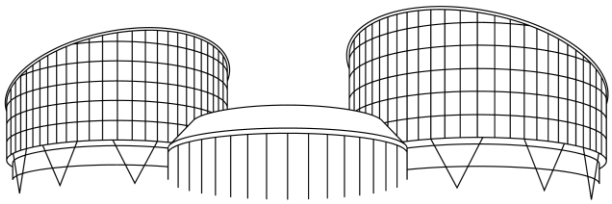

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ASPROFTAS v. TURKEY

(Application no. 16079/90)

JUDGMENT

STRASBOURG

27 May 2010

FINAL

04/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Asproftas v. Turkey,

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

Nicolas Bratza, *President,*
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku,
Işıl Karakaş,
Mihai Poalelungi, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 4 May 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 16079/90) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Mr Tasos Asproftas ("the applicant"), on 12 January 1990.

2. The applicant was represented by Mr C. Velaris, a lawyer practising in Nicosia. The Turkish Government ("the Government") were represented by their Agent, Mr Z.M. Necatigil.

3. The applicant alleged, in particular, that the Turkish occupation of the northern part of Cyprus had deprived him of his home and that he had been subjected to treatment contrary to the Convention during a demonstration.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. By a decision of 26 September 2002 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Government of Cyprus, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

THE FACTS

7. The applicant was born in 1963 and lives in Nicosia.

I. THE APPLICANT'S HOME

8. The applicant claimed that his home had been in Trypimeni, a village in the District of Farmagusta (northern Cyprus). He had lived there with his parents, who ran a grocery store, and six siblings in a house with a yard (covering an area of 532 square metres), registered under plot no. 81, sheet/plan 13/40 and owned by his father. On 7 September 1999, the applicant's father transferred ownership of this house to Mr Georgios Asproftas (the applicant's brother) by way of gift.

9. Since the 1974 Turkish intervention, the applicant has been deprived of his home, which was located in the area under the occupation and control of the Turkish military authorities. The latter had prevented him from having access to and from using the house at issue.

II. THE DEMONSTRATION OF 19 JULY 1989

10. On 19 July 1989, the applicant joined an anti-Turkish demonstration in the Ayios Kassianos area in Nicosia in which the applicants in the *Chrysostomos and Papachrysostomou v. Turkey* and *Loizidou v. Turkey* cases (see below) also took part.

A. The applicant's version of events

11. According to an affidavit sworn by the applicant before the Nicosia District Court on 4 January 2000, the demonstration of 19 July 1989 was peaceful and was held on the fifteenth anniversary of the Turkish intervention in Cyprus, in support of the missing persons and to protest against human rights violations. The applicant joined the demonstration as a reporter for the newspaper *Exormisis.*

12. During the demonstration dozens of armed Turkish policemen and soldiers moved towards the demonstrators. The UN peacekeeping cordon broke up and vanished. The Turkish forces started to beat some women with batons, to kick them and drag them by the arms, legs and hair. While he was trying to help some of these women, the applicant was grabbed and beaten by Turkish policemen. He was hit in the face and other parts of the body and taken at gunpoint with others who had also been arrested during the demonstration. His photographic equipment was seized despite him showing his press card. He was then led to a bus through an angry crowd of 200-300 civilians who shouted abuse and threats. As the applicant was walking without police protection, the crowd had an opportunity to rush at him. He was dragged and beaten until two policemen came and accompanied him onto the bus. He was transported to the so-called "Pavlides Garage", where a body search was carried out and all his personal effects were taken. The crowd outside the garage was shouting and throwing stones, some of which came through the roof.

13. While at the garage the applicant saw a policeman in civilian clothes who told him "Turkey will kill you". Sometime around midnight he was interrogated by an officer who spoke perfect Greek. The applicant did not give wholly accurate answers to some of the questions, preferring to lie about some of the detail. The interrogator then started a political discussion and tried to convey his own ideas to the applicant in a very friendly and diplomatic manner. The applicant refused to sign a statement written in Turkish, as he considered it would have been tantamount to recognising the "Turkish Republic of Northern Cyprus" (the "TRNC"). When one of the women detainees (Mrs Vrahimi – see application no. 16078/90) was beaten, all the other prisoners remained silent, fearing for their fate. At around 2.30 a.m. on 20 July 1989 the applicant and some other men were ordered onto a police bus. He was taken to the Seray Police Station, where, after a body search, he was held in a cell that was filthy, dirty and dark. During his stay in the cell the applicant heard the screams of other demonstrators.

14. At around 2.00 p.m. the same day, he was given back his personal effects and taken to court together with seven other prisoners. No proper translation was provided at the hearing. A policeman acted as translator but translated only part of what the judge and the witnesses said. The accused explained why they were taking part in the demonstration and in what capacity. The applicant was remanded in custody for two days and then taken to Ortakeuy Prison, where all his personal effects were removed again. He was put with other men in a dormitory block. An hour later, he was blindfolded and led to another area of the prison where he was interrogated by four or five army officers who could not speak any Greek. A translator was present. After the interrogation, which touched on political and military subjects, he was taken to another room to talk to a television anchorman.

15. On 21 July 1989 the applicant was again taken to court together with nine other people. He had no legal representation and no proper interpretation was provided. The interpreter had difficulties in translating some of the words and was occasionally helped by the television anchorman. One of the accused (the Bishop of Kitium) spoke on behalf of the others and said they would only accept as defence counsel a Greek-Cypriot or a UN lawyer. The trial judge replied that she could only appoint a lawyer registered with the "TRNC" bar association. The accused pleaded "not guilty" and stated that they did not recognise the legitimacy of the "TRNC" and of its tribunals. Four witnesses were called by the prosecution. The Bishop of Kitium put some questions to the first witness. Those considered of a political character were ruled inadmissible by the trial judge. The Bishop then made the following statement: "since cross-examining the pseudo-witnesses of your pseudo-court may be regarded as indicating that we recognise the procedure, we say that we have nothing else to say and we shall not cross-examine any other pseudo-witness". From then on the

accused did not participate in the procedure. After the trial hearing, the applicant and his co-accused were taken back to prison. Their pictures were taken.

16. On 22 July 1989 the applicant was taken to court again. A baying crowd gathered outside the courtroom. He was sentenced to three days' imprisonment and a fine of 50 Cypriot pounds (CYP) – approximately 85 euros (EUR) – with five additional days in prison in default of payment within 24 hours. There was an angry crowd in the court area shouting, swearing and making obscene gestures at him and the other detainees.

17. The applicant was detained in Ortakeuy Prison from 24 until 28 July 1989. During this period he refused to eat anything in order to protest against the prison director's refusal to give to the Bishop of Kitium the church vestments and holy vessels, which had been sent in order to allow the Bishop to celebrate mass. On 26 July 1989 the applicant was locked in an isolation cell as punishment for refusing food. That cell was extremely small and unbearably hot (40-60^{o}C).

18. On 28 July 1989 the applicant was released in front of journalists and television cameras. He was handed over to the UN soldiers at the last Turkish sentry box and transported back to the southern part of Cyprus.

19. In support of his claim of ill-treatment, the applicant produced five medical certificates, which read as follows:

(a) Certificate issued on 16 December 2002 by Dr. Andreas G. Constantinides, consultant surgeon at the Evangelistria Medical Centre in Nicosia:

> "[Mr Tasos Asproftas] is suffering from osteoarthritis of the cervical cord. I have recommended that he should stay at home and undergo physiotherapy from 17/12 until 28/12/02."

(b) Certificate issued on an unspecified date by Dr. S.C. Sergiou, orthopaedic surgeon in Larnaka:

> "Mr Tasos Asproftas is suffering from cervical disc disease and is unable to work from 3/1/03 until 12/1/03."

(c) Certificate issued on 9 January 2003 by the medical and public health services – X-rays department – of the Republic of Cyprus:

> "Rear central hernia of the disc. Rear lateral right osteophyte in the area of chronic hernia of the disc A4-A5.
>
> Rear lateral left osteophyte in the area of chronic hernia in discs A5-A6 and A6-A7.
>
> Straight cervical spine due to muscles' spasm.
>
> Stenosis of the middle sections of the spinal cord A4-A5, A5-A6."

(d) Certificate issued on an unspecified date by Dr. Nicos Chr. Spanos, neurosurgeon in Nicosia:

"It is recommended that Mr Asproftas be granted sick leave from 13.1.03 until 31.1.03 for investigation and treatment of the cervical middle spinal disc."

(e) Certificate issued on 7 February 2003 by Dr. Nicolas C. Christodoulou, specialist in physical medicine and rehabilitation sport medicine in Limassol:

"Diagnosis: Severe left cervicobranchial syndrome (rapiculitis C7)

Instructions for physiotherapy: approximately 12 sessions.

1. Interferential current

2. Short wave diathermy

3. Mild cervical massage."

20. The applicant alleged that the above health problems were the result of the savage blows he had received from the Turkish policemen, soldiers and civilians in July 1989.

B. The Government's version of events

21. The Government alleged that the applicant had participated in a violent demonstration with the aim of inflaming anti-Turkish sentiment. The demonstrators, supported by the Greek-Cypriot administration, were demanding that the "Green Line" in Nicosia should be dismantled. Some carried Greek flags, clubs, knives and wire-cutters. They were acting in a provocative manner and shouting abuse. The demonstrators were warned in Greek and English that unless they dispersed they would be arrested in accordance with the laws of the "TRNC". The applicant was arrested by the Turkish-Cypriot police after crossing the UN buffer zone and entering the area under Turkish-Cypriot control. The Turkish-Cypriot police intervened in the face of the manifest inability of the Greek-Cypriot authorities and the UN Force in Cyprus to contain the incursion and its possible consequences.

22. No force was used against demonstrators who did not intrude into the "TRNC" border area and, in the case of demonstrators who were arrested for violating the border, no more force was used than was reasonably necessary in the circumstances in order to arrest and detain the persons concerned. No one was ill-treated. It was possible that some of the demonstrators had hurt themselves in the confusion or in attempting to scale barbed wire or other fencing. Had the Turkish police, or anyone else, assaulted or beaten any of the demonstrators, the UN Secretary General would no doubt have referred to this in his report to the Security Council.

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

if he required assistance from a lawyer registered in the "TRNC", but refused and did not ask for legal representation. Interpretation services were provided at the trial by qualified interpreters. All the proceedings were translated into Greek.

C. The UN Secretary General's report

24. In his report of 7 December 1989 on the UN operations in Cyprus, the UN Secretary General stated, *inter alia*:

> "A serious situation, however, arose in July as a result of a demonstration by Greek Cypriots in Nicosia. The details are as follows:
>
> (a) In the evening of 19 July, some 1,000 Greek Cypriot demonstrators, mostly women, forced their way into the UN buffer zone in the Ayios Kassianos area of Nicosia. The demonstrators broke through a wire barrier maintained by UNFICYP and destroyed an UNFICYP observation post. They then broke through the line formed by UNFICYP soldiers and entered a former school complex where UNFICYP reinforcements regrouped to prevent them from proceeding further. A short while later, Turkish-Cypriot police and security forces elements forced their way into the area and apprehended 111 persons, 101 of them women;
>
> (b) The Ayios Kassianos school complex is situated in the UN buffer zone. However, the Turkish forces claim it to be on their side of the cease-fire line. Under working arrangements with UNFICYP, the Turkish-Cypriot security forces have patrolled the school grounds for several years within specific restrictions. This patrolling ceased altogether as part of the unmanning agreement implemented last May;
>
> (c) In the afternoon of 21 July, some 300 Greek Cypriots gathered at the main entrance to the UN protected area in Nicosia, in which the UN headquarters is located, to protest the continuing detention by the Turkish-Cypriot authorities of those apprehended at Ayios Kassianos. The demonstrators, whose number fluctuated between 200 and 2,000, blocked all UN traffic through this entrance until 30 July, when the Turkish-Cypriot authorities released the last two detainees;
>
> (d) The events described above created considerable tension in the island and intensive efforts were made, both at the UN headquarters and at Nicosia, to contain and resolve the situation. On 21 July, I expressed my concern at the events that have taken place and stressed that it was vital that all parties keep in mind the purpose of the UN buffer zone as well as their responsibility to ensure that that area was not violated. I also urged the Turkish-Cypriot authorities to release without delay all those who had been detained. On 24 July, the President of the Security Council announced that he had conveyed to the representatives of all the parties, on behalf of the members of the Council, the Council's deep concern at the tense situation created by the incidents of 19 July. He also stressed the need strictly to respect the UN buffer zone and appealed for the immediate release of all persons still detained. He asked all concerned to show maximum restraint and to take urgent steps that would bring about a relaxation of tension and contribute to the creation of an atmosphere favourable to the negotiations."

D. Photographs of the demonstration

25. The applicant produced 21 photographs taken at different times during the demonstration on 19 July 1989. Photographs 1 to 7 were intended to show that, notwithstanding the deployment of the Turkish-Cypriot police, the demonstration was peaceful. In photographs 8 to 10 members of the Turkish-Cypriot police are seen breaking up the UNFICYP cordon. The final set of photographs show members of the Turkish-Cypriot police using force to arrest some of the women demonstrators.

E. The documents pertaining to the applicant's trial

26. The English translation of the "TRNC" Nicosia District Court's judgment of 22 July 1989 indicates that the applicant, together with 9 other men, was charged with two offences: entering "TRNC" territory without permission (contrary to sections 2, 8 and 9 of Law no. 5/72 – see paragraph 33 below) and entering "TRNC" territory other than through an approved port (contrary to subsections 12(1) and (5) of the Aliens and Immigration Law – see paragraph 34 below).

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

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

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

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

(iv) the applicant stated that he was a journalist, that he had been arrested while he was following the demonstration even though the peace keeping forces had given him permission to do so;

(v) the accused had been told that they could cross-examine witnesses in turn and, if they so wished, choose one of their number to cross-examine the witnesses on behalf of all the accused; however, they had not done so; one of the accused had put a few questions to one of the prosecution witnesses;

(vi) before the "TRNC" District Court passed sentence, the Bishop of Kitium, speaking on behalf of all the accused, made a statement, saying that their struggle was peaceful, that their aim was to encourage Greek and Turkish-Cypriots to live together in peace, that they carried no weapons and that they had asked for UN protection;

(vii) relying on statements by the prosecution witnesses, which had not been undermined by the statements made by some of the accused, the

"TRNC" District Court came to the conclusion that the accused had crossed the borders of the "TRNC" at an unapproved entry point and without permission and had resisted by various means the UN and Turkish forces which had tried to stop them;

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

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

III. RELEVANT DOMESTIC LAW

A. The Cypriot Criminal Code

28. Section 70 of the Cypriot Criminal Code reads as follows:

> "Where five or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace they are an unlawful assembly.
>
> It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.
>
> When an unlawful assembly has begun to execute the purpose, whether of a public or of a private nature, for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled."

29. According to section 71 of the Criminal Code, any person who takes part in an unlawful assembly is guilty of a misdemeanour and liable to imprisonment for one year.

30. Section 80 of the Criminal Code provides:

> "Any person who carries in public without lawful occasion any offensive arm or weapon in such a manner as to cause terror to any person is guilty of a misdemeanour, and is liable to imprisonment for two years, and his arm or weapons shall be forfeited."

31. According to Section 82 of the Criminal Code, it is an offence to carry a knife outside the home.

B. Police officers' powers of arrest

32. The relevant part of Chapter 155, section 14 of the Criminal Procedure Law states:

"(1) Any officer may, without warrant, arrest any person -

...

(b) who commits in his presence any offence punishable with imprisonment;

(c) who obstructs a police officer, while in the execution of his duty ..."

C. Offence of illegal entry into "TRNC" territory

33. Section 9 of Law No. 5/72 states:

"... Any person who enters a prohibited military area without authorization, or by stealth, or fraudulently, shall be tried by a military court in accordance with the Military Offences Act; those found guilty shall be punished."

34. Subsections 12 (1) and (5) of the Aliens and Immigration Law read as follows:

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

...

5. Any person who contravenes or fails to observe any of the provisions of subsections (1), (2), (3) or (4) of this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine."

THE LAW

I. PRELIMINARY ISSUE

35. In a letter of 22 April 2010 the Government requested the Court to declare the application inadmissible for non-exhaustion of domestic remedies. They invoked the principles affirmed by the Grand Chamber in *Demopoulos and Others v. Turkey* ([GC] (Dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010) and argued that the applicant should address his claims to the Immovable Property Commission (the "IPC") instituted by the "TRNC" Law 67/2005.

36. The Court first observes that the Government's submissions were unsolicited; they were received by the Registry long after the expiration of the time-limit for filing observations on the merits and/or comments on just satisfaction and almost two months after the delivery of the Grand Chamber's decision in *Demopoulos*. It could therefore be held that the

Government are estopped for raising the matter at this stage of the proceedings.

37. Moreover, the Court cannot but reiterate its case-law according to which objections based on non-exhaustion of domestic remedies raised after an application has been declared admissible cannot be taken into account at the merits stage (see *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003, and *Alexandrou v. Turkey* (merits), no. 16162/90, § 21, 20 January 2009). This approach has not been modified by the Grand Chamber, as the cases of *Demopoulos and Others* had not been admissible when Law 67/2005 entered into force and when Turkey objected that domestic remedies had not been exhausted.

38. In any event, no complaint under Article 1 of Protocol No. 1 has been declared admissible in the ambit of the present application. Therefore, Government's argument that the applicant should first submit his property claims to the IPC cannot be accepted.

39. It follows that the Government's preliminary objection of non-exhaustion of domestic remedies should be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

40. The applicant submitted that in 1974 he had had his home in Trypimeni. As he had been unable to return there, he was the victim of a violation of Article 8 of the Convention.

This provision reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

41. The Government disputed this claim.

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

43. The Court observes that the applicant lived in the home owned by his father until the age of eleven and that he claimed that this property was still regarded strongly as the family home more than thirty-five years later.

44. In this respect, it is to be recalled that the Grand Chamber has recently held that it is not enough for an applicant to claim that a particular place or property is a "home"; he or she must show that they enjoy concrete

and persisting links with the property concerned. The nature of the ongoing or recent occupation of a particular property is usually the most significant element in the determination of the existence of a "home" in cases before this Court. However, where "home" is claimed in respect of property in which there has never been any, or hardly any, occupation by the applicant or where there has been no occupation for some considerable time, it may be that the links to that property are so attenuated as to cease to raise any, or any separate, issue under Article 8. Furthermore, while an applicant does not necessarily have to be the owner of the "home" for the purposes of Article 8, it may nonetheless be relevant in such cases of claims to "homes" from the past that he or she can make no claim to any legal rights of occupation or that such time has elapsed that there can be no realistic expectation of taking up, or resuming, occupation in the absence of such rights. Nor can the term "home" be interpreted as synonymous with the notion of "family roots", which is a vague and emotive concept (see *Demopoulos and Others*, *Chrysostomi, Lordos and Lordou Anastasiou*, *Kanari-Eliadou and Others*, *Sotirou and Moushoutta*, *Stylas*, *Charalambou Onofriou and Others* and *Chrisostomi v. Turkey* [GC] (Dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, § 135, 1 March 2010).

45. Turning to the facts of this case, the Court recalls that the applicant was very young at the time he ceased to live in the then family home in 1974, which was more than twelve years before the Court's temporal jurisdiction commenced and more than fifteen years before the date of introduction of this application. For almost his entire life, the applicant has been living elsewhere. The fact that he might inherit a share in the title of that property in the future is a hypothetical and speculative element, not a concrete tie in existence at this moment in time. The Court accordingly does not find that the facts of the case are such as to disclose any present interference with the applicant's right to respect for his home (see, *mutatis mutandis*, *Demopoulos and Others*, cited above, § 136).

46. It follows that there has been no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 8

47. The applicant complained of a violation under Article 14 of the Convention on account of discriminatory treatment against him in the enjoyment of his rights under Article 8 of the Convention. He alleged that this discrimination had been based on his national origin.

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

48. As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see, among many other authorities, *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I, and *Zarb Adami v. Malta*, no. 17209/02, § 42, ECHR 2006-VIII).

49. The Court cannot but recall its conclusion that the facts of the case do not disclose any present interference with the applicant's right to respect for his home (see paragraph 45 above). Therefore, the facts in issue do not fall within the ambit of Article 8. Article 14 of the Convention is accordingly not applicable.

50. It follows that there has been no violation of Article 14 of the Convention, read in conjunction with Article 8.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

He invoked Article 3 of the Convention, which reads as follows:

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

52. The Government disputed his claim.

A. Arguments before the Court

1. The Government

53. Relying on their version of the events (see paragraphs 21-23 above), the Government submitted that this part of the application should be determined on the basis of the Commission's findings in the case of *Chrysostomos and Papachrysostomou v. Turkey* (applications nos. 15299/89 and 15300/89, Commission's report of 8 June 1993, Decisions and Reports (DR) 86, p. 4), as the factual and legal bases of the present application were the same as in that pilot case. They argued that the third-party intervener should be considered estopped from challenging the Commission's findings.

2. The applicant

54. The applicant submitted that his complaints were not identical to those that had been raised in the *Chrysostomos and Papachrysostomou* case (cited above) but significantly different, both as regards the factual basis and the legal analysis. He essentially adopted the observations submitted by the Government of Cyprus (see below).

55. The applicant further observed that, while attending the demonstration of 19 July 1989 as a journalist, he had been attacked by several soldiers who had seriously assaulted him and physically removed him at gunpoint. This constituted an excessive use of force. The Turkish forces had failed to protect him from blows and abuse from the crowd. He was then interrogated in relation to political matters which bore no relation to the grounds for his deprivation of liberty and the conditions of his detention were inhuman and degrading.

3. The third-party intervener

56. The Government of Cyprus submitted that the findings of the Commission in the case of *Chrysostomos and Papachrysostomou* (cited above) were not applicable to the present case. Whether the treatment suffered by the applicant violated Article 3 had to be examined and determined in light of the facts of the case and on the basis of the evidence provided.

57. The treatment endured by the applicant during his arrest and subsequent imprisonment and trial had been of a very severe nature, including *inter alia* physical violence and punishment, exposure to violent and abusive crowds, inhuman and degrading conditions of detention (including solitary confinement and sleep deprivation) and humiliating and frightening treatment in court. Whether such treatment was viewed cumulatively or separately, it had caused severe physical and psychological suffering amounting to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

B. The Court's assessment

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

59. As to the application of these principles to the present case, the Court observes that it is undisputed that the applicant was arrested during a demonstration which gave rise to an extremely tense situation. It will be recalled that in the case of *Chrysostomos and Papachrysostomou*, the Commission found that a number of demonstrators had resisted arrest, that the police forces had broken their resistance and that in that context there

was a high risk that the demonstrators would be treated roughly, and even suffer injuries, in the course of the arrest operation (see the Commission's report, cited above, §§ 113-15). The Court does not see any reason to depart from these findings and will take due account of the state of heightened tension at the time of the applicant's arrest.

60. It further observes that the applicant submitted that in the course of his arrest he was beaten and hit in the face by Turkish policemen and by the crowd (see paragraph 12 above). However, the Court has at its disposal little evidence to corroborate the applicant's version of events. The medical certificates produced by the applicant refer to a cervical disc disease and osteoarthritis from which the applicant was suffering in the period between December 2002 and February 2003 (see paragraph 19 above), which is more than thirteen years after the date of the alleged ill-treatment. The Court considers that such delayed medical examinations could not determine whether the injuries and pain alleged by the applicant were caused during the events of 19 July 1989.

61. Under these circumstances, it has not been established that the applicant's injury was deliberately caused by the Turkish or Turkish-Cypriot police. In any event, it cannot be ruled out that the applicant's condition is consistent with a minor physical confrontation between him and the police officers. There is nothing to show that the police used excessive force when, as they allege, they were confronted in the course of their duties with resistance to arrest by the demonstrators, including the applicant (see, *mutatis mutandis*, *Protopapa*, cited above, §§ 47-48).

62. The applicant's remaining allegations, concerning the conditions of his detention at the "Pavlides garage" at the Seray Police Station and at Ortakeuy Prison, are unsubstantiated. Nor has it been proved that the applicant's injuries required immediate medical assistance. The Court considers, moreover, that the degree of intimidation which the applicant might have felt while being deprived of his liberty did not attain the minimum level of severity required to come within the scope of Article 3 (see *Protopapa*, cited above, § 49).

63. Under these circumstances, the Court cannot consider it established beyond reasonable doubt that the applicant was subjected to treatment contrary to Article 3 or that the authorities had recourse to physical force which had not been rendered strictly necessary by the applicant's own behaviour (see, *mutatis mutandis*, *Foka v. Turkey*, no. 28940/95, § 62, 24 June 2008).

64. It follows that there has been no violation of Article 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

65. The applicant alleged that his deprivation of liberty had been contrary to Article 5 of the Convention which, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> ..."

66. The Government disputed this claim.

A. Arguments before the Court

1. The Government

67. The Government observed that given its violent character, the demonstration constituted an unlawful assembly. They referred, on this point, to sections 70, 71, 80 and 82 of the Cypriot Criminal Code, which was applicable in the "TRNC" (see paragraphs 28-31 above) and noted that under Chapter 155 of the Criminal Procedure Law (see paragraph 32 above), the police had power to arrest persons involved in violent demonstrations.

2. The applicant

68. The applicant considered that he had not taken part in a "riot", but merely in a demonstration against the Turkish occupation of a sovereign territory.

3. The third-party intervener

69. The Government of Cyprus observed that during the applicant's initial arrest, subsequent detention and prison sentence following the court conviction, the applicant was denied his liberty in circumstances which did not follow a procedure prescribed by law and which were not lawful under Article 5 § 1 (a) and (c) of the Convention. Moreover, the authorities' failure to inform the applicant of all the reasons for his arrest constituted a violation of Article 5 § 2.

B. The Court's assessment

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

71. As to the question of compliance with the requirements of Article 5 § 1, the Court reiterates that this provision requires in the first place that the detention be "lawful", which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Benham v. the United Kingdom*, 10 June 1996, §§ 40 and 42, *Reports* 1996-III).

72. The Court further notes that in the case of *Foka v. Turkey* (cited above, §§ 82-84) it held that the "TRNC" was exercising *de facto* authority over northern Cyprus and that the responsibility of Turkey for the acts of the "TRNC" was inconsistent with the applicant's view that the measures adopted by it should always be regarded as lacking a "lawful" basis in terms of the Convention. The Court therefore concluded that when, as in the *Foka* case, an act of the "TRNC" authorities was in compliance with laws in force within the territory of northern Cyprus, it should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention. It does not see any reason to depart, in the instant case, from that finding, which is not in any way inconsistent with the view adopted by the international community regarding the establishment of the "TRNC" or the fact that the Government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see *Cyprus v. Turkey*, cited above, §§ 14, 61 and 90).

73. In the present case, it is not disputed that the applicant took part in a demonstration which the authorities of the "TRNC" regarded as potentially being an "unlawful assembly" within the meaning of section 70 of the Cyprus Criminal Code (see paragraph 28 above). Taking part in an unlawful assembly is an offence under section 71 of the Cypriot Criminal Code and is

punishable by up to one year's imprisonment (see paragraph 29 above). It is also an offence under the "TRNC" laws to enter "TRNC" territory without permission and/or other than through an approved port (see paragraphs 33-34 above). The Court further notes that according to Chapter 155, section 14 of the Criminal Procedure Law, a police officer may, without warrant, arrest any person who commits in his presence any offence punishable with imprisonment or who obstructs a police officer while in the execution of his duty (see paragraph 32 above – see also *Protopapa*, cited above, § 61, and *Chrysostomos and Papachrysostomou*, Commission's report, cited above, § 147).

74. As the police officers who effected the arrest had grounds for believing that the applicant was committing offences punishable by imprisonment, the Court is of the opinion that he was deprived of his liberty in accordance with a procedure prescribed by law "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", within the meaning of Article 5 § 1 (c) of the Convention (see *Protopapa*, cited above, § 62).

75. Moreover, there is no evidence that the deprivation of liberty served any other illegitimate aim or was arbitrary. Indeed, on 20 July 1989, the day after his arrest, the applicant was brought before the "TRNC" Nicosia District Court and remanded for trial in relation to the offence of illegal entry into "TRNC" territory (see paragraph 14 above).

76. After 22 July 1989, the date on which the "TRNC" Nicosia District Court delivered its judgment (see paragraph 16 above), the applicant's deprivation of liberty should be regarded as the "lawful detention of a person after conviction by a competent court", within the meaning of Article 5 § 1 (a) of the Convention.

77. Finally, it is to be observed that the applicant was interrogated by an official who spoke Greek on the day of his arrest (see paragraph 13 above). In the Court's view, it should have been apparent to the applicant that he was being questioned about the trespassing of the UN buffer zone and his allegedly illegal entry into the territory of the "TRNC" (see, *mutatis mutandis*, *Murray and Others v. the United Kingdom*, Series A no. 300-A, § 77, 28 October 1994). Moreover, during the court hearing on the following day, an interpreter was present and the applicant had an opportunity to explain why he was taking part in the demonstration and in what capacity. Another interrogation took place in Ortakeuy Prison after the hearing (see paragraph 14 above). The Court therefore finds that the reasons for the applicant's arrest were sufficiently brought to his attention during his interviews and during the court's hearing of 20 July 1989 (see, *mutatis mutandis*, *Protopapa*, cited above, § 65).

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

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

79. The applicant complained of a lack of fairness at his trial by the "TRNC" Nicosia District Court.

He invoked Article 6 of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

80. The Government disputed this claim.

A. Arguments before the Court

1. The Government

81. The Government stated that:

(i) the applicant had been tried by an impartial and independent court;

(ii) all the cases before the court, including the applicant's, were divided into groups so as to ensure a speedy trial and help the accused in their defence;

(iii) the applicant had not asked for more time to prepare his defence, and had declined legal representation;

(iv) the court had advised the applicant and helped him to understand his rights and the procedure;

(v) everything at the trial had been interpreted during the proceedings by qualified translators and interpreters in order to ensure that the defence was

not prejudiced and the accused were fully informed of the charges against them;

(vi) in passing sentence the court had taken all the circumstances of the case into consideration.

82. The Government challenged the third-party intervener's arguments as being of a political nature. They considered that the allegations of a lack of fairness, independence and impartiality of the judiciary in the "TRNC" were without any foundation whatsoever. On the contrary, previous cases decided by the "TRNC" courts showed that they respected human rights and the Convention principles.

2. The applicant

83. The applicant submitted that in the light of the Court's judgment in the *Loizidou v. Turkey* case ((merits), 18 December 1996, *Reports* 1996-VI), the legal basis upon which certain complaints in the case of *Chrysostomos and Papachrysostomou* had been dismissed by the Commission was no longer sustainable. The jurisprudence of the Court established that Turkey bore responsibility for all the acts of its subordinate local administration in northern Cyprus. Moreover, the objection of incompetence *ratione loci* raised by the Government in the present application had been rejected at the admissibility stage.

84. The applicant further noted that the Government had failed to provide an adequate answer to his complaints relating to the serious deficiencies of his trial. He emphasised that:

(i) he had not been promptly informed, in a language which he could understand, of the nature and cause of the accusation against him;

(ii) he had not been given adequate time and facilities for his defence;

(iii) he had not been permitted to engage a lawyer of his own choosing;

(iv) the judge had impeded any attempts to subject witnesses to a full cross-examination;

(v) the translation of the proceedings had been very poor.

85. In his submission, the intimidations, by way of interrogation or blindfolding, had rendered the whole proceedings against him an abuse of process.

3. The third-party intervener

86. The Government of Cyprus submitted that the instant application was an exceptional case in which the applicant had been denied each and all of the basic fair-trial guarantees provided for in Article 6 of the Convention. The violations of his rights included *inter alia* a failure to inform the applicant promptly, in a language that he understood, of the nature and cause of the accusation against him, to provide him with adequate time and facilities to find a lawyer of his own choosing and to prepare his defence, to

allow the cross-examination of witnesses and to provide the applicant with proper interpretation and a transcript of the trial.

87. The applicant had not been permitted to engage a lawyer of his choice, but was asked only at the commencement of the trial if he wished to use a lawyer registered in the "TRNC". No indication had been given to him that such a lawyer would provide legal assistance free of charge. In any case, legal advice should have been offered well in advance of the commencement of the trial. Lastly, there was proof beyond reasonable doubt that the "court" which tried the applicant was neither impartial nor fair.

B. The Court's assessment

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

89. As to the application of these principles to the present case, the Court observes that the applicant was remanded for trial before the "TRNC" Nicosia District Court. An interpreter was present at the hearings on 21 July 1989. Even if the Court has no information on which to assess the quality of the interpretation provided, it observes that it is apparent from the applicant's own version of the events that he understood the charges against him and the statements made by the witnesses at the trial. In any event, it does not appear that he challenged the quality of the interpretation before the trial judge, requested the replacement of the interpreter or asked for clarification concerning the nature and cause of the accusation.

90. The Court furthermore notes that the accused were offered the opportunity of using the services of a member of the local Bar Association, of calling defence witnesses and of cross-examining the prosecution witnesses in turn, appointing, if they so wished, one of their number to act on behalf of the others. However, exception made for few questions put to a witness by the Bishop of Kitium, they chose not to avail themselves of any of these rights.

91. The Court considers that the applicant was undoubtedly capable of realising the consequences of his decision not to make use of any of the procedural rights which were offered to him. Furthermore, it does not appear that the dispute raised any questions of public interest preventing the aforementioned procedural guarantees from being waived (see, *mutatis mutandis*, *Hermi v. Italy* [GC], no. 18114/02, § 79, 10 October 2006, and *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000).

92. The Court also emphasises that the accused did not request an adjournment of the trial or a translation of the written documents pertaining to the procedure in order to acquaint themselves with the case-file and to prepare their defence. There is nothing to suggest that such requests would have been rejected. The same applies to the possibility, which was not taken

up by the accused, of lodging an appeal or an appeal on points of law against the "TRNC" Nicosia District Court's judgment.

93. Finally, the Court cannot accept, as such, the allegation that the "TRNC" courts as a whole were not impartial and/or independent or that the applicant's trial and conviction were influenced by political aims (see, *mutatis mutandis*, *Cyprus v. Turkey*, cited above, §§ 231-240).

94. In the light of the above, and taking account in particular of the conduct of the accused, the Court considers that the criminal proceedings against the applicant, considered as a whole, were not unfair or otherwise contrary to the provisions of the Convention.

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

VII. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

96. The applicant submitted that he had been convicted in respect of acts which did not constitute a criminal offence.

He invoked Article 7 of the Convention, which reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

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

98. The Government of Cyprus submitted that the applicant had been wrongly tried for acts which did not amount to offences under national or international law, and which in any event failed to meet the standards of foreseeability and accessibility required by the Convention (see *G. v. France*, 27 September 1995, Series A no. 325-B), in violation of Article 7 of the Convention.

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

100. As to the application of these principles to the present case, the Court notes that the applicant was convicted for having entered the territory of the "TRNC" without permission and other than through an approved port. These offences are defined in Law no. 5/72 and subsections 12(1) and (5) of the Aliens and Immigration Law (see paragraphs 33-34 above).

101. It is not disputed that these texts were in force when the offences were committed and were accessible to the applicant. The Court furthermore finds that they described with sufficient clarity the acts which would have made him criminally liable, thus satisfying the requirement of foreseeability. There is nothing to suggest that they were interpreted extensively or by way of analogy; the penalty imposed (three days' imprisonment and a fine of CYP 50 – see paragraph 16 above) was within the maximum provided for by the law in force at the time the offence was committed.

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

VIII. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

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

He invoked Article 11 of the Convention, which reads as follows:

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

104. The Government disputed this claim, observing that given its violent character, the demonstration was clearly outside the scope of Article 11 of the Convention. They considered that the "TRNC" police had intervened in the interests of national security and/or public safety and for the prevention of disorder and crime.

105. The Government of Cyprus submitted that the applicant's right to demonstrate under Article 11 of the Convention had been interfered with in an aggravated and serious manner. The acts of the respondent Government were a deliberate and provocative attempt to disrupt a lawful demonstration in an area which was subject to UN patrols and not even within the claimed jurisdiction of the "TRNC". The interference with the applicant's rights was not prescribed by law and was an excessive and disproportionate response to a peaceful and lawful demonstration. The respondent Government had not identified any legitimate aim that they were seeking to serve by assaulting the applicant.

106. The Court notes that the applicant and others clashed with Turkish-Cypriot police while demonstrating in the Ayios Kassianos area of Nicosia. The demonstration was dispersed and some of the demonstrators, including the applicant, were arrested. Under these circumstances, the Court considers that there has been an interference with the applicant's right of assembly (see *Protopapa*, cited above, § 104).

107. This interference had a legal basis, namely sections 70 and 71 of the Cypriot Criminal Code (see paragraphs 28-29 above) and section 14 of the Criminal Procedure Law (see paragraph 32 above), and was thus "prescribed by law" within the meaning of Article 11 § 2 of the Convention. In this respect, the Court recalls its finding that when, as in the *Foka* case, an act of the "TRNC" authorities was in compliance with laws in force within the territory of northern Cyprus, it should in principle be regarded as having a legal basis in domestic law for the purposes of the Convention (see paragraph 72 above). There remain the questions whether the interference pursued a legitimate aim and was necessary in a democratic society.

108. The Government submitted that the interference pursued legitimate aims, including the protection of national security and/or public safety and the prevention of disorder and crime.

109. The Court notes that in the case of *Chrysostomos and Papachrysostomou*, the Commission found that the demonstration on 19 July 1989 was violent, that it had broken through the UN defence lines and constituted a serious threat to peace and public order on the demarcation line in Cyprus (see Commission's report, cited above, §§ 109-10). The Court sees no reason to depart from these findings, which were based on the UN Secretary General's report, on a video film and on photographs submitted by the respondent Government before the Commission. It emphasises that in his report, the UN Secretary General stated that the demonstrators had "forced their way into the UN buffer zone in the Ayios Kassianos area of Nicosia", that they had broken "through a wire barrier maintained by UNFICYP and destroyed an UNFICYP observation post" before breaking "through the line formed by UNFICYP soldiers" and entering "a former school complex" (see paragraph 24 above).

110. The Court refers, firstly, to the fundamental principles underlying its judgments relating to Article 11 (see *Djavit An v. Turkey*, no. 20652/92, §§ 56-57, ECHR 2003-III; *Piermont v. France*, 27 April 1995, §§ 76-77, Series A no. 314; and *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32, Series A no. 139). It is clear from this case-law that the authorities have a duty to take appropriate measures with regard to demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see *Oya Ataman v. Turkey*, no. 74552/01, § 35, 5 December 2006). However, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (see *Plattform "Ärzte für das Leben"*, cited above, § 34).

111. While an unlawful situation does not, in itself, justify an infringement of freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III (extracts)), interferences with the right guaranteed by Article 11 of the Convention are in principle justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others where, as in the instant case, demonstrators engage in acts of violence (see, *a contrario*, *Bukta and Others v. Hungary*, no. 25691/04, § 37, 17 July 2007, and *Oya Ataman*, cited above, §§ 41-42).

112. The Court further observes that, as stated in the UN Secretary General's report of 7 December 1989 (see paragraph 24 above), the demonstrators had forced their way into the UN buffer zone. According to the "TRNC" authorities, they also entered into "TRNC" territory, thus committing offences punished by the "TRNC" laws (see paragraphs 33-34 and 73 above). In this respect, the Court notes that it does not have at its disposal any element capable of casting doubt upon the statements given by some witnesses at trial according to which the area where the accused had entered was "TRNC" territory (see paragraph 27 (iii) above). In the Court's view, the intervention of the Turkish and/or Turkish-Cypriot forces was not due to the political nature of the demonstration but was provoked by its violent character and by the violation of the "TRNC" borders by some of the demonstrators (see *Protopapa*, cited above, § 110).

113. In these conditions and having regard to the wide margin of appreciation left to the States in this sphere (see *Plattform "Ärzte für das Leben"*, cited above, § 34), the Court holds that the interference with the applicant's right to freedom of assembly was not, in the light of all the circumstances of the case, disproportionate for the purposes of Article 11 § 2.

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

IX. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

He invoked Article 13 of the Convention, which reads as follows:

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

A. Arguments of the parties

1. The Government

116. In their observations of 10 January 2003, the Government observed that the applicant, who had failed to use the domestic remedies available within the legal system of the "TRNC", could not complain of a violation of Article 13 of the Convention.

2. The applicant

117. The applicant submitted that even if the remedies existing in the "TRNC" had theoretically been available to him, it could not be seriously suggested that after having gone through the mockery of a criminal "trial" he should be required to exhaust any rights of appeal which might have existed. As he had been put on show before a tribunal which had ignored the most basic concepts of justice, the applicant had to be considered to have been absolved from the obligation to try any domestic remedy. It would be wholly unrealistic to suggest that he should have stayed in northern Cyprus in order to engage in a legal struggle. In any event, as far as the reference made by Turkey to existing domestic remedies in the "TRNC" could be interpreted as an objection of inadmissibility for non-exhaustion, this objection had been raised after the application was declared admissible.

3. The third-party intervener

118. The Government of Cyprus submitted that, contrary to Article 13 of the Convention, no effective remedies had at any time been available to the applicant in respect of any of his complaints. Alternatively, the institutions established by the "TRNC" were incapable of constituting effective domestic remedies within the national legal system of Turkey.

B. The Court's assessment

119. Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

120. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in

law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term "effective" is also considered to mean that the remedy must be adequate and accessible (see *Vidas v. Croatia*, no. 40383/04, § 34, 3 July 2008, and *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII).

121. It is also to be recalled that in its judgment in the case of *Cyprus v. Turkey* (cited above, §§ 14, 16, 90 and 102) the Court held that for the purposes of Article 35 § 1, with which Article 13 has a close affinity (see *Kudla*, cited above, § 152), remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises.

122. In the present case, it does not appear that the applicant attempted to make use of the remedies which might have been available to him in the "TRNC" with regard to the circumstances of his arrest, his subsequent detention and his trial (see *Protopapa*, cited above, § 121, *mutatis mutandis*, *Chrysostomos and Papachrysostomou*, Commission's report cited above, § 174). In particular, he refused the services of a lawyer practising in the "TRNC", made little or no use of the procedural safeguards provided by the "TRNC" Nicosia District Court, did not lodge an appeal against his conviction and did not file with the local authorities a formal complaint about the ill-treatment he allegedly suffered at the hands of the Turkish-Cypriot police. In the Court's view, there is no evidence that, had the applicant made use of all or part of them, these domestic remedies would have been ineffective.

123. Under these circumstances, no breach of Article 13 of the Convention can be found.

X. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 5, 6 AND 7

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

He invoked Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

125. The Government disputed this claim.

126. The Government of Cyprus submitted that the applicant had been arrested, beaten and prosecuted by the authorities solely because of his nationality and ethnic origin. That differential treatment was a clear violation of Article 14 of the Convention.

127. The Court's case-law establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory (see *Unal Tekeli v. Turkey*, no. 29865/96, § 49, 16 November 2004).

128. In the present case the applicant failed to prove that he had been treated differently from other persons – namely, from Cypriots of Turkish origin – who were in a comparable situation. The Court also refers to its conclusion that the applicant's fundamental rights under Articles 3, 5, 6, 7, 11 and 13 of the Convention have not been infringed (see *Protopapa*, cited above, § 127, and, *mutatis mutandis*, *Manitaras v. Turkey* (dec.), no. 54591/00, 3 June 2008).

129. It follows that there has been no violation of Article 14 of the Convention read in conjunction with Articles 5, 6 and 7 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection of non-exhaustion of domestic remedies;

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

3. *Holds* that there has been no violation of Article 14 of the Convention read in conjunction with Article 8 of the Convention;

4. *Holds* that there has been no violation of Article 3 of the Convention;

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

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

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

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

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

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

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Bratza is annexed to this judgment.

N.B.
F.A.

CONCURRING OPINION OF JUDGE BRATZA

In the case of *Protopapa v. Turkey* (no. 16084/90, 24 February 2009), I voted with the other members of the Chamber in relation to all of the Convention complaints of the applicant save that under Article 13 which, for the reasons explained in my Partly Dissenting Opinion, I found had been violated.

The applicant's complaint under Article 13 in the present case is substantially the same as that of the applicant in the *Protopapa* case. While I continue to entertain the doubts which I expressed in that case as to whether there were any remedies which could be regarded as practical or effective and which offered the applicant any realistic prospects of success, in deference to the majority opinion in the *Protopapa* judgment, which is final, I have joined the other members of the Chamber in finding no violation of Article 13.