atteignait un degré de gravité tel qu'il constitue une offense à la dignité humaine des intéressés.»

Je me demande si, lorsqu'elle constate des violations pour tous les motifs que je viens de mentionner et qui se trouvent récapitulés dans son raisonnement concernant la violation de l'article 3, la Commission a une position qui se concilie aisément avec le point de vue selon lequel, en dépit de ces constats, les tribunaux du nord de Chypre sont indépendants et objectivement impartiaux lorsqu'ils ont à connaître des affaires de Chypriotes grecs. En d'autres termes se pose la question de savoir à quel point les Chypriotes grecs peuvent croire que, dans l'environnement hostile où ils vivent – soumis à une politique tendant à une séparation nationale complète –, la seule autorité qui échappe à cette politique bien orchestrée est l'autorité judiciaire. L'autorité législative opère des discriminations, l'autorité exécutive opère des discriminations; et pourtant l'autorité judiciaire, composée de personnes émanant des mêmes organes nationaux, demeure le seul garant de la protection d'une petite minorité menacée d'extinction. Je pense qu'une telle thèse est irréaliste et ne concorde nullement avec les autres constats de la Commission. C'est pourquoi j'estime que les tribunaux du nord de Chypre ne peuvent passer pour indépendants des autres autorités de

cette région et qu'ils manquent d'impartialité objective en ce qui concerne les Chypriotes grecs – conviction qu'après tout les individus concernés semblent partager: ils ne font pas vraiment usage des recours que leur offrent ces tribunaux.

Pour les mêmes motifs, je crois que l'article 13 a été violé à raison des ingérences de particuliers dans les droits que les articles 8 de la Convention et 1 du Protocole n° 1 garantissent aux Chypriotes grecs résidant dans le nord de Chypre.

Quant aux opposants chypriotes turcs au régime, j'ai les mêmes doutes à propos de la protection de leurs droits par l'administration locale, compte tenu de la situation politique particulière qui règne dans le nord de Chypre et le désir du régime actuel d'atteindre son but, qui est d'instaurer une séparation ethnique dans la région. Il semble que les idées contraires ne sont pas bien accueillies par le régime. Partant, comme les constats par la Commission de l'absence de violation des articles normatifs invoqués reposent essentiellement sur l'argument d'après lequel les opposants au régime auraient pu faire connaître leurs doléances par le canal des recours qui s'offraient à eux dans le nord de Chypre, je me vois aussi contraint de marquer mon dissentiment. Il en va de même, bien entendu, pour l'article 13 s'agissant des Chypriotes turcs qui s'opposent au régime.

OPINION PARTIELLEMENT DISSIDENTE DE M^me^ LIDDY, À LAQUELLE DÉCLARENT SE RALLIER M. TRECHSEL, M^me^ THUNE, M. ROZAKIS, M. ŠVÁBY, M. RESS ET M. PERENIČ

(Traduction)

Quant à l'article 8 (paragraphe 577 du rapport)

Le gouvernement requérant dénonce à ce titre notamment une ingérence dans le domicile et la vie privée et familiale de la communauté tsigane chypriote turque. Il fait état de la démolition des habitations d'une communauté tsigane près de Morphou sur ordre des autorités locales. Des témoins ont attesté que cette démolition avait eu lieu sans avertissement préalable prétendument pour des raisons d'hygiène. Les cabanes similaires et voisines d'autres habitants du village n'ont pas été détruites. Les Tsiganes ont fini par vivre à la belle étoile.

Le gouvernement défendeur ne signale aucune voie de recours qui aurait pu contraindre les autorités à fournir aux Tsiganes un logement de substitution approprié avant de démolir leurs cabanes ou qui, après l'incident, aurait pu leur permettre d'obtenir rapidement un autre logement dans des conditions réalistes et effectives.

Dans l'affaire *Buckley c. Royaume-Uni* (arrêt du 25 septembre 1996, *Recueil des arrêts et décisions* 1996-IV, pp. 1292-1295, §§ 76, 77, 80, 81, 83 et 84), la Cour a pris en compte plusieurs facteurs attestant de la nécessité de respecter le mode de vie traditionnel des Tsiganes avant de conclure que le refus d'un permis d'aménagement foncier à une Tsigane désireuse de vivre dans une caravane constituait une ingérence justifiée dans le droit de l'intéressée au respect de son domicile. La Cour a déclaré que les intérêts de la communauté devaient être mis en balance avec le droit de la requérante au respect de son domicile, lequel relève de sa sécurité et de son bien-être personnels et de ceux de ses enfants. La Cour devait rechercher si le processus décisionnel était équitable et respectait comme il se devait les intérêts de l'individu protégés par l'article en question et si les motifs invoqués pour justifier l'ingérence étaient pertinents et suffisants. Dans l'affaire *Buckley*, la requérante a pu faire des observations aux autorités et l'on a tenu compte de ses besoins particuliers en tant que Tsigane suivant un mode de vie traditionnel. L'intéressée avait eu à deux reprises la possibilité de demander un emplacement sur un site officiel pour caravanes qui n'était pas éloigné. Elle fut pour finir condamnée à de simples amendes pour ne pas avoir retiré sa caravane et ne fut pas chassée de son terrain. La Cour a conclu

que la situation difficile dans laquelle se trouvait la requérante avait été dûment prise en compte tant dans le cadre réglementaire, qui comportait des garanties procédurales adéquates pour protéger ses intérêts au titre de l'article 8, que par les autorités responsables de l'aménagement foncier lorsqu'elles ont appliqué leur pouvoir discrétionnaire aux circonstances particulières de l'affaire.

En l'occurrence, rien n'indique que des garanties procédurales appropriées aient été mises en place avant la démolition sans avertissement des domiciles des Tsiganes près de Morphou. Il n'a pas davantage été démontré que les autorités aient tenu compte de la situation difficile des Tsiganes lorsqu'elles ont appliqué leur pouvoir discrétionnaire en démolissant les cabanes des intéressés mais pas celles des villageois qui en étaient voisines. Il n'a pas été établi que les motifs invoqués étaient pertinents et suffisants et, notamment, que les autorités se sont demandé s'il existait d'autres possibilités de logement.

Dans ces conditions, la démolition des habitations de la communauté tsigane chypriote turque a emporté violation de l'article 8.

OPINION PARTIELLEMENT DISSIDENTE DE M. CABRAL BARRETO

Dans le rapport que nous venons d'adopter, il y a deux points où, avec regret, je ne peux pas me rallier à l'opinion de la majorité de la Commission.

1. Le premier point tient à la question de savoir si l'article 6 de la Convention a été violé en ce qui concerne les Chypriotes grecs habitant le nord de Chypre.

Malgré la qualité de leur service juridique, on peut douter de l'indépendance et de l'impartialité des tribunaux, dans une perspective subjective, si on regarde la conclusion à laquelle est arrivée la Commission sur les conditions de vie des Chypriotes grecs (violation de l'article 3 de la Convention).

Mais ce qui pour moi demeure essentiel, c'est le fait d'examiner si le système judiciaire y existant a été ou non «établi par la loi».

Dans un système comme celui de la Convention, où la prééminence du droit prime avant tout, il me paraît difficile de soutenir qu'il suffit que la «loi» en cause relève seulement de l'ordre juridique interne.

Pour moi le respect des deux ordres – interne et international – est nécessaire pour que les conditions requises par l'article 6 soient remplies.

Cela ne veut pas dire que les décisions des tribunaux internes, dans la mesure où elles profitent aux Chypriotes grecs, ne puissent pas être remises en question.

2. Le second point concerne l'article 13 de la Convention, et est lié au premier: les recours disponibles dans le nord de Chypre pour les Chypriotes grecs y habitant ne répondent pas aux conditions exigées par l'article 13 en raison de motifs identiques à ceux indiqués ci-dessus.