Anmerkung zur Zulässigkeitsentscheidung der Europäischen Kommission für Menschenrechte im Fall *Chrysostomos u. a. / Türkei* vom 4. März 1991

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In der nachstehend abgedruckten Entscheidung hat die Europäische Kommission für Menschenrechte zu der Zulässigkeit der Erklärungen Stellung genommen, mit denen die türkische Regierung versucht hatte, ihre am 28. Januar 1987 erfolgte Anerkennung des Individualbeschwerderechts nach Art.25 EMRK einzuschränken[1]. Die Türkei hat diese Anerkennung 1990 in nur geringfügig geänderter Form erneuert[2]. Rechtsnatur und Vereinbarkeit der türkischen Erklärungen mit der Europäischen Menschenrechtskonvention waren von Anfang an umstritten[3]. Die Kommission erklärt sämtliche Einschränkungen mit Ausnahme der zeitlichen für unverein-

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Abkürzungen: BYIL = British Year Book of International Law; EMRK = Europäische Menschenrechtskonvention; EPIL = R. Bernhardt (Hrsg.), Encyclopedia of Public International Law; EuGRZ = Europäische Grundrechte Zeitschrift; HRLJ = Human Rights Law Journal; ICJ Rep. = International Court of Justice. Reports of Judgments, Advisory Opinions and Orders; ICLQ = International and Comparative Law Quarterly; IGH = Internationaler Gerichtshof; (YB)ILC = (Yearbook of the) International Law Commission; R.G.D.I.P. = Revue Générale de Droit International Public; R.U.D.H. = Revue Universelle des Droits de l'Homme; WÜRV = Wiener Übereinkommen über das Recht der Verträge; Yearbook = Yearbook of the European Convention on Human Rights; ZP = Zusatzprotokoll.

[1] Text der Erklärung in § 1 (Complaints) der Entscheidung. Ebenso in ZaöRV 47 (1987), 804f.; RGDIP 93 (1989), 94f.; HRLJ 11 (1990), 456f.

[2] Erklärung vom 28.1.1990, HRLJ 11 (1990), 458. Sie gilt erneut für drei Jahre.

[3] C. Rumpf, Die Anerkennung des Individualbeschwerderechts gemäß Art.25 EMRK durch die Türkei, ZaöRV 47 (1987), 778 (788ff.); W. Kälin, Die Vorbehalte der Türkei zu ihrer Erklärung gem. Art.25 EMRK, EuGRZ 1987, 421ff.; I. Cameron, Turkey and Article 25 of the European Convention on Human Rights, ICLQ 37 (1988), 887ff.; C. Tomuschat, Turkey's Declaration under Article 25 of the European Convention on Human Rights, in: Fortschritt im Bewußtsein der Grund- und Menschenrechte, Festschrift für

bar mit Art.25 EMRK, geht aber dennoch davon aus, die Türkei habe sich wirksam dem Individualbeschwerdeverfahren unterworfen. Sowohl in der Begründung als auch im Ergebnis setzt diese Entscheidung Maßstäbe für das Kontrollsystem der Europäischen Menschenrechtskonvention. Sie ist in ihrer Bedeutung durchaus mit der Zulässigkeitsentscheidung vom 11. Januar 1961 im Staatenbeschwerdeverfahren *Österreich/Italien*[4] vergleichbar. Wegen der starken Bezugnahme auf die Besonderheiten des Konventionsrechts dürften die Erwägungen aber nur in eingeschränktem Maße auf die allgemeinen Vorbehaltsregeln des Völkerrechts übertragbar sein.

1. Den gegen die Türkei gerichteten Beschwerden liegen Ereignisse zugrunde, die sich 1989 auf Zypern abgespielt hatten. In Nordzypern existiert seit 1983 die sog. »Türkische Republik Nordzypern«, die international nur von der Türkei anerkannt wird, während die Republik Zypern nur den südlichen Teil der Insel kontrolliert[5]. Seit ihrer Invasion 1974 sind türkische Streitkräfte im Norden der Insel stationiert. Die Beschwerdeführer der Beschwerden Nr.15299/89 und 15300/89 hatten sich am 19. Juli 1989 an einem Protestmarsch beteiligt, mit dem Angehörige der griechischen Bevölkerungsgruppe anläßlich des 15. Jahrestages der Invasion gegen die andauernde Besetzung des Nordens durch türkische Truppen demonstrieren wollten. Im Rahmen des Protestmarsches führte der erste Beschwerdeführer, Metropolit Chrysostomos, der Bischof von Kitium, einen Gebetsgottesdienst in einer Kapelle durch, die sich in der Pufferzone zwischen der Republik Zypern und der sog. »Türkischen Republik Nordzypern« befand[6]. Dieser Gottesdienst wurde nach Darstellung der Beschwerdeführer durch ein brutales Vorgehen von Angehörigen der türkischen Armee und nordzypriotischen Sicherheitskräften beendet. Sie verbrachten die ersten beiden Beschwerdeführer nach Nicosia, wo diese verhört und inhaftiert wurden. Beide wurden wegen Verletzung der türkisch-zypriotischen Grenze zu Geld- und kurzen Haftstrafen verurteilt. Sie beschweren sich über Mißhandlungen, unzumutbare Haftbedingungen sowie konven-

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F. Ermacora (1988), 119ff.; C. Zanghì, La déclaration de la Turquie relative à l'art.25 de la Convention européenne des droits de l'homme, RGDIP 93 (1989), 69ff.

[4] E 788/60 – *Österreich/Italien* (11.1.1961), Yearbook 4 (1961), 116.

[5] Zur völkerrechtlichen Lage Zyperns vgl. T. Oppermann, Cyprus, in: EPIL 12 (1990), 76ff.; M. Flory, La partition de Chypre, Annuaire Français de Droit International 30 (1984), 177ff.; M. Leigh, Opinion dated 20 July 1990 on the legal status in international law of the Turkish Cypriot and the Greek Cypriot communities in Cyprus, abgedruckt in UN Doc.A/44/967 (1.8.1990).

[6] Nach Auffassung der türkischen Organe hatten die Demonstranten die Demarkationslinie überschritten, vgl. Report of the Secretary General on the United Nations Operation in Cyprus, UN Doc.S/21010 (7.12.1989), § 11(b).

tionswidrige Gerichtsverfahren und machen Verletzungen der Art.1, 3, 5, 6, 7, 9 und 13 EMRK geltend. Die damaligen Ereignisse, die zu einer Festnahme von insgesamt 111 Personen geführt hatten, erregten weltweit Aufsehen und waren auch Gegenstand einer Sitzung des Sicherheitsrats der Vereinten Nationen[7]. Die dritte Beschwerdeführerin ist Eigentümerin verschiedener Landstücke in Nordzypern, zu denen sie seit der türkischen Invasion 1974 keinen Zugang mehr hat. Sie leitete am 19. März 1989 einen Protestmarsch gegen die türkische Besatzung und wurde vorübergehend festgenommen. Sie macht Verletzungen der Art.3, 5, 8 EMRK sowie von Art.1 1.ZP geltend. Die türkische Regierung bestreitet, daß Angehörige der türkischen Armee an den Vorkommnissen des 19. Juli 1989 beteiligt gewesen seien. Es seien allein Sicherheitskräfte der »Türkischen Republik Nordzypern« gegen die Demonstranten vorgegangen. Im übrigen beruft sie sich auf die territoriale Begrenzung in Absatz (i) ihrer Erklärung vom 28. Januar 1987.

2. Die Kommission hat in dieser Entscheidung erstmals zu der Gültigkeit von anderen als zeitlichen Einschränkungen der Anerkennungserklärung nach Art.25 EMRK Stellung genommen. Die Kompetenz der Kommission hierzu war von der Türkei ausdrücklich anerkannt worden[8]. Es wird mittlerweile kaum mehr bestritten, daß Kommission und Gerichtshof befugt sind, über die Gültigkeit sowohl von Vorbehalten (Art.64 EMRK) als auch von einseitig formulierten Beschränkungen der Jurisdiktion von Kommission und Gerichtshof zu entscheiden[9]. Das Ergebnis der Kommission, die Konvention lasse andere als Begrenzungen *ratione temporis* des Individualbeschwerderechts nicht zu[10], kam nicht überraschend. Es entspricht der im Schrifttum herrschenden Auffassung[11] und soll daher an dieser Stelle nicht weiter vertieft werden.

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[7] Vgl. Note by the President of the Security Council, UN Doc.S/21026 (14.12.1989); Archiv der Gegenwart 59 (1989), 33582.

[8] Vgl. § 4 (The Law) der Entscheidung.

[9] B 9116/81 – *Temeltasch/Schweiz* (5.5.1982), Decisions and Reports 31, 120 (§§ 59ff.); Fall *Belilos*, Urteil vom 29.4.1988, Serie A Nr.132, § 50 = EuGRZ 1989, 21 = ZaöRV 48 (1988), 522 mit Anm. Oeter; Kälin (Anm.3), 928; Cameron (Anm.3), 920ff.

[10] § 29 (The Law) der Entscheidung.

[11] P.-H. Imbert, Die Frage der Vorbehalte und die Menschenrechtskonventionen, in: I. Maier (Hrsg.), Europäischer Menschenrechtsschutz, Verhandlungen des 5. Internationalen Kolloquiums über die EMRK (1982), 95 (115f.); R. Kühner, Vorbehalte und auslegende Erklärungen zur Europäischen Menschenrechtskonvention, ZaöRV 42 (1982), 58 (76); Kälin (Anm.3), 425; Cameron (Anm.3), 901; Tomuschat (Anm.3), 123ff. Anderer Ansicht Zanghì (Anm.3), 85ff.; P. van Dijk /G. van Hoof, Theory and Practice of the European Convention on Human Rights (1984), 453.

3. Die Kommission vermeidet es, ausdrücklich auf die Rechtsnatur der Erklärungen einzugehen. Es wird lediglich darauf verwiesen, daß die türkische Regierung selbst mehrfach erklärt habe, daß es keine »Vorbehalte« im Sinne des Völkervertragsrechts seien[12]. Das Schrifttum dagegen ging teilweise von einem Vorbehaltscharakter der Erklärungen aus[13]. Dies widerspricht jedoch der erklärten Intention der türkischen Regierung. Der ständige Vertreter der Türkei hat in seinem Schreiben vom 26. Juli 1987 bekräftigt, daß es sich bei den Erklärungen nicht um »Vorbehalte« im Sinne der Wiener Vertragsrechtskonvention, sondern um »Bedingungen« handele, die die der Kommission eingeräumte Befugnis definieren und begrenzen sollen[14]. Aber gegen eine Analogie zu den Vorbehaltsregeln des völkerrechtlichen Vertragsrechts sprechen auch grundsätzliche Erwägungen[15]. Mit Vorbehalten im Sinne von Art.2 Abs.1 *lit.* d WÜRV haben die Erklärungen nach Art.25 EMRK nur ihre Eigenschaft als einseitige empfangsbedürftige Willenserklärungen gemeinsam[16]. Ihr Zweck ist aber nicht die Beschränkung einer vertraglich vorgesehenen Bindung, sondern die konstitutive Anerkennung zusätzlicher Verpflichtungen[17]. Prüfungsmaßstab für die Zulässigkeit der türkischen Erklärungen konnten daher nicht die Art.19 WÜRV und Art.64 EMRK, sondern allein Art.25 EMRK sein.

4. In ihrer kompetenzbegründenden Funktion ähnelt die Anerkennung des Individualbeschwerderechts gemäß Art.25 EMRK den Erklärungen nach Art.36 Abs.2 IGH-Statut. Die türkische Regierung hat daher versucht, sich auf die Staatenpraxis hinsichtlich der Fakultativklausel des IGH-Statuts zu berufen, in der die Zulässigkeit weitreichender »Vorbehalte« anerkannt ist[18]. Eine gewisse Grenze der grundsätzlich bestehenden Freiheit der Staaten, die Reichweite der obligatorischen Gerichtsbarkeit des Internationalen Gerichtshofs einschränkend zu modifizieren, bildet hier allein der dem allgemeinen Vertragsrecht inhärente Grundsatz von

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[12] § 15 (The Law) der Entscheidung.

[13] Rumpf (Anm.3), 790ff.; Kälin (Anm.3), 424 (dieser Autor nimmt seine Prüfung ausdrücklich anhand von Art.19 WÜRV vor, 425 Anm.28).

[14] § 12 (Complaints) der Entscheidung.

[15] Tomuschat (Anm.3), 123f.

[16] Eingehend zum Vorbehaltsbegriff im allgemeinen Völkerrecht R. Kühner, Vorbehalte zu multilateralen völkerrechtlichen Verträgen (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Bd.91) (1986), 8ff.; F. Horn, Reservations and Interpretative Declarations to Multilateral Treaties (1988), 33ff.

[17] Kühner, *ibid.*, 51f.; J. Crawford, The Legal Effect of Automatic Reservations to the Jurisdiction of the International Court, BYIL 50 (1979), 63 (77).

[18] Vgl. Crawford, *ibid.*, 63ff.; R. Dolzer, Conally Reservation, in: EPIL 1 (1981), 55f.

Treu und Glauben *(good faith)*[19]. Die Kommission hat diese Analogie verworfen, da sie mit dem Charakter der Konvention als eines »verfassungsrechtlichen Instruments des europäischen *ordre public* im Bereich der Menschenrechte« nicht vereinbar sei[20]. Sie verweist darauf, daß die Erklärungen nach Art.36 Abs.2 IGH-Statut dem Grundsatz der Gegenseitigkeit unterworfene Vereinbarungen der Vertragsstaaten begründen würden. Diese Einschätzung befindet sich in Einklang mit der Rechtsprechung des Internationalen Gerichtshofs, der das System der Fakultativklausel im *Nicaragua (Jurisdiction)*-Urteil als ein Netzwerk gegenseitiger Vereinbarungen charakterisierte[21]:

> "In fact, the declarations, even though they are unilateral acts, establish a series of bilateral engagements with other States accepting the same obligation of compulsory jurisdiction, in which the conditions, reservations and time-limit clauses are taken into consideration".

Der entscheidende Unterschied zwischen beiden Erklärungen liegt daher in der Rechtsnatur der durch sie begründeten Bindung. Auch wenn der vertragliche Charakter des durch gegenseitige Unterwerfungserklärungen nach Art.36 Abs.2 IGH-Statut geschaffenen Jurisdiktionsbandes nicht unumstritten ist[22], handelt es sich zumindest um ein vertragsähnliches, auf dem Grundsatz der Gegenseitigkeit beruhendes Verhältnis, das mit der Anerkennung des Individualbeschwerderechts nach Art.25 EMRK nicht vergleichbar ist[23]. Während die auf Grundlage der Fakultativklausel bestehende konsensuale Bindung rein zwischenstaatlichen Charakter hat, ist es Sinn und Zweck der Konvention, einen gemeinsamen europäischen *ordre public* im Bereich der Menschenrechte zu schaffen, dessen Nutznießer nicht die Konventionsstaaten, sondern die ihrer Jurisdiktion unterworfe-

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[19] Case concerning Military and Paramilitary Activities in and against Nicaragua *(Nicaragua/USA)*, Jurisdiction, ICJ Rep.1984, 392 (418, para.60) (26.11.1984). Siehe auch Nuclear Tests *(Australia/France)*, Judgment, ICJ Rep.1974, 253 (268, para.46) (20.12.1974); Nuclear Tests *(New Zealand/France)*, Judgment, ICJ Rep.1974, 457 (473, para.49) (20.12.1974).

[20] § 22 (The Law) der Entscheidung.

[21] Case concerning Military and Paramilitary Activities in and against Nicaragua *(Nicaragua/USA)*, Jurisdiction, ICJ Rep.1984, 392 (418, para.60) (26.11.1984). Siehe auch Separate Opinion Mosler, *ibid.*, 466; Fisheries Jurisdiction *(UK/Iceland)*, Jurisdiction, ICJ Rep.1973, 3 (16) (2.2.1973); Separate Opinion Lauterpacht, Case of Certain Norwegian Loans *(France/Norway)*, ICJ Rep.1957, 49 (6.7.1957).

[22] Cameron (Anm.3), 895; Dolzer (Anm.18), 55; Crawford (Anm.17), 76; D. Bowett, Reservations to Non-Restricted Multilateral Treaties, BYIL 48 (1976/77), 67 (76 Anm.3). Den vertraglichen Charakter betonte insbesondere die ILC in ihrem 1959 Report to the General Assembly, YBILC 1959 II, 87 (94 Anm.28).

[23] So auch Cameron, *ibid.*, 896.

nen Bürger sind[24]. Indem sie der Europäischen Menschenrechtskonvention beitreten, unterwerfen sie sich einer internationalen Rechtsordnung, die über den rein zwischenstaatlichen Bereich hinausgeht, und sich als eine »kollektive Garantie« («garantie collective»/"collective enforcement", vgl. die Präambel der EMRK) der in ihr verankerten Rechte und Freiheiten versteht[25].

5. In diesem Zusammenhang ist auffällig, daß die Konvention hier erstmals ausdrücklich als ein »verfassungsrechtliches Instrument« ("constitutional instrument") gekennzeichnet wird[26]. In der Tat kann die Europäische Menschenrechtskonvention längst nicht mehr nur als völkerrechtliche Verbürgung eines menschenrechtlichen Mindeststandards verstanden werden. Mit Hilfe der evolutiven Interpretation sind Kommission und Gerichtshof kontinuierlich bemüht, die in der Konvention verankerten Rechte den sich verändernden kulturellen, sozialen und wirtschaftlichen Realitäten anzupassen[27]. Der Gerichtshof, der seine Rolle mit derjenigen nationaler Verfassungsgerichte verglichen hat[28], bekennt sich ausdrücklich zu der Aufgabe, die konventionsrechtlichen Standards fortzuentwickeln[29]. Die Spruchpraxis der Straßburger Organe hat mittlerweile eine erhebliche Bedeutung für den Grundrechtsschutz zahlreicher Konventionsstaaten er-

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[24] E 788/60 – *Österreich/Italien* (11.1.1961), Yearbook 4 (1961), 116 (140); Fall *Irland/Vereinigtes Königreich*, Urteil vom 18.1.1978, Serie A Nr.25, § 239 = EuGRZ 1979, 149. Siehe auch Interamerikanischer Gerichtshof für Menschenrechte, Advisory Opinion OC-2/82 (24.9.1982), Series A No.2, § 29.

[25] Allgemein zum *sui generis*-Charakter der EMRK A. Drzemczewski, The Sui Generis Nature of the European Convention on Human Rights, ICLQ 29 (1980), 54ff.

[26] § 22 (The Law) der Entscheidung.

[27] Siehe etwa Fall *Kjeldsen, Busk Madsen und Pedersen*, Urteil vom 7.12.1976, Serie A Nr.23, § 53 = EuGRZ 1976, 478; Fall *Tyrer*, Urteil vom 25.4.1978, Serie A Nr.26, § 31 = EuGRZ 1979, 162; Fall *Marckx*, Urteil vom 13.6.1979, Serie A Nr.31, § 41 = EuGRZ 1979, 454; Fall *Airey*, Urteil vom 9.10.1979, Serie A Nr.32, § 26 = EuGRZ 1979, 626; Fall *Soering*, Urteil vom 7.7.1989, Serie A Nr.161, § 87 = EuGRZ 1989, 314 mit Anm. Blumenwitz. Allgemein hierzu R. Bernhardt, Thoughts on the Interpretation of Human-Rights Treaties, in: Protection des droits de l'homme: la dimension européenne, Mélanges en l'honneur de Gérard J. Wiarda (1988), 65ff.; K. Weidmann, Der Europäische Gerichtshof für Menschenrechte auf dem Weg zu einem europäischen Verfassungsgerichtshof (1985), 77–79.

[28] Fall *Marckx, ibid.*, § 58.

[29] «En effet, ses arrêts servent non seulement à trancher les cas dont elle est saisie, mais plus largement à clarifier, sauvegarder et développer les normes de la Convention et à contribuer de la sorte au respect, par les Etats, des engagements qu'ils sont assumés en leur qualité de Parties contractantes», Fall *Irland/Vereinigtes Königreich*, Urteil vom 18.1.1978, Serie A Nr.25, § 154 = EuGRZ 1979, 149; bestätigt in Fall *Guzzardi*, Urteil vom 6.11.1980, Serie A Nr.39, § 86 = EuGRZ 1983, 633.

langt[30]. Es läßt sich sogar der Beginn eines Dialoges zwischen dem Europäischen Gerichtshof und den nationalen Verfassungsgerichten feststellen[31]. Diese Dynamik des materiellen Konventionsrechts steht in einem immer deutlicher werdenden Spannungsverhältnis zu dem rein völkerrechtlichen Charakter ihres Gründungsinstruments, der insbesondere in den Vorschriften über die Anerkennung des Individualbeschwerderechts (Art.25 EMRK) sowie der Gerichtsbarkeit des Gerichtshofes (Art.46 EMRK), die besondere Zuständigkeit des Ministerkomitees (Art.32 EMRK) und die Urteilswirkungen (Art.50ff. EMRK) zum Ausdruck kommt. Indem sie den verfassungsrechtlichen Charakter der Konvention betont, bekennt sich die Kommission zu einer dynamischen Fortentwicklung des europäischen Kontrollmechanismus, die nicht ohne Auswirkungen auf dessen verfahrensrechtliche Ausgestaltung bleiben kann. Der in diesem Zusammenhang angesprochene Grundsatz der Effektivität *(effet utile)* betrifft zwar in erster Linie den materiellen Inhalt der in der Konvention verankerten Rechte und Freiheiten[32], gilt aber auch für das von ihr errichtete Rechtsschutzsystem[33]. Eine derartige Fortentwicklung setzt selbstverständlich die Zustimmung der Vertragsparteien voraus. In dieser Hinsicht ist das am 6. November 1990 zur Unterzeichnung aufgelegte 9. Zusatzprotokoll zur EMRK, das dem individuellen Beschwerdeführer erstmals das Recht verleiht, sein Verfahren vor den Gerichtshof zu brin-

[30] Siehe die rechtsvergleichenden Überblicke bei J. Polakiewicz/V. Jacob-Foltzer, The European Human Rights Convention in Domestic Law: The Impact of Strasbourg Case-Law in States where Direct Effect is Given to the Convention, HRLJ 12 (1991), 65–85 (1.Teil), 125–142 (2.Teil); G. Ress, Die EMRK und die Vertragsstaaten: Die Wirkungen der Urteile des Europäischen Gerichtshofes für Menschenrechte im innerstaatlichen Recht und vor innerstaatlichen Gerichten, in: I. Maier (Hrsg.), Europäischer Menschenrechtsschutz, Verhandlungen des 5. Internationalen Kolloquiums über die EMRK (1982), 227 (259ff.); A. Drzemczewski, European Human Rights Convention in Domestic Law (1983); C. Gusy, Wirkungen der Europäischen Menschenrechtskonvention und der europäischen Rechtsprechung in einzelnen Vertragsstaaten, Zeitschrift für Rechtsvergleichung 30 (1989), 1–23.

[31] Vgl. M.-A. Eissen, L'interaction des juridictions constitutionnelles nationales et de la jurisprudence de la Cour européenne des Droits de l'Homme, in: D. Rousseau/F. Sudre (Hrsg.), Conseil constitutionnel et Cour européenne des Droits de l'homme (1990), 137ff.

[32] Siehe etwa *Belgischer Sprachen*-Fall, Urteil vom 23.7.1968, Serie A Nr.6, S.31 (§§3 und 4); Fall *Marckx* (Anm.27), §31; Fall *Airey* (Anm.27), §24; Fall *Artico*, Urteil vom 13.5.1980, Serie A Nr.37, §33 = EuGRZ 1980, 662; Fall *Sporrong und Lönnroth*, Urteil vom 23.9.1982, Serie A Nr.52, §63 = EuGRZ 1983, 523; Fall *Silver u.a.*, Urteil vom 25.3.1983, Serie A Nr.61, §90 = EuGRZ 1984, 147; Fall *Soering* (Anm.27).

[33] §40 (The Law) der Entscheidung. So auch schon der Gerichtshof im Fall *Klass*, Urteil vom 6.9.1978, Serie A Nr.28, §34: «La Convention et ses institutions ayant été créées pour protéger l'individu, les clauses procédurales de la Convention doivent être appliquées d'une manière qui serve à rendre efficace le système des requêtes individuelles».

gen[34], eine positive Entwicklung, da es die Bereitschaft der Konventionsstaaten bezeugt, das Straßburger Rechtsschutzsystem weiterzuentwickeln.

6. Auf Grund ihres Ergebnisses, daß die in den Absätzen (i) bis (v) der türkischen Erklärung enthaltenen Einschränkungen alle unzulässig sind, mußte die Kommission zu der Frage Stellung nehmen, ob sie überhaupt von einer wirksamen Anerkennung des Individualbeschwerderechts ausgehen konnte. Hierin liegt ohne Zweifel die eigentliche Problematik der Entscheidung. Denn der Vertreter der türkischen Regierung hatte vor der Kommission erklärt, daß die in der Erklärung vom 28. Januar 1987 formulierten »Bedingungen« von so ausschlaggebender Bedeutung für die Anerkennung des Individualbeschwerderechts gewesen wären, daß ihre Zurückweisung durch die Kommission die gesamte Erklärung hinfällig werden ließe[35]. Dennoch nimmt die Kommission an, daß die Türkei das Individualbeschwerderecht wirksam anerkannt hat[36]. Während die Ausführungen über die Unzulässigkeit der türkischen Erklärungen sich weitgehend mit dem Meinungsstand im Schrifttum deckten, kommt die Kommission damit zu einem Ergebnis, das so nicht vorausgesehen wurde[37].

7. Aus dem allgemeinen Völkerrecht ergeben sich keine Anhaltspunkte zur Lösung dieser Fragestellung. Die Regeln über die Rechtsfolgen unzulässiger Vorbehalte zu völkerrechtlichen Verträgen sind in Schrifttum und Praxis umstritten[38]. Einen wichtigen Präzedenzfall bildete dagegen das auch von der Kommission erwähnte Urteil des Europäischen Gerichtshofs für Menschenrechte vom 29. April 1988 im Fall *Belilos*[39]. Denn hierin war die Unzulässigkeit einseitiger Einschränkungen des Konventionsrechts als für den Bindungswillen unerheblich angesehen worden. Der Gerichtshof hatte zunächst festgestellt, daß die »auslegende Erklärung« der Schweiz zu Art.6 Abs.1 EMRK, deren Rechtsnatur nicht eindeutig bestimmt wurde, nicht den Anforderungen des Art.64 EMRK genüge und daher ungültig sei. Anschließend verwies er lapidar darauf, daß kein Zweifel daran beste-

[34] European Treaty Series No.140. Der Text mit Explanatory Report ist abgedruckt in HRLJ 12 (1991), 51ff. (in englisch) und RUDH 2 (1990), 442ff. (in französisch).

[35] § 43 (The Law) der Entscheidung.

[36] § 48, *ibid.*

[37] Vgl. zur Diskussion über die Rechtsfolgen unwirksamer Einschränkungen des Individualbeschwerderechts Kälin (Anm.3), 429; Rumpf (Anm.3), 802; Tomuschat (Anm.3), 132ff.; Cameron (Anm.3), 917ff.

[38] Kühner (Anm.16), 220ff.; Horn (Anm.16), 191ff.

[39] Fall *Belilos*, Urteil vom 29.4.1988, Serie A Nr.132 = EuGRZ 1989, 21 = ZaöRV 48 (1988), 522 mit Anm. Oeter. Siehe hierzu S. Marks, Reservations Unhinged: The Belilos Case before the European Court of Human Rights, ICLQ 39 (1990), 300ff.; I. Cameron/F. Horn, Reservations to the European Convention on Human Rights: The Belilos Case, German Yearbook of International Law 33 (1990), 69ff.

hen könne, daß die Schweiz sich als durch die Konvention gebunden ansehe und dies auch sei, unabhängig von der Wirksamkeit der Erklärung[40]. Für die hier von der Kommission zu entscheidende Frage konnte das *Belilos*-Urteil jedoch nur in eingeschränktem Maße von Nutzen sein. Denn im Gegensatz zum vorliegenden Fall konnten an dem Bindungswillen der Schweiz in der Tat keine ernsthaften Zweifel bestehen. Der Gerichtshof sah sich deshalb auch nicht veranlaßt, näher auf die Rechtsfolgen unzulässiger Vorbehalte einzugehen.

8. Die Kommission geht zu Recht davon aus, daß es für die Beurteilung des Bindungswillens der Türkei allein auf den Zeitpunkt der Abgabe der Erklärung nach Art.25 EMRK ankommen kann[41]. Die türkische Regierung verfolgte damals zwei miteinander unvereinbare Ziele. Zum einen wollte sie das Individualbeschwerderecht nach Art.25 EMRK anerkennen, zum anderen die Kompetenz der Kommission und den Umfang ihrer Kontrolle einschränken. Die Kommission löst diesen Konflikt, indem sie annimmt, der überwiegende Wille der Türkei sei auf die Anerkennung des europäischen Kontrollsystems gerichtet gewesen, so daß der Wegfall der von ihr formulierten »Bedingungen« die Gültigkeit der Unterwerfung nicht berührte[42]. Dabei wird unterstellt, daß die türkische Erklärung vom 27. Januar 1987 keine untrennbare Einheit bildete, sondern teilbar ist. Diese Annahme ist nicht unproblematisch, da den von der Türkei formulierten Einschränkungen eine für den Bindungswillen ganz andere Bedeutung zukommt als etwa der »auslegenden Erklärung« der Schweiz im Fall *Belilos*. Denn ihr Gegenstand waren nicht Einzelfragen der Anwendbarkeit von Art.6 Abs.1 EMRK, sondern unter anderem das Notstandsrégime des Art.15 EMRK und die territoriale Reichweite der europäischen Kontrolle, also Kernbereiche der nationalen Souveränität betreffende Fragen. Unter diesen Umständen mußte es nicht abwegig erscheinen, die Erklärung vom 27. Januar 1987 als eine untrennbare Einheit anzusehen[43]. Es läge dann nur die Anerkennung eines um die formulierten Einschränkungen reduzierten Individualbeschwerderechts vor, das bei deren Unzulässigkeit keine hinreichende Grundlage mehr für die Kompetenz der Kommission darstellen würde. Diese Auffassung berücksichtigt jedoch nicht in ausreichendem Maße die Besonderheiten des Rechtsschutzsystems der EMRK, in dem die Frage der Zulässigkeit von Beschränkungen des Individualbeschwerde-

[40] Fall *Belilos, ibid.*, § 60.

[41] § 45 (The Law) der Entscheidung.

[42] § 46, *ibid.*

[43] So etwa Cameron (Anm.3), 923; Rumpf (Anm.3), 800ff.; ähnlich auch Tomuschat (Anm.3), 132ff.

rechts verbindlich durch eine internationale Kontrollinstanz entschieden wird. Wie insbesondere aus dem Brief des Ständigen Vertreters der Türkei an den Generalsekretär des Europarats vom 26. Juni 1987[44] hervorgeht, hat die Türkei diese Entscheidungsbefugnis der Kommission ausdrücklich anerkannt. Danach wollte sie das Individualbeschwerderecht nur insoweit einseitig modifizieren, als dies nach Auffassung der Kommission als des zur Entscheidung berufenen Organs mit Art.25 EMRK vereinbar ist. Hinzu kommt, daß die Abgabe der Erklärung nach Art.25 EMRK fast zeitgleich mit der gütlichen Einigung in dem letzten Staatenbeschwerdeverfahren gegen die Türkei erfolgte[45]. Obwohl die Anerkennung des Individualbeschwerderechts formell nicht Teil dieser Einigung war, spricht diese Tatsache dafür, daß die Türkei mit einer wirksamen Unterwerfung unter die Jurisdiktion der Kommission weiteren Vorwürfen wegen Menschenrechtsverletzungen die Grundlage entziehen wollte. Unter diesen Umständen mußte der Rechtsirrtum über die Zulässigkeit von einseitigen Beschränkungen unbeachtlich bleiben.

9. Neben diesen Erwägungen dürfte auch eine in den Entscheidungsgründen natürlich nicht offengelegte Folgenanalyse für das Ergebnis der Kommission sprechen. Eine Ungültigkeit der Unterwerfungserklärung hätte der Durchsetzung des Konventionsrechts in keiner Weise gedient[46]. Im übrigen hatte sich die Kommission durch die Zulässigkeitserklärung anderer Beschwerden gegen die Türkei in gewisser Weise präjudiziert[47]. Hätte sie in diesem Verfahren erklärt, an sich sei ihre Zuständigkeit nie in gültiger Weise anerkannt worden, wäre den anderen gegen die Türkei gerichteten Beschwerden, die bereits für zulässig erklärt worden sind, die Grundlage entzogen worden. Aber auch die im Schrifttum vorgeschlagene Lösung, die Unterwerfungserklärung in dem Ausmaß der formulierten Einschränkungen für teilungültig zu erklären (analog Art.21 Abs.3 WÜRV)[48], hätte zu einer Schwächung des Konventionssystems geführt. Die Türkei hätte ihr Ziel erreicht, sich nach außen einer europäischen

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[44] Auszugsweise abgedruckt in § 12 (Complaints) der Entscheidung.

[45] Vgl. hierzu R. Kühner, Die gütliche Einigung nach Art.28b) EMRK vom 7. Dezember 1985 im Fall der Staatenbeschwerden Frankreichs, Norwegens, Dänemarks, Schwedens und der Niederlande gegen die Türkei, ZaöRV 46 (1986), 75ff.; C. Rumpf, Die gütliche Einigung im Staatenbeschwerdeverfahren gegen die Türkei, EuGRZ 1986, 177ff.

[46] Kälin (Anm.3), 429.

[47] Vgl. etwa E 14116 und 14117/89 – *Sargin und Yagci/Türkei* (11.5.1989), RUDH 1 (1989), 516.

[48] Kälin (Anm.3), 429; Cameron (Anm.3), 921. Allgemein für nach Art.64 EMRK unzulässige Vorbehalte Kühner (Anm.11), 88f.

Kontrolle zu unterwerfen und gleichzeitig die politisch sensiblen Sachbereiche hiervon auszuschließen. Damit wäre ein gefährlicher Präzedenzfall geschaffen worden, der gerade jetzt, zu einem Zeitpunkt, wo verschiedene Staaten Osteuropas ihren Beitritt zur Konvention vorbereiten, nicht erwünscht sein kann. Indem die Kommission die Erklärung vom 28. Januar 1987 als gültige Anerkennung des Individualbeschwerderechts auslegt, wahrt sie die Integrität des Konventionsrechts und ihre Autorität als Kontrollinstanz. Die einzige Gefahr dieser Lösung liegt darin, daß die Türkei die Entscheidung zum Anlaß nimmt, sich in Zukunft der europäischen Kontrolle zu entziehen. In einer ersten Reaktion auf die Entscheidung kritisierte ein Sprecher des türkischen Außenministeriums deren politischen Charakter und erklärte, daß weitere Maßnahmen erwogen werden[49]. Da eine Kündigung der Konvention oder gar ein Austritt aus dem Europarat nicht wahrscheinlich sind, bleibt nur die Möglichkeit, die 1990 erneuerte Unterwerfungserklärung nach Ablauf der gesetzten Frist nicht zu verlängern. Hierbei handelt es sich aber wohl um ein kalkulierbares Risiko. Gerade auch wegen des geplanten Beitritts zu den Europäischen Gemeinschaften[50], für die die Achtung der Menschenrechte zum *acquis communautaire* gehört, den ein beitretender Staat zu übernehmen hat[51], muß die türkische Regierung ein Interesse daran haben, die europäischen Standards in diesem Bereich zu respektieren.

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[49] Hürriyet vom 17.3.1991.

[50] Die Türkei stellte einen entsprechenden Antrag am 14.4.1987, Bulletin der Europäischen Gemeinschaften 4 – 1987, 12.

[51] Vgl. C. Vedder, in: E. Grabitz (Hrsg.), Kommentar zum EWG-Vertrag (2. Aufl.), Art.237 Rdnr.6; J.A. Frowein, Die rechtliche Bedeutung des Verfassungsprinzips der parlamentarischen Demokratie für den europäischen Integrationsprozeß, Europarecht 1983, 301 (309f.).

Anhang

EUROPEAN COMMISSION OF HUMAN RIGHTS

Chrysostomos and Others
Application Nos.15299/89, 15300/89, 15318/89
4 March 1991

COMPLAINTS
(...)
THE FACTS

I. (...)

II. Turkey's declaration under Article 25 of the Convention

1. On 28 January 1987 the Government of Turkey deposited the following declaration with the Secretary General of the Council of Europe pursuant to Article 25 of the Convention:

"The Government of Turkey, acting pursuant to Article 25 (1) of the Convention for Protection of Human Rights and Fundamental Freedoms, hereby declares to accept the competence of the European Commission of Human Rights to receive petitions according to Article 25 of the Convention subject to the following:

(i) the recognition of the right of petition extends only to allegations concerning acts and omissions of public authorities in Turkey performed within the boundaries of the territory to which the Constitution of the Republic of Turkey is applicable;

(ii) the circumstances and conditions under which Turkey, by virtue of Article 15 of the Convention, derogates from her obligations under the Convention in special circumstances must be interpreted, for the purpose of the competence attributed to the Commission under this declaration, in the light of Articles 119 to 122 of the Turkish Constitution;

(iii) the competence attributed to the Commission under this declaration shall not comprise matters regarding the legal status of military personnel and in particular, the system of discipline in the armed forces;

(iv) for the purpose of the competence attributed to the Commission under this declaration, the notion of 'a democratic society' in paragraphs 2 of Articles 8, 9, 10 and 11 of the Convention must be understood in conformity with the principles laid down in the Turkish Constitution and in particular its Preamble and its Article 13;

(v) for the purpose of the competence attributed to the Commission under the present declaration, Articles 33, 52, and 135 of the Constitution must be understood as being in conformity with Articles 10 and 11 of the Convention.

This declaration extends to allegations made in respect of facts, including judgments which are based on such facts which have occurred subsequent to the date of

deposit of the present declaration. This declaration is valid for three years from the date of deposit with the Secretary General of the Council of Europe."

2. On 29 January 1987 the Secretary General of the Council of Europe transmitted the above declaration to the other High Contracting Parties to the Convention and added:

"At the time this declaration was deposited, I drew the Turkish authorities' attention to the fact that this notification made pursuant to Article 25 (3) of the Convention in no way prejudges the legal questions which might arise concerning the validity of the said declaration."

3. In a letter of 5 February 1987 to the Secretary General the Permanent Representative of Turkey observed:

"...

The unequivocal wording of Article 25 (3) of the Convention offers no basis for expressing opinions or adding comments when transmitting the copies of the Turkish declaration to the High Contracting Parties during the discharge of your functions as depositary.

According to Article 25 (3) of the Convention, the Secretary General, with regard to each declaration under Article 25 deposited with him, shall 'transmit copies thereof to the High Contracting Parties and publish them'.

International treaty practice, in particular that followed by the Secretary General of the United Nations as depositary to such similar important treaties as the Statute of the International Court of Justice or the covenants and conventions dealing with human rights and fundamental freedoms also confirms that the depositary has to refrain from any comments on the substance of any declaration made by a Contracting Party.

..."

4. In his reply of 10 February 1987 the Secretary General stated with regard to his earlier letter of 29 January:

"...

I consider that this course is in keeping with international treaty law and with the relevant practice, as confirmed by numerous precedents, including the practice of the Secretary General of the United Nations as depositary. ...

... Article 77 (2) of the Vienna Convention on the Law of Treaties ... provides as follows:

'In the event of an difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the Contracting States or, where appropriate, of the competent organ of the international organisation concerned.'

It is consequently my duty to draw the attention of the Contracting Parties to a point on which there is a difference between a Government and myself concerning the performance of my functions as depositary."

5. The Permanent Representative of Turkey replied on 13 March 1987:

"...

First of all, I would like to state that the Turkish declaration does not contain any 'reservations' in the sense of international treaty law. ... The term 'reservations' mentioned in your letter, therefore, consists solely of a subjective interpretation and attribution which, in fact, should have been carefully avoided in view of the clearly limited function of the depositary according to Article 25 (3) of the Convention ...

(The) Secretary General of the UN, conforming himself to Resolution 598 (VI) adopted on 12 January 1952 by the General Assembly, has never refused to register notifications or declarations made by contracting parties to a Convention to which he acts as depositary, nor has he made any critical comment about such notifications or declarations when informing the other contracting parties thereof.

..."

6. On 6 April 1987 the Deputy Minister of Foreign Affairs of Greece addressed the following letter to the Secretary General:

"...

The Turkish Government, departing from the practice which has up to now been followed by all States in respect of declarations made pursuant to the aforementioned provision, has thought it right to reduce substantially its conventional obligations by formulating a certain number of reservations ... (The) Turkish Government has not expressly used the term reservation in its declaration but ... what is important ... is not the nomenclature or absence of nomenclature of the act in question but its content and effect. Accordingly, any unilateral declaration which limits a State's contractual obligations is incontestably, from the point of view of international law, a reservation. This question concerns one of the most established principles of international treaty law, which has been codified by the two Vienna Conventions – the Convention of 1969 on the law of treaties and the Convention of 1986 on the law of treaties between States and international Organisations or between international Organisations. Both Conventions provide in identical terms that 'the expression 'reservation' means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State' (Article 2, para.1 (d)).

It is therefore evident that limitations and restrictions contained in the aforementioned declaration of the Turkish Government constitute reservations from the point of view of international law. Moreover, this results clearly from the expression 'subject to' used in the Turkish declaration.

Accordingly, the question which arises is to know whether the reservations are compatible with the European Convention on Human Rights. In our opinion, there is no doubt that they are incompatible and in particular for the following reasons:

The issue of reservations is regulated very strictly by Article 64 of the Convention ...

It is self-evident that the Turkish reservations are far from being in agreement with the conditions set out in this article since they are neither compatible with the requirement of time nor with the basic conditions provided therein.

It is moreover incontestable that reservations to the European Convention on Human Rights may not be formulated on the basis of any provision other than Article 64. This conclusion results not only from Article 64 itself, which is the only provision regulating reservations, but also from the overall structure and nature of the European Convention on Human Rights as well as the general principles of international law relating to reservations. Furthermore, Article 25 provides neither directly nor implicitly the possibility of formulating reservations similar to the reservations set out in the Turkish declaration. The position cannot be otherwise for if reservations could be made on the basis of Article 25, such a method of proceeding would undermine Article 64 and would sooner or later destroy the very foundations of the Convention.

Article 19, paragraph b, of the Convention on the law of treaties, proclaiming a principle of incontestable legal logic, states that: 'a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless: b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made' (see also Article 19 (b) of the Convention on the law of treaties between States and international Organisations or between international Organisations).

It follows that the Turkish reservations, as they are outside the scope of Article 64, must be considered as unauthorised reservations under the Convention and, accordingly, as illegal reservations. Consequently, they are null and void and may not give rise to any effect in law.

In conclusion, we insist on stressing how regrettable it is in this affair of extreme importance which concerns European public order that you have not up to now fully exercised the depositary functions resulting from general international law and, in particular, from the Vienna Conventions of 1969 and 1986 (see Article 77, paragraph 1 (d), and paragraph 2, respectively), particularly since over and above your depositary role, you are one of the organs which must supervise the strict application of the European Convention on Human Rights (Article 57)."

7. The Secretary General replied as follows in his letter of 27 April 1987:

"Referring to the observations ... relating to the exercise of my functions as depositary under the European Convention on Human Rights, I would like to recall that, at the time of deposit of the declaration by the Turkish authorities, I thought it my duty to stipulate that the notification made pursuant to Article 25 (3) of the Convention in no way prejudged the legal questions which might arise concerning the validity of the said declaration. Moreover, by letter dated 10 February 1987, I drew the attention of the Contracting Parties, referring to Article 77 (2)

of the Vienna Convention on the law of treaties, to the divergence which had arisen between the Government of Turkey and myself concerning the discharge of my aforementioned functions. In this way, I consider that I have complied with the law and practice of treaties and international organisations resulting in particular from the Vienna Convention of 1969."

8. The Permanent Representative of Sweden, in his letter of 21 April 1987, replied as follows to the Secretary General's letter of 29 January 1987 transmitting Turkey's declaration under Article 25:

"...

The Swedish Government considers this declaration an important step for the protection of human rights in Turkey. However, the reservations and declarations which Turkey has made in connection with the said recognition raise various legal questions as to the scope of the recognition. The Government therefore reserves the right to return to this question in the light of such decisions by the competent bodies of the Council of Europe that may occur in connection with concrete petitions from individuals."

9. The Minister of Foreign Affairs of Luxembourg, in his letter of 21 April 1987, replied as follows to the notification, by the Secretary General, of Turkey's declaration under Article 25:

"...

The reservations, which are set out in that declaration and which limit the recognition by the Turkish Government of the competence of the European Commission of Human Rights to receive individual petitions, raise a fundamental question regarding the scope of legal instruments elaborated within the Council of Europe. The question is to know inter alia whether the unilateral expression of a limitation of an international Convention's recognition is valid or not.

... Luxembourg reserves to itself the right to express, when it deems appropriate and before the competent bodies of the Council of Europe, its position in regard to the Turkish Government's declaration. Between now and then, the absence of a formal and official reaction on the merits of that problem should not ... be interpreted as a tacit recognition by Luxembourg of the Turkish Government's reservations."

10. The Permanent Representative of Denmark, in his letter of 30 April 1987 to the Secretary General, stated the following with regard to Turkey's declaration:

"...

In the view of the Danish Government, the reservations and declarations which accompany the said recognition raise various legal questions as to the scope of the recognition. The Government therefore reserves its right to return to these questions in the light of future decisions by the competent bodies of the Council of Europe in connection with concrete petitions from individuals."

11. The Permanent Representative of Norway, in his letter of 4 May 1987 to the Secretary General, made the following statement:

"...

In the view of the Norwegian Government the step taken by the Turkish Government is to be welcomed as an important contribution to the strengthening of human rights in Europe. However, the wording of the declaration could give rise to difficult issues of interpretation as to the scope of the recognition of the right to petition. In the event, such issues fall to be resolved by the European Commission of Human Rights in dealing with concrete petitions from individuals.

The right of individual petition under Article 25 of the Human Rights Convention forms an essential part of the system of procedural safeguards for human rights in Europe. It is therefore desirable to avoid any doubt as to the scope and validity of the recognition by individual States of this right which may be raised by generalised stipulations in respect of the context in which petitions would be accepted as admissible, interpretative statements or other conditionalities."

12. The permanent Representative of Turkey, in his letter of 26 June 1987 to the Secretary General, made the following comments with regard to the above letters by Greece, Sweden, Luxembourg, Denmark and Norway:

"First of all, I would like to emphasise that the points contained in the Turkish declaration cannot be considered as 'reservations' in the sense of international treaty law. According to the Vienna Convention on the Law of Treaties of 1969, which for most of its provisions purports to codify existing principles of international treaty law, 'a reservation modifies for the reserving State the provisions of the treaty to which the reservation relates to the extent of the reservation'. In this sense, a reservation distinctly alters for the reserving State the scope of its commitments under the treaty.

Turkey ratified the Convention and its First Protocol in 1954, by making a reservation with regard to Article 2 of the Protocol. The 'conditions' attached to the Turkish declaration of 28 January 1987, however, are not 'reservations' to commitments arising out of the Convention. They do not modify Turkey's general obligations under the Convention. The Convention, as ratified and subject to the 'reservation' made in 1954, continues to bind Turkey to the full extent and ... is open to allegations under Article 24.

In other words, the conditions attached to the declaration of 28 January 1987 do not purport to modify or to exclude any of the legal provisions of the Convention. The 'conditions' have the only purpose to define and limit the granting of additional power and authority which Turkey as a Contracting State has on its own volition bestowed upon the Commission.

Furthermore, any acceptance of an optional clause of an international treaty is tantamount to an expression of consent by the State concerned to be bound by that provision. It is thus based on the subjective attitude and understanding of the State concerned. This means that the State is free, within the limits of the rules of the international treaty or convention concerned, to qualify its consent to be bound by the optional clause.

When recognising the right of individual petition pursuant to Article 25 of the European Convention on Human Rights, the States are granting an additional competence to the European Commission of Human Rights. Such granting of competence can be made subject to certain conditions.

Article 25 of the Convention does not contain any indications neither of possible conditions nor of prohibition of such conditions. In particular, it does not envisage a qualified declaration nor does it prohibit such a declaration. Thus a declaration under Article 25 accompanied with certain conditions cannot be seen as being contrary to an explicit rule of the Convention.

Finally, I would like to point out in this connection that the only competent organ to make a legally binding assessment in this respect is the European Commission of Human Rights, when being seized by an individual application, and eventually the Committee of Ministers when acting pursuant to Article 32 of the Convention."

13. On 22 July 1987 the Permanent Representative of Belgium, in a letter to the Secretary General, stated the following with regard to Turkey's declaration under Article 25:

"...

The Belgian Government considers this declaration an important step towards the protection of human rights in Turkey. However, the conditions and qualifications set forth in this declaration, which are liable to limit the recognition by the Turkish Government of the competence of the European Commission of Human Rights to receive individual petitions, raise legal questions as to the scope of an essential provision of the system of protection of the rights and fundamental freedoms provided for by the Convention.

Belgium therefore reserves the right to express its position in regard to the Turkish Government's declaration, at a later stage and before the competent bodies of the Council of Europe. Meanwhile the absence of a formal reaction on the merits of the problem should by no means be interpeted as a tacit recognition by Belgium of the Turkish Government's conditions and qualifications."

THE LAW

I. The Commission's competence in relation to the declaration made by Turkey under Article 25 of the Convention

1. Article 25 of the Convention provides:

1. "The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

2. Such declarations may be made for a specific period.

3. The declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.

4. The Commission shall only exercise the powers provided for in this Article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs."

2. Turkey has recognised the Commission's competence under Article 25 in her declaration of 28 January 1987.

3. The applicants claim to be victims of violations of the Convention by Turkey in the "buffer zone" and the northern part of Cyprus. The respondent Government, invoking the territorial limitation in paragraph (i) of their declaration of 28 January 1987, submit that Turkey has not recognised the Commission's competence to examine the present applications, which lie outside the territorial framework specified in the declaration. The applicants contest the validity of this territorial limitation and its applicability to the present case. The respondent Government state that the declaration has been conceived as a whole and that the rejection of any of the conditions contained therein would make the declaration inexistent.

4. The Commission must first determine the validity of Turkey's declaration and its scope. Its competence for this determination has expressly been recognised by Turkey in earlier correspondence (letter of 26 June 1987 to the Secretary General) and at the hearing before the Commission. Moreover, the Secretary General of the Council of Europe has on 28 January 1987, when Turkey deposited her declaration, drawn the Turkish authorities' attention to the fact that the notification of the declaration to the other High Contracting Parties "in no way prejudges the legal questions which might arise concerning the validity of the said declaration".

a) The meaning of the territorial limitation in para.(i) of Turkey's declaration

5. The applicants submit with regard to the scope of the territorial restriction that, on a reasonable interpretation, it does not provide any assistance to Turkey because the Turkish Constitution must apply to the actions of its armed forces and to the decisions of the Government concerning the disposition and use of the armed forces. They note that Turkey has replaced her declaration of 1987 "with a new form of words".

6. The Commission finds that the phrase "acts or omissions of public authorities in Turkey" in the declaration of 1987 clearly refers to the metropolitan territory, but that the words "territory to which the Constitution of Turkey is applicable" might also be interpreted as including acts performed by Turkish authorities abroad, which are governed by the Turkish Constitution. The Commission notes that the latter phrase has in the Turkish declaration of 7 March 1990 been replaced by the words "within the boundaries of the national territory of the Republic of Turkey".

7. The Commission finds that the territorial restriction in Turkey's declaration of 28 January 1987 must be interpreted in the light of its clear object and purpose in view of the previous Inter-State cases brought by Cyprus against Turkey. The applicants have stated earlier: "It is generally recognised that this restriction has the exclusive purpose of seeking to avoid the responsibility of Turkey for breaches of the European Convention arising from Turkish actions in the Turkish occupied area of Cyprus."

8. The Commission finds on the basis of the above interpretation that the acts complained of in the present applications come within the scope of the territorial restriction in Turkey's declaration of 28 January 1987. The Commission must therefore determine whether its jurisdiction is limited by this clause.

b) The validity of the limitations in paras.(i) to (v) of Turkey's declaration

9. Turkey's declaration under Article 25 contains – apart from the temporal limitation in the first sentence of the last paragraph – five restrictive clauses in paras.(i) to (v). In previous applications by individuals against Turkey the Commission has not determined the validity of any of these five clauses because they were not invoked. However, when admitting Applications Nos.14116/88 and 14117/88 (Sargin and Yagci v. Turkey, Dec.11.5.89, Revue universelle des droits de l'homme 1989 p.516, also to be published in Decisions and Reports), the Commission based itself on a valid declaration by Turkey recognising the right of individual petition.

10. The Commission notes that these "conditions" are set out separately, and are different in their nature, from the temporal limitation in the last paragraph of

Turkey's declaration under Article 25. It recalls that temporal limitations are permissible under paragraph 2 of Article 25, which provides that declarations under paragraph 1 "may be made for a specific period". This clause has always been understood as allowing High Contracting Parties to exclude retroactivity of declarations made under Article 25, cf. the declarations by the United Kingdom of 14 January 1966 (Yearbook 9 p.8), by Italy of 20 June 1973 (Yearbook 16 p.10), by Spain of 11 June 1981 (Yearbook 24 p.8), by Liechtenstein of 15 August 1985 (Yearbook 28 p.11) and by Greece of 20 November 1985 (Yearbook 28 p.10), and Application No.6323/73, X. v. Italy, Dec.4.3.76, D.R.3 p.80. With regard to the specific terms of the temporal restriction in Turkey's declaration the Commission has previously held that it is precluded by this restriction from examining applications concerning administrative decisions taken before, and confirmed by judgments after, 28 January 1987 (Application No.13623/88, Dec.13.4.89).

11. The legal situation is different with regard to the limitations contained in paras.(i) to (v) of Turkey's declaration. They are not, like temporal restrictions, covered by paragraph 2 of Article 25 but, as limitations of a different character (ratione loci, ratione materiae and ratione personae), not expressly authorised in this Article. The Commission has examined whether they are nevertheless compatible with Article 25, as claimed by the respondent Government.

12. Article 31 para.1 of the Vienna Convention on the Law of Treaties provides that a treaty shall be interpreted in good faith in accordance with "the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

13. As regards the ordinary meaning of Article 25 para.1 of the European Convention on Human Rights, the Commission considers that the wording "the rights set forth in this Convention" presupposes total, not partial recognition. Otherwise the Convention would in Article 25 para.1 have referred to "any" or "some" rights.

14. The Commission has next considered Article 25 in the context of the Convention as a whole.

15. It notes that, under Article 64 para.1 first sentence any State may, when signing the Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. It follows from the clear wording of this provision ("when signing the Convention or when depositing its instrument of ratification") that a High Contracting Party may not, when at a later stage recognising the right of individual petition, substantially modify its Convention obligations for the purpose of proceedings under Article 25. The respondent Government have repeatedly stated that the additional clauses in their declaration under Article 25 are not to be considered as "reservations" in the sense of international treaty law.

16. The Commission observes that, if considered valid, the restrictions ratione

materiae in paras.(ii), (iv) and (v) of Turkey's declaration would lead to the result that the guarantee of specific Convention rights would in proceedings under Article 25 differ from the guarantee of the same rights applying in proceedings under Article 24. However, the competence of the Commission cannot in regard to the substance of Convention rights be different in the two proceedings.

17. The conclusion, that Article 25 only permits the temporal restrictions expressly authorised in its second paragraph, is further supported by a comparison with Article 46, which provides in paragraph 2 that declarations recognising the jurisdiction of the Court "may be made ... for a specified period". This provision is analogous to paragraph 2 of Article 25. Article 46 para.2 further provides that declarations under paragraph 1 "may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties". As pointed out by the Commission in the case of Kjeldsen, Busk Madsen and Pedersen, no further conditions are permitted under this Article (see Eur. Court H.R., Series B no.21, p.119; cf. also Eur. Court H.R., "Linguistic" case, Series B no.3, Vol.I p.432).

18. The Commission also notes that Article 6 para.2 of Protocol No.4 and Article 7 para.2 of Protocol No.7 provide that the right of individual recourse recognised by a declaration made under Article 25 of the Convention shall not be effective in relation to the Protocol unless the State concerned has made a statement recognising such a right. As pointed out by the applicants such an express stipulation would not have been necessary had Article 25 allowed such limitations of the right of individual petition to be placed unilaterally by a State when recognising the right of individual petition.

19. The Commission has further examined the five conditions in paras.(i) to (v) of Turkey's declaration under Article 25 in the light of the object and purpose of the Convention.

20. It is clear from the Preamble to the Convention that the High Contracting Parties in concluding the Convention intended to achieve greater unity by a common understanding and observance of human rights and to take steps for the collective enforcement of the rights and freedoms defined in Section I. The Commission found in the Austria v. Italy case (No.788/60, Dec.11.1.61, Collection 7 p.23 at pp.40–43 = Yearbook 4 p.116 at pp.136–142) that the purpose of the High Contracting Parties to the Convention was "to establish a common public order of the free democracies of Europe" and that the obligations undertaken by the Parties in the Convention "are essentially of an objective character" – a character which also appears in the machinery provided in the Convention for its collective enforcement – "being designed rather to protect the fundamental rights of individual human beings from infringement by any of the High Contracting Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves".

21. The Court has similarly held in the case of Ireland v. the United Kingdom

(Eur. Court H.R., judgment of 18 January 1978, Series A no.25 p.90 para.239) that, unlike international treaties of the classic kind, "the Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a 'collective enforcement'".

22. The Commission finds in the present case that the character of the Convention, as a constitutional instrument of European public order in the field of human rights, excludes application by analogy, as suggested by the respondent Government, of the State practice under Article 36 para.3 of the Statute of the International Court of Justice. Declarations under this clause create mere reciprocal agreements between contracting States. The Commission notes that Article 36 para.3 of the Statute does not, like Article 25 of the European Convention on Human Rights, concern petitions brought by individuals but applications by States. State applications are in the Convention regulated by Article 24. Under this provision they may, without any further agreement and without fulfilling any condition of reciprocity, be brought by every State which has ratified the Convention (cf. the Austria v. Italy case loc. cit. and Nos.9940-44/82 – France, Norway, Denmark, Sweden and Netherlands v.Turkey –, Dec.6.12.83, D.R.35 p.143, at pp.168–170).

23. The Commission has finally examined the Convention practice before and after the Turkish declaration of 28 January 1987, in accordance with Article 31 para.3 of the Vienna Convention on the Law of Treaties, which provides that there shall be taken into account, together with the context: a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; and b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

24. The respondent Government relied at the hearing on the territorial limitation contained in the second paragraph of the United Kingdom declaration of 14 January 1966 (Yearbook 9 pp.8–9), which excluded petitions "in relation to anything done or occurring in any territory in respect of which the competence of the ... Commission ... has not been recognised by the Government of the United Kingdom or to petitions in relation to anything done or occurring in the United Kingdom in respect of such a territory or of matters arising there."

25. The Commission notes that this clause excluded not only local but also central acts – e.g. decisions of the Privy Council in the United Kingdom – concerning non-metropolitan territories. However, this restriction was formulated by the United Kingdom in view of Article 63 para.4 of the Convention, which permits High Contracting Parties to limit the application of declarations under Article 25 as regards the non-metropolitan territories referred to in Article 63. The Commission is not in the present case called upon to verify whether the United Kingdom has in the above declaration correctly applied Article 63. It will consider below whether Article 63 has any relevance for the present applications.

26. As regards practice subsequent to the Turkish declaration of 28 January

1987, the Commission notes that the restrictions contained in the declaration were rejected by one High Contracting Party – i. e. Greece – and that the Governments of Sweden, Luxembourg, Denmark, Norway and Belgium, and the Secretary General of the Council of Europe as depositary, reserved their positions in view of the serious Convention issues raised by the Turkish declaration.

27. The respondent Government also relied at the hearing on the declaration made under Article 25 by the Minister of Foreign Affairs of Cyprus on 9 August 1988, which was deposited on 5 September 1988 and reads as follows:

"On behalf of the Government of the Republic of Cyprus, I declare, in accordance with Article 25 of the Convention ..., that ... Cyprus recognizes, for the period beginning on 1 January 1989 and ending on 31 December 1991, the competence of the ... Commission ... to receive petitions submitted ... subsequently to 31 December 1988, by any person, non-governmental organisation or group of individuals claiming, in relation to any act or decision occurring or any facts or events arising subsequently to 31 December 1988, to be the victim of a violation of the rights set forth in that Convention.

... (The) competence of the Commission by virtue of Article 25 ... is not to extend to petitions concerning acts or omissions alleged to involve breaches of the Convention or its Protocols, in which the Republic of Cyprus is named as the Respondent, if the acts or omissions relate to measures taken by ... Cyprus to meet the needs resulting from the situation created by the continuing invasion and military occupation of part of the territory of the Republic by Turkey."

28. The Commission notes that the Secretary General, when transmitting the above declaration by Cyprus to the other High Contracting Parties on 12 September 1988, recalled that "according to the general rules this notification made pursuant to Article 25 (3) of the Convention in no way prejudges the legal questions which might arise concerning the validity of the said declaration". The Commission further observes that the validity of the limitation in the second paragraph of the declaration by Cyprus was not at issue, and not determined, in the Commission's decision of 6 December 1990 admitting Application No. 15070/89 – Modinos v. Cyprus.

29. Having regard to its above considerations, the Commission finds no legal basis in the Convention for a restriction of a declaration under Article 25 other than the temporal limitations provided for in paragraph 2 of this Article.

30. The Commission has finally examined the territorial restriction in para.(i) of Turkey's declaration in the light of Articles 1 and 63 of the Convention, as applied by the Convention organs in the determination of their competence ratione loci.

31. Article 1 of the Convention provides:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention."

32. The applicants claim that the alleged actions of Turkish military forces in

Cyprus, and of persons acting under their authority, fall within Turkey's jurisdiction within the meaning of Article 1. The Commission recalls that the application of the Convention extends beyond the national frontiers of the High Contracting Parties and includes acts of State organs abroad. It has previously stated in Applications Nos.6780/74 and 6950/75 (Cyprus v. Turkey, Dec.26.5.75, D.R.2 p.125 at pp.136–137), in inter-State proceedings instituted under Article 24 of the Convention:

"8. In Article 1 of the Convention, the High Contracting Parties undertake to secure the rights and freedoms defined in Section 1 to everyone 'within their jurisdiction' (in the French text: 'relevant de leur juridiction'). The Commission finds that this term is not, as submitted by the respondent Government, equivalent to or limited to the national territory of the High Contracting Party concerned. It is clear from the language, in particular of the French text, and the object of this Article, and from the purpose of the Convention as a whole, that the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their territory or abroad ...

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

9. The Commission does not find that Article 63 of the Convention, providing for the extension of the Convention to other than metropolitan territories of High Contracting Parties, can be interpreted as limiting the scope of the term 'jurisdiction' in Article 1 to such metropolitan territories. The purpose of Article 63 is not only the territorial extension of the Convention but its adaptation to the measure of self-government attained in particular non-metropolitan territories and to the cultural and social differences in such territories; Article 63 para.3 confirms this interpretation. This does not mean that the territories to which Article 63 applies are not within the 'jurisdiction' within the meaning of Article 1.

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

It remains to be examined whether Turkey's responsibility under the Convention is otherwise engaged because persons or property in Cyprus have in the course

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

33. The above view has been confirmed and further developed by the Commission in Application No.8007/77 (Cyprus v. Turkey, Dec.10.7.78, D.R.13 p.85 at pp.148–150), in the following terms:

"22. The Commission, while maintaining this conclusion in the present case, wishes to add the following further observations with regard to the respondent Government's reference to the 'Turkish Federated State of Cyprus'.

23. It is not disputed between the Parties that the European Convention on Human Rights continues to apply to the whole of the territory of the Republic of Cyprus, and that the applicant Government have since 1974 been prevented from exercising their jurisdiction in the north of the island. This restriction on the actual exercise of jurisdiction by the applicant Government, as the Government of the Republic of Cyprus, is due to the presence of Turkish armed forces in the north of the island. The respondent Government submit that the presence of their armed forces in that area is justified both under the Treaty of Guarantee of 1960 and by the wish of the 'Turkish Federated State of Cyprus', proclaimed in the north of the Republic in 1975.

24. The Commission is not called upon to pronounce on the validity of either of these alleged justifications under general law. It is bound to observe, however, that one High Contracting Party, namely Cyprus, has since 1974 been prevented from exercising its jurisdiction in the northern part of its territory by the presence there of armed forces of another High Contracting Party, namely Turkey; that the recognition by Turkey of the Turkish Cypriot administration in that area as 'Turkish Federated State of Cyprus' does not, according to the respondent Government's own submissions, affect the continuing existence of the Republic of Cyprus as a single State and High Contracting Party to the Convention; and that, consequently, the 'Turkish Federated State of Cyprus' cannot be regarded as an entity which exercises 'jurisdiction', within the meaning of Article 1 of the Convention, over any part of Cyprus.

25. The Commission concludes that Turkey's jurisdiction in the north of the Republic of Cyprus, existing by reason of the presence of her armed forces there which prevents exercise of jurisdiction by the applicant Government, cannot be

excluded on the ground that jurisdiction in that area is allegedly exercised by the 'Turkish Federated State of Cyprus'."

34. Article 1 of the Convention, as interpreted above, supports the view that the territorial restriction in Turkey's declaration is not permitted under Article 25.

35. As to the question whether Article 63 could be invoked in respect of the view that certain territorial limitations may validly be added to declarations made under Article 25 the Commission observes the following.

36. Article 63 paras.1 and 4 provide:

"(1) Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible."

"(4) Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organisations or groups of individuals in accordance with Article 25 of the Convention."

37. The Commission observes that Article 63 cannot be applied directly in the present case. The northern part of Cyprus is not a territory for whose international relations Turkey is responsible in the sense of this Article. Application of Article 63 para.4 by analogy – in the sense that a High Contracting Party may validly exclude the application of a declaration recognising the right of individual petition to territories which do not clearly form part of its own metropolitan territory – is not suggested by the respondent Government who leave this issue to the Commission's determination. The applicants, who contest the legality of Turkey's presence in the north of Cyprus, deny the applicability of Article 63 in the present case.

38. The Commission has considered whether application by analogy of Article 63 para.4 of the Convention to other non-metropolitan territories would in the circumstances of the present case be compatible with the object and purpose of the Convention.

39. The applicants submit that such application of Article 63 to Turkish acts in Northern Cyprus would be illegitimate, given the illegality under international law of Turkey's presence in that area. The respondent Government submit, as regards control of the implementation of the Convention by Turkey, that Turkey may be challenged before the Commission for alleged non-observance of the provisions of the Convention in the framework of Article 24.

40. The Commission has again had regard to the character of the Convention, as described above, and to the principle, reflected in its case-law under Article 1, that application of the Convention extends beyond the national frontiers of the High Contracting Parties and includes acts of State organs abroad (cf. paras.32 and 33 above). The commission also recalls that the Convention is intended to guarantee "not rights that are theoretical or illusory but rights that are practical and

effective" (Eur. Court H.R., Artico judgment of 13 May 1980, Series A no.37 p.34 para.33). The principle that Convention rights should serve a practical purpose ("effet utile") applies in the Commission's view not only to the rights defined in Section I of the Convention but also to the fundamental procedural right of individual petition under Article 25 as soon as a State has recognised that right. The Commission finally refers to its earlier observations at para.9 of its decision of 26 May 1975 (reproduced at para.32 above) concerning the purpose of Article 63, and at para.23 and 24 of its decision of 10 July 1978 (reproduced at para.33 above) concerning the restriction, resulting from the presence of Turkish armed forces in the north of Cyprus, on the exercise of jurisdiction by Cyprus, a High Contracting Party to the Convention. While not called upon to pronounce on the legality under international law of Turkey's presence in the north of Cyprus the Commission finds that application by analogy of Article 63 would be incompatible with the specific situation in that area.

41. The Commission finds that application by analogy of Article 63 para.4 would in the circumstances of the present applications be incompatible with the object and purpose of the Convention.

42. The Commission finds that the restrictions contained in paras.(i) to (v) of Turkey's declaration under Article 25 of 28 January 1987 are not permitted by this Article. This finding does not affect the Commission's previous decisions (e. g. No.13623/88, Dec.13.4.89, and No.13891/88, Dec.20.1.89) applying, as valid temporal restriction under paragraph 2, the clause contained in the first sentence of the last paragraph of Turkey's declaration.

c) The validity of Turkey's recognition of the right of individual petition

43. At the hearing before the Commission the Agent of the respondent Government made the following statement

"Le gouvernement turc considère et a toujours considéré que les conditions qui figurent dans sa déclaration selon l'article 25, y compris la clause territoriale, ont un caractère essentiel pour la volonté du Gouvern[e]ment d'accepter le droit de recours individuel, à tel point que si une seule de ces conditions devait être rejetée, la déclaration dans sa totalité deviendrait caduque; dans un tel cas, la reconnaissance par la Turquie du droit de recours individuel n'existerait plus."

44. The Commission recalls that its competence to determine the scope and validity of Turkey's declaration under Article 25 has expressly been recognised by Turkey (cf. para.4 above) and that Turkey has repeatedly stated that the restrictions contained in paras.(i) to (v) of the declaration "cannot be considered as 'reservations' in the sense of international treaty law".

45. The Commission must interpret Turkey's intention, when she made her declaration on 28 January 1987, as expressed at that time. It recalls that the declara-

tion was deposited after a friendly settlement had been reached in proceedings brought against Turkey by France, Norway, Denmark, Sweden and the Netherlands (Applications Nos.9940–9944/82) and shortly before the expiry, on 1 February 1987, of the period provided for the reporting procedure agreed in the settlement (see Comm. Report 7.12.85, D.R.44 pp.31, 38f.). By making the declaration under Article 25 Turkey then manifested her will to be bound by the Convention system also as regards individual applications under Article 25.

46. Where a State has clearly expressed the intention to be bound under Article 25, but has added restrictions to its declaration which are incompatible with the Convention, the main intention of the State must prevail. The Commission finds Turkey's present statement, accepting to be bound by its declaration under Article 25 only if all conditions contained therein are valid, to be incompatible both with her above earlier statements and with the object and purpose of the Convention. It therefore cannot prevail within the framework of this instrument.

47. The Commission recalls that the Court, when finding that an interpretative declaration by Switzerland did not satisfy two of the requirements of Article 64 of the Convention, "with the result that it must be held to be invalid", found it at the same time "beyond doubt that Switzerland is, and regards itself as, bound by the Convention irrespective of the validity of the declaration" (Belilos judgment of 29 April 1988, Eur. Court H.R., Series A no.132 p.28 para.60). The Commission notes in this context a principle frequently applied in the interpretation of legal instruments where parts are found to be invalid. This rule is expressed in the Latin phrase "ut res magis valeat quam pereat".

48. It follows from the above considerations that, by her declaration of 28 January 1987, Turkey has validly, and with a temporal limitation only, recognised the right of individual petition under Article 25 of the Convention.

49. The Commission therefore finds that it is competent ratione loci, under Turkey's declaration under Article 25 of the Convention of 28 January 1987, to deal with the present applications.

d) The Commission's competence ratione temporis in relation to the declaration made by Turkey under Article 25 of the Convention

50. It remains to be examined whether the Commission is also competent ratione temporis, given that the declaration only "extends to allegations made in respect of facts, including judgments which are based on such facts which have occurred subsequent to the date of deposit of the present declaration".

51. This clause does not affect the Commission's competence to deal with the complaints in Applications Nos.15299/89 and 15300/89 which concern violations of the Convention alleged to have been committed in July 1989.

52. Nor does it affect the Commission's competence to deal with those com-

plaints in Application 15318/89 which concern alleged violations of the Convention in March 1989.

53. The legal situation is different, however, insofar as the third applicant alleges continuing violations of Article 8 of the Convention and Article 1 of Protocol No.1.

54. The third applicant's submissions invoking the concept of a continuing violation are made in view of the six months' rule under Article 26 of the Convention and concern in particular her complaint under Article 1 of Protocol No.1.

55. The Commission has previously held that where there is "a permanent state of affairs which is still continuing", the question of the six months' rule "could only arise after the state of affairs has ceased to exist" (De Becker case, Yearbook 2 pp.214, 244; First Creek case, second decision on admissibility, Collection 26 pp.80, 110 = Yearbook 11 pp.730, 778).

56. In Application No.8007/77, lodged by Cyprus under Article 24 of the Convention, the Commission has stated the following in respect of complaints of continuing violations of, inter alia, Article 1 of Protocol No.1 by Turkey in the north of Cyprus (Dec.10.7.78, D.R.13 p.85 at p.154):

"45. The Commission observes ... that, in admissibility proceedings concerning State applications ..., it is not its task even to carry out a preliminary examination of the merits since the provisions of Article 27 para.(2) ... apply, according to their express terms, to individual applications under Article 25 only ...

It follows that the Commission cannot at this stage of the proceedings examine whether the ... complaints of 'continuing violations' of the Convention are or are not well-founded and that the applicant Government's submission, that the six months' rule is inapplicable because the application relates to such 'continuing violations', must be accepted.

46. The Commission concludes that the application cannot be rejected under Articles 26 and 27 para.(3) of the Convention for non-observance of the six months' rule."

57. In the present application under Article 25 the Commission must, before considering the six months' rule, examine the effect of the temporal restriction contained in Turkey's declaration under this Article.

58. The Commission has previously held that it is precluded by the specific terms of this restriction from examining applications complaining of administrative decisions taken before, and confirmed by judgments after, 28 January 1987 (see para.11 above).

59. Applying this reasoning in the present case the Commission finds that it cannot, under the terms of Turkey's declaration under Article 25 as limited by its temporal restriction, examine complaints of continuing violations insofar as they relate to periods before 29 January 1987.

60. The Commission concludes that it is not competent ratione temporis under this declaration to deal with the third applicant's complaints of continuing viola-

tions of Article 8 of the Convention and Article 1 of Protocol No.1 between 20 July 1974 and 28 January 1987. It follows that, to this extent, Application No.15318/89 is incompatible with the provisions of the Convention within the meaning of Article 27 para.2.

II. As to whether the applications are manifestly ill-founded

a) Applications Nos.15299/89 and 15300/89

61. The first and second applicants complain about their detention and alleged ill-treatment and the proceedings in Northern Cyprus in July 1989. They claim that the acts complained of were carried out by Turkish military forces stationed in the northern part of Cyprus, or by forces acting under their authority, and allege violations of Articles 1, 3, 5, 6, 7, 9 and 13 of the Convention.

62. The respondent Government refute the applicants' account of the facts and state that Turkish forces did not intervene during the events of 15 July 1989 and had nothing to do with those events.

63. The Commission finds that the first and second applicants' complaints raise complex issues of law and fact which require an examination of their merits. It follows that Applications Nos.15299/89 and 15300/89 are not manifestly ill-founded within the meaning of Article 27 para.2 of the Convention.

b) Application No.15318/89

64. The third applicant complains that she was detained on 19 March 1989 when trying to return to her property in the northern part of Cyprus. She alleges violations of Articles 3 and 5 of the Convention and continuing violations of Article 8 of the Convention and Article 1 of Protocol No.1.

65. The respondent Government contest the third applicant's account of the facts.

66. The Commission finds that the third applicant's complaints under Articles 3 and 5 of the Convention, concerning her detention in March 1989, raise complex issues of law and fact which require an examination of their merits. It follows that these complaints are not manifestly ill-founded.

68. As regards the third applicant's complaints under Article 8 of the Convention and Article 1 of Protocol No.1, the Commission has already found (paras.59–60) that it is precluded by the temporal restriction in Turkey's declaration from dealing with the third applicant's complaints of continuing violations of the Convention alleged to have occurred before 29 January 1987.

69. The applicant's complaint that she was refused access to her property in the north of Cyprus after 28 January 1987 raises an issue, requiring an examination of the merits, under Article 1 of Protocol No.1 to the Convention, but no issue under Article 8 of the Convention, as regards the third applicant's right to respect for her

home. The Commission notes that the applicant grew up in Kyrenia in Northern Cyprus, but that in 1972 she married and moved with her husband to Nicosia.

70. The Commission concludes that the third applicant's complaint, that she was refused access to her property in Northern Cyprus after 28 January 1987, is not manifestly ill-founded, if considered under Article 1 of Protocol No.1 to the Convention.

For these reasons, the Commission, by a majority

1. **DECLARES ADMISSIBLE Applications Nos.15299/89 and 15300/89 without prejudging the merits of the cases;**
2. **(a) DECLARES INADMISSIBLE the complaints in Application No.15318/89 of continuing violations of Article 8 of the Convention and Article 1 of Protocol No.1 alleged to have occurred before 29 January 1987;**
   (b) DECLARES ADMISSIBLE the remainder of this application, without prejudging the merits of the case.

Secretary to the Commission
(H. C. KRÜGER)

President of the Commission
(C. A. NØRGAARD)