

APPLICATIONS/REQUÊTES N° 6780/74 & N° 6950/75

CYPRUS v/TURKEY
CHYPRE c/TURQUIE

DECISION of 26 May 1975 on the admissibility of the applications
DÉCISION du 26 mai 1975 sur la recevabilité des requêtes

Article 24 of the Convention : *Case referred to the Commission by a Contracting Party.*

(a) *The applicant Government, as constituted at and since the time of lodging the present applications, are to be considered as representing the Republic of Cyprus for the purpose of proceedings under Art. 24 and 28 of the Convention.*

(b) *The protection of the rights and freedoms guaranteed under the Convention should not be impaired by any constitutional defect of the applicant Government.*

Article 1 of the Convention : *The Contracting Parties are bound to secure the rights and freedoms set forth in the Convention to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad.*

Article 63 of the Convention : *This provision cannot be interpreted as limiting the scope of the term "jurisdiction" in Article 1 to metropolitan territories.*

Article 26 of the Convention : *Applicable in cases brought by States. In a troubled situation arising out of a military action, it is for the Respondent State to establish that practicable and effective remedies were available with regard to the complaints mentioned in the application.*

Article 27, paragraph 2, of the Convention : *An inter-State application cannot be rejected as being abusive under this provision. Does a general principle exist, according to which the right to bring proceedings before an international instance must not be abused ? (unresolved).*

Article 24 de la Convention : *Commission saisie par une Partie Contractante.*

(a) *Le Gouvernement requérant, constitué lors de et depuis l'introduction des requêtes, doit être considéré comme représentant la République de Chypre pour les procédures visées aux articles 24 et 28 de la Convention.*

(b) *Un éventuel vice constitutionnel dans le chef du Gouvernement requérant ne saurait compromettre la protection des droits et libertés garantis par la Convention.*

Article 1^{er} de la Convention : *Les Parties Contractantes sont tenues d'assurer les droits et libertés garantis à toute personne relevant effectivement de leur autorité et de leur responsabilité que cette autorité s'exerce sur leur territoire ou à l'étranger.*

Article 63 de la Convention : *Cette disposition ne peut être interprétée comme limitant la portée du terme « juridiction », figurant à l'article 1^{er}, aux territoires métropolitains.*

Article 26 de la Convention : *Applicable aux requêtes étatiques. Dans une situation perturbée issue de son intervention militaire, il appartient à l'Etat mis en cause de démontrer que les griefs formulés pourraient faire l'objet de recours accessibles et efficaces.*

Article 27, paragraphe 2, de la Convention : *Une requête étatique ne peut pas être rejetée comme abusive en application de cette disposition. Existe-t-il un principe général selon lequel le droit de saisir une instance internationale ne doit pas donner lieu à des abus ? (Question non résolue).*

(français : voir p. 138)

Having regard to Art. 24 of the Convention for the Protection of Human Rights and Fundamental Freedoms ;

Having regard to the first application, introduced on 19 September 1974 by the Government of Cyprus against the Government of Turkey and registered on the same day under file No. 6780/74, and to the following proceedings concerning this application :

- the order made by the President on 19 September 1974 requesting the Secretary General of the Council of Europe to give notice of the application to the Government of Turkey and to invite the Government to submit before 23 November 1974 their observations in writing on the admissibility of the application ;
- the telex communication of 29 September 1975 from the Cyprus Foreign Minister confirming that the application, which had been filed by the Deputy Permanent Representative of Cyprus, had been brought on his instructions ;
- the Commission's decision of 1 October 1974 that the applicant Government should be invited to submit further details of the application as soon as possible and, in the meanwhile, to indicate the date by which they would be in a position to provide them ;
- the applicant Government's "Particulars of the Application" dated 15 November which were filed on 22 November 1974 ;
- the respondent Government's observations of 21 November on the admissibility of the application which were filed on 22 November 1974 ;
- the Commission's decision of 14 December 1974 that the respondent Government should be invited to submit before 25 January 1975 any further observations which they might wish to make on the admissibility of the application and that the applicant Government should be invited to submit their reply by 28 February 1975 ;
- the respondent Government's further observations of 22 January 1975 ;
- the applicant Government's reply of 27 February 1975 ;
- the Commission's decision of 20 March that a hearing of the Parties on the admissibility of the application should be held on 22 and 23 May 1975 ;
- the respondent Government's request of 29 April 1975 for an adjournment of the hearing ;
- the applicant Government's comments of 1 May 1975 on this request ;
- the President's decision of 6 May 1975, taken after consultation of the other members of the Commission, that the hearing should be maintained ;
- the applicant Government's request of 13 May 1975 for an adjournment of the hearing ;
- the respondent Government's comments of 16 May 1975 on this request ;
- the President's decision of 16 May that the hearing should be maintained, subject to the Commission's decision at the opening of its session on 21 May 1975 ;

Having regard to the second application, announced by letter of 18 March, introduced on 21 March 1975 by the Government of Cyprus against the Government of Turkey and registered on the same day under file No. 6950/75, and to the following proceedings concerning this application :

- the Commission's decision of 21 March requesting the Secretary General to give notice of the application to the Government of Turkey and to invite the Government to submit before 25 April 1975 their written observations on the admissibility of the application ;
- the respondent Government's observations of 24 April 1975 ;
- the President's order of 28 April that the applicant Government should be invited to submit before 17 May 1975 their observations in reply ;
- the applicant Government's observations of 10 May 1975 ;

Having regard to the Commission's decisions of 21 May 1975 :

- that the two applications should be joined ;
- that the hearing, which had been fixed to open on 22 May 1975, should be maintained and that the Parties should be invited to make oral submissions on the admissibility of both applications ;

Having regard to :

- the applicant Government's request of 21 May that the hearing, which had been fixed to open in the morning of 22 May 1975, should be adjourned until the afternoon of the day ;
- the Commission's decision of 21 May 1975 refusing this request ;

Having regard to :

- the respondent Government's request of 22 May 1975 that the hearing should be adjourned until the following day ;
- the Commission's decision of 22 May 1975 refusing this request ;

Having regard to the oral submissions made by the Parties at the hearing before the Commission on 22 and 23 May 1975 on the admissibility of both applications ;

Having deliberated on 23, 24 and 26 May 1975 ;

The Commission decides as follows :

THE FACTS

I. The applications

1. *Application No. 6780/74*

(a) *Original submissions*

On 19 September 1974 the applicant Government submitted this application to the Commission in the following terms :

..1. The Republic of Cyprus contends that the Republic of Turkey has committed and continues to commit, in the course of the events outlined hereinafter, both in Cyprus and Turkey, breaches of Arts. 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Art. 1 of the First Protocol and of Art. 14 of the Convention in conjunction with all the aforementioned Articles.

2. On 20 July 1974 Turkey, without prior declaration of war, has invaded Cyprus and commenced military operations in its territory, by means of land, sea and air forces, and until 30 July 1974 has occupied a sizeable area in the northern part of Cyprus.

3. On 14 August 1974 by further military operations Turkey extended its occupation to about 40 percent of the territory of the Republic of Cyprus, and continues to remain in occupation of such territory.

4. In the course of the said military operations and occupation, Turkish armed forces have, by way of systematic conduct and adopted practice, caused deprivation of life, including indiscriminate killing of civilians, have subjected persons of both sexes and all ages to torture, inhuman and degrading treatment and punishment, including commission of rapes and detention under inhuman conditions, have arrested and are detaining in Cyprus and Turkey hundreds of persons arbitrarily and with no lawful authority, are subjecting the said persons to forced labour under conditions amounting to slavery or servitude, have caused through the aforesaid detention, as well as by displacement of thousands of persons from their places of residence and refusal to all of them to return thereto, separations of families and other interferences with private life, have caused destruction of property and obstruction of free enjoyment of property, and all the above acts have been directed against Greek Cypriots only, due, inter alia, to their national origin, race and religion.

5. Full details will be available in due course."

(b) *Further submissions*

The applicant Government gave further particulars of the above allegations in their written submission of 15 November 1974 (entitled : "Particulars of the Application") and at the oral hearing before the Commission on 22 and 23 May 1975.

2. *Application No. 6950/75*

(a) *Original submissions*

On 21 March 1975 the applicant Government submitted this application to the Commission in the following terms :

"1. The Republic of Cyprus contends that the Republic of Turkey has committed and continues to commit, since 19 September 1974 when Application No. 6780/74 was filed, in

the areas occupied by the Turkish army in Cyprus, under the actual and exclusive authority and control of Turkey (as per paras. 12, 18 and 19 of the Particulars of Application No. 6780/74 pending before the Commission of Human Rights) breaches of Arts. 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Art. 1 of the First Protocol and of Art. 14 of the Convention in conjunction with all the aforementioned Articles.

2. Turkey, since 19 September 1974, continues to occupy 40% of the territory of the Republic of Cyprus, seized as described in the Particulars of the said Application...

3. In the said Turkish occupied areas the following atrocities and crimes were committed by way of systematic conduct by Turkey's state organs in flagrant violation of the obligations of Turkey under the European Convention on Human Rights during the period from 19 September 1974 until the filing of the present Application :

- (a) Murders in cold blood of civilians including women and old men. Also about 3,000 persons (many of them civilians), who were in the Turkish occupied areas, are still missing and it is feared that they were murdered by the Turkish army.
- (b) Wholesale and repeated rapes. Even women of ages up to 80 were savagely raped by members of the Turkish forces. In some areas forced prostitution of Greek Cypriot girls continues to be practised. Many women who remained in the Turkish occupied areas became pregnant as a result of the rapes committed by the Turkish troops.
- (c) Forcible eviction from homes and land. The Greek Cypriots who were forcibly expelled by the Turkish army from their homes (about 200,000), as per Para. 20 C of (the Particulars of) Application No. 6780/74, are still being prevented by the Turkish army to return to their homes in the Turkish occupied areas and are refugees in their own country living in open camps under inhuman conditions. Moreover, the Turkish military authorities continue to expel forcibly from their homes the remaining Greek Cypriot inhabitants in the Turkish occupied areas most of whom are forcibly transferred to concentration camps. They are not even allowed to take with them their basic belongings. Their homes and properties have been distributed amongst the Turkish Cypriots who were shifted from the southern part of Cyprus into the Turkish occupied areas as well as amongst many Turks who were illegally brought from Turkey in an attempt to change the demographic pattern in the Island.
- (d) Looting by members of the Turkish army of houses and business premises belonging to Greek Cypriots continues to be extensively practised.
- (e) Robbery of the agriculture produce and livestock, housing units, stocks in stores, in factories and shops owned by Greek Cypriots and of jewellery and other valuables found on Greek Cypriots arrested by the Turkish army continues uninterrupted. The agricultural produce belonging to Greek Cypriots continues to be collected and exported directly or indirectly to markets in several European countries. Nothing belonging to the Greek Cypriots in the Turkish occupied areas has been returned and no compensation was paid or offered in respect thereof.
- (f) The seizure, appropriation, exploitation and distribution of land, houses, enterprises and industries belonging to Greek Cypriots, as described in Para. 20 F of the Particulars of Application No. 6780/74 continues.
- (g) Thousands of Greek Cypriot civilians of all ages and both sexes are arbitrarily detained by the Turkish military authorities in the Turkish occupied areas under miserable conditions. For this purpose additional concentration camps were established. The report mentioned in ... the observations of the Cyprus Government on the admissibility of Application No. 6780/74 describes the conditions of some cases of such detention. The situation of most of the detainees is desperate.
- (h) Greek Cypriot detainees and inhabitants in the Turkish occupied areas, including children, women and elderly people continue to be the victims of systematic tortures and of other inhuman and degrading treatment, e.g. wounding, beating, electric shocks, lack of food and medical treatment, etc.
- (i) Forced labour. A great number of persons detained by the Turkish army, including women, were and still are made during their detention, to perform forced and compulsory labour.

- (j) Wanton destruction of properties belonging to Greek Cypriots including religious items found in the Greek Orthodox Churches.
- (k) Forced expatriation of a number of Greek Cypriots living in the Turkish occupied areas, to Turkey.
- (l) Separation of families. Many families are still separated as a result of some of the crimes described above such as detention and forcible eviction.

4. All the above atrocities were entirely unconnected with any military operations. They were all committed at a time when no military operations or any fighting whatsoever was taking place.

5. The aforementioned atrocities and criminal acts were directed against Greek Cypriots because of their ethnic origin, race and religion. The object was to destroy and eradicate the Greek population of the Turkish occupied areas so as to move therein Turks, thus creating by artificial means a Turkish populated area in furtherance of Turkey's policy for the formation of the so-called 'Turkish Cypriot Federated State'. In pursuance of this policy the members of the Turkish army who took part in the invasion (about 40,000) and their families have been recently declared as subjects of the illegally and unilaterally proclaimed 'Turkish Cypriot Federated State', i.e. the Turkish occupied areas of Cyprus, with the official blessing of Turkey and have occupied the properties belonging to the Greek Cypriots.

6. No remedy in the Turkish Courts was under the circumstances likely to be effective and adequate for the atrocities and crimes in question. In any case all the above atrocities and crimes were committed under such circumstances which excuse the failure to resort to any domestic remedy for the purposes of Art. 26 of the Convention.

7. The situation resulting from Turkey's occupation of the areas in question affected also the rights and freedoms of the Turkish Cypriots in those areas including those who, in furtherance of Turkey's political aims, were shifted thereto from the southern part of Cyprus where they have their homes and properties.

8. All the above atrocities and criminal acts can be proved by evidence including evidence of eye witnesses. Other sources of evidence as to the above matters are international organisations like the United Nations and the International Red Cross.

9. Further particulars of the above violations of human rights, including statements by witnesses, will be made available as soon as possible.

10. It should be mentioned that it was not possible until now to ascertain in full the magnitude of the savage crimes perpetrated by Turkey in the Turkish controlled areas as these areas are still sealed off and the Turkish military authorities do not allow free access to them even by UNFICYP and humanitarian organisations.

....."

(b) *Further submissions*

The applicant Government gave further particulars of the above allegations at the oral hearing before the Commission on 22 and 23 May 1975.

II. Submissions of the Parties as to the admissibility of the applications

1. The respondent Government's written observations

(a) In their observations of **21 November 1974** on the admissibility of the first application (No. 6780/74) the respondent Government maintained that this application was inadmissible on the following grounds: non-existence of a properly constituted representation of the Republic of Cyprus; failure to exhaust domestic remedies; lack of Commission's jurisdiction *ratione loci*; and abusive nature of the application. They submitted in particular:

aa The applicant Government were not the Government of Cyprus, but only the leaders of the Greek Cypriot community, and therefore not entitled to represent the State of Cyprus before the Commission. This State was established by the Zurich and London Agreements of 1959, which provided for its joint administration by the Greek and Turkish communities; the Constitution of Cyprus of 1960 also took account of the bicomunal nature of the Republic, and Art. 1 of the Treaty of Guarantee of 1960 obliged the Republic to respect the Constitution.

The leaders of the Greek Cypriot community attempted since 1963 by attacks directed against the Turkish community to put an end to the bi-communal nature of the State and set up a de facto authority in certain parts of the island. In order to secure its continued existence the Turkish community was forced to withdraw into a number of scattered enclaves where it also set up a de facto authority. The existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community, had been recognised both by the three guaranteeing powers (Greece, United Kingdom and Turkey) in the Geneva Declaration of 30 July 1974 and by the General Assembly of the United Nations in its Resolution 3212 (XXIX) of 1 November 1974. The mission of the United Nations force in Cyprus since 1964 and the negotiations held since 1968 between the two de facto administrations also proved this fact.

The respondent Government concluded : the leaders of the Greek Cypriot community who had taken the administration of the State into their hands in violation of the international agreements which established the Republic of Cyprus and of the Cyprus Constitution which was part of those agreements were not entitled to represent this State : neither of the two autonomous Cypriot administrations (Turkish and Greek) was by itself entitled to do so. Moreover, under international law an administration which had illegally seized control of the government machinery but had only succeeded in extending its authority over a part of the territory and a part of the population was not entitled to represent the State concerned.

The respondent Government further contended that the applicant Government acted unconstitutionally in bringing the application : in the absence of a Council of Ministers composed of seven Greek and three Turkish Ministers appointed by the President and Vice-President of the Republic respectively, in accordance with Art. 46 and 57 (c) of the Constitution of Cyprus, the decision to seize the Commission was not taken by the organ competent under Art. 54 of the Constitution. Moreover, this decision was not approved by the Vice-President, as required by Arts. 54, 57 and 50 of the Constitution (in this respect the respondent Government referred to two letters of 24 September and 30 October 1974 the Vice-President to the Commission which were transmitted by the Permanent Representative of Turkey). Lastly, the agents who lodged the application were not appointed in accordance with the Constitution : with regard to the person who signed the application, his appointment as Deputy Permanent Representative had not been submitted to the Vice-President for approval under Art. 50, and the person who, as "Minister of Foreign Affairs", confirmed the application had not been appointed Minister in accordance with Art. 47.

bb The respondent Government further maintained that the application was inadmissible under Arts. 26 and 27 (3) of the Convention for non-exhaustion of domestic remedies. The Convention constituted an integral part of Turkish law and, under Art. 114 of the Constitution, an appeal lay to a court against every act or decision of the administration. However, the respondent Government had no knowledge of any action brought before the Turkish courts in this matter and the applicant Government had failed to comply with rule 38 (2) of the Commission's Rules of Procedure which stated that the applicant shall "provide information enabling it to be shown that the conditions laid down in Art. 26 of the Convention have been satisfied".

cc The respondent Government further referred to Arts. 1, 19 and 63 of the Convention and argued that the Commission had no jurisdiction *ratione loci* to examine the application as Cyprus did not fall under Turkish jurisdiction. Turkey had not extended her jurisdiction to the island of Cyprus since she had neither annexed a part of the island nor established a military or civil government there. The administration of the Turkish Cypriot community had absolute jurisdiction over part of the island. Moreover, Turkey could not be held liable under Art. 63 of the Convention since she was not responsible for the international relations of either the whole or a part of Cyprus.

dd The respondent Government finally referred to the Commission's decision on the admissibility of certain new allegations in the first Greek Case (Yearbook of the European Convention on Human Rights, Vol. 8, pp. 158-169) and submitted that the present application constituted an abuse of the procedure provided for by the Convention : it was unsubstantiated and contained accusations of a political nature, such as references to the "invasion" and "occupation" of Cyprus by Turkey, which had nothing to do with the

purpose of the Convention and could only be intended to foster a campaign of political propaganda against Turkey.

(b) In their further observations of **22 January 1975** on the admissibility of the first application the respondent Government maintained the position adopted in their above observations of 21 November 1974.

(c) In their observations of **24 April 1975** on the admissibility of the second application (No. 6950/75) the respondent Government submitted that the grounds for inadmissibility set out in their observations of 21 November 1974 with regard to the first application applied also to the second. They requested the Commission to order the joinder of the two applications under Rule 29 and to declare them inadmissible on the above grounds, in particular on that of the non-existence of a properly constituted representation of the Republic of Cyprus.

2. The applicant Government's written observations

(a) In their observations of **27 February 1975** on the admissibility of the first application (No. 6780/74) the applicant Government contested the four grounds of inadmissibility, advanced in the respondent Government's observations of 21 November 1974, and submitted in particular :

aa The objection that there existed no properly constituted representation of the Republic of Cyprus had been raised by Turkey in various international forums, including the United Nations, and been consistently rejected. The applicant Government, recognised as the lawful Government of the Republic by the overwhelming majority of its people, had always been so recognised in international relations. Thus, during the 29th session of the United Nations General Assembly which adopted Resolution 3212 (XXIX) referred to in the respondent Government's observations, Cyprus was represented through the applicant Government and the credentials of this Government's representation were accepted as in the past, all efforts by Turkey to dispute them having failed, and the Minister of Foreign Affairs who signed those credentials was the one who authorised the filing of the present application to the Commission; furthermore, the resolution of the Security Council concerning the United Nations Peace-Keeping Force in Cyprus expressly noted the consent of "the Government of Cyprus", i.e. the applicant Government in the present proceedings. The Committee of Ministers of the Council of Europe had also always recognised the applicant Government as the lawful Government of Cyprus and its appointed representatives as duly representing this Republic; the applicant Government's Minister of Foreign Affairs, who authorised the filing of the present application, acted as Chairman at the Committee's meeting in November 1974, in spite of Turkey's objection.

The applicant Government further submitted that the constitutional irregularities alleged by the respondent Government did not in the circumstances affect the applicant Government's capacity to represent the Republic of Cyprus internationally. In any event, where an application under Art. 24 of the Convention had been referred to the Commission by the Secretary General of the Council of Europe, the Commission had no competence to examine the status of the Government bringing this application.

Without prejudice to the above arguments the applicant Government further contended that they were in all respects a lawful Government. The State of Cyprus was established in 1960 and the Constitution continued to function until 21 December 1963 in spite of obstruction by the Turkish Cypriots. The troubles which broke out on that day, following a mere proposal by the President to amend the Constitution, amounted to an armed anti-state action on the part of the Turkish Cypriots who refused to co-operate in the Government; instead, they pursued a policy of partition, first by withdrawing into a number of enclaves over which the Government were prevented to exercise their powers (4.86 % of the territory of the Republic) and, following the Turkish invasion, by the formation of a "Turkish Federated State" in Cyprus. This was in line with the expansionist policy pursued by Turkey both before and after the establishment of the Republic of Cyprus, as borne out by various statements of members of the Turkish Government.

In view of the persistent non-participation of the Turkish Cypriots in the Government of the State, the remaining (Greek Cypriot) members of the Government, in accordance with the principle "Salus populi est suprema lex", deviated from the strict letter of the

Constitution in order to keep the essential services of the State in operation. The law of necessity thus applied was in 1964 recognised by the Supreme Court of Cyprus (in the case of the Attorney General of the Republic v. M. Ibrahim and others) as forming part of the Constitution. The Turkish Cypriot judges, who had resumed their functions in 1964 and stayed in office until 1966, followed the Supreme Court's judgment in their own decisions and thereby recognised the lawful existence and functioning of the Government.

The leaders of the coup of 15 July 1974 were not supported by the people of Cyprus nor recognised by any other country, including Turkey. The coup failed and the present Government continued to exercise their functions, recognised internationally and supported by the overwhelming majority of the people. The invasion, and occupation of a part of the territory by Turkey did not, under international law, affect the lawfulness of the Government.

The respondent Government's reference to Mr Denktash's disapproval of the present proceedings, and of the nomination of the Republic's representatives, constituted a contradiction in terms because, on the one hand, they disputed the existence of a Government of Cyprus and, on the other hand, they invoked constitutional rights of the Vice-President of such Government. In any case, Mr Denktash abstained from exercising his functions in the Government.

Lastly, as stated by the Commission in its decision on the admissibility of Application No. 788/60 (Austria v/Italy, Yearbook 4, pp. 116, 140), a High Contracting Party, when it refers an alleged breach of the Convention to the Commission under Art. 24 of the Convention, "is not to be regarded as exercising a right of action for the purpose of enforcing its own rights, but rather as bringing before the Commission an alleged violation of the public order of Europe".

bb In reply to the respondent Government's objection that domestic remedies had not been exhausted, the applicant Government maintained that the respondent Government had failed to indicate any domestic remedy which in the circumstances could be exercised by the victims of the atrocities committed by the Turkish army and other State organs of Turkey, as described in the Particulars of the Application, and that they had also failed to show that such remedy would be effective and adequate in the circumstances.

One could not expect the Greek Cypriot victims of the atrocities committed by the Turkish army, in consequence of a hostile operation ordered by Turkey and directed against the Greek Cypriot community, to visit the enemy country, or to engage lawyers there, in order to raise their complaints in Turkish courts. The surviving victims of these atrocities had either been expelled from the Turkish occupied area or were living in that area, which was sealed off, under continuous insecurity and restriction of movement. Those detained in concentration camps in the occupied area, or in prisons in Turkey, were not during their detention given the chance to seize a court and, in any case, precluded from doing so by the conditions of their detention.

Remedies could moreover not be exercised for fear of repercussions: the life, liberty, honour and property of surviving victims in the occupied area or in Turkey were already under the direct threat of vindictive action by the Turkish authorities and there was a fear of further expansion of the occupation and, possibly, an occupation of the whole island by Turkey.

The atrocities complained of were part of a government policy. No action in a Turkish court could therefore be regarded as an effective remedy.

Furthermore most of these atrocities could not be considered as "acts or decisions of the administration", within the meaning of Art. 114 of the Turkish Constitution, against which an appeal lies to a court.

In the circumstances under which the atrocities were committed no information as to the identity of the perpetrators could be obtained apart from the fact that they were members of the Turkish army. This made it impossible to exercise the judicial remedy in question.

Lastly, no Turkish courts existed in the Turkish occupied area of Cyprus where most of the alleged violations of human rights took place.

cc The applicant Government further submitted that the Commission was competent *ratione loci* to examine the application.

Under Art. 19 of the Convention the Commission was competent to ensure the observance of the engagements undertaken by the High Contracting Parties, the principal engagement being the one set out in Art. 1.

It was clear from the language and object of Art. 1 and from the purpose of the Convention as a whole that the High Contracting Parties were bound to secure the rights and freedoms defined in the Convention to all persons under their actual and exclusive authority, whether that authority was exercised within their own territory or abroad. The application related to violations of human rights committed by Turkey in areas over which she exercised actual authority to the exclusion of any other Government: in the Turkish occupied part of Cyprus, on Turkish vessels and in Turkey.

In the occupied part of Cyprus the actual and exclusive authority was exercised by the Turkish army under the direction of the Turkish Government; indeed, through various official statements and activities Turkey was treating this area as being under her control and supervision. The Turkish Cypriot community had neither legal nor actual authority over the area.

The operation of the Convention in the occupied part of Cyprus would become ineffective if one accepted the respondent Government's submission that alleged violations of the Convention in that area could not be examined by the Commission. It followed from Art. 17 that the Convention did not allow such a vacuum in the protection of its rights and freedoms.

Art. 63 of the Convention, referred to in the respondent Government's observations, had not been invoked by the applicant Government and was irrelevant to the issue.

dd The applicant Government finally maintained that the application was not abusive, as submitted by the respondent Government. Its only object was to ensure the observance of the Convention by Turkey. The applicant Government alleged specific violations of human rights and had produced evidence of particular instances including statements of witnesses. Expressions like "invasion" or "occupation" had to be used in order to describe the actual conditions under which these violations were committed.

In conclusion the applicant Government requested the Commission to declare the application admissible.

(b) In their observations of **10 May 1975** in reply to the respondent Government's observations of 24 April on the admissibility of the second application (No. 6950/75) the applicant Government referred to their above observations of 27 February on the admissibility of the first application as being equally applicable to the second.

3. Oral submissions of the Parties at the hearing on 22 and 23 May 1975

The Parties' above observations on the admissibility of the applications were further developed at the hearing before the Commission on 22 and 23 May 1975.

(a) Submissions of the respondent Government

The respondent Government, replying to the applicant Government's observations of 27 February 1975, submitted in particular:

aa The general rule that a government, which had been recognised by a number of other States and international organisations, could be considered as a lawful government was not applicable in the case of Cyprus whose special international status had to be respected. Since 1963 there were two de facto Governments in Cyprus, each controlling only a part of the territory, and no "law of necessity" could justify the usurpation of State powers by one of them. The bi-communal nature of the Republic was also respected by the Consultative Assembly of the Council of Europe which since 1964 refused to admit a Cypriot delegation without Turkish Cypriot members.

The non-existence of a lawful Government of Cyprus had prevented Turkey from raising the sufferings of the Turkish Cypriots before the Commission. The Greek Cypriot community, by its policy of Enosis, intended to destroy the independence of Cyprus; the proposed constitutional amendments served this purpose. In 1974 Turkey finally had to intervene, but this was not done in order to divide the island.

It was true that an objection to the validity of a treaty could under Art. 46 of the Vienna Convention on the Law of Treaties only be raised by the State whose constitution

had not been respected but, in the special case of Cyprus, a violation of the Constitution was at the same time a violation of international agreements and could consequently be raised by Turkey, as a Party to these agreements.

bb The respondent Government did not consider that, under Art. 26 of the Convention, they were obliged to show the existence of effective domestic remedies as long as no action had been taken by any of the alleged victims in order to test these remedies. Various remedies were actually available although the Government could not say that the inhabitants of the northern part of Cyprus had by an official announcement been informed of their existence.

Thus, under Art. 114 of the Turkish Constitution anyone could seize an ordinary, administrative or military court. The acts complained of in the applications were criminal offences under the Penal Code and any alleged victim could lay a criminal charge—in writing or orally and, if necessary, with the help of an interpreter—and become a private party in criminal proceedings at the instance of such charges ; however, no criminal charges had been brought. The Public Prosecutor also acted *ex officio* when otherwise informed of a criminal offence but no such proceedings had been instituted on the basis of the applicant Government's allegations.

With regard to any criminal offences committed by Turkish soldiers in Cyprus, Turkish military tribunals, instituted under Art. 138 of the Turkish Constitution and composed of independent judges, were competent. Administrative acts could under Art. 114 of the Constitution be attacked before the Conseil d'Etat and there was also a higher administrative military tribunal concerning military staff and organisations (Art. 140 in fine of the Constitution).

(b) Submissions of the applicant Government

aa With regard to their *ius standi* the applicant Government, referring to their earlier submissions, further observed that no objection was raised by Turkey when they signed and ratified Protocols Nos. 2, 3 and 5 to the Convention in the name of Cyprus. Under international law no distinction was made between constitutional and unconstitutional governments : the title to rule was determined by the fact of actual governing. The applicant Government were recognised by the family of nations and the Commission, in dealing with the issue of representation, should have regard to this practice as reflected, *inter alia*, in the proceedings of the Committee of Ministers of the Council of Europe.

The fact that, as a result of the Turkish occupation, the applicant Government were prevented from exercising their authority over the whole of the territory of the Republic of Cyprus did not under international law affect their right to represent this Republic.

bb The applicant Government further maintained that under Art. 26 of the Convention the victim of a violation of the Convention was not obliged to exhaust remedies which were not available in the territory where the violation occurred. Furthermore, as stated by the Commission in Application No. 712/60 (*Retimag v/Federal Republic of Germany*, Yearbook 4, pp. 384, 400), "remedies which, although theoretically of a nature to constitute a remedy, do not in reality offer any chance of redressing the damage alleged need not be exhausted".

The multiple violations complained of in the present case constituted an "administrative practice" in the sense of the Commission's case-law, they formed part of a government policy and any appeal to a higher authority was bound to be ineffective in the circumstances.

cc The applicant Government finally observed with regard to the interpretation of Art. 1 of the Convention that this provision did not speak of "territory". This term had been contained in the original draft of the Consultative Assembly of the Council of Europe but later been replaced by the term "jurisdiction" which could be defined as an aspect of sovereignty comprising judicial, legislative and administrative competence.

THE LAW

1. The Commission has considered the respondent Government's four objections to admissibility in the following order :

- I. the objection concerning the *locus standi* of the applicant Government ;

- II. the objection concerning the Commission's competence *ratione loci* ;
- III. the objection that domestic remedies have not been exhausted ; and
- IV. the objection that the applications are abusive.

1. **As to the locus standi of the applicant Government**

2. The present applications have been introduced under Art. 24 of the European Convention on Human Rights which provides that any High Contracting Party may refer to the Commission any alleged breach of the Convention by another High Contracting Party.

The Commission has first considered *ex officio* whether the applications, which were lodged in the name of the Republic of Cyprus, were brought on behalf of Cyprus as a "high Contracting Party", that is to say, whether Cyprus has been, at the time of the introduction of the applications, and continues to be such a Party.

In this connection the Commission has noted the respondent Government's reference to para. 5 of the Geneva Declaration of 30 July 1974 in which Greece, Turkey and the United Kingdom recognised the existence in practice "in the Republic of Cyprus" of "two autonomous administrations", namely that of the Greek Cypriot community and that of the Turkish Cypriot Community. The Commission further notes that the Vice-President of the Republic of Cyprus, Mr Rauf Denktaş, has on 13 February 1975 proclaimed a "Turkish Federated State" in Cyprus.

It is clear, however, from the terms of the above declarations that, whatever may have been their legal significance in other respects, they did not affect, and were not intended to affect, the continuing existence of Cyprus as a State and High Contracting Party to the European Convention on Human Rights. The Commission is satisfied that this is not disputed by Turkey or any other Party to the Convention.

It follows that the applications cannot be rejected on the ground that they have not been brought in the name of Cyprus as a "High Contracting Party" within the meaning of Art. 24.

3. The respondent Government submit, however, that the applicant Government are not the Government of Cyprus but only the leaders of the Greek Cypriot Community who in 1963 have taken the administration of the State into their hands in violation of the London and Zurich Agreements of 1959, the Treaty of Guarantee of 1960, and the Constitution of Cyprus which is a part of those agreements. Under international law the applicant Government are therefore not entitled to represent the Republic of Cyprus.

The Commission, in its examination of this preliminary objection concerning the *ius standi* of the applicant Government in proceedings under Art. 24 of the Convention, notes that this Government have nevertheless been and continue to be recognised internationally as the Government of the Republic of Cyprus and that their acts are accepted accordingly in a number of contexts of diplomatic and treaty relations and of the working of international organisations. In this respect the Commission observes in particular :

- that the Security Council of the United Nations, in Resolution 364 (1974) of 13 December 1974 concerning the prolongation of service of the United Nations Peace-Keeping Force in Cyprus, expressly noted the agreement of "the Government in the present proceedings" and that this Government's consent was similarly recorded in a number of earlier resolutions of the Security Council since 1964 concerning the same matter ;
- that representatives of the Republic of Cyprus, appointed by the applicant Government, have continued fully to participate in the Committee of Ministers of the Council of Europe, consistently with Arts. 14 and 16 of its Statute, and that the present applications were signed by the then Deputy Permanent Representative (No. 6780/74) and the present Permanent Representative (No. 6950/75) respectively ;
- that no objection was raised by any other Party to the Convention, including Turkey, when the applicant Government, acting in the name of the Republic of Cyprus, ratified in 1969 Protocols Nos. 2, 3 and 5 to the Convention and that the applicant Government, as the Government of Cyprus, similarly ratified a number of other international agreements including the European Social Charter.

The Commission therefore concludes that the applicant Government, as constituted at and since the time of lodging the present applications, are to be considered as representing the Republic of Cyprus also for the purpose of proceedings under Art. 24, and any subsequent proceedings under Art. 28, of the Convention.

4. The respondent Government further contend that the applicant Government acted unconstitutionally in bringing the present applications : in the absence of a Council of Ministers constituted in conformity with Art. 46, the decision to seize the Commission has not been taken by the organ competent under Art. 54 of the Constitution ; moreover, this decision has not been approved by the Vice-President, as required by Arts. 49 and 57 of the Constitution (in this respect the respondent Government refer to two letters of 24 September and 30 October 1974 from the Vice-President to the Commission which were transmitted by the Permanent Representative of Turkey) ; lastly, the agents who lodged the applications were not appointed in accordance with Arts. 47 and 50 of the Constitution.

The Commission, even assuming that an inconsistency with the Constitution of Cyprus of 1960 as alleged by the respondent Government could be relevant for the validity of the applications, finds that regard must be had not only to the text of this Constitution but also to the practice under it, especially since 1963. In this respect the Commission notes that a number of international legal acts and instruments, which were drafted in the course of the above practice and presented on behalf of the Republic of Cyprus, have, as stated above, been recognised in diplomatic and treaty relations, both by Governments of other States and by organs of international organisations including the Council of Europe.

5. The Commission also considers that regard must be had to the purpose of Art. 24 of the present Convention and that the protection of the rights and freedoms of the people of Cyprus under the Convention should consequently not be impaired by any constitutional defect of its Government.

6. The Commission therefore concludes that the present applications have been validly introduced on behalf of the Republic of Cyprus.

II. As to the Commission's competence *ratione loci*

7. The respondent Government further contend that the Commission has no jurisdiction *ratione loci* to examine the applications, insofar as they relate to alleged violations of the Convention in the island of Cyprus. They submit that, under Art. 1 of the Convention, the Commission's competence *ratione loci* is limited to the examination of acts alleged to have been committed in the national territory of the High Contracting Party concerned ; Turkey has not extended her jurisdiction to Cyprus or any part thereof, nor can she be held liable, under Art. 63 of the Convention, for any acts committed there.

8. In Art. 1 of the Convention, the High Contracting Parties undertake to secure the rights and freedoms defined in Section 1 to everyone "within their jurisdiction" (in the French text : "relevant de leur juridiction"). The Commission finds that this term is not, as submitted by the respondent Government, equivalent to or limited to the national territory of the High Contracting Party concerned. It is clear from the language, in particular of the French text, and the object of this Article, and from the purpose of the Convention as a whole, that the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad. The Commission refers in this respect to its decision on the admissibility of Application No. 1611/62—X. v/Federal Republic of Germany—Yearbook of the European Convention on Human Rights, Vol. 8, pp. 158-169 (at pp. 168-169).

The Commission further observes that nationals of a State, including registered ships and aircrafts, are partly within its jurisdiction wherever they may be, and that authorised agents of a State, including diplomatic or consular agents and armed forces, not only remain under its jurisdiction when abroad but bring any other persons or property "within the jurisdiction" of that State, to the extent that they exercise authority over such persons or property. Insofar as, by their acts or omissions, they affect such persons or property, the responsibility of the State is engaged.

9. The Commission does not find that Art. 63 of the Convention, providing for the extension of the Convention to other than metropolitan territories of High Contracting

Parties, can be interpreted as limiting the scope of the term "jurisdiction" in Art. 1 to such metropolitan territories. The purpose of Art. 63 is not only the territorial extension of the Convention but its adaptation to the measure of self-government attained in particular non-metropolitan territories and to the cultural and social differences in such territories ; Art. 63 (3) confirms this interpretation. This does not mean that the territories to which Art. 63 applies are not within the "jurisdiction" within the meaning of Art. 1.

10. It follows from the above interpretation of Art. 1 that the Commission's competence to examine the applications, insofar as they concern alleged violations of the Convention in Cyprus, cannot be excluded on the grounds that Turkey, the respondent Party in the present case, has neither annexed any part of Cyprus nor, according to the respondent Government, established either military or civil government there.

It remains to be examined whether Turkey's responsibility under the Convention is otherwise engaged because persons or property in Cyprus have in the course of her military action come under her actual authority and responsibility at the material times. In this respect it is not contested by the respondent Government that Turkish armed forces have entered the island of Cyprus, operating solely under the direction of the Turkish Government and under established rules governing the structure and command of these armed forces including the establishment of military courts. It follows that these armed forces are authorised agents of Turkey and that they bring any other persons or property in Cyprus "within the jurisdiction" of Turkey, in the sense of Art. 1 of the Convention, to the extent that they exercise control over such persons or property. Therefore, insofar as these armed forces, by their acts or omissions, affect such persons' rights or freedoms under the Convention, the responsibility of Turkey is engaged.

III. As to the exhaustion of domestic remedies

11. Under Art. 26 of the Convention the Commission may only deal with a case after all domestic remedies have been exhausted, according to the generally recognised rules of international law. This rule applies not only in individual applications lodged under Art. 25 but also in cases brought by States under Art. 24 of the Convention (cf. the Commission's constant case-law and, in particular, its decision on the admissibility of Application No. 788/60 —Austria v. Italy—Yearbook 4, pp. 116-183 (at pp. 148-153)).

The rule requiring the exhaustion of domestic remedies means in principle that remedies, which are shown to exist within the legal system of the responsible State, must be used and exhausted in the normal way before the Commission is seized of a case ; on the other hand, remedies which do not offer a possibility of redressing the alleged injury or damage cannot be regarded as effective or sufficient and need not, therefore, be exhausted (cf. the Commission's decision on the admissibility of Application No. 712/60—Retimag v. Federal Republic of Germany—Yearbook 4, pp. 384, 400).

12. The respondent Government submit that, under Turkish law, a number of effective remedies are available in criminal, civil, disciplinary and administrative proceedings to persons claiming to be the victims of violations by Turkish authorities of individual rights and freedoms as alleged in the present applications ; such remedies can be brought either before the competent judicial authorities in Turkey or before the military courts of the Turkish forces in Cyprus.

13. With regard to the question whether the remedies indicated by the respondent Government can in the circumstances of the present case be considered as effective, the Commission notes that the applicant Government's allegations of large-scale violations of human rights by Turkish authorities in Cyprus relate to a military action by a foreign power and to the period immediately following it. It is clear that this action has deeply and seriously affected the life of the population in Cyprus and, in particular, that of the Greek Cypriots who were living in the northern part of the Republic where the Turkish Troops operated. This is especially shown by the very great number of refugees who are at present in the south of the island.

14. In these circumstances the Commission finds that remedies which, according to the respondent Government, are available in domestic courts in Turkey or before Turkish military courts in Cyprus could only be considered as effective "domestic" remedies under Art. 26 of the Convention with regard to complaints by inhabitants of Cyprus if it were

shown that such remedies are both practicable and normally functioning in such cases. This, however, has not been established by the respondent Government. In particular, the Government have not shown how Art. 114 of the Constitution of Turkey can extend to all the alleged complaints or how any proceedings could be effectively handled given the very large number of these complaints.

15. The Commission therefore does not find that, in the particular situation prevailing in Cyprus since the beginning of the Turkish military action on 20 July 1974, the remedies indicated by the respondent Government can be considered as effective and sufficient "domestic remedies" within the meaning of Art. 26 of the Convention. It follows that the applications cannot be rejected for non-exhaustion of domestic remedies in accordance with Arts. 26 and 27 (3).

IV. As to whether the applications are abusive

16. The respondent Government finally submit that the applications constitute an abuse of the procedure provided for by the Convention in that they are unsubstantiated and contain accusations of a political nature, such as references to the "invasion" and "occupation" of Cyprus by Turkey.

17. The Commission has already held in a previous case (decision on the admissibility of certain new allegations in the First Greek Case, Yearbook 11, pp. 730, 764) that the provision of Art. 27 (2), requiring the Commission to declare inadmissible any application that it considers abusive, is confined to individual petitions under Art. 25 and therefore inapplicable to inter-State applications under Art. 24 of the Convention. It follows that the present applications cannot be rejected under the said provision.

18. The Commission notes, however, that the respondent Government, by inviting the Commission to reject the applications as abusive, invoke a general principle according to which the right to bring proceedings before an international instance must not be abused: They consider that such a principle has been recognised in the Commission's above decision in the First Greek Case.

In that decision the Commission, "assuming that such a general principle exists and is applicable to the institution of proceedings within the framework of the Convention", found that "the alleged political element of the new allegations, even if established, is not such as to render them 'abusive' in the general sense of the word" (*loc. cit.*).

As regards the present applications the Commission does not accept either of the contentions of the respondent Government that they are an abuse of the Convention process. The Commission, even assuming that it is empowered on general principle to make such a finding, considers that the applicant Government have, at this stage of the proceedings, provided sufficient particularised information of alleged breaches of the Convention for the purpose of Art. 24. The Commission further considers that the terms in which the applicant Government have characterised the Turkish military action in Cyprus cannot be regarded as "abusive" in the general sense of the word.

Now therefore the Commission, without prejudging the merits of the case,

DECLARES THE APPLICATIONS ADMISSIBLE.