EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

26 September 2005

Collective Complaint No. 30/2005 **Case Document No. 3**
Marangopoulos Foundation for Human Rights v. Greece

RESPONSE FROM THE MARAGOPOULOS FOUNDATION FOR HUMAN RIGHTS TO THE OBSERVATIONS BY THE GREEK GOVERNMENT ON THE ADMISSIBILITY

registered at the Secretariat on 21 September 2005

Collective Complaint No. 30 – MFHR vs. Greece

Response to the State's Arguments on Admissibility

(Submitted 21 September 2005)

A – Introduction

1. The Marangopoulos Foundation for Human Rights (hereinafter, 'the complainant', or 'the MFHR') has the honour to present its response to the Hellenic government's (hereinafter 'the State', 'Greece', or 'the defendant') observations on the admissibility of Collective Complaint No. 30 (hereinafter, 'the complaint'), brought under the 1995 Protocol Establishing a Collective Complaint Mechanism (hereinafter, 'the Protocol') and alleging multiple instances of non-compliance with the European Social Charter of 1961 (hereinafter, 'the Charter').

B – Response to the State's observations

2. The State's observations raise three distinct issues of admissibility that will be addressed separately below. It is alleged that: (i) the complainant lacks the "particular competence" required by the 1995 Protocol; (ii) the State cannot be held responsible for the actions or omissions of private persons; and, (iii) the State cannot be held responsible for actions and omissions occurring prior to its 1998 ratification of the Protocol. In other terms, the State suggests that the Foundation lacks *locus standi* (section 1, below), and that the complaint should be partially or completely declared inadmissible because the European Committee of Social Rights (hereinafter, 'the Committee') lacks competence *ratione personæ* (section 2) and *ratione temporis* (section 3).

B.1. The State's observations concerning the complainant's locus standi

3. The State alleges that the MFHR's "actions relating to *human and*, *especially, individual rights* are recognized and well known". The State further indicates that the MFHR bases its particular competence on "only two" activities relating to the subject of the complaint: a publication in 1997, and a round-table discussion in 1988. It concludes by saying this is not proof enough of the complainant's particular competence in issues such as "environmental pollution and its impact on worker's health, as well as health and safety at work and fair working conditions".

4. Paragraph 5 of the complaint sets numerous, non-exhaustive, grounds for the "particular competence" requirement, and not "only two", as suggested by the State. The two activities referred to by the State concern the very specific subject of the relation between environmental pollution and the right to health, with particular focus on the Ptolemaida area. Other activities of the complainant in the field of the right to the protection of health, the right to health and safety at work, and the right to fair working conditions, and the protection of social rights generally were put forward by the complainant, but not mentioned by the defendant.

5. The complainant does not share the State's outdated and arbitrary distinction of human rights into two main 'categories' or 'generations', and much to the contrary has struggled for over 26 years to promote *all* human rights[1] – and not only *individual* rights – as "universal, indivisible and interdependent and interrelated", even before the explicit terms of the Vienna Declaration and Program of Action of 1993[2]. Nonetheless, in order to dispel any doubts, and to help the Committee reach its

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[1] According to the testament of George Marangopoulos, founder of the MFHR, the objective of the Foundation is "the research, study, safeguard, according to the common consciousness, of rights and liberties…"

[2] *Vienna Declaration and Program of Action*, adopted by the World Conference on Human Rights in Vienna on 25 June 1993 (UN Doc. A/CONF.157/23 of 12 July 1993), paragraph 5: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms"

conclusion on the complainant's entitlement to act in the present complaint, a complete listing of relevant activities carried out by the MFHR is appended.[3]

6. According to the classification used in Annex I, the complainant's activities in the specific areas can be schematically described as follows:

Table 1 – Activities of the MFHR concerning the subject matter of the complaint[4]

Subject/ Activities	Colloquies/ Conferences	Courses/ Seminars	Lectures	Publications	Press conf. open activities	Total
Environment	2	1	0	4	1	8
Health	2	0	2	3	0	7
Labour & work conditions	4	0	0	7	6	17
ESC Rights generally	10	1	1	7	5	24
Total	18	2	3	21	12	56 (4)

7. As results from the afore-mentioned list, the MFHR has consistently displayed a multifaceted, multidisciplinary, rich and diverse activity by organizing colloquies, seminars, publishing numerous titles – a number of which in the field of social rights and the right to health –, organizing courses and otherwise furthering human rights education, participating in sessions of international organizations and their subsidiary bodies[5], extending judicial and extra-judicial assistance, presenting petitions and

[3] See Annex I – "MFHR Activities Relating to the Subject Matters of the Complaint". The majority of the MFHR's activities – in all fields of human rights promotion and protection – are listed in its brochure, also appended (Annex II). The most up-to-date version of the complete list of activities is also readily available on the complainant's website: http://www.mfhr.gr.

[4] Activity [9] of Annex I does not fit into any of the categories of Table 1, and therefore is counted separately. The list contains 57 activities relevant to the complaint, whereas Table 1 reports only 56.

[5] These are too numerous to be listed exhaustively, but as an illustration, it should be mentioned that the MFHR has regularly submitted written and oral statements to ECOSOC, the Commission on Human Rights, the Council of Europe, UNESCO, the EU and it's institutions, etc. It should be highlighted that the MFHR, represented by its President, was particularly active in the two ILO Conferences in which *Convention 182 concerning the worst forms of child labour* of 1999 was negotiated and adopted (86th and 87th International Labour Conferences).

appeals to national, regional and international authorities[6] and coordinating at the national level, the activities of civil society **relevant to the questions raised by this complaint**.

8. In order to call the Committee's attention to certain activities and initiatives of the complainant that have particular relevance to the issues raised by the complaint, we will briefly highlight the most important activities among those listed in Annex I.

9. The MFHR is among the foremost organizations, governmental and non-governmental, to endeavour to give full effect to social rights, generally. It is in this spirit that it convened in the spring of 1992 an international seminar, co-sponsored by the Council of Europe and enjoying the participation of Mr. Peter Leuprecht, then Head of Human Rights at the Council of Europe, in which the MFHR's president had the opportunity to vigorously underline the universality, interdependence, and interrelatedness of all rights, and to suggest the need for the establishment of the right to appeal to a quasi-judicial international body in order to monitor the effectiveness of economic, social and cultural rights.[7]

10. The MFHR has also developed a diverse contribution to the promotion and protection of collective and social rights generally, as illustrated by the many activities regarding the right to development[8], and the right to the environment[9]. With regard to the latter, the legal protection of the environment has always been seen from the perspective of the protection of the life and health of the human being.[10]

11. Among social rights, we have particularly focused on the issue of health[11], the right to work and the right to adequate working conditions[12]. We were publishing in

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[6] These actions, as well, are too many and diverse to allow an exhaustive listing, but we have highlighted in item [9] of Annex I, the petition-appeal presented to the Prosecutor's Office of the International Criminal Tribunal for the Former Yugoslavia, regarding the environmental and health effects of the use of depleted uranium munitions.

[7] See the "Preface" *in* Vassilouni, S. (ed.), *Aspects of the Protection of Individual and Social Rights*, Athens: Hestia Publishers, 1995, pp. 17-26 (item [48] of Annex I).

[8] Items [19], [42]-[47], [52], and [56]-[57] of Annex I.

[9] Items [1]-[9] of Annex I.

[10] See, for instance, items [2] and [5] of Annex I.

[11] See, particularly, Items [10]-[16] of Annex I.

the field of health and human rights when it was still a relatively novel concept[13], furthering a conception of the right to health as protected both indirectly – by other rights such as dignity, or integrity[14] –, and directly as a social right[15]. Regarding the activities with respect to the right to work, and the right to adequate working conditions, some focused on labour rights autonomously, and others to labour rights combined with other rights, such as the right to non-discrimination[16], the right to effective equality[17], or the rights of the child.[18]

12. The complainant therefore asserts that its activities in the field of the protection of social rights generally, and of those particular rights that are raised in the complaint, satisfy the "particular competence" requirement set forth in Article 3 of the Protocol in quantitative, qualitative and temporal terms: its activities were both numerous and relevant to the issues raised, and they spanned many decades.

13. For the reasons exposed, the MFHR requests that the Committee declare that the complainant has "particular competence" in the subject matters raised by the complaint, according to the Protocol requirements.

B.2. The State's observations with respect to the Committee's competence ratione personæ

14. In its written arguments, the State expressed "reservations" about the issue "of State responsibility for actions and omissions on the part of individuals". Nonetheless it provides no indication of what such reservations amount to, and simply "leaves it to the European Committee on Social Rights to decide on whether or not the [admissibility] preconditions exist, which shall allow the imputation to the Hellenic

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[12] See items [17]-[33], [39], [40], and [43]-[44] of Annex I.
[13] See, for instance, item [10] of Annex I, published in 1988.
[14] See, for instance, items [12] and [16] of Annex I.
[15] See, items [9], [11] and [48] of Annex I.
[16] Items [20]-[23] and [27] of Annex I.
[17] Items [19], [24]-[26], and [42]-[43] of Annex I.
[18] Items [18] and [28]-[33] of Annex I.

state of actions and omissions on the part of the Public Power Corporation (DEI)…”.[19]

15. The complaint contains a single instance of imputation to the State, of acts and omissions carried out by DEH: “as *de facto* manager of DEH, a private corporation, the State fails in its duty to establish employment contracts respectful of its international obligations [to protect lignite miners by providing additional paid holidays or reduced working hours]”.[20]

It should be highlighted that the violation of Article 2, paragraph 4, is – according to the complaint – a *double violation*: the State failed both as *regulator* of economic activity, and as an *employer*, to uphold the legal obligations binding upon it.

16. DEH’s nature and history distinguishes it from other corporations in the field of lignite mining and energy production in Greece[21]. Of course, private-owned companies in the lignite sector cannot be generally held internationally responsible under the Charter mechanism for the omission, by the State, to adopt legislative measures to fulfil the terms of Article 2, paragraph 4. But the complainants are of the opinion that in the present case, the State had *two distinct means* to ensure compliance with Article 2, paragraph 4 of the Charter, *and has failed to effect both*: the State

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[19] The Public Power Corporation’s acronym in Greek is Δ.Ε.Η. (pronounced D-E-Í). The English translation of its annual reports uses either PPC or DEH as their acronym, and we have preferred the latter throughout the complaint and in these observations (see also note 21, below).

[20] Cf. paragraph 109 of the Analytical Complaint. The argument on admissibility is succinctly made in paragraph 6 of the Analytical complaint (p. 3). The status and history of DEH, as well as its relations with the Greek State, are also described in paragraphs 18 and 19 of the complaint (p. 7).

[21] The “Δημόσια Επιχείρηση Ηλεκτρισμού” - which translates literally as “Public Electricity Enterprise”- or “Public Power Corporation” (DEH), was created in the 1950s by a complete nationalization of the energy sector – until then assured by small private operators, such as the British electricity provider, “Power”. The 1950 law that established DEH states: “(…) this organization is a public enterprise that belongs entirely to the Greek public sector, and that operates in the public interest and according to the rules of private economy, enjoying full administrative and economic independence (…) but under complete State supervision and control.”. DEH was partially privatized in January 2001, is still responsible for 96% of all the energy produced in Greece, and still owns and develops the transmission network (although another state-owned *société anonyme*, the Hellenic Transmission System Operator [HTSO], is nominally responsible for its management in non-discriminatory terms; see DEI Annual Report, 2004 http://www.dei.gr/%28BD01B3C42C3DBE81917CC1479538EA1C545AC73F379DA00D%29/documents/annual04%20eng-teliko.pdf , p. 86). With regard to DEH’s legal status, the corporation’s Annual Report 2004 states that “We are the largest electricity generator in Greece. We were established in 1950 and we were incorporated as a Société Anonyme on 1st January 2001, under the Liberalisation Law (2773/1999). Until January 2001 we were wholly owned by the Hellenic Republic.” (DEI Annual Report, 2004, p. 10)

should have enacted legislation to the effect that lignite miners must be afforded reduced working hours or additional paid holidays – thereby protecting miners of DEH and all other enterprises; and, having failed to do so, the State could, and should, have concluded collective or individual labour agreements that would have the same practical protective effect.[22]

It is also notable that under this double-tiered responsibility argument, the legal status of DEH in the domestic order is of no consequence: the State could have enacted the required laws before or after the privatisation; failing to do so, the State could, and should, have made DEH's contractual policy reflect its international obligations, prior to, or after said privatisation.[23]

17. Therefore, and with respect to all other claims[24], the complainant has asserted the responsibility of the State for its failure to adequately regulate and enforce regulation, of the lignite-mining sector and the operation of lignite-fired power plants. The exercise of these regulatory functions is a classical example of 'governmental functions', carried out by organs of the State in all branches of government, at the national regional and local level. These acts and omissions fall squarely in the definition of State responsibility, as established in Article 4 of the *Articles on the Responsibility of States for Internationally Wrongful Acts* (hereinafter, "Articles on State Responsibility")[25] :

> *"The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and*

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[22] Although the latter option would still not fully satisfy the Charter requirements, as private-owned lignite-mining corporations would still be allowed to operate in violation of Article 2, paragraph 4, the Committee might have considered that the average level of protection, nation-wide, had been satisfied (DEH is responsible for roughly 97% of all the lignite extracted in Greece, and is therefore the largest single employer).

[23] This double failure is all the more condemnable in that, as DEH's major shareholder, the State did not require the minority shareholder's consent in order to enact such a change of contractual policy. There is no justification for the State's double omission.

[24] See Analytical Complaint paragraphs 104, 109 and 132 for a detailed list of instances of non-compliance with Charter articles 2 §4, 3 §1, 3 §2 and 11.

[25] The *Articles on the Responsibility of States for Internationally Wrongful Acts*, and the *Commentary* thereto, which are considered to codify international custom and state practice in the matter, were adopted by the International Law Commission at its 53rd session (UN Doc. A/56/10), and endorsed by the UN General Assembly Resolution 56/83 of 12 December 2001 (UN Doc. A/RES/56/83).

whatever its character as an organ of the central government or a territorial unit of the State."

18. The State's responsibility derives, therefore, from the fact that it has authorized the continuous operation[26] of DEH's lignite mining and burning operations – before and after the corporation's partial privatisation – without due regard to the labour and health protections that are imposed on the State by the Charter. With respect to all these issues, the State's responsibility for these legislative, administrative and enforcement omissions is undisputed in the State's observations and falls squarely within the jurisdiction of the Committee.

19. Without prejudice to what has been stated above, the complainant has argued and continues to argue that the conduct of DEH is imputable to the State with respect to issues raised in the complaint on Article 2, paragraph 4 of the Charter. The fact that DEH – both before and after its partial privatisation – had a contractual policy in violation of the Charter's requirements engages the international responsibility of the State, on the following grounds.

20. According to the Articles on State Responsibility, the acts of private companies and individuals may be attributed to the State under certain circumstances. Article 8 of the Articles on State Responsibility, reads "[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.".

As mentioned, DEH was a public entity, fully owned and controlled by the State until its 2001 partial privatisation, and even after the privatisation, the State holds 51.5% of the corporation's shares, thereby exercising *full and absolute* control of its policies, actions and omissions.[27]

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[26] See *infra*, "Section B.3. The State's observations with respect to the Committee's competence *ratione temporis*", p. 11.

[27] See note 23, above. Minority shareholders are only required to express their consent in matters that are not relevant to the present complaint, see DEH Annual Report 2004, p. 180.

21. Therefore the complainant considers that DEH's actions falls within the scope of Article 8, "because there exists a specific factual relationship between the person or entity engaging in the conduct and the State"[28]. The Governing Board of DEH is still nominated directly by the State[29]. The partial privatisation of DEH has therefore not essentially modified the supervisory and control capacities and methods of the Greek State that is still omnipresent in management and policy-making. Conversely DEH is involved in public policy-making as well, as demonstrated by the corporation's considerable influence in framing Greece's policies on climatic changes.[30]

22. Finally, the complainant would like to conclude by stating that regardless of the State's responsibility for DEH's actions or omissions under *general* international law, it is our understanding that the Charter system does not allow states to divest themselves of international responsibility by partially transferring public corporation ownership to private economic actors.

> 23. For all these reasons the complainant requests that the Committee declare the complaint admissible in its entirety, thus rejecting the State's unclear reservations on imputation.

B.3. The State's observations with respect to the Committee's competence ratione temporis

24. The State alleges that "the Hellenic government has reservations" about the issue "of the meaning of continuous violation". Once more the defendant provides no clear picture of said reservations and "leaves it to the European Committee on Social Rights to decide on whether or not the [admissibility] preconditions exist, which shall allow the imputation to the Hellenic state of actions and omissions (…) that have

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[28] Paragraph 1 of the Comment on Article 8, Articles on the Responsibility of the State, p. 104.

[29] The nomination of the members of DEH's governing board is still ruled by Law 2414/1996 (Official Gazette A-135, 25/06/1996), Article 6, para. 2, indent *c)*, of which determines that the Ministers of National Economy and the Minister that supervises DEH's operation (currently, the Ministry of Development) will jointly nominate the Chairman and the Chief Executive Officer of the corporation.

[30] See, for instance, DEH Annual Report 2004, p. 36: "In addition, we cooperate with the Ministries of Development and Public Works, *in order to formulate Greece's position on climatic changes*" (emphasis added). It could not be different, as noted in the Analytical Complaint, paragraphs 42-45, since DEH is the single most important polluter in Greece.

preceded the ratification in 1998 of the Additional Protocol of Collective Complaints by Greece."

25. The complaint asserted that since the entry into force of the Charter, in July 1984, Greece is under the obligation to comply with the Charter's provisions. The entry into force of the Protocol in August 1998 has simply enabled organisations such as the complainant, to file collective complaints. The complaint further sustained that violations arising from acts occurring prior to the ratification were of continuous character.[31]

26. A detailed review of the acts and omissions imputed to the State by the complaint will reveal that most, if not all, acts and omissions *have been constant through time*: it is the aggregate of policy mismanagement and negligence, as well as ubiquitous legal lacunæ, occurring repeatedly for the last forty years, *and still occurring now*, that have produced the environmental deterioration and its impacts on human health and well-being. These State omissions have therefore occurred prior to and after the Charter's entry into force, and prior to and after the Protocol's entry into force, until now.

27. So, for instance, with regard to Article 11, the complaint asserts that the State fails to "remove as far as possible the causes of ill-health", as it has allowed, and still allows, the operation of lignite mines and lignite-fired power plants without sufficient regard to environmental impacts and with considerable and measurable negative health impacts. The State fails to "provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health", as it hasn't organized, and still fails to organize, regular systematic population-wide health assessments to measure such impacts and formulate appropriate public-health policy responses and preventive measures; it did not, and still does not, give wide access to environmental and health impact information neither on a regular, nor on a emergency basis and it did not, and still does not, sufficiently involve local communities in environmental impact assessment and health policy debate. Finally, the State fails to "prevent as far as possible epidemic, endemic

[31] See paragraphs 7 to 9 of the Analytical Complaint.

and other diseases", as it did not – and still does not – afford sufficient means for the monitoring mechanisms to act efficiently; for these reasons, the State has failed to fully implement the obligations contained in Article 11, paragraphs 1, 2 and 3. *The non-compliance occurred in the past, and is still occurring now*.

28. Therefore the complainant's argument is that the non-compliance derives from acts and omissions taking place *now*, acts and omissions that took place in the *past*, and even acts and omissions that have been partially remedied, but nonetheless *still produce effects*[32]. The non-conformity with articles 2, 3, and 11 results from a set of particular, inter-related and complex actions and omissions of the State. That is precisely the value of the mechanism of collective complaints: it focuses not on individual cases, narrowly defined in time and space, with precise and identifiable victims, but rather the sum total of policies, actions and omissions that endanger the effective exercise by all of rights such as the protection of health.

29. It is very important to keep in mind that the complaint also refers to the past because health consequences of environmental and labour policy are cumulative and aggravated with time, and that even with the relatively recent increase of public awareness with respect to environmental and health matters, State policy remains substantially unchanged.

30. Subsidiarily, should the Committee have doubts whether allegations regarding facts occurring before the 1984 Charter ratification or the 1998 Protocol ratification should be considered, the complainant would like to point out that the notion of continuing violation has emerged in order to extend legal protection to situations taking place before the entry into force of a treaty, when said situation continues to produce effects (or aspects) that violate the treaty at the moment of examination of the case.[33]

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[32] For instance, Greek environmental law came to fill a normative gap in 1986, with Law 1650/1986 (Official Gazette A 160, of 16/10/1986) – which could be seen as a partial remediation –, but the practical application of the law has so far been insufficient to remedy environmental damages it was meant to address or avoid.

[33] See Judgments of the European Court of Human Rights: *De Becker v. Belgium*, Yearbook II (1958-1959), §8 of the decision; *Papamichalopoulos and others v. Greece* (24 June 1993), § 40; *Agrotexim and others v. Greece* (24 October 1995) §§ 56 – 58; *Loizidou v. Turkey* (18 December 1996) § 41; *Cyprus v. Turkey* (10 May 2001) §§ 136, 150, 158, 175.

31. This notion of continuing violation is now well established in international human rights jurisprudence and theory. It concerns "[…] continuing situations where the violation is not (only) constituted by an act performed or a decision taken at a given moment, but (also) by its consequences, which continue and thus repeat the violation day by day [...]"[34]. In other words, the violation continues when its effects violate every day the human rights instrument concerned and the State fails to ensure the effective exercise of the rights guaranteed.[35]

32. Under the Council of Europe's human rights protection system, the European Court on Human Rights has extensively developed the concept of continuing violation, the evolution of which can be roughly summarized as follows:

- In *De Becker v. Belgium* (Judgment of 27 March 1962)[36], the Applicant contested the compatibility of his condemnation in 1946 by the Conseil de Guerre and in 1947 by the Brussels Military Court, *inter alia*, to forfeiture of his civil and political rights under Article 123 sexies of the Belgian Penal Code (introduced into the Belgian Penal Code by the Legislative Decree of 6th May 1944) with Article 10 of the ECHR (freedom of expression), as he was journalist and writer. "The Commission recognised, in regard to its competence ratione temporis that the Applicant had found himself placed in a continuing situation, which had no doubt originated before the entry into force of the Convention in respect of Belgium (14th June 1955), but which had continued after that date, since the forfeitures in question had been imposed "for life" ".
- In *Papamichalopoulos and Others v. Greece* (Judgment of 24 June 1993)[37], complained about an unlawful occupation of their land by the Navy Fund since 1967, thereby interfering with their right to protection of their property (Article 1 of Protocol No. 1). The Convention and Protocol No. 1 had already come into force in respect of Greece, on 3 September 1953 and 18 May 1954 respectively. Greece denounced them on 12 December 1969 with effect from 13 June 1970 (under former Article 65 § 1 of the Convention) but was not thereby released from its obligations under them "in respect of any act which, being capable of constituting a

[34] Van Dijk, P., Van Hoof, G.J.H., *Theory and Practice of the European Convention on Human Rights*, The Hague – London – Boston, Kluwer Law International, 1998, 3rd Edition, p. 160.

[35] See also Cohen-Jonathan, G., *La Convention Européenne des droits de l'homme*, Paris, Economica, 1989, pp. 97 – 100 ; Sorensen, M., « Le problème inter-temporel dans l'application de la Convention Européenne des droits de l'homme », *Mélanges Modinos*, Paris, 1968, pp. 304-319 (mostly pp. 314-315).

[36] Case *De Becker v. Belgium* (striking out), no. 214/56, § 8, Yearbook II (1958-1959).

[37] Case *Papamichalopoulos and Others v. Greece*, no. 18/1992, § 40, ECHR, Series A no. 260-B.

violation of such obligations, [might] have been performed by it" earlier (see Article 65 §2); it ratified them again on 28 November 1974 after the collapse of the military dictatorship established by the coup d'état of April 1967. The Court noted that Greece had not recognised the Commission's competence to receive "individual" petitions until 20 November 1985 and then only in relation to acts, decisions, facts or events subsequent to that date, but no relevant preliminary objection was raised in this case. Consequently, the Court contended itself to note "*merely that the applicants' complaints relate to a continuing situation, which still obtains at the present time*".

- In *Agrotexim and Others v. Greece* (Judgment of 24 October 1995)[38], the applicant companies complained for interference with their right to the peaceful enjoyment of their property by the measures adopted by Athens Municipal Council dated from 1979 and with articles 6 and 13 of the Convention in that it was not possible under Greek law for them, as shareholders of the Brewery, to institute proceedings in a court. The Commission in its admissibility decision found that the applicant companies' complaints related to a continuing situation because some of the contested measures continued after 20 November 1985 and up to the Commission's decision. As to the Court, "[…] a preliminary study of the case leads the Court to conclude that it may be possible to regard **the successive actions** of Athens Municipal Council as a **series of steps amounting to a continuing violation** and indicating the existence of a plan by the Municipal Council to purchase the two sites at the lowest possible price.
- In *Loizidou v. Turkey* (Judgment of 18 December 1996)[39], the applicant complained that prohibition by Turkey of access to her property in northern Cyprus ever since 1974 and, consequently constituted a continuing violation of her rights and that the jurisprudence of the Convention institutions and other international tribunals recognised this concept. As Turkey had limited its declaration of acceptance of the Court's jurisdiction, according to former Article 46 of the Convention, to facts, which occurred subsequent to the time of deposit (22 January 1990), the Court concluded that its jurisdiction only extended to the applicant's allegation of a continuing violation of her property rights subsequent to 22 January 1990 and it decided to join the question raised by the objection ratione temporis to the merits[40]. The Court recalled that "it has endorsed the notion of a continuing violation of the Convention and its effects as to temporal limitations of the competence of Convention organs […] Accordingly, the present case concerns alleged violations of a continuing nature if the applicant, for purposes of Article 1 of Protocol No. 1 (P1-1) and Article 8 of the Convention (art. 8), can still be regarded - as remains to be examined by the Court - as the legal owner of the land".
- In *Cyprus v. Turkey* (Judgment of 10 May 2001)[41], the question of violation of the Convention by Turkey since its military operation in northern Cyprus in July 1974 was under

[38] Case *Agrotexim and Others v. Greece*, no. 15/1994, § 57-58, ECHR, Series A no. 330-A.
[39] Case *Loizidou v. Turkey*, no. 40/1993, § 40-41, ECHR 1996-VI.
[40] See the Loizidou v. Turkey judgment of 23 March 1995 (preliminary objections), Series A no. 310, pp. 33-34, §§ 102-05).
[41] Case *Cyprus v. Turkey* (dec.) [GC], no. 25781/94, §§ 136, 150, 157-158, 174-175, 189, ECHR 2001-IV.

consideration. The applicant Government invoked in particular Articles 1 to 11 and 13 of the Convention as well as Articles 14, 17 and 18 read in conjunction with the aforementioned provisions. They further invoked Articles 1, 2 and 3 of Protocol No. 1. Cyprus requested the Court to "decide and declare that the respondent State is responsible for continuing violations and other violations of Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 17 and 18 of the Convention and of Articles 1 and 2 of Protocol No. 1". The Court concluded that "there has been a continuing violation of Article 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances" (§ 136). Furthermore, the Court asserted that "during the period under consideration, there has been a continuing violation of Article 5 of the Convention by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the missing Greek-Cypriot persons in respect of whom there is an arguable claim that they were in custody at the time they disappeared (§ 150). […] For the Court, the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attains a level of severity, which can only be categorised as inhuman treatment within the meaning of Article 3 (§ 157). The Court concluded that, during the period under consideration, there has been a continuing violation of Article 3 of the Convention in respect of the relatives of the Greek-Cypriot missing persons (§ 158). Moreover, the Court observed that: "firstly, the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8 § 2 of the Convention (see paragraph 173 above); secondly, the inter-communal talks cannot be invoked in order to legitimate a violation of the Convention; thirdly, the violation at issue has endured as a matter of policy since 1974 and must be considered continuing" (§ 174).As to article 8 of the Convention, the Court concluded "that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus" (§ 175). Finally, the Court concluded that "there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights" (§ 189) [42].

33. As emerges from the above-mentioned decisions, the main factors for the existence of continuing violations are the duration of the violation and the fact that the violation is still occurring. Moreover the Court has clearly held that a State's

[42] See also Case *Demades v. Turkey* (Judgment of 31 July 2003), no. 16219/90, §§ 36-37, 44-46, in which the Court sees no reason in the instant case to depart from the conclusions, which it reached in the *Loizidou* and *Cyprus v. Turkey* cases.

declaration limiting the Court's jurisdiction to facts occurring after said declaration, does not preclude the Court's jurisdiction in the specific case of continuing violations.

34. For all the above reasons the complainant requests that the Committee declare the complaint admissible in its entirety, thus dismissing the State's unclear reservations on the notion of continuous violation.

C – Conclusion

35. For all the reasons mentioned above the Marangopoulos Foundation for Human Rights respectfully asks that the European Committee of Social Rights find and declare that the MFHR has particular competence in the issues raised by Collective Complaint No. 30, and that it reject the State's arguments concerning the admissibility of the complaint, thereby declaring it admissible in its entirety.

Athens, 21 September 2005.

Prof. Alice Yotopoulos-Marangopoulos
President, MFHR