

Parliamentary **Assembly** **Assemblée** parlementaire

Rights and fundamental freedoms of Greek Cypriots and Maronites living in the northern part of Cyprus

Doc. 9714

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Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Dick Marty, Switzerland, Liberal, Democratic and Reformers' Group

Summary

The Assembly agrees with the conclusions of the European Court of Human Rights in its judgment of 10 May 2001 in the case of Cyprus v. Turkey, establishing violations of the human rights of the Greek Cypriot and Maronite communities living in the northern part of Cyprus.

The Assembly insists that the Turkish Cypriot administration controlling the northern part of Cyprus, as well as Turkey which assumes *de facto* legal co-responsibility in this part of the island:

- cease all humiliation of the Greek and Maronite communities and put an end to the climate of intimidation;
- end the dispossessions affecting members of these communities, by returning to the members of these communities the property and possessions of which they have been arbitrarily dispossessed, individually or collectively, or failing that offer them just compensation;

- ensure freedom of education and worship for Orthodox Christians and Maronites;
- end the restrictions on movements across the demarcation line and immediately grant Greek Cypriots living in the northern part of Cyprus at least the same rights as those already granted to Maronites;
- grant all inhabitants the right to an effective remedy;
- ensure equal access to medical care;
- permit the communities to freely choose their representatives themselves.

The Assembly urges all the representatives of the civil society of Cyprus, independently of the community to which they belong, to do their utmost to bring about a climate of mutual understanding, of dialogue and of tolerance between the different social, political, religious, cultural and linguistic constituents present on the island, who, as history has shown, are perfectly capable of living together in peace and harmony.

I. Draft resolution [[Link to the adopted text](#)]

1. The Assembly once again expresses its serious concern, noting that the island of Cyprus continues to be rigorously and arbitrarily divided into two parts and that such a situation has lasted for more than thirty years, without any improvement.
2. All the people living in Cyprus, in the northern as well as the southern part, are protected by the European Convention for the protection of Human Rights, since the Republic of Cyprus acceded to this Convention on 6 October 1962.
3. The Assembly agrees with the opinion expressed by the European Court of Human Rights in its judgment of 10 May 2001 in the case of Cyprus v. Turkey, that Turkey's responsibility under the Convention also extends to actions of the Turkish Cypriot administration: Turkey therefore has a general obligation to secure respect for the human rights safeguarded by the Convention for all persons in the territory controlled by the Turkish Cypriot administration.
4. The Parliamentary Assembly is extremely concerned by the status imposed upon the Greek Cypriot and Maronite communities that have remained north of the demarcation line and by the resulting violations of human rights, as established by the European Court of Human Rights in Strasbourg.
5. The Assembly considers that a general settlement of the Cypriot conflict should never be at the expense of the communities that have opted to continue to live there where they have always resided.
6. The Assembly agrees with the conclusions of the European Court of Human Rights in its aforementioned Cyprus v. Turkey judgment establishing violations of the human rights of the Greek Cypriot and Maronite communities living in the northern part of Cyprus.

7. The Assembly is particularly shocked by the imposed division of families, the prohibition on young people returning to their homes, the arbitrary confiscations and expropriations and the general climate of apprehension and uncertainty, even fear, to which members of these communities are deliberately subjected.

8. The Assembly insists that the Turkish Cypriot administration controlling the northern part of Cyprus, as well as Turkey which assumes *de facto* legal co-responsibility in this part of the island, as indicated in paragraph 3 above:

a. cease all humiliation of the Greek and Maronite communities and put an end to the climate of intimidation;

b. end the dispossessions affecting members of these communities, by returning to the members of these communities the property and possessions of which they have been arbitrarily dispossessed, individually or collectively, or failing that offer them just compensation;

c. ensure freedom of education and worship for Orthodox Christians and Maronites;

d. end the restrictions on movements across the demarcation line and immediately grant Greek Cypriots living in the northern part of Cyprus at least the same rights as those already granted to Maronites;

e. grant all inhabitants the right to an effective remedy;

f. ensure equal access to medical care;

g. permit the communities to freely choose their representatives themselves.

9. The Assembly urges all the representatives of the civil society of Cyprus, independently of the community to which they belong, to do their utmost to bring about a climate of mutual understanding, of dialogue and of tolerance between the different social, political, religious, cultural and linguistic constituents present on the island, who, as history has shown, are perfectly capable of living together in peace and harmony.

II. Explanatory memorandum

by Mr Marty, Rapporteur

A. Introduction

1. For nearly 38 years, the United Nations blue helmets (UNFICYP) have been in post in Cyprus, and for more than 27 years the demarcation line separating Greek and Turkish Cypriots has been guarded by barbed wire, watchtowers and soldiers of the international peace-keeping forces. The line prevents almost any contact between the two communities and severely restricts freedom of movement of persons and goods. Such a situation is clearly incompatible with human rights and dignity and the fact that it is taking place in a Council of Europe member state makes it even more intolerable. Moreover, the two parts of the island have experienced

widely diverging economic and social changes and the current significant disparities between them will rapidly become more marked.

2. Yet Cyprus's history also bears witness to longstanding peaceful coexistence between different cultures, languages and religions. Whether they be Orthodox, Muslim, Maronite or Armenian, Cypriots have shown that they can live together in a climate of peace and tolerance and there are many testimonies to the peaceful meshing of the two communities' values. Clearly, it is not our place to seek out and point a finger at the guilty parties in Cyprus's long-running crisis. This is not our task or the purpose of this report. Nevertheless, we consider it undeniable that the "green line" is, *de facto*, a dramatic and distressing symbol of the inability of the two communities' political and religious leaders to recognise the real interests of the people. It is also and above all the tragic consequence of the inadequacies of the various powers that have taken on responsibilities in the region and have seen a need to intervene in Cypriot affairs. The division of the island appears as one of the unfortunate expressions of the ideology of cultural confrontation and, in a way, ethnic cleansing, at the expense of respect for diversity, coexistence and tolerance.

3. At the time of its independence in 1960, Cyprus comprised 77% Greek Cypriots (Orthodox), 18.3% Turkish Cypriots (Muslims) and 4.7% of persons from other communities (mainly Maronites and Armenians), and a total population of about 600,000. The Turkish Cypriot community was scattered over different parts of the island and was certainly not concentrated in one area. The dispersion of these communities, which are numeric minorities, showed that a shared existence between the two communities was not only possible but also very much a reality. Several small villages were mixed and contained a church and a mosque alongside each other. Turkey's military intervention in summer 1974, following a coup attempt fostered by the Greek military dictatorship, and the occupation that followed and continues today, have created major upheavals in the pattern of settlement, with veritable flights of populations, driven by the remorseless logic of "ethnic cleansing". As a result, the Turkish Cypriots are now concentrated in the northern part of the island and the Greek Cypriots in the south, thus accelerating the process already underway for several years following the repeated numerous violent confrontations which have occurred since 1963. Thousands of people have been forced to abandon their homes and land, thereby losing all their means of subsistence and ending up as refugees in their own country.

4. There has been some controversy about the use of the term "enclaved", which was first used by the United Nations to describe the Turkish Cypriot groups living in specific parts of the island in the years preceding the Turkish military intervention and is now employed to refer to those remaining in their enclaves in the north after August 1975. According to figures supplied by the Secretary General of the United Nations to the General Assembly in his report of 30 May 2001, 428 Greek Cypriots and 167 Maronites remain in this area. The numbers are constantly declining and by 29 October 2001 had already fallen to respectively 427 and 165^[1]. Above all, it is an ageing population. Happily, a birth was reported in the Greek Cypriot community on 14 August 2001. The Maronite population is concentrated in four villages: Ayia Marina, Asomatos, Karpasia, and Kormakitis (Koruçam); the Greek Cypriot population is grouped in the two villages of Ayia Triada and Rizokarpaso (Dipkarpaz) in the Karpas (Karpaz) peninsula (see Appendix 1 for the geographical situation of the two communities).

5. Turkey justified its military intervention in Cyprus in 1974 with reference to its position as guarantor of the rights of the Turkish Cypriot community threatened by the Greek majority and claimed that it was seeking to re-establish constitutional order. From the standpoint of international law, the situation is as follows[2]. In the northern part of the island – where a large number of Turkish soldiers and weapons are still stationed - the Turkish Cypriot administration has proclaimed the so-called Turkish Republic of Northern Cyprus. Apart from Turkey, no country or international organisation recognises this entity. The only recognised state is the Republic of Cyprus, which is a member of the United Nations, has been a member of the Council of Europe since 1961 and is currently an applicant for membership of the European Union. The European Court of Human Rights does not recognise the northern part as an independent entity. It considers that *de facto* power in this area is currently exercised by Turkey, which is therefore responsible for any human rights violations committed there. In terms of international law and terminology, therefore, the Rapporteur sees no reason to disagree with this clearly established legal situation recognised by the whole of the international community.

6. The question of the rights of Turkish Cypriots living in the north of the island and in the territory of the Republic of Cyprus falls outside the terms of reference of this report, as approved by the Commission when I presented my introductory memorandum to the June 2001 part-session[3]. It will not therefore be considered in this report. During the talks the Rapporteur had with the representatives of the northern part of the island, it was stated that acts had occurred which are considered as violations of human rights against Turkish Cypriots living in the southern part of the island.

7. In this connection, one should mention the existence of two judgments of the European Court of Human Rights referring to specific situations, namely the Egmez judgment of 21 December 2000 and the Denizci and others judgment of 23 May 2001; these two judgments are currently being considered by the Committee of Ministers. The first case concerned inhuman treatment inflicted upon the applicant when he was arrested by State officials and the absence of an effective remedy (violation of Articles 3 and 13 of the Convention); the second case concerned applicants who had been submitted to ill-treatment considered by the Court as inhuman, had been victims of illegal arrest and detention, and who had been submitted to limitations concerning their freedom of movement (Articles 3 and 15 of Protocol No 2, as well as Articles 3 and 5 of Protocol No 4).

8. Your Rapporteur is of the opinion that the Committee should consider extending his mandate or defining a new one.

B. Summary of complaints before the European Court of Human Rights in the Loizidou and Cyprus v. Turkey cases

9. In the Loizidou case, the European Court of Human Rights delivered a judgment establishing the principle of Turkey's administration of northern Cyprus. The Court accepted the claim of the applicant, who had been dispossessed of property in Kyrenia, for compensation from Turkey. The Court stated that "as a consequence of the fact that [Mrs Loizidou] has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy, her property". According to the Court, "the continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol

No. 1". In other words, this did not amount to expropriation properly speaking but to confiscation, which the Court considered to be a permanent violation of Article 1 of Protocol No. 1. It is interesting to note that this judgment was delivered by the Court even though the property was confiscated long before Turkey acknowledged the compulsory jurisdiction of the Court in a declaration of 22 January 1990, despite the Court's established case-law that ratification of the European Convention on Human Rights has no retroactive effect^[4]. The Committee of Ministers adopted an interim resolution on 24 July 2000 strongly insisting that Turkey comply fully with the Court's judgment and another resolution of the Committee of Ministers on 26 June 2001 calling upon the authorities of the member States to take such action as they deemed appropriate to this end (that is, persuade Turkey to comply with its obligations).

10. In a judgment delivered on 10 May 2001 in the Case of Cyprus v. Turkey, the European Court ruled that the questions raised by Cyprus in its application engaged the responsibility of Turkey under the European Convention on Human Rights and found fourteen violations of the Convention. With regard to the missing Greek Cypriots and their families, the Court found a continuing violation of articles 2 (right to life), 5 (right to liberty and security) and 3 (prohibition of inhuman or degrading treatment). In the case of the homes and property of displaced persons, there was a continuing violation of Article 8 (right to respect for private and family life, home and correspondence), Article 1 of Protocol No. 1 (protection of property) and Article 13 (right to an effective remedy). Turning to the living conditions of Greek Cypriots in the Karpas region of northern Cyprus, it found a violation of Article 10 (freedom of expression), Article 1 of Protocol No. 1, Article 2 of Protocol No. 1 (right to education) and articles 3, 8 and 13. The Court also found that a number of complaints were unsubstantiated and said that the possible application of Article 41 of the Convention was not ready for decision.

11. In its allegations before the Court, Cyprus relied in particular on Article 8 (continuing refusal to allow Greek Cypriots to return to their homes and reunite with their families in northern Cyprus, settlement of Turkish colonists in the north), Article 1 of Protocol No. 1 (refusal to grant access to property and the right to enjoy it, reallocation of property, non-payment of compensation and deprivation of title to property) and Article 13 (failure to provide remedies to displaced persons to redress alleged violations of Article 8 and Article 1 of Protocol No 1).

12. In connection with the living conditions of Greek Cypriots in the Karpas region of northern Cyprus, Cyprus relied in particular on the following articles of the Convention: 3 (discriminatory treatment; the restrictions placed on them and the methods of coercion used were also said to constitute inhuman and degrading treatment, particularly in view of their advanced age), 8 (right to respect for private and family life, home and correspondence), 9 (interference with their right to manifest their religion because of restrictions on their freedom of movement and access to their places of worship), 10 (excessive censorship of school books and restrictions on the importation of newspapers and books in Greek) and 13 (refusal to provide effective remedies to redress their complaints) of the Convention; together with articles 1 (interference in the right to respect for the property of deceased Greek Cypriots and persons who had left northern Cyprus for good) and 2 (refusal to set up secondary schools for Greek Cypriot children) of Protocol No 1.

C. Other positions on the problems of the enclaved population

13. The Turkish Cypriot authorities have a quite different point of view on the subject. On 5 May 2000, the "Council of Ministers" of the Turkish Cypriot administration announced a certain number of measures affecting the enclaved population, designed to lift certain restrictions on the movement of persons on either side of the demarcation line. These had been imposed in 1995 and already partially lifted in 1998. The measures include the lifting of fees for visas and to enter the "territory" of the northern area, except for fees charged for handling files (one pound sterling). Ten pounds sterling is charged monthly for multiple entries and exits. Greek Cypriots and Maronites living in the southern part of the country who visit their families in the north can stay in the "territory" of the entity for a reasonable time, which may be extended for reasons of illness or fatigue. The restriction which prevented Greek Cypriot young men whose age made them liable for military service and who were studying or working in the southern part of the island from visiting their parents or grandparents in the entity has been lifted. If a Greek Cypriot or Maronite marries someone from the same community residing in the other part of the island, the latter may henceforth reside in the north. Freedom of movement in the north is now guaranteed. Maronites and Greek Cypriots may now apply for "citizenship" of the Turkish Cypriot entity. However, residence permits for persons arriving from the south may be withdrawn at any time for reasons of security or to maintain public order. According to the Turkish Cypriot administration and Turkey, the Greek Cypriot and Maronite communities in the enclave enjoy the same rights as the Turkish Cypriot population with regard to health, education, freedom of movement, freedom of communication and freedom of religion.

14. The Head of Civil Affairs of the United Nations Peacekeeping Force in Cyprus (UNFICYP), whom I had the opportunity to meet briefly during my visit to the buffer zone, described his department's main functions: providing humanitarian aid from Cyprus to persons in the enclave, collecting and distributing their post, passing on their pensions paid in the Republic of Cyprus and trying to talk to them. In other words, it offers a made-to-measure service and it can reasonably be concluded that this particular United Nations activity is justified, even though in some respects the UN's permanent presence can only prolong and reinforce the *status quo*. In carrying out this task of assisting persons in the enclave, however, UN personnel are escorted by Turkish Cypriot police. Nor can the UN patrol in the northern part of the island without a Turkish Cypriot escort. They only have one liaison post, in Leonarisso in the Karpas peninsula, even though they should be able to establish armed posts throughout the area. Our meeting coincided with the arrival of the UN Secretary General's Special Representative, Mr de Soto, to discuss the problems of the enclaved population. Since my visit, direct discussions between the leaders of the two communities have resumed, but from what has emerged this problem has not been discussed. The civil administration of UNFICYP places the situation of Greek Cypriots and Maronites in the north and Turkish Cypriots in the south on an equal footing. An investigation into assaults on Turkish Cypriots in the south is apparently under way. UNFICYP has reported violations of the human rights of Greek Cypriots and Maronites and made recommendations to the Turkish Cypriot authorities.

D. Visits to the two communities: testimony received

15. I first visited the Maronite community. They live mainly in two enclaves, to the west of the northern part of the island. This community of believers, which is considered to be authentically Cypriot, speaks Greek but also the Cypriot Arab dialect, although it has retained its liturgy in Aramean. It is united with the Catholic

Church, thanks to whose support it has secured certain advantages, but the Holy See's recent contacts with the administrative authorities for humanitarian purposes will probably not be enough to avoid the community's extinction since no births have been recorded since Turkey's military intervention and the average age of Maronites is now 72. The particular advantages granted to this community concern freedom of movement and of residence. For example, Maronites on both sides can cross the demarcation line in their private vehicles, whereas Greek Cypriots from either side must take taxis, and they pay a lower crossing fee than the Greek Cypriots (just four pound sterling, compared with fifteen pounds for Greek Cypriots, while the fee for a visa for monthly multiple entries is ten pounds, which makes the cost of visits prohibitive). Their relatives can stay at any time of the year for up to one week - the normal pattern is once a month for three days - after advising the authorities 48 hours in advance (for Greek Cypriots five days' prior notice is required).

16. The Maronites are subject to the same constraints as Greek Cypriots concerning their property regime (see below). Products cultivated by Maronites are purchased at a low price by the Turkish Cypriot authorities (who claim to treat the other inhabitants in the same way) and their standard of living does not match up to what it would be if they were able to reap the full benefit from their land. The situation is exactly the same among the Greek Cypriot minority, or perhaps even worse since the Rizokarpaso (Dipkarpaz) co-operative no longer offers practically any products for sale.

17. I was told of difficulties experienced in consulting a doctor, even if the latter comes from the south. Greek Cypriots and Maronites living in the north have practically no other choice than to be cared for in the south (in emergencies, however, Greek Cypriots may be treated in Famagusta hospital). Persons who are ill have to be transported in a United Nations ambulance.

18. Since there are no more Maronite children there are also no schools. The Maronites have repeatedly asked the authorities to convert the former school in Kormakitis into a cultural centre, but so far the Turkish Cypriot authorities have failed to accede to the request. There is only one priest for the community of Maronite faithful, and masses cannot always be celebrated, which is unacceptable from the standpoint of freedom of worship. Telephone communications with the south seem to be possible and southern radio is received, but the newspapers are censored (the situation is the same in the Karpas peninsula).

19. Although Maronites enjoy more flexible arrangements concerning freedom of movement, they face the same problems as Greek Cypriots with regard to property rights and the right of return. When a person dies, if there are no heirs living in the north the family cannot inherit the property, which is confiscated by the authorities. Similarly, when persons die, their families cannot return to settle in the north. The departure of persons to the south also entails the confiscation of their property if there is no more family. This is contrary to the humanitarian agreement on enclaved persons reached by MM. Clerides and Denktas on 31 July 1975 (Vienna III), which stipulated that persons could remain in the regions where they lived and could enjoy normal conditions enabling them to remain. Like the Greek Cypriots, the Maronites have no legal remedies to secure recognition of their property titles, which are transferred to persons of Turkish origin (and then translated into Turkish, the only official language in the territory, which they do not speak), without their being aware of it.

20. Another problem common to the two communities concerns their representatives. There are two for each community, one appointed by the Cypriot government the other by the Turkish Cypriot administration. These "muhtars" have civil functions but do not have the powers of mayors. When I visited the Maronite community I was only able to meet the "muhtar" appointed by the entity, since the one appointed by the Cypriot government had apparently refused to see me. However, I was able to meet both "muhtars" of the Greek Cypriot community, who appeared to be friends and support each other.

21. As far as education is concerned, the Greek Cypriots have the problem that when their children have completed primary school in the north they have to continue their secondary and any university studies in the south, where they then settle once for all when their studies are finished in order to find work, since there is practically no chance of finding a job in their villages of origin. The economic activity of these communities is essentially based on agriculture - much diminished as properties fall into the hands of immigrants from Turkey - and fishing - also rapidly declining owing to exhaustion of stocks and inability to find outlets.

22. One shocking feature is that young Greek Cypriot girls born in the northern part of the island but educated in the south can visit their parents during the holidays and at weekends up to the age of 18 but beyond that age are not entitled to return to settle in the northern part and can only return for a few weekends each year. The same restrictions apply to boys up to the age of conscription, which is 16. In the north, the Greek Cypriot community has one school - which it was not possible to visit however - with two teachers recognised by the Turkish Cypriot administration. Certain school-books are apparently rejected, for example geography books in which the demarcation line is not shown on maps.

23. Freedom of worship is closely supervised, as are the annual pilgrimages to St Andrew's Monastery, occupied by an aged priest and two nuns, under United Nations protection. I was unable to visit the monastery, which is very isolated, to meet the priest, normally resident in Rizokarpaso (Dipkarpaz), who cannot celebrate religious offices freely.

24. Greek Cypriots residing in the south cannot visit their remaining families in the north freely. To do so they must notify the Turkish Cypriot authorities one week in advance that they want to make the visit. They can only do so once a month and can only stay for a reasonable period, generally one or two nights. They cannot take their private car but must hire a taxi at a very high rate.

Conclusions

25. Despite the assurances of the Turkish Cypriot authorities, the testimony I gathered on the spot during my visit leads me to conclude that members of the Maronite and Greek Cypriot communities enclaved in the northern part of Cyprus do indeed suffer human rights violations.

26. These violations, some of which are serious, are imputable to the administration set up by Turkey, which carries ultimate responsibility for acts committed in the territory in question. These violations principally concern freedom of circulation, freedom to choose to live in one's area of origin, the right to

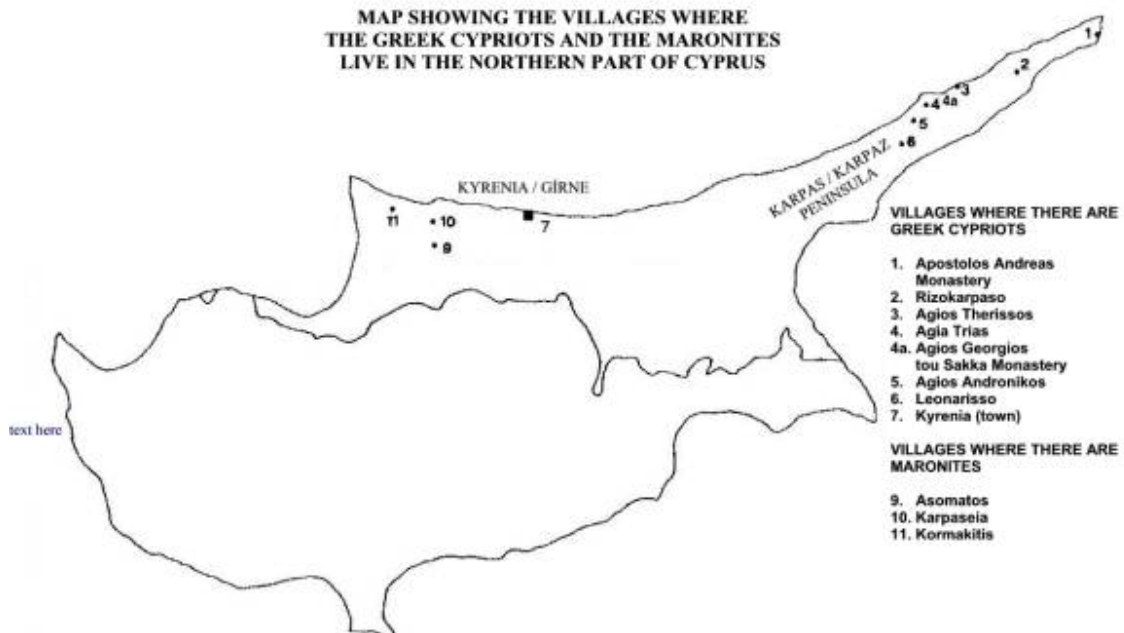
education, the right to religion, the right to an effective remedy and the right to property.

27. I have been shocked by the climate of intimidation which one encounters on the spot, lack of security and sense of anguish experienced by the members of the two communities. The reality I saw was that of a life of vexations, obstacles, restrictions and insecurity.

28. The Turkish Cypriot authorities maintain a deliberate policy of confining and isolating members of these communities, and making their living conditions so difficult that they are forced to leave. These conditions, characterised by a whole raft of adverse circumstances, mean that they are living in a hostile environment in which any private or normal family life is impossible.

29. The discrimination suffered by these persons is unacceptable and incompatible with the European Convention on Human Rights. The Court has explicitly defined as inhuman and degrading treatment the authorities' silence in the face of families' concerns about the fate of missing persons.

30. It is therefore extremely urgent that this policy, aimed at deliberately annihilating the two very minority communities, living in the northern part of the island, be put to an end. Such a policy is shameful since it is contrary to all the values which unite us in this Council.



APPENDIX I

APPENDIX II

341

10.5.2001

Press release issued by the Registrar

of the European Court of Human Rights

JUDGMENT IN THE CASE OF CYPRUS v. TURKEY

In a Grand Chamber [judgment](#) delivered at Strasbourg on 10 May 2001 in the case of **Cyprus v. Turkey** (application no. 25781/94), the European Court of Human Rights held, by sixteen votes to one, that the matters complained of by Cyprus in its application entailed Turkey's responsibility under the European Convention on Human Rights.

The Court held that there had been the following 14 violations of the Convention (see **Decision of the Court** for details):

Greek-Cypriot missing persons and their relatives

- a continuing **violation of Article 2** (right to life) of the Convention concerning the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances;
- a continuing **violation of Article 5** (right to liberty and security) concerning the failure of the Turkish authorities to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance;
 - a continuing **violation of Article 3** (prohibition of inhuman or degrading treatment) in that the silence of the Turkish authorities in the face of the real concerns of the relatives attained a level of severity which could only be categorised as inhuman treatment.

Home and property of displaced persons

- a continuing **violation of Article 8** (right to respect for private and family life, home and correspondence) concerning the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus;
- a continuing **violation of Article 1 of Protocol No. 1** (protection of property) concerning the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights;

- a **violation of Article 13** (right to an effective remedy) concerning the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 and Article 1 of Protocol No. 1.

Living conditions of Greek Cypriots in Karpas region of northern Cyprus

- a **violation of Article 9** (freedom of thought, conscience and religion) in respect of Greek Cypriots living in northern Cyprus, concerning the effects of restrictions on freedom of movement which limited access to places of worship and participation in other aspects of religious life;
- a **violation of Article 10** (freedom of expression) in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship;
- a **continuing violation of Article 1 of Protocol No. 1** in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised;
- a **violation of Article 2 of Protocol No. 1** (right to education) in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them;
- a **violation of Article 3** in that the Greek Cypriots living in the Karpas area of northern Cyprus had been subjected to discrimination amounting to degrading treatment;
 - a **violation of Article 8** concerning the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home;
 - a **violation of Article 13** by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

Rights of Turkish Cypriots living in northern Cyprus

- a **violation of Article 6** (right to a fair trial) on account of the legislative practice of authorising the trial of civilians by military courts.

The Court further held that there had been **no violation** concerning a number of complaints, including all those raised under: Article 4 (prohibition of slavery and forced labour), Article 11 (freedom of assembly and association), Articles 14 (prohibition of discrimination), Article 17 (prohibition of abuse of rights) and Article 18 (limitation on use of restrictions on rights) read in conjunction with all those provisions. As regards a number of other allegations, the Court held that it was not necessary to consider the issues raised.

The Court also decided, unanimously, that the question of the possible application of Article 41 (just satisfaction) of the Convention was not ready for decision.

1. Principal facts

The case relates to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus. In connection with that situation, Cyprus maintained that Turkey had continued to violate the Convention in northern Cyprus after the adoption of two earlier reports by the European Commission of Human Rights, which were drawn up following previous applications brought by Cyprus against Turkey.

In the Convention proceedings, Cyprus contended that Turkey was accountable under the Convention for the violations alleged notwithstanding the proclamation of the "Turkish Republic of Northern Cyprus" in November 1983 and the subsequent enactment of the "TRNC Constitution" in May 1985. Cyprus maintained that the "TRNC" was an illegal entity from the standpoint of international law and pointed to the international community's condemnation of the establishment of the "TRNC". Turkey, on the other hand, maintained that the "TRNC" was a democratic and constitutional State, which was politically independent of all other sovereign States, including Turkey. For that reason, Turkey stressed that the allegations made by Cyprus were imputable exclusively to the "TRNC" and that Turkey could not be held accountable under the Convention for the acts or omissions on which those allegations were based.

2. Procedure

The application was lodged with the European Commission of Human Rights on 22 November 1994. Having declared the application admissible on 28 June 1996, the Commission appointed Delegates who took evidence in respect of various matters raised by the application in Strasbourg (27-28 November 1997), Cyprus (21-24 February 1998) and London (22 April 1998). Having concluded that there was no basis on which a friendly settlement could be secured, the Commission, following an oral hearing, adopted a report on 4 June 1999 in which it established the facts and expressed an opinion as to whether the facts disclosed the alleged breaches by Turkey of its obligations under the Convention.

The case was referred to the Court by the Government of the Republic of Cyprus on 30 August 1999 and by the Commission on 11 September 1999. The panel of the Grand Chamber of the Court decided that the case should be examined by the Grand Chamber.

3. Composition of the Court

Judgment was given by the Grand Chamber of seventeen judges, composed as follows:

Luzius **Wildhaber** (Swiss), **President**,
Elisabeth **Palm** (Swedish),
Jean-Paul **Costa** (French),

Luigi **Ferrari Bravo** (Italian),
Lucius **Cafilisch** (Swiss),
Willi **Fuhrmann** (Austrian),
Karel **Jungwiert** (Czech),
Marc **Fischbach** (Luxemburger),
Boštjan **Zupancic** (Slovenian),
Nina **Vajic** (Croatian),
John **Hedigan** (Irish),
Margarita **Tsatsa-Nikolovska** (FYROMacedonia),
Tudor **Pantiru** (Moldovan),
Egils **Levits** (Latvian),
Anatoly **Kovler** (Russian), *judges*,
Kutlu Tekin **Fuad**, *ad hoc judge* in respect of Turkey,
Silvio **Marcus-Helmons**, *ad hoc judge* in respect of Cyprus,

and also Michele **de Salvia**, *Registrar*.

4. Complaints

Before the Court, Cyprus alleged violations of the Convention under Articles 1 (obligation to respect human rights), 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, Articles 1 and 2 of Protocol No. 1, and Articles 14, 17, and 18. According to Cyprus, these Articles were violated as a matter of administrative practice by the respondent State.

The allegations concerned the following issues:

(a) Greek-Cypriot missing persons and their relatives

In respect of Greek-Cypriot missing persons, it was alleged that, if any were still in Turkish custody, this would constitute a form of slavery or servitude contrary to Article 4 and a grave breach of their right to liberty under Article 5. In addition, Cyprus maintained that there had been a violation of Articles 2 and 5 on account of Turkey's failure to carry out an investigation into the disappearance of these persons in life-threatening circumstances and to account for their whereabouts.

In respect of the relatives of missing persons, Cyprus alleged violations of Articles 3, 8 and 10 on account of the Turkish authorities' consistent and continuing failure to provide information on the fate of the missing persons.

(b) Home and property of displaced persons

Cyprus complained, among other things, under Article 8 (the continuing refusal to allow Greek Cypriots to return to their homes and families in northern Cyprus; implantation of Turkish settlers in northern Cyprus to the detriment of the demographic and cultural environment of northern Cyprus), Article 1 of Protocol No. 1 (denial of access to and enjoyment of property, re-assignment of property, withholding of compensation and deprivation of title), Article 13 of the Convention (failure to provide any remedy to displaced persons in respect of the alleged violations of Article 8 and Article 1 of Protocol No. 1) and Article 14 taken in conjunction with the preceding Articles (discrimination against Greeks and Greek Cypriots as regards, among other things, enjoyment of their property). Cyprus

further invoked Article 3 (discrimination against displaced persons amounting to ill-treatment), and Articles 17 (abuse of rights) and 18 (impermissible use of restrictions on rights).

(c) Living conditions of Greek Cypriots in the Karpas region of northern Cyprus

As regards the Karpas Greek Cypriots, Cyprus relied on, among other things, Articles 2 (denial of adequate medical treatment and services), 3 (discriminatory treatment; in particular in view of their advanced age, the restrictions placed on them and methods of coercion used were said to amount to inhuman and degrading treatment), 5 (threat to security of person and absence of official action to prevent this), 6 (lack of a fair hearing before an independent and impartial tribunal established by law for the determination of their civil rights), 8 (interference with their right to respect for their private and family life, home and correspondence), 9 (interference with their right to manifest their religion on account of restrictions on their freedom of movement and access to places of worship), 10 (excessive censorship of school-books and restrictions on importation of Greek-language newspapers and books), 11 (impediments to their participation in bi or inter-communal events or gatherings), 13 (denial of an effective remedy in respect of their complaints) and 14 (discrimination on racial, religious and linguistic grounds), and Articles 1 (interference with the property of deceased Greek Cypriots as well as with the property of such persons who permanently leave northern Cyprus) and 2 (denial of secondary-education facilities to Greek-Cypriot children) of Protocol No. 1.

(d) Complaints relating to Turkish Cypriots, including members of the Gypsy community, living in northern Cyprus

Cyprus alleged, among other things, violations in relation to Turkish Cypriots who are opponents of the "TRNC" *régime* of Articles 5 (arbitrary arrest and detention), 6 (trial by "military courts"), 8 (assaults and harassment by third parties), 10 (prohibition of Greek-language newspapers and interference with the right to freedom of expression), 11 (denial of the right to associate freely with Greek Cypriots), Article 1 of Protocol No.1 (failure to allow Turkish Cypriots to return to their properties in southern Cyprus). Violations were also alleged of Articles 3, 5, 8 and 13 and Article 2 of Protocol No. 1 in relation to the treatment of Turkish-Cypriot Gypsies living in northern Cyprus.

5. Decision of the Court

Preliminary issues

The Court considered, unanimously, that, notwithstanding Turkey's failure either to submit a memorial to the Court or to attend the oral hearing held on 20 September 2000 and to plead these issues afresh, it had jurisdiction to examine those preliminary issues raised by Turkey in the proceedings before the Commission which the Commission reserved for the merits stage.

The Court held, unanimously, that the applicant Government had both *locus standi* to bring the application, given that the Republic of Cyprus was the sole legitimate government of Cyprus, and a legitimate legal interest in having the merits of the application examined since neither of the resolutions adopted by the Committee of Ministers of the Council of Europe on the Commission's previous reports had resulted

in a decision which could be said to be dispositive of the issues raised in the application. Furthermore, the Court, unanimously, confirmed the Commission's conclusion that situations which ended more than six months before the date of introduction of the application (22 May 1994) fell outside the scope of its examination.

As to Turkey's denial of liability under the Convention for the allegations made against it, the Court held, by sixteen votes to one, that the facts complained of in the application fell within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entailed the respondent State's responsibility under the Convention. In reaching this conclusion, the Court noted that such a finding was consistent with its earlier statements in its ***Loizidou v. Turkey (merits)*** judgment [fn]. In that judgment, the Court had noted that Turkey exercised effective overall control of northern Cyprus through its military presence there, with the result that its responsibility under the Convention was engaged for the policies and actions of the "TRNC" authorities. In the instant case, the Court stressed that Turkey's responsibility under the Convention could not be confined to the acts of its own soldiers and officials operating in northern Cyprus but was also engaged by virtue of the acts of the local administration ("the TRNC"), which survived by virtue of Turkish military and other support.

The Court further held, by ten votes to seven, that, for the purposes of the exhaustion requirements under the former Article 26 (current Article 35 § 1), remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of these remedies had to be considered in the specific circumstances where it arose, on a case-by case basis. The majority of the Court, in line with the majority viewpoint of the Commission, considered, among other things, and with reference to the Advisory Opinion of the International Court of Justice in the Namibia case, that in situations similar to those arising in the present case, the obligation to disregard acts of *de facto* entities, like the "TRNC", was far from absolute. For the Court, life went on in the territory concerned for its inhabitants and that life must be made tolerable and be protected by the *de facto* authorities, including their courts. It considered that, and in the interests of the inhabitants, the acts of those authorities could not simply be ignored by third States or by international institutions, especially courts. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they were discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they were entitled. In reaching this conclusion, the Court's majority stressed that its reasoning did not in any way legitimise the "TRNC" and reaffirmed the view that the government of the Republic of Cyprus remained the sole legitimate government of Cyprus.

(a) Greek-Cypriot missing persons and their relatives

The Court, unanimously, found that there had been **no violation of Article 2** by reason of an alleged violation of a substantive obligation under that Article in respect of any of the missing persons. The evidence before it did not substantiate to the required standard that any of the missing persons were killed in circumstances engaging the respondent State's liability.

On the other hand, the Court found, by sixteen votes to one, that there had been a **continuing violation of Article 2** on account of the failure of the authorities of the

respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.

The Court concluded, unanimously, that **no violation of Article 4** had been established.

Although it found, unanimously, that it had not been established that, during the period under consideration, any of the missing persons were actually in detention, the Court ruled, by sixteen votes to one, that there had been a **continuing violation of Article 5** by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance.

As to the relatives of the Greek-Cypriot missing persons, the Court held, by sixteen votes to one, that there had been a **continuing violation of Article 3**. In the Court's opinion, the silence of the authorities of the respondent State in the face of the real concerns of the relatives attained a level of severity which could only be categorised as inhuman treatment.

Having regard to that conclusion, the Court held, unanimously, that it was not necessary to examine whether Articles 8 and 10 of the Convention had been violated in respect of the relatives of the Greek-Cypriot missing persons.

(b) Home and property of displaced persons

The Court held, by sixteen votes to one, that there had been a **continuing violation of Article 8** by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus. Having regard to that conclusion, the Court found, unanimously, that it was not necessary to examine whether there had been a further violation of that Article by reason of the alleged manipulation of the demographic and cultural environment of the Greek-Cypriot displaced persons' homes in northern Cyprus. As to the applicant Government's complaint under Article 8 concerning the interference with the right to respect for family life on account of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus, the Court held, unanimously, that this complaint fell to be considered in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots.

Furthermore, the Court held, by sixteen votes to one, that there had been a **continuing violation of Article 1 of Protocol No. 1** by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

The Court also held, by sixteen votes to one, that there had been a **violation of Article 13** by reason of the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 and Article 1 of Protocol No. 1. It did not find it necessary (unanimously) to examine whether in this case there had been a violation of Article 14 taken in conjunction with Articles 8 and 13 and Article 1 of Protocol No. 1, or whether the

alleged discriminatory treatment of Greek-Cypriot displaced persons also gave rise to a breach of Article 3.

It was also of the unanimous view that it was not necessary to examine separately the applicant Government's complaints under Articles 17 and 18, having regard to its findings under Articles 8 and 13 and Article 1 of Protocol No. 1.

(c) Living conditions of Greek Cypriots in Karpas region of northern Cyprus

The Court held, by sixteen votes to one, that there had been a **violation of Article 9** in respect of Greek Cypriots living in northern Cyprus. As regards Maronites living in northern Cyprus it found, unanimously, **no violation of Article 9**. The Court also held, by sixteen votes to one, that there had been a **violation of Article 10** in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship.

The Court further held, by sixteen votes to one, that there had been a **continuing violation of Article 1 of Protocol No. 1** in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised.

The Court also ruled, by sixteen votes to one, that there had been a **violation of Article 2 of Protocol No. 1** in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them.

In addition, the Court found, by sixteen votes to one, that there had been a **violation of Article 3** in that the Greek Cypriots living in the Karpas area of northern Cyprus had been subjected to discrimination amounting to degrading treatment. It observed in this connection that the Karpas Greek-Cypriot population was compelled to live in a situation of isolation and that its members were controlled and restricted in their movements and had no prospect of renewing or developing their community. For the Court, the conditions under which the population was condemned to live were debasing and violated the very notion of respect for the human dignity of its members. The discriminatory treatment attained a level of severity which amounted to degrading treatment.

The Court further held, by sixteen votes to one, that, from an overall standpoint, there had been a **violation of Article 8** concerning the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home. In this connection the Court noted that the population concerned was subjected to serious restrictions on the exercise of these rights, including monitoring of its members' movements and contacts. The surveillance effected by the authorities even extended to the physical presence of State agents in the homes of Greek Cypriots on the occasion of social or other visits paid by third parties, including family members. Having regard to that conclusion, the Court found, unanimously, that it was not necessary to examine separately the applicant Government's complaint under Article 8 concerning the effect of the respondent State's alleged colonisation policy on the demographic and cultural environment of the Greek Cypriots' homes. The Court further found, unanimously, **no violation of Article 8** concerning the right to respect for correspondence by reason of an alleged practice

of interference with the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

The Court found, by sixteen votes to one, that there had been a **violation of Article 13** by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1. On the other hand, it held, by eleven votes to six, that **no violation of Article 13** had been established by reason of the alleged absence of remedies in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 and Article 1 of Protocol No. 1.

The Court held, by sixteen votes to one, that **no violation of Article 2** had been established by reason of an alleged practice of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus and, by the same margin, that there had been **no violation of Article 5**. Furthermore, by eleven votes to six, it held that **no violation of Article 6** had been established in respect of Greek Cypriots living in northern Cyprus by reason of an alleged practice of denying them a fair hearing by an independent and impartial tribunal in the determination of their civil rights and obligations. The Court also held, unanimously, that **no violation of Article 11** had been established by reason of an alleged practice of denying Greek Cypriots living in northern

Cyprus the right to freedom of association and that **no violation of Article 1 of Protocol No. 1** had been established by virtue of an alleged practice of failing to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons.

The Court decided, unanimously, that it was not necessary to examine whether there had been a violation of Article 14 taken in conjunction with Article 3 in respect of Greek Cypriots living in northern Cyprus, having regard to its finding under Article 3 and, by fourteen votes to three, that, having regard to the particular circumstances of this case, it was not necessary for it to examine whether there had been a breach of Article 14 taken in conjunction with other relevant Articles.

(d) Right of displaced Greek Cypriots to hold elections

The Court held, unanimously, that it was not necessary to examine whether the facts disclosed a violation of the right of displaced Greek Cypriots to hold free elections, as guaranteed by Article 3 of Protocol No. 1.

(e) Rights of Turkish Cypriots, including members of Gypsy community, living in northern Cyprus

Under this heading, the Court, unanimously, declined jurisdiction to examine those aspects of the applicant Government's complaints under Articles 6, 8, 10 and 11 in respect of political opponents of the regime in the "TRNC" as well as their complaints under Articles 1 and 2 of Protocol No. 1 in respect of the Turkish-Cypriot Gypsy community, which were held by the Commission not to be within the scope of the case as declared admissible.

The Court found, by sixteen votes to one, that there had been a **violation of Article 6** on account of the legislative practice of authorising the trial of civilians by military courts.

The Court further held, unanimously, that there had **been no violation of Articles 3, 5, 8, 10 and 11** concerning the rights of Turkish Cypriot opponents of the regime in northern Cyprus by reason of an alleged administrative practice, including an alleged practice of failing to protect their rights under these Articles. By sixteen votes to one, the Court found **no violation of Articles 3, 5, 8 and 14** concerning the rights of members of the Turkish-Cypriot Gypsy community by reason of an alleged administrative practice, including an alleged practice of failing to protect this group's rights under these Articles.

It held, unanimously, that: **no violation of Article 10** had been established by reason of an alleged practice of restricting the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek-language press; **no violation of Article 11** had been established by reason of an alleged practice of interference with the right to freedom of association or assembly of Turkish Cypriots living in northern Cyprus; **no violation of Article 1 of Protocol No. 1** had been established by reason of an alleged administrative practice, including an alleged practice of failing to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus.

By eleven votes to six, the Court found that **no violation of Article 13** had been established by reason of an alleged practice of failing to secure effective remedies to Turkish Cypriots living in northern Cyprus.

(f) Alleged violations of Articles 1, 17, 18 and former Article 32 § 4

The Court held unanimously that it was not necessary to examine separately the applicant Government's complaints under these Articles.

Judges Palm, Costa, Jungwiert, Pantîru, Levits, Kovler, Fuad and Marcus-Helmons expressed partly dissenting opinions, which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Registry of the European Court of Human Rights
F – 67075 Strasbourg Cedex
Contacts: Roderick Liddell (telephone: (0)3 88 41 24 92)
Emma Hellyer (telephone: (0)3 90 21 42 15)
Fax: (0)3 88 41 27 91

The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.

[fn] Judgment of 18 December 1996, Reports of Judgments and Decisions 1996-VI, §§ 52-56.

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 8712, Reference No 2500 of 16 May 2000, validity extended to 25 April 2003

Draft resolution adopted by the Committee on 30 January 2003 with 31 votes in favour, 4 votes against and 1 abstention

Members of the Committee: Mr Lintner (*Chairperson*), Mr Marty, Mr Jaskiernia, Mr Jurgens (*Vice-Chairpersons*), Mrs Ahlqvist, Mr Akçam, Mr G. Aliyev, Mrs Arifi, Mr Arzilli, Mr Attard Montalto, Mr Barquero Vázquez, Mr Berisha, Mr Bindig, Mr Brecj, Mr Bruce, Mr Chaklein, Mrs Christmas-Møller, Mr Cilevics, Mr Clerfayt, Mr Contestabile, Mr Daly (alternate: Mr Mooney), Mr Davis, Mr Dees (alternate: Mr Janssen van Raaij), Mr Dimas, Mrs Domingues, Mr Engeset, Mrs Err, Mr Fedorov, Mr Fico, Mrs Frimansdóttir, Mr Frunda, Mr Galchenko (alternate: Mr Sharandin), Mr Guardans, Mr Gündüz, Mrs Hajiyeva (alternate: Mr A. Huseynov), Mrs Hakl, Mr Holovaty, Mr Jansson, Mr Kelber, Mr Kelemen, Mr Kontogiannopoulos, Mr S. Kovalev, Mr Kroll, Mr Kroupa, Mr Kucheida, Mrs Leutheusser-Schnarrenberger, Mr Livaneli, Mr Manzella, Mr Martins (alternate: Mrs Aguiar), Mr Mas Torres, Mr Masson, Mr McNamara, Mr Meelak (alternate: Mrs Klaar), Mrs Nabholz-Haidegger, Mr Nachbar, Mr Olteanu, Mrs Pasternak, Mr Pehrson, Mr Pellicini (alternate: Mr Naro), Mr Pentchev, Mr Piscitello, Mr Poroshenko, Mrs Postoica, Mr Pourgourides, Mr Raguz, Mr Ransdorf, Mr Rochebloine, Mr Rustamyan, Mr Skrabalo, Mr Solé Tura (alternate: Mrs Lopez Gonzalez), Mr Spindelegger, Mr Stankevic, Mr Stoica, Mr Symonenko, Mr Tabajdi, Mrs Tevdoradze, Mr Toshev, Mr Vanoost (alternate: Mr Goris), Mr Wilkinson, Mrs Wohlwend

N.B. The names of those members who were present at the meeting are printed in italics.

Secretaries to the Committee: Ms Coin, Ms Kleinsorge, Mr Cupina, Mr Milner

[1] Mr Jurgens's opinion of 1997 on the situation in Cyprus gave 486 as the number of Greek Cypriots and 187 for the number of Maronites (Doc 7747).

[2] See Mr Jurgens's opinion on the situation in Cyprus (Doc 9313).

[3] See AS/Jur (2001) 40.

[4] Turkey submitted an objection *ratione temporis*, which was joined to the merits of the case.